



# Byron Shire Council



## Agenda

### Ordinary Meeting

**Thursday, 21 September 2017**

**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

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## 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)

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## 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

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#### **2. APOLOGIES**

#### **3. REQUESTS FOR LEAVE OF ABSENCE**

#### **4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

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

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# BYRON SHIRE COUNCIL

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***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    Plastic Free Byron Shire  
File No:                            I2017/1154

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I move:

1. That Council received a report in October 2017 on Council's capacity to influence reductions in single use of plastic bags and packaging with the intent of implementing a voluntary ban of single use plastic bags and packaging in the Byron Shire by Plastic Free July 2018.

This could involve:

- A) creating a program of education and assistance for local businesses and the community to reduce the use of disposable plastic items including plastic bags, plastics drinking straws, bottled water, takeaway coffee cups and food containers.
  - B) host a number of events to raise awareness and promote alternatives for local businesses and local business groups.
  - C) support and promote the positive steps being taken in the community to reduce the use of single use plastic items.
  - D) report back the costs and benefits of phasing out single use plastics for Council if it was implemented across the shire.
  - E) the implementation of Council's existing Sustainable Events Management Policy, in particular as it relates to the use of disposable plastic items and packaging for takeaway items and single use plastic water bottles.
  - F) Work in conjunction with local groups like Plastic Free Byron, Positive Change for Marine Life, Mullum Cares and Boomerang Bags and the Chambers across the Shire to find the best ways to help implement these changes.
2. Council look to identify potential funding streams to help support the process through grants or other means.
  3. Council investigate potential legal options for a ban or covenant to assist in this process.
  4. Council creates and promotes more public water stations across the shire to reduce the need for single use water bottles.
  5. Council writes to the NSW Premier Gladys Berejiklian, NSW Environment Minister Gabrielle Upton, NSW MLC for Ballina, Tamara Smith, NSW Member for the Northern Rivers, Benjamin Franklin and the Federal Member for Richmond, Justine Elliot, advocating for a ban on single use plastic bags and asking for any support they may be able to give.

Signed: Cr Sarah Ndiaye

**Councillor's supporting information:**

More than four billion single-use plastic bags are used in Australia each year; 10 million per day or 20,000 tonnes. More than 75% are used only once. Some of them end up in landfill but many end up in the environment where they can cause great harm to bird, animal and aquatic life. As well as being mistaken for food, plastic bags break up into smaller fragments that release toxins and absorb other chemicals in seawater, such as pesticides and detergents, creating highly toxic particles that can enter the food chain. Single use plastic bags and packaging are a major source of litter and water pollution in our local waterways and ocean.

Given our large expanse of Marine Parks, National Parks, State Forests and riparian zones and our high number of visitors to the area (approx. 2 million per year), it is important that Council does its part to reduce plastic use and the environmental devastation caused by plastic pollution. Plastic bags and packaging can become serial killers. Once a bag and other plastic is ingested, it can kill marine life, releasing the bag back into the environment to kill again once the animal decomposes.

Around the world, about eight million tonnes of rubbish makes its way into the world's oceans. An estimated 80% of this is plastic, with beverage litter, plastic bags and microplastics making up around 35% of this. Plastic is responsible for the death of an estimated one million seabirds and over 100,000 sea mammals each year. Turtles, whales and seabirds mistake plastic bags for food or become entangled in them, resulting in painful injuries or even death.

**So why plastic bags?**

It is estimated that it costs governments, businesses and community groups in Australia over \$4 million per annum to clean up littered plastic shopping bags alone! Tasmania, the Northern Territory, ACT and South Australia have already introduced a ban on single-use plastic bags, which has been very successful in reducing the use of plastic bags. Many NSW towns, often known for their environmental and cultural tourism, have already banned the bag. These towns include Mogo, Blackheath, Bundanoon, Tilba and the Kangaroo Valley.

There are two types of plastic bags:

1. Light weight bags (<35 microns) which are predominantly used as check-out bags in supermarkets and for fresh produce, take-away food and other non-branded applications. These are cheap to produce and are predominantly used only once before being discarded.
2. Heavier, boutique style bags that are generally branded and used to carry higher value goods. These are often only used once, use more resources to produce and take longer to break down. They should not be considered a reasonable replacement for light-weight bags. Neither should so called 'biodegradable bags', which simply break down into thousands of tiny, long-lived toxic particles more quickly.

Light-weight plastic bags are given out at no cost at checkouts. They are, however, not free. The cost of plastic bags adds \$10-\$15 per year per family. Retailers build the cost into their sales price even though they may seem to be 'free' over the counter. Disposal of plastic bags also costs Council – our landfill site is not infinite, and landfill and collection costs are expensive.

**What are the solutions?**

The Federal and State Governments and the Australian Retailers Association (ARA) agreed to cut plastic check-out bag usage by 50 per cent by the end of 2005. The targets for reduction in plastic bag use were almost achieved with a 41% reduction by supermarkets and an overall reduction of 34% - from 5.95 billion down to 3.92 billion bags per year. The Code included education and

commitments to make 'green bags' widely available in stores. However, according to the NSW EPA, since the end of the Plastic Shopping Bag Code of Practice, it appears that the trend of reduction in plastic shopping bag usage has reversed. In order to reduce plastic use further, leadership at local, State and Federal levels is needed.

Community education programs can be highly successful. Most town and village scale bans start at a community level. Council can assist through leading by example and through workshops run by our Waste Management Officer or community groups. These have the added benefit of increasing community engagement. Council can also help by disseminating clear information about recyclable options that suit our composting, recycling and waste disposal options.

Ultimately, the most simple and effective first-step to plastic pollution would be a ban on single use plastic bags. This would create a level playing field where no retailer will be disadvantaged and all customers could be educated with a standard message. Council is not in a position to enforce a regional ban on single use plastic bags on our own. A Byron Shire-wide ban would only be possible with the voluntary participation of all the retail outlets in the region. Experience has shown this can be achieved on a smaller scale in retail precincts or villages and Council should support this. However, it would be very challenging to replicate this at a larger scale, particularly when national and international companies are involved. National companies may not allow a local outlet to ban single use plastic bags. Facilitating a voluntary ban amongst local businesses would also take considerable time and resources. For these reasons a NSW or Australian wide ban on single use plastic bags is a far simpler and more practical solution, therefore it is important that we continue to advocate for a ban. It is important to remember that plastic bags are just one aspect of this proposal so it is important we continue to work on reducing single use plastics wherever we can.

The NSW Government recognises the growing evidence on the impacts that plastic shopping bags have on the environment. In 2015, the NSW Environment Protection Agency investigated options for addressing the impacts of plastic bags in NSW and nationally. These options were presented at the Meeting of the Environment Ministers in December 2015. The Ministers agreed that NSW and Queensland would convene this Ministerial Roundtable to inform a harmonised approach to reducing the environmental impacts of plastic shopping bags and review experiences of jurisdictions who have implemented plastic shopping bags bans. While the QLD government has agreed to phase out all single-use bags by 2018, no further progress has been made since then from the NSW Government. The Australian Government has been involved in these discussions with State Environment Ministers. Woolworths and Coles have both now agreed to phase out single-use plastic bags in 2018. Unfortunately, neither the NSW nor Australian Government has set a clear directive on this issue at this stage.

#### **Conclusion**

Single use plastic bags remain highly prolific in NSW and can cause significant damage to the environment. They are also an easy target to shift consumer attitudes and perspectives on the impacts that plastic have on the environment. Council should support efforts to reduce the use of disposable plastic bags in its own operations and throughout the broader community. A statewide or national ban on single use plastic bags would be the most effective way to address this issue and Council should advocate strongly for this, whilst addressing the issues raised in this document. Single use packaging use is prolific in the Byron Shire with more education and understanding needed to help businesses, as well as consumers make the changes necessary to ensure a more sustainable future that's single-use free.

### **Staff comments by Lloyd Isaacson, Team Leader Resource Recovery and Quarry, Infrastructure Services:**

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

#### 5 NoM Part 1

Staff note that there is a lot of confusion with regard to the various forms of packaging and its subsequent end life or recovery options. Staff are able to investigate implementation of options A-F to influence reductions in single use of plastic bags and packaging.

#### 10 NoM Part 2

Staff are able to investigate options for funding this process

#### 15 NoM Part 3

As Identified in the NoM, Local Government faces significant challenges in implementing a single-use plastic bag ban or voluntary covenant. As Cr Ndiaye notes:

20 *Council is not in a position to enforce a regional ban on single use plastic bags on our own. A Byron Shire-wide ban would only be possible with the voluntary participation of all the retail outlets in the region. Experience has shown this can be achieved on a smaller scale in retail precincts or villages and Council should support this. However, it would be very challenging to replicate this at a larger scale, particularly when national and international companies are involved. National*  
 25 *companies may not allow a local outlet to ban single use plastic bags. Facilitating a voluntary ban amongst local businesses would also take considerable time and resources. For these reasons a NSW or Australian wide ban on single use plastic bags is a far simpler and more practical solution, therefore it is important that we continue to advocate for a ban.*

30 The comment below was provided by Council's Legal Staff in response to a 2016 investigation exploring the legal options for a Council led covenant or ban;-

- Council cannot lawfully ban the use of plastic bags in Byron Shire;
- As a creation of Parliament, Council does not have general law-making powers. What power
- 35 Council does have is limited by the Local Government Act 1993(LGA);
- The LGA doesn't allow Council to lawfully stop plastic bags being used by businesses and their customers;
- Only the State or Commonwealth Government could (potentially) impose a ban on plastic bags; and,
- 40 • A voluntary ban or covenant faces very similar limitations as it is not compellable or legally binding.

#### NoM Part 4

45 Staff will need to investigate and consider potential funding sources for this project.

It is noted that the water refill installed outside Santos Mullumbimby in late 2016 cost \$6,200 to purchase the unit (crowd funded by the community) and an additional \$7,480 for installation (funded by BSC). Obviously efficiencies could be realised with bulk procurement for supply and

50 install, however funding sources would have to be investigated.

Ongoing operational and maintenance costs would also have to be quantified and funding sourced.

NoM Part 5

- 5 Staff concur with Cr Ndiaye's assessment that a "NSW or Australian wide ban on single use plastic bags is a far simpler and more practical solution" and support the movement that Council writes to the relevant members of parliament advocating a State/National ban.

Financial/Resource/Legal Implications:

- 10 It would be challenging for staff to develop a comprehensive report for the October 2017 Council meeting as requested. A more realistic timeframe to adequately investigate the proposed motions would result in a report to the 14 December 2017 meeting.

High level financial and legal implications have been identified in the above comments.

- 15 Is the proposal consistent with any Delivery Program tasks?

Yes – whilst not specifically identified as a 2017/18 operational activity, it is consistent with the objectives of Action CI1.6.1, Strategy CI1.6 in Council 2017-2021 Delivery Program.

**Notice of Motion No. 9.2**     **Fly Neighborly Advice Agreement for Tyagarah Airfield**  
**File No:**                             I2017/1271

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I move:

1. That funds allocated in this years budget for the preparation of a Tyagarah Airfield Masterplan also be used to incorporate a Fly Neighborly Advice (FNA) agreement into all leases and license at Tyagarah Airfield.
2. That Air Services Australia (ASA), the Aircraft Noise Ombudsman(ANO), non-profit tenants at Tyagarah Airfield, commercial tenants at Tyagarah airfield, Tyagarah Progress Association and land owners within 3km of Tyagarah airfield be invited to participate in the development of the FNA agreement.

Signed:     Cr Cate Coorey

**Councillor's supporting information:**

Almost every airstrip or air facility in Australia – particularly those close to population centres – have an agreement of this kind. There is currently no regulation of air activity out of Byron airstrip.

[From Civil Aviation Safety Australia:](#)

*A Fly Neighbourly Advice (FNA) is a voluntary code of practice established between aircraft operators and communities or authorities that have an interest in reducing the disturbance caused by aircraft within a particular area. FNAs were introduced in Australia in 1994 as a tool to reduce the effects of aviation on environmentally sensitive areas within uncontrolled airspace. The development of an FNA is facilitated by the OAR.*

*An FNA might include recommended limitations on operating heights, the frequency of operations and areas of operation. The nature, scope and terms of the advice are matters for the stakeholders to determine. Arrangements for the monitoring, and adherence with, an FNA are also matters that may be addressed.*

*An FNA must be consistent with [Civil Aviation Regulations 1988](#) and any air traffic management procedures applicable to the area. Mandatory aviation operating and safety procedures (as well as any aviation requirements relevant to the area) have precedence over an FNA in all circumstances.*

*An FNA should also acknowledge the necessity for police, fire, search and rescue, other emergency services and infrastructure-monitoring organisations to have access to low level airspace when the need arises.*

**Staff comments by Michael Matthews, Manager Open Space & Resource Recovery, Infrastructure Services:**

Assessment of current usage of the Tyagarah Airfield outlines that Skydiving operations equate for more than 95% of the airfield usage. Skydiving operations that operate out of Tyagarah have an Airservices Letter of Agreement which includes Noise Minimisation Requirements. This skydiving operation is required to adhere to the Airservices Letter of Agreement where operationally possible. Their standard operating procedures see that the aircraft departs to the East and conducts climb overwater before returning overhead the Tyagarah airfield to conduct the parachute drop and then commences descent back to Tyagarah. Their operations are at the mercy of prevailing winds, weather conditions, local traffic and Coolangatta Air Traffic Control. The Airservices Letter of Agreement is to be adhered to operationally wherever possible whilst ensuring

the safety of aircraft, its passengers and operations in accordance with the Aircraft Flight Manual, Air Services Australia and CASA regulations. There are many other factors to consider regarding noise and flight paths that a FNA would fall outside of, class G airspace, aircraft noise regulations for CASA registered aircraft within Australia, aircraft from other local aerodromes or Gold Coast Airport, safety first and operations due to wind direction, air temperature, weather conditions, air traffic control instructions and other traffic. Operations from Tyagarah aeroplane landing area are permitted aviation activities governed by Federal rules and regulations.

Financial/Resource/Legal Implications:

Current usage of the Tyagarah Airfield outlines the Skydiving operations equate for over 95% of the airfield usage. A FNA is a voluntary practice and normally developed for airfields that are registered and certified - Tyagarah is neither certified nor registered. A FNA is voluntary and primarily developed where noise and community complaints are significant. Council staff have received a total of four community complaints between June and July of this year. Airservices Australia has also responded directly to these noise complaints and advised "Many aerodromes have established "Fly Neighbourly" policies for aircraft utilising their facilities, however they only apply to the area immediately surrounding the aerodrome, and are purely voluntary agreements which have no legal standing. There are rules regarding heights flown over populous areas but it would be impractical to suggest that aircraft "stay away from residential areas" completely".

Airservices also suggested in dealing with complaints of this nature they have found that often the skydive operators are willing to work where possible with the local residents. Council has no actual or projected budget or resource to commit for a FNA which would require substantial time, consultation, expert knowledge and project management. Legal advice would be required for any voluntary practices to be included in legal documents such as leases and licenses and the ability to monitor such inclusions in an uncertified and unregistered airplane landing area at Tyagarah.

Is the proposal consistent with any Delivery Program tasks?

No

**Notice of Motion No. 9.3     Roadworks in Protected Areas**  
**File No:                             I2017/1272**

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**I move:**

- 1. That Council update resolution 12-560 to reflect the revised SEPP (infrastructure);**

**12-560 Resolved:**

- 1. That where Council proposes to utilise the provisions of the State Government Infrastructure SEPP for works located in environmental protection zones, Council require a report for these matters to Council prior to any approval with consideration and assessment of Council's geographical information system High Conservation Value data layers and consultation with Natural Resource Management staff.**
- 2. That Council develop a policy/procedure that clearly defines the appropriate measures for the disposal of vegetation in relation to the works and the awarding of contracts and that this be reported to Council and to consider:**
  - a) contracts for tree removal not including ownership of logs; and**
  - b) trees/logs or other infrastructure eg timber bridges, removed for infrastructure works on public land be assessed for appropriate use to determine the value of leaving on site for habitat or to be used for the provision of public purposes eg outdoor furniture, public art, fencing or for sale with proceeds returned to Council.**
- 3. That the PRG consideration of road management be deemed a priority.**

**New notice of motion:**

- 1. That where Council proposes to utilise the provisions of the State Environmental Planning Policy (Infrastructure) for works located in Environmental Zones or areas mapped as High Environmental Value (HEV) vegetation data layers using Councils geographic information system, council require a review of Environmental Factors (REF) and a report summarising these matters be presented to Council prior to any approval with consultation with Natural Resource Management staff.**
- 2. That prior to the REF and a report being presented to Council under clause 1 that any REF be publicly exhibited for a minimum of 14 days.**
- 3. That clauses 2 and 3 of motion 12-560 continue to be implemented.**
- 4. That Council develop a policy/procedure that clearly defines the appropriate measures for the disposal of vegetation in relation to the works and the awarding of contracts and that this be reported to Council and to consider:**

- a) contracts for tree removal not including ownership of logs; and
- b) trees/logs or other infrastructure eg timber bridges, removed for infrastructure works on public land be assessed for appropriate use to determine the value of leaving on site for habitat or to be used for the provision of public purposes eg outdoor furniture, public art, fencing or for sale with proceeds returned to Council.

5. That the PRG consideration of road management be deemed a priority.

5 Signed: Cr Cate Coorey

**Councillor's supporting information:**

10 The **State Government Infrastructure SEPP** has increased in scope and reach after amendments by the NSW government. It is now appropriate for Council to update Council resolution 12-560 to better reflect community expectations relating to the protection of environmental values and public consultation.

15 **Staff comments by Christopher Soulsby, Developer Contributions Officer, Infrastructure Services:**

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

20 Staff do not have an option to utilise or not utilise the provisions of the SEPP Infrastructure as it applies to works under the SEPP. The SEPP applies to all types of development listed in the SEPP and the SEPP will prevail over the provisions of the LEP. The differentiation between Part 4 and Part 5 of the Environmental Planning and Assessment 1979 and the approval paths used in the SEPP and the LEP were considered by Justice Robson in *Butler Street Community Network Incorporated v Northern Region Joint Regional Planning Panel [2017] NSWLEC 51*. This judgement makes it clear that the SEPP prevails and is not optional. The provisions of the  
25 Infrastructure SEPP must be applied to all road works unless an alternate environmental planning instrument (SEPP 14 for example) prevails.

30 The wording of this NOM is very broad and will have wide ranging consequences on the day to day operations of the Infrastructure Services Directorate. Given the short timeframe to respond to this NOM staff have not had sufficient time to fully assess the impact of the NOM in terms of cost and loss of productivity.

35 The SEPP Infrastructure has three categories of development. Development is defined in the Environmental Planning and Assessment Act 1979 as follows:

**development** means:

- (a) the use of land, and
- (b) the subdivision of land, and
- (c) the erection of a building, and
- 40 (d) the carrying out of a work, and
- (e) the demolition of a building or work, and
- (f) any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument,

45 This means that all works are development including road work.

The three categories of development in the SEPP are:

- 1 Exempt development does not require a Review of Environmental Factors (REF) or a Development Application (DA);
- 2 Development without consent ( requires a REF);
- 3 Development with consent ( requires a DA);

5 The relevant text of the SEPP is provided in the attachments. The effect of this NOM as it relates to Clause 97 of the SEPP is that works such as, pothole patching, resheets, linemarking, replacement of signs and emergency works that previously did not need a REF will now need an REF, two weeks of advertising and a report to Council. The broad reach of this NOM would in fact prevent the Works Section of Council from undertaking any of the activities listed in clause 97 without investigation of Council's GIS to determine if the HEV layer or and E Zone applied.

The following are two example of how this NOM would restrict the operations of the Works Section of Infrastructure Services:



15 1 Council's Works Section would not be able to patch potholes in this section of Broken Head Reserve Road that is mapped as HEV without an REF, exhibition and report to Council.



2 Council's Works Section would not be able grade the unsealed section of Grays Lane without an REF, exhibition and report to Council.

- 5 Both of these activities are currently exempt development under the SEPP and do not require an REF.

10 Clause 94 of the SEPP relates to road infrastructure facilities that are permissible without consent. Development without consent requires a REF. An REF is required by Section 111 of the Environmental Planning and Assessment Act 1979. Section 111 required an authority (Council) proposing to carry out an activity to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity. Road work and work is considered to be an activity under the terms of the Act. Clause 94 relates to activities that may have an impact on the environment.

15 This NOM would require staff to apply section 111, as it applies to REFs for development without consent, to exempt development. For example: in order to patch a pothole within an area mapped as HEV an REF that takes into consideration the fullest extent possible all matters affecting or likely to affect the environment would be required. This would also be required to be reported to council after 2 weeks of public exhibition.

20 REFs are already required for development without consent. The section 111A of the act and clause 228 of the regulations set out the factors to be taken into account concerning the impact of an activity on the environment. These factors, where relevant, must be incorporated into the REF. The additional process of exhibiting REFs and reporting to Council for all works in these areas regardless of the level of impact will add significant costs and delays to carrying out works.

#### Financial/Resource/Legal Implications:

- 30 All works regardless of their environmental impact that fall within an E-zone or an area mapped as HEV will require an REF and this will require consultation will Natural Resources Management Staff. This will place a significant workload on the Sustainable Environment and Economy Directorate that has not been budgeted for or adequately resourced.

5 The impacts on the efficient delivery of new capital works and routine maintenance works by the Infrastructure Services Directorate has yet to be quantified. It is probably that there would be cost impacts due to: preparation of additional REFs, advertising, council reporting, and delays in project delivery.

10 Staff would require additional time to estimate the quantum of costs and reduction in service provision resulting from this NOM as it pertains to delivering maintenance and capital works programs.

15 Given the short time frame to review this NOM the full implications with respect to the types work that are captured have not been fully assessed. There may be other types of work not addressed above that are caught by this NOM. Further consultation between Infrastructure Services staff and Strategic Planning will be required. Some of the areas impacted will be, stormwater works and maintenance, water and sewer works, parks and reserves works and maintenance.

Is the proposal consistent with any Delivery Program tasks?

20 The NOM is not inconsistent with the Delivery Program task in that it doesn't prevent with tasks occurring. It would result in significant costs and delays in the provisions of many routine tasks.

Notice of Motion No. 9.4      Review of Selected Policies  
File No:                              I2017/1276

I move:

1. That Staff provide Councillors with a report on the following Council Policies with feedback on:

- i. Affordable Housing on Council Owned Land Policy 2009
- ii. Community Economic Development Policy 2010
- iii. Planning Agreement Policy 2009
- iv. Positive Ageing Policy 2010
- v. Social Impact Assessment Policy 2009

2. That the report provide the following information:

- a) the implementation of the policy;
- b) if and where it has been applied, and
- c) the capacity of Council to implement the policy and any impediments or challenges to its implementation.

3. That the report come to Council by ... (TBA)

Signed: Cr Cate Coorey

Councillor's supporting information:

See attached policies:

- [Affordable Housing on Council Owned Land Policy 2009](#)
- [Community Economic Development Policy 2010](#)
- [Planning Agreement Policy 2009](#)
- [Positive Ageing Policy 2010](#)
- [Social Impact Assessment Policy 2009](#)

Affordable Housing on Council Owned Land Policy 2009

*"When considering the best use of lands owned by Council, as a first option, consideration is given to affordable housing", \.Between 2009 and the present has council consistently applied the policy statement to the use and disposal of all Council owned land?*

Has an affordable housing feasibility analysis been carried out in relation to the disposal of Council owned land from 2009 to the present in accordance with this policy?

Can staff provide feedback on the success or failure of this policy?

[Social Impact Assessment Policy.](#)

Part 4 of the SIA Policy 2009

"This policy applies to the following proposals and Council activities that may have significant social impacts where a development application is not required:

- a) A new strategic plan;

- b) A major review of an existing strategic plan;
- c) An amendment to Council's Local Environmental Plan (including rezoning proposals);
- d) An 'affordable housing' project;
- e) A 'manufactured home estate' or caravan park;
- 5 f) A proposal for the use of 'community land';
- g) A proposal for the re-classification of Council land from operational land to community land or visa versa; or
- h) An infrastructure proposal.

10 **Staff comments by Anna Vinfield, Manager Governance Services, Corporate and Community Services:**

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

15 Staff are conducting a major review of all of Council's policies in partnership with Council's internal auditors. This review will look at the effectiveness of each policy, current practice, duplication with legislation, best practice and contemporary approaches.

20 The policies included in this Notice of Motion will be included in the review of Policies currently being undertaken.

It is intended that Councillors will be briefed during the review process and priority policies identified. A briefing can occur at the next available Strategic Planning Workshop and a report prepared in accordance with the proposed Notice of Motion.

25 Financial/Resource/Legal Implications:

The review will be included in the internal auditors work program. This expenditure is included in Council's adopted budget.

30 Is the proposal consistent with any Delivery Program tasks?

Yes. The delivery program includes action (1.2.4) to monitor decision making to ensure alignment with corporate documents as adopted or endorsed by Council and the activity to continue to review policies.


35

**Notice of Motion No. 9.5      Retraction of Planning Proposal regarding STRA**  
**File No:                              I2017/1282**

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**I move that Council write to the Minister for Planning as per S.58 (4) of the Environmental Planning and Assessment Act 1979, and request that Amendment No.11 Byron Local Environmental Plan 2014, not proceed to enable Council time to reconsider and resubmit a more detailed and well-thought-through planning proposal following the outcome of the State Government's consideration of the Short Term Holiday Letting in NSW Options Paper.**

**5      Attachments:**

1      Letter from Department of Planning , E2017/87496 

**10      Signed:   Cr Michael Lyon**

**Councillor's supporting information:**

15      Byron Shire Council has been pushing towards an amendment to the Byron LEP 2014 to regulate short term rental accommodation (STRA) since mid-2015. Byron Shire Council's planning proposal has gone through multiple iterations and a multitude of consultation with the community and government agencies. The proposed amendment first contained exempt provisions, for example, which were then removed in October 2016 after receiving advice from the Parliamentary Counsel's Office (PCO), and then again reinstated at the March 2017 meeting after receiving advice from the  
 20      Department of Planning and Environment (DPE) that Council could only proceed with a planning proposal that did so due to inconsistencies with the recommendations of the NSW Legislative Committee on Environment and Planning. Finally, after again submitting our planning proposal in April 2017 to the DPE reinstating exempt provisions, as requested, the amendment was deferred by the DPE until the NSW Government finalises its approach to STRA, following the release of  
 25      their options paper.

As our experience thus far in attempting to regulate STRA through our planning instrument shows, this is a landscape that is constantly shifting. With the NSW Government's release of their options paper and therefore imminent decision on a potentially statewide approach to regulating STRA, it  
 30      does not make sense to continue with our planning proposal in its current form when we do not know how it may interact with the NSW Government's finalised approach. The goalposts keep moving. There is no question that STRA has had a serious impact on our community and in order to get an outcome that best serves our community we best wait until the State Government has concluded its consultation and finalised its desired approach.

35      Of course, this does not mean we should not or cannot act in the interim. Council will be making a submission to the options paper to advocate for an approach that will allow us to most effectively regulate STRA. It is noted that an option to continue with the current situation, that is with the power for individual Councils to choose how to best regulate STRA in their local government areas,  
 40      including the ability to amend their own LEPs as they see fit with the support of the Minister for Planning, is absent from the options paper. While not addressed in this Notice of Motion, advocacy for this approach, if successful, would allow Council to proceed successfully and with certainty with a planning proposal to amend the Byron LEP 2014 to regulate STRA and protect neighbourhood amenity and housing supply and affordability for residents.

45

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

**Background**

The issue of short term rental accommodation (holiday let) has a recent planning history with Council.

The Byron Shire Short Term Rental Accommodation Action Plan:

<http://www.byron.nsw.gov.au/publications/short-term-rental-accommodation-action-plan>

is the culmination of a process to develop structure and planning controls around the long practiced use of holiday letting dwellings in Byron Shire. The process commenced in 2013 with key stakeholder workshops that continued into 2014. From these workshops a Discussion Paper was prepared for key stakeholder's consideration. Comments on the Discussion Paper then led to the development of a Draft Short Term Holiday Accommodation Strategy that was publicly exhibited from 11 November to 22 December 2014. Over 150 submissions were received including two from state government agencies (DPE and RFS). Council considered a report on the submissions at the 30 April 2015 meeting. The decision to amend LEP 2014 was made at that meeting.

A Proposal was subsequently prepared and submitted to the Department of Planning and Environment (DPE) who issued a Gateway Determination on 31 August 2015.

On 28 September 2015, Council submitted an amended Planning Proposal to the DPE and an amended Gateway was issued on 2 October 2015. At this time the DPE issued delegated authority to Council to make the plan.

The Planning Proposal was publicly exhibited for a period of 6 weeks (from 22 October to 4 December 2015), in accordance with the gateway determination. 58 public submissions were received raising various issues.

Council considered a report on the outcomes of the public exhibition and the consultation with government and other agencies (Tourism NSW, NSW Rural Fire Service, Holiday Rental Industry Association) at its Ordinary Meeting of 7 April 2016 and resolved as follows:

**16-165 Resolved:**

1. That Council modify the planning proposal in relation to the exempt provisions as proposed in the NSW Rural Fire Service submission to state:

6. Prior to commencement, where the dwelling is located on mapped bushfire prone land, a bushfire safety authority under Section 100B of the Rural Fires Act 1997 shall be obtained and all conditions of the Bushfire Safety Authority must be complied with.

2. That Council forward the modified planning proposal to amend Byron LEP 2014, as included in Attachment 1 of this report, to NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared, under section 59(1) of the Environmental Planning and Assessment Act 1979 with the following additional changes:

a) Incorporate item 18 and 19 (amend item 19 from "10pm" to "12 midnight") contained on page 514 of Attachment 1 of Report 13.4 being "controls relating to exempt provisions for use of outdoor areas and visitor number and hours"

3. That Council liaise with Parliamentary Counsel's Office (PCO) as necessary to finalise the content of the draft LEP and to enable PCO to issue an Opinion that the plan can be made.
4. That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning and Environment for notification on the NSW Government legislation website.
5. That a security bond be required of no less than \$250 per adult per letting and that a provision be added to the exempt clause.

#### PCO Recommendation

Following Resolution **16-165**, the Planning Proposal was sent to the Department of Planning and Environment and the Parliamentary Counsel's Office (PCO) for an opinion as to whether the plan can be made. The PCO have recommended the plan be made with some changes to the exempt provisions. PCO provided Council with legal advice on how the clauses were to be drafted. The provisions state:

#### **[1] Clause 6.10 (insert after Clause 6.9)** **6.10 Short-term rental accommodation**

- (1) *The objective of this clause is to require development consent for the temporary use of a dwelling as short-term rental accommodation.*
- (2) *Despite any other provision of this Plan, development consent is required for the use of a dwelling as short-term rental accommodation if the dwelling is available for rent for more than 90 days per calendar year.*
- (3) *Development consent must not be granted for the use of a dwelling as short-term rental accommodation unless:*
  - (a) *the dwelling is located in a zone where dwellings are permitted with development consent, and*
  - (b) *the dwelling contains no more than 5 bedrooms, and*
  - (c) *the use does not interfere with the amenity of the neighbourhood by reason of the activities taking place on or near the dwelling, the emission of noise or traffic generation.*

#### **[2] Schedule 2 Exempt development (Insert in appropriate order)**

##### **Short-term rental accommodation**

*Note. If the subject dwelling is located on bush fire prone land, a bush fire safety authority must be obtained before the dwelling is used as short-term rental accommodation (see section 100B of the Rural Fires Act 1997).*

- (1) *Must be located in a zone where dwellings are permitted with development consent.*
- (2) *Must not contain more than 3 bedrooms.*
- (3) *If part of a community or strata scheme, must have the prior written approval of the owners corporation for that scheme.*
- (4) *Must be serviced by a general waste garbage bin and a recycling garbage bin.*
- (5) *Must have a fire blanket and fire extinguisher in the kitchen and evacuation lighting.*
- (6) *Any smoke alarm that is required to be installed under the Act must be powered from the mains electricity supply.*
- (7) *Car parking must be provided on the land as follows:*
  - (a) *for 2 bedrooms or less—1 car parking space,*
  - (b) *for 3 bedrooms—2 car parking spaces.*

*Note. A driveway that can accommodate 2 vehicles complies with the car parking requirement for 2 car parking spaces.*

*(8) Council must be notified that the dwelling house is short-term rental accommodation.*

*(9) Must not involve any moveable dwellings.*

5     *(10) Signage (being at least A3 size) must be clearly displayed on the land to which the sign relates and contain the following:*

*(a) the name and telephone number (including an after hours telephone number) of the owner or property manager using a minimum 40mm high font,*

*(b) wording to the effect that the dwelling house is short-term rental accommodation.*

10

**[3] Dictionary**

*Insert in alphabetical order:*

*short-term rental accommodation means a dwelling house, or part of a dwelling house, used for the purpose of tourist and visitor accommodation (other than bed and breakfast accommodation or farm stay accommodation) that is available for rent on a temporary basis.*

15

**Council Resolution 16-545**

20

A report was presented to Council on 27 October 2016 to provide Council with an update on the Planning Proposal to amend Byron LEP 2014 to facilitate Short Term Rental Accommodation (STRA) in accordance with Council Resolution 16-165.

25

The report noted that the PCO have recommended that the plan be made with some changes to the exempt provisions. The report noted that the recommended clauses detailed above, although similar to what was drafted by Council, were not identical. Council considered the report and resolved as follows:

30

**16-545**     *Resolved that Council:*

*1. Note the amendments to the draft planning provisions by Parliamentary Counsel;*

35

*2. Amend the planning proposal to remove exempt provisions noting Council's intention to review the applicability of exempt provisions within 12 months;*

40

*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;*

45

*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;*

50

*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.*

The Planning Proposal was subsequently amended to remove exempt provisions in accordance with item (2) of the above resolution. Council then resubmitted the planning proposal to the Department of Planning and Environment requesting approval to finalise the plan.

- 5 By letter dated 6 February 2017, the DPE advised that Council's revised planning proposal is inconsistent with the recommendations of the Legislative Committee on Environment and Planning. The DPE advised that Council could still proceed with the planning proposal as it stood prior to removal of the exempt provisions (Planning Proposal Version 4), or review the proposed exempt provisions and await the Government's response to the Committee's recommendations to ensure consistency.

Consequently, the written authorisation of delegation to Council issued to allow the exercise of plan making functions was revoked and an amended Gateway determination issued.

#### 15 **Council Resolution 17-084**

A report was presented to Council on 23 March 2017 to advise Council that an amended Gateway Determination had been issued by the Department of Planning and Environment.

- 20 The report noted that Council's revised planning proposal is inconsistent with the recommendations of the Legislative Committee on Environment and Planning and provided details of the Committee's recommendations. The report also noted that the DPE advised that Council could still proceed with the original planning proposal. Should Council not wish to proceed with the original planning proposal, the DPE suggested that Council wait for the Government's response to the Committee's recommendations to ensure consistency i.e. inclusion of exempt development provisions for short term rental accommodation in LEPs.

#### **17-084** Resolved:

- 30 1. *That Council note the comments made by Department of Planning and Environment about the submitted planning proposal.*
2. *That Council proceed with an amended planning proposal that reinstates exempt development provisions for short term rental accommodation into the Local Environmental Plan.*
- 35 3. *That Council refer the amended planning proposal to the Department of Planning and Environment for finalisation in accordance with the amended Gateway Determination.*
4. *That should in the meantime a state environmental planning policy not be produced by the department of planning and environment for the purposes of short term rental accommodation by 1 July 2017, Council lift its current moratorium on legal action against unauthorised tourist and visitor accommodation (illegal holiday letting).*
- 40 5. *That Council write to the department informing them of part 4.*
- 45 6. *That Council be provided a discussion paper / report to the May Council meeting on the available enforcement options against unauthorised tourist and visitor accommodation (illegal holiday letting) and to councillors as early as possible.*

- 50 In accordance with Resolution **17-084**, the planning proposal was amended to reinstate exempt development provisions for short term rental accommodation into the Local Environmental Plan and referred to the Department of Planning and Environment for finalisation in accordance with the amended Gateway determination.

**Current position**

5 In a letter received from the Department of Planning 16 May 2017 (Attached), Council was advised that a decision on whether to proceed with the submitted planning proposal had been deferred until a State wide approach has been finalised, following consideration of the outcomes of consultation on the Options Paper.

10 To this aim, Council staff are now preparing a submission to the State Government on the Options Paper, the deadline for this being 31 October 2017. Council staff are not of the opinion that a standard State wide approach to this issue will be acceptable or appropriate to Byron Shire, given our circumstances to that of other local government areas in NSW in relation to short term rental accommodation (holiday let).

15 Financial/Resource/Legal Implications:

N/A

Is the proposal consistent with any Delivery Program tasks?


20 N/A

**SUBMISSIONS AND GRANTS****Report No. 11.1      Byron Shire Council Submissions and Grants as at 30 August 2017****Directorate:** Corporate and Community Services**Report Author:** Jodi Frawley, Grants Co-ordinator**File No:** I2017/1161**Theme:** Corporate Management  
Governance Services**Summary:**

Council have submitted applications for a number of grant programs which, if successful, would provide significant funding to enable the delivery of identified projects. This report provides an update on these grant submissions.

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**RECOMMENDATION:****That Council note the report.****Attachments:**

- 1      Byron Shire Council Current Submissions and Grants as at 30 August 2017(2), E2017/88044 

**Report**

This report provides an update on grant submissions including funding applications submitted, potential funding opportunities and those awaiting notification.

5

Funding Applications – Successful

- Northern Rivers Community Recovery fund, Commonwealth-NSW National Disaster Relief and Recovery Funds (shared with Ballina, Kyogle, Richmond Valley and Tweed) - \$2,115,164
- 10 • Coolamon Scenic Drive Safety Treatments, Safer Roads, NSW Roads and Maritime Services - \$362,000
- L-Bin Collection and drop off systems, Resource Recovery Facility Expansion and Enhancement Program - \$119,000

15 Funding opportunities identified for consideration by staff

- Byron Shire Bike Plan, Active Transport (Roads and Maritime Services, NSW Government)
- Cycle/walking paths, Broken Head road (Suffolk Park to Byron Bay), Active Transport (Roads and Maritime Services, NSW Government)
- 20 • Cycle/walking paths, Lismore Road, Active Transport (Roads and Maritime Services, NSW Government)
- Cycle/walking paths, Ewingsdale Road, Active Transport (Roads and Maritime Services, NSW Government)
- Cycle/walking paths, Balememo Road, Active Transport (Roads and Maritime Services, NSW Government)
- 25 • Shared Zones for Lateen and Bay Lanes, Byron Bay Active Transport (Roads and Maritime Services, NSW Government)
- Bridges for the Bangalow Agricultural Area, Fixing Country Roads (Restart NSW, NSW Government)
- 30 • Clarks Beach Amenities, Stronger Country Communities Fund (Regional Growth Fund, NSW Government)
- Ocean Shore Community Centre upgrade, Stronger Country Communities Fund (Regional Growth Fund, NSW Government)
- Active Recreation Waterlily Park, Ocean Shores, Stronger Country Communities Fund (Regional Growth Fund, NSW Government)
- 35 • Refurbishment of Sandhills Childcare Centre, Stronger Country Communities Fund (Regional Growth Fund, NSW Government)
- Brunswick Library renovation and extension, Regional Cultural Fund (Regional Growth Fund, NSW Government)
- 40 • Byron Trails, Northern Rivers Business Recovery Program (Commonwealth-NSW National Disaster Relief and Recovery)
- Emergency Relief Information, Northern Rivers Business Recovery Program (Commonwealth-NSW National Disaster Relief and Recovery)
- Billi's Back, Northern Rivers Business Recovery Program (Commonwealth-NSW National Disaster Relief and Recovery)
- 45 • Northern Rivers Resilience Masterclasses, Northern Rivers Business Recovery Program (Commonwealth-NSW National Disaster Relief and Recovery)

Funding submissions submitted and awaiting notification

50

- Building capacity in Byron's Community Halls, Building Better Regions Fund Community Investments, (Australian Government)
- Fishing Platform Brunswick River ,Recreational Fishing Trust, (NSW Government)

- Blindmouth Creek Crossing replacement Bridges Renewal Programme, (Australian Government)
- Bridges for the Bangalow Agricultural Area, Bridges Renewal Programme, (Australian Government)
- 5 • 3D Mapping Tool, Smart Cities and Suburbs, (Australian Government)
- North Byron Coastline Management Plan, Coastal and Estuary Grants Program (NSW Government)
- Byron Bay Bypass, Regional Jobs and Investment Package for North Coast NSW (Australian Government)
- 10 • Shark Smart Alert and Advice System, Shark Management Strategy Program (NSW Government)
- 622 Bangalow Road Safety Treatments, Safer Roads including Black Spot Funding (Roads and Maritime Services, NSW Government)
- Brunswick Harbour Boat Ramp, NSW Boating Now (RMS, NSW Government)

15 Additional information on the grant submissions made and or pending is provided in Attachment 1 – Grants report as at 30 August 2017

### **Financial Implications**

20 If Council is successful in obtaining the identified grants more than \$12 million would be achieved which would provide significant funding for Council projects. Some of the grants require a contribution from Council (either cash or in-kind) and others do not. Council's contribution is funded. The potential funding and allocation is noted below:

25	Requested funds from funding bodies	\$12,291,141
	Council cash contribution	\$7,514,905
	Council in-kind contribution	\$128,218
	Funding applications submitted and awaiting notification (total project value)	<b>\$19,934,264</b>

### **Statutory and Policy Compliance Implications**

35 Council is required under Section 409 3(c) of the *Local Government Act 1993* to ensure that 'money that has been received from the Government or from a public authority by way of a specific purpose advance or grant, may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose'. This legislative requirement governs Council's administration of grants.

**STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

**Report No. 13.1**      **Establishment of the Mullumbimby Hospital Site Project Reference Group and Selection of Community Representatives**

5    **Directorate:**           Corporate and Community Services  
**Report Author:**       David Royston-Jennings, Corporate Governance and Strategic Planning Officer  
                                  Sarah Ford, Manager Community Development  
 10   **File No:**                I2017/927  
**Theme:**                Corporate Management  
                                  Governance Services

**Summary:**



15   As per Council resolution 17-269 (in part), a call for expression of interest and other activities have been conducted to present to Council nominees for the proposed Mullumbimby Hospital Site Project Reference Group. The report also presents a draft Constitution for the Project Reference Group.

---

**RECOMMENDATION:**

1.    **That Council increase the number of representatives the Mullumbimby Hospital Site Project reference Group from 15 to 16 as a result of strong applications and interest in the Project Reference Group as outlined below**
  
- a)   **That Council select 12 representatives for appointment to the Mullumbimby Hospital Site Project Reference Group from the Community Organisation nominees, noting the Project Guidance Group have recommended the appointment of representatives of the following groups:**
  - **Mullumbimby Hospital Action Group**
  - **North Coast Community Housing**
  - **Third Sector Australia (formerly On Track Community Programs)**
  - **Mullumbimby & District Neighbourhood Centre**
  - **Mullumbimby Chamber of Commerce**
  - **Byron Youth Service**
  - **Mullumbimby Residents Association**
  - **Brunswick Heads Progress Association**
  - **Ocean Shores Community Association**
  - **Arts Northern Rivers**
  - **Creative Mullumbimby**
  - **Aboriginal Services Coalition**
  
- b)   **That Council nominate 4 individual community representatives for appointment to the Mullumbimby Hospital Site Project Reference Group from the individual community nominees;**
  
3.    **That Council thank all other nominees for their interest and time in submitting an Expression of Interest and invite them to participate in future broader consultation activities;**
  
4.    **That Council adopt the Draft Constitution for the Mullumbimby Hospital Site Project Reference Group including the purpose, objectives, membership and timeframe for the group to operate.**

**Attachments:**

- 1 Draft Constitution Mullumbimby Hospital Site Project Reference Group, E2017/86725 
- 2 Attachment for Council Report re establishment of Mullumbimby Hospital PRG - Community Group  
5 nominations, E2017/86726 
- 3 Confidential - Mullumbimby Hospital Site PRG Community Member Nominations Table Complete,  
E2017/87153
- 4 Confidential - Mullumbimby Hospital Site Project Reference Group Nominations, E2017/87168

10

**Report**

At its Ordinary Meeting 22 June 2017, Council resolved (17-269), in part, the following:

- 5           4. That a Project Reference Group (PRG) be established with a sunset period of 12 months comprising up to 15 representatives from critical Mullumbimby stakeholder groups that includes at least two with commercial experience and skills. The PRG to propose and consider potential uses for the former Mullumbimby Hospital site. The PRG constitution to reference the following policy and objectives:
- 10           A) Gain the best outcome from the future use of the Hospital Hill site for BSC, the Brunswick Valley community and its other stakeholders. The best outcome is defined by a participatory planning process.
- 15           B) Execute a world's best practice participatory planning process for the future use of the Hospital Hill Site that gives the community and all stakeholders a genuine and meaningful voice in shaping the use of the site and that aligns with the "The community Charter – Planning for the people – a community charter for good planning in NSW".
- 20           5. That the General Manager and staff work with the PRG to develop a proposed community engagement strategy.
- 25           6. That the expressions of interest for membership to the PRG be published at the next available opportunity with the submissions provided at the next Ordinary Meeting for determination.

30           Staff has had 5 meetings with a Project Guidance Group, comprised of representatives from Mullumbimby Hospital Action Group and Councillors, to provide advice and recommendations on the purpose, objectives and membership of the proposed Project Reference Group (PRG).

35           The Project Guidance Group developed the Draft Constitution for the Project Reference Group as well as assisted in contacting over 40 community groups from across the Brunswick Valley community and helped raise awareness for the call for individual nominations for the PRG.

40           Over 40 community groups from across the Brunswick Valley have been contacted to ascertaining their interest in being involved on the PRG, or alternatively, interest in the broader consultation that will occur during the next twelve months.

45           A call for expressions of interest was advertised from 27 July in Council Notices, with submissions closing on 24<sup>th</sup> August 2017. The advertisement was also posted on social media sites and a media release published in local papers.

**Draft PRG Constitution**

50           A copy of the draft Mullumbimby Ex-Hospital Site Project Reference Group is provided as Attachment 1, with the key features included below.

55           The Project Guidance Group have worked with staff to refine the purpose, objectives and proposed membership of the group as follows:

Purpose of PRG

Gain the best outcome from the future use of the Hospital Hill site for Byron Shire Council, the Brunswick Valley community and its other stakeholders.

Principles underpinning the PRG are based on 'The Community Charter – Planning for the people – a community charter for good planning in NSW':

- The wellbeing of the whole community, the environment and future generations is considered;
- Effective and genuine public participation is fundamental;
- Open, inclusive, transparent and accountable processes are undertaken;
- Objective and evidence-based advice is utilised.

### Objectives

1. Propose and consider potential uses for the former Mullumbimby Hospital site.
2. Utilise a best practice participatory planning process for the future use of the Hospital Hill site that gives the community and all stakeholders a genuine and meaningful voice.
3. Work with Council staff to develop an inclusive community engagement strategy for implementation by Council.
4. Consider potential constraints arising from the site contamination and the various options for remediating/ removing that contamination.
5. Develop a set of clear criteria for assessment of recommendations and options to Council.
6. Provide advice and recommendations to Council on the best outcome for the Hospital Hill site taking into consideration community and stakeholder input, data and zoning and regulatory requirements.

### **Membership and Assessment Criteria**

1. The Project Guidance Group has worked with staff to refine the membership and selection criteria for the group as follows:

The PRG Membership (max 18) will include:

- 3 Councillors
- 3-5 independent community representatives as per selection criteria
- A representative from [community stakeholder group from above list, as selected by Council x 10-12]
- General Manager (or staff member delegate)

*Note: Staff members participating on the PRG do not have any voting entitlements.*

Community members will be selected based on:

1. Having a direct interest and connection to the Brunswick Valley community, and either:
  - a. involvement in the Mullumbimby Hospital acquisition process or
  - b. experience in community services or groups
  - c. direct commercial business experience and skills.
2. Demonstrate the following:
  - a. strong communication and interpersonal skills
  - b. ability to work in a group environment for shared decision making supporting the principles and objectives of the PRG for the benefit of the whole community
  - c. capacity or willingness to access and utilize web based communications

- d. available and committed for the full duration of the process

Stakeholder groups will be selected based on:

- a. an balanced mix of interest groups with minimal overlap
- b. a demonstrated link to the Brunswick Valley community
- 5 c. based on long term future benefits for the community

### **Community Groups**

10 Community groups from a range of sectors were contacted by letter in the week of 24<sup>th</sup> July. The sectors include: medical/ health; aged care; housing; business; environment/sustainability; agriculture; community associations (such as progress/ residents associations); community services; education; arts; youth; Aboriginal; and church groups. Each group was contacted at least three times – by initial letter, by phone follow up and by a reminder email.

15 Of the 40 community groups contacted, 14 replied they would be interested in having a seat on the PRG and able to commit to attend meetings over a twelve month period. Attachment 2 provides information about each of these groups including the sector/s they represent, the nominated person for the PRG and any other information they have provided relevant to the process.

20 The Project Guidance Group has worked with staff and recommend the following 12 community groups be appointed by Council. These recommendations are made considering the selection criteria listed above under ‘stakeholder groups’.

- 25
  - Mullumbimby Hospital Action Group
  - North Coast Community Housing
  - Third Sector Australia (formerly On Track Community Programs)
  - Mullumbimby & District Neighbourhood Centre
  - Mullumbimby Chamber of Commerce
  - Byron Youth Service
- 30
  - Mullumbimby Residents Association
  - Brunswick Heads Progress Association
  - Ocean Shores Community Association
  - Arts Northern Rivers
  - Creative Mullumbimby
- 35
  - Aboriginal Services Coalition

Other groups that have expressed interest in the broader consultation that will occur over the next twelve months include:

<ul style="list-style-type: none"> <li>• COREM</li> <li>• TOOT</li> <li>• CWA</li> <li>• Rural Fire</li> <li>• Police</li> <li>• Brunswick Valley &amp; District Volunteer Rescue Organisation</li> <li>• SES</li> <li>• Red Cross</li> <li>• Anglicare</li> <li>• Salvation Army</li> <li>• Tweed Byron Land Council</li> </ul>	<ul style="list-style-type: none"> <li>• Primary Healthcare Network</li> <li>• Libraries</li> <li>• Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)</li> <li>• Drill Hall Theatre Company</li> <li>• Rainforest Rescue</li> <li>• Natural Death Centre</li> <li>• Local schools</li> <li>• Local church groups</li> </ul>	<ul style="list-style-type: none"> <li>• U3A</li> <li>• Luminous Youth</li> <li>• Main Arm Rural Residents Association</li> <li>• Brunswick Valley Historical Society</li> <li>• The Family Centre</li> <li>• Byron Hospice Service</li> <li>• Brunswick Heads Chamber of Commerce</li> <li>• Social Futures</li> <li>• Other resident and progress associations</li> </ul>
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**Individual Community Nominations**

Individual community members were called for in advertising as stated above. In addition, letters were written to the neighbours surrounding the ex-hospital site.

5 14 submissions were received and the details of each nominee are provided in the confidential attachment 3 to this report. Nomination forms in full are contained in attachment 4. Due to the strength of applications, four nominations have been identified by the Project Guidance Group as meeting the criteria for participation in the Project Reference Group.

10 The Project Guidance Group has worked with staff and have made recommendations for appointment in the confidential attachment. These recommendations are made considering the selection criteria listed above under 'community members'.

15 The unsuccessful individual community members could be invited to participate in the broader consultation, devised by the PRG.

**Final Membership of the PRG**

20 The recommendations included in this report have considered a balance of skills, interest and the selection criteria by the Project Guidance Group and staff. The recommendations presented provide a holistic and well considered group which the PGG believe will provide the best outcome for the community.

25 The recommendations are for 4 individual community members and 12 representatives of groups. These candidates, along with the three Councillors, it is recommended will make up the final Project Reference Group.

**Financial Implications**

30 A small budget will be required to cater for up to 12 meetings, room hire and other associated costs for operating the PRG. A small budget allocation for future community engagement activities would also be required.

35 It is recommended that a budget of \$10,000 be allocated to the activities of this PRG in the next quarterly review process.

**Statutory and Policy Compliance Implications**

40 Guide to Operations – Advisory Committees and Panels

**Report No. 13.2**  
**Directorate:** Corporate and Community Services  
**Report Author:** Ralph James, Legal Services Coordinator  
**File No:** I2017/987  
**Theme:** Corporate Management  
Governance Services

**Summary:**

Council is required to review its Panel of Conduct Reviewers by 30 September 2017.

Council agreed to collaborate with NOROC member Councils to convene a shared panel of Conduct Reviewers.

The Panel of Conduct Reviewers endorsed by NOROC is recommended to Council.

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**RECOMMENDATION:**

1. That That Council enter into an arrangement with other NOROC member councils to share a Code of Conduct Review Panel consisting of following Reviewers:

<u>Nominee</u>	<u>Organisation (if applicable)</u>
Nicolas A P Harrison	Self
Michael Symons	Self
Graham Evans	O'Connell Workplace Relations
Kathy Thane	Train Reaction PTY LTD
Peta Tupney	Tress Cox Lawyers
Monica Kelly	Prevention Partners
Chris Gallagher	Chris Gallagher Consulting
Alison Cripps	Cripps Consulting
Kath Roach	Sinc solutions
Phil O'Toole	Centium
Emma Broomfield	Locale Consulting

**Attachments:**

- 1 Confidential - List of Applicants - Code of Conduct Review Panel, E2017/88047

**Report**

The Code of Conduct Procedures – refer to <http://www.byron.nsw.gov.au/publications/code-of-conduct-procedures-for-administering> (Procedures) - include:

- 3.1 *Council must by resolution establish a panel of conduct reviewers.*
- 3.2 *Council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.*
- 3.3 *The panel of conduct reviewers is to be established following a public expression of interest process."*

Council is required to appoint a panel of Conduct Reviewers by 30 September 2017.

The role of the panel of Conduct Reviewers is set out in the Procedures.

The NOROC General Manager's group appointed Ralph James (Byron), Neil Baldwin (Tweed), Peter Jeuken (Lismore) and Marcus Schintler (Kyogle) to the Panel of Conduct Reviewers Assessment Group.

Council agreed to collaborate with NOROC member Councils to convene a shared panel of Conduct Reviewers.

An Expression of Interest process was coordinated through NOROC and followed the requirements established within the Procedures.

The following advertising for expressions of interest occurred:

- Northern Star, Grafton Examiner, Coffs Advocate, Tweed News (26 & 29 April)
- Courier Mail, Gold Coast Bulletin (29 April)
- SMH (2 May)

A total of 71 submissions were received and these submissions were evaluated by the Assessment Group. The Assessment Group reported to NOROC a preferred list of panel of Conduct Reviewers.

The Assessment Group applied the following selection criteria to justify how they selected their recommended appointees. The selection/eligibility criteria used were the criteria prescribed by the NSW Government which is set out below.

*"To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:*

- a) *An understanding of local government and*
- b) *Knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the Public Interest Disclosures Act 1994 and*
- c) *Knowledge and experience of one or more of the following:*
  - I. *Investigations, or*
  - II. *Law, or*
  - III. *Public administration, or*
  - IV. *Public sector ethics, or*
  - V. *Alternative dispute resolution"*

Price and knowledge of applicants were also considered.

On 4 September 2017 the NOROC Mayors endorsed the Code of Conduct Review Panel as per the following:

- 5     **That NOROC endorses a Code of Conduct Review Panel for immediate distribution to member councils for recommended adoption via resolution to share that panel with other member Councils.**

10    The list in the NOROC report and in the recommendation in this report set outs in no particular order the panel of Conduct Reviewers adopted by NOROC for recommendation to member councils.

15    Council is now required to determine its panel of Conduct Reviewers. It can adopt the panel as recommended by NOROC or it could adopt a changed panel (but all members of the Panel must have been applicants to the NOROC Expression of Interest process and they must satisfy the prescribed eligibility criteria). A confidential list of all applicants is attached.

**Financial Implications**

20    By collaborating through NOROC, Council saved the time and money associated with having to run an individual expression of interest process.

25    Each Code of Conduct matter referred for review incurs costs, which can vary depending on the nature of the matter being investigated.

**Statutory and Policy Compliance Implications**

30    The process followed by NOROC and the recommendation in this report satisfy the requirements of the Code of Conduct Procedures.

**Report No. 13.3**      **Council Resolutions Quarterly Review - 1 April 2017 to 30 June 2017**  
**Directorate:**      Corporate and Community Services  
**Report Author:**      David Royston-Jennings, Corporate Governance and Strategic Planning Officer  
5   **File No:**      I2017/1080  
    **Theme:**      Corporate Management  
                 Governance Services

10   **Summary:**

This report provides an update on the status of Council resolutions and any proposed actions for consideration by Council.

15   It should be noted that 98 resolutions have been completed during the period 1 April to 30 June 2017, compared with 52 resolutions completed in the period 1 January to 31 March 2017, and there are 58 outstanding resolutions, compared with 73 outstanding as at 31 March 2017. Resolutions could be outstanding due to budget constraints, staff resourcing, and extended negotiations with stakeholders. There are a number that require no further action and should be closed.  
20



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**RECOMMENDATION:**

1.    **That Council receive and note the information provided in this report on outstanding Council Resolutions in Attachment 1 (#E2017/84730).**
2.    **That Council note the completed Resolutions in Attachment 2 (#E2017/84729).**
3.    **That Council resolve that no further action be taken in respect of the following resolutions and that they be closed:**

**Resolution 14-146**

**Attachments:**

- 25   1    Outstanding Resolutions as at 30 June 2017, E2017/84730   
    2    Completed Resolutions 1 April to 30 June 2017, E2017/84729 

## Report

This report provides a quarterly update on the status of Council Resolutions to 30 June 2017.

- 5 Resolutions completed include the exhibition of the rural land use strategy, appointment of new members to some of Council's Section 355 Committees, approval of a traffic management plan for Splendour in the Grass 2017, authorisation for Cr Ndiaye to attend the ALGA National General Assembly, granting of a sub-lease to Byron Youth Service Inc., designation of senior staff within the organisation, adoption of the Commercial Activities on Coastal and Riparian Crown Reserves policy, report on all abilities beach access and the adoption of the Community Strategic Plan 2027, 10 Delivery Program 2017-2021 and Operational Plan 2017-2017 (including Statement of Revenue Policy, Budget and Fees and Charges).

During this period:

- 15
- 98 resolutions were completed during period 1 April to 30 June 2017
  - 58 resolutions remain outstanding as at 30 June 2017

The outstanding Council resolutions per Council terms are provided below:

- 20
- 40 Outstanding Council Resolutions from current Council (2016-2020)
  - 15 Outstanding Council Resolutions from previous Council (2012-2016)
  - 3 Outstanding Council Resolutions from prior Council (2008-2012)
  - 58 Outstanding Resolutions as at 30 June 2017
- 25 Resolutions could be outstanding due to budget constraints, staff resourcing, and extended negotiations with stakeholders.

Details of completed resolutions for the period are provided at Attachment 2.

- 30 It should be noted that staff are reviewing the how Council (and community) are informed about the status of resolutions to ensure that this is provided in a more timely, transparent and easily understood format. Council at its August meeting (decision 17-362) resolved that at the next available Strategic Planning Workshop, Council discuss ways to keep Councillors and the community informed of the current status of resolutions and that following this discussion a report 35 be brought outlining possible layouts and methods of reporting the status of resolutions.

In 2014, Council (14-417) sought a review of outstanding resolutions to determine which ones currently fit within other resolutions, which ones cannot be resourced and which Council resolutions are able to be closed. The below tables outline these resolutions.

40 **Table 1: Council Resolutions that are no longer relevant or that have been superseded by other Resolutions**

Resolution No.	Meeting Date	Report Title	Staff Comments and Recommendation
14 -146	10/04/2014	Meeting to investigate the provision of free wireless internet	Wi fi roundtable discussion and that of the adequacy of NBN services in the Shire being progressed through business chamber, industry and business roundtable meetings hosted by council.

**Financial Implications**

A number of resolutions note that resource constraints limit completion of action required.

**5 Statutory and Policy Compliance Implications**

- Council requires a quarterly report be prepared to allow it to consider the six monthly Operational Plan and Quarterly Budget reviews along with a review of Council Resolutions.
- Implementation of Council Resolutions in accordance with the Local Government Act 1993.
- 10 • This report has been prepared in accordance with Part 3c) of Resolution 14-417.

Council at its Ordinary meeting held on 24 August 2017 adopted Resolution **17-362**, which reads as follows:-

15 *Resolved:-*

*1. That at the next possible Strategic Planning Workshop Council discuss ways to keep Councillors and the community informed of the current status of resolutions.*

20 *2. That following this discussion a report be brought outlining possible layouts and methods of reporting the status of resolutions.*

The proposed discussion in Part 1.is scheduled for the Strategic Planning Workshop to be held on 7 September 2017.

25 The attachments to this report have been prepared in the old format pending the Workshop and the further report to Council.

**Report No. 13.4      Public Exhibition of Draft Policy - Byron Bay Urban Recycled Water Connection Policy****Directorate:** Corporate and Community Services**Report Author:** Peter Rees, Manager Utilities**File No:** I2017/1122**Theme:** Corporate Management  
Financial Services

5

10 **Summary:**

Council at its Ordinary Meeting held on 22 June 2017 considered *Report 13.30 – Byron Bay Urban Recycled Water Connection Policy*.

- 15 Council resolved (Resolution: **17-266**) to place the draft policy on public exhibition without amendment. This report is provided to Council to consider the submissions received in relation to the Byron Bay Urban Recycled Water Connection Policy before adopting this policy.
- 

**RECOMMENDATION:**

**That Council adopt the Byron Bay Urban Recycled Water Connections Policy as detailed in Attachment 1 (#E2017/62524).**

20 **Attachments:**

- 1 Draft Policy Urban Recycled Water Connections (E2017/60557), E2017/62524 
- 2 Confidential - Urban Reuse Connection Policy Public Submission, E2017/86810

25

**Report**

Council at its Ordinary Meeting held on 22 June 2017 considered *Report 13.30 – Byron Bay Urban Recycled Water Connection Policy*.

Council resolved (Resolution: **17-266**):

1. *That the Draft Urban Recycled Water Connections Policy be placed on public exhibition for a period of 28 days.*
2. *That if no submissions are received, the Policy be adopted.*
3. *That any submissions received be reported back to Council*

Council placed the draft policy on public exhibition for a period of 28 days, which closed on 10 August 2017. During the public exhibition period, there one submission received, which is contained at Confidential Attachment 2.

The responses to the questions and statements in the submission are as detailed below.

*1. Why now and not before when Byron Council had given commitment to treated effluent reuse as part of the Brunswick Valley STP development commissioned in 2011 and West Byron STP augmented in 2005 and commissioned in 2006?*

Council undertook an extension to the recycled water main in 2016 that has allowed the recycled water to be extended to the large water users in and around the Byron Bay CBD. Up until this time Council has pursued connections to all the sites identified in the 2006 Effluent Management Strategy with over 70% of the sites being connected.

*2. Why is treated effluent reuse already existing in adjoining Shires and not in Byron?*

Treated effluent reuse has existed in Byron since 2003 at Main Arm, Byron Bay and Bangalow.

*3. Why has the reuse of treated effluent in the Shire failed at West Byron STP and Brunswick Valley STP?*

*In public access at a Special Meeting of Council, 6.7.17, Tony Flick from Ewingsdale reported that for 12 years he has been engaging with Council about the flooding of part of his property with now between 2ML - 3ML/day.*

The reuse of treated effluent has not failed at West Byron STP or the Brunswick Valley STP.

*4. Why is the proposed transfer of raw sewage from Ocean Shores STP, a proposal that in all probability will make treated effluent reuse in the northern area of the Shire more expensive because it will require a return pipeline.*

The proposed transfer of sewage from the Ocean Shores STP is a proposal still under consideration by Council. A return pipeline was a part of the originally approved project to transfer treated effluent from Ocean Shores to Brunswick Valley. Effluent reuse in the northern part of the Shire was not pursued due to a lack of support from the community at the time. It is however an option that can be revisited should there be community support for the project.

The Ocean Shores sewage transfer is being investigated as it has been identified this will save Council of the order of \$13 million over the life of the scheme. There is no technical reason why this scheme would make treated effluent reuse more expensive in the northern area of the Shire.

*5. Why is this exhibited draft policy so narrow in its focus?*

The Policy applies to the entire Byron Bay Urban Recycled Water Scheme.

*6. Misleading and deceptive information about reuse to*

*(a) The EPA. Until contacted in April, the EPA has been led to believe that Byron Shire had a reuse system in place and cited the Main Arm farmers and the Byron Golf Club. The Main Arm farmers have not taken treated effluent for years. The Byron Gold Club is unable to say how much treated effluent is been used and Water and Recycling has omitted to date to give any information on how much treated effluent is been supplied to the golf course. At worse, BSC may be 'dumping' treated effluent indirectly into the Belongil.*

*(b) (i) Byron Council's promotion of Water Week advertised treated effluent reuse that didn't exist*

*(ii) Council's report to a public meeting held in the late nineties, following the augmentation of Ocean Shores STP in 1995, was very badly worded and presented to neighbours adjoining the Ocean Shores Golf Course. It led to them refusing to accept the use of treated effluent on the golf course.*

*(c) the proposed irrigation of bamboo from Bangalow STP has been a failure because the bamboo has never been harvested let alone for fibre production. This completely contradicts Council's advertisement 12 April 2017 page 16 wherein it is stated that, "...onsite irrigation system currently used for a bamboo plantation with the purpose of harvesting for fibre production" exists. The bamboo is at an advanced stage of growth as opposed to been regularly harvested to promote the uptake of effluent.*

Council's EPA licences have the following EPA specified test points for Council's recycled water schemes.

Byron Bay EPA Licence 3404

Point 3 – Effluent Reuse - Volume and Quality monitoring

Point 5 – Discharge to Urban Reuse Pipeline – Volume and Quality monitoring

Brunswick Valley EPA Licence 13266

Point 6 – Volume Monitoring (Effluent Reuse)

Point 8 – Effluent Quality Monitoring (Tap of effluent reuse pipeline at corner of Main Arm Rd and Johnstones In Main Arm)

Bangalow STP EPA Licence 2522

Point 4 – Volume Monitoring (Effluent Reuse)

The government department responsible for the overview of recycled water schemes in NSW is the Department of Primary Industries (Water).

Council's promotion of Water Week was a well received community event. It showcased Council's use of recycled water in wetlands, plantations and the urban reuse scheme.

The bamboo plantation continues to use recycled water and Council is now developing a project to establish a bio energy plant that will use crops such as bamboo as a coppice crop to produce energy and biochar.

*7. Narrowness of the Exhibited Policy, Opportunities Foregone and Emerging Opportunities:*

a. *If Byron Shire Council was committed to an effluent reuse policy and strategy, then all DAs, such as Bayside Brunswick and the Mills Estate in Brunswick alone, should have had effluent reuse connections as infrastructure.*

5 b. *Effect of privatisation of surface and groundwater reserves: Introduction of water licenses in rural areas opens up opportunity for treated effluent to be used. Identifying potential effluent reuse areas in rural settings needs to be considered as part of the Rural Residential Strategy. As expressed by one rural property owner.*

10 *"Water is a concern and unfortunately the Brunswick Valley Water Sharing Plan was passed on the 1st of July 2016 which basically privatised all the surface water in the Brunswick Valley. All of the various groundwater sources were also privatised under water sharing plans on the 1st of July 2016 as well. The ground water sources included. North Coast Coastal Sands, North Coast Volcanic s, New England Fold Belt Coastal and the Clarence Moreton Basin. This happened and it seems almost no one knew about it. The water sharing plans were put on public exhibition. In the case of the Brunswick Valley Water source there was not a single public submission received by the Department. The Brunswick Valley water source includes all the water flowing in the Creeks and Rivers in Byron Shire and the groundwater under the non coastal flood plains. It includes all the water in Rural Dams over a properties "Harvestable Right". For example a 20 Hectare property can have Dams up to a capacity of 3.2ML. Anything over than requires a water license. It looks like no more water licenses will be issued for the Brunswick Valley Water Source. If anyone wants a water license they have to buy the water off the people that already owned them prior to the water sharing plan coming into effect on 1st July 2016."*

25 *I will have to pay a minimum of \$500 per ML but everyone who rushed to get their water licenses just a year ago got them for free. It seems the public exhibition of all these water sharing plans was done quite secretly and no advertisements were run in local papers for example.*

30 *If you read the groundwater sharing plans for the North Coast it seems to indicate a massive quantity of groundwater available which has a very high annual recharge rate. I am skeptical of the numbers however. It really seems like a lot of water. In relation to Brunswick Valley surface water flows. The valley is broken up into various sub catchments. Some have no water allocated at all. and some have very little. The subcatchment that accounts for the vast majority of water allocated in Byron Shire is from the Tyagarah Creek sub catchment.*

35 *So basically for any new Horticulture, Nursery, Aquaculture, Intensive Agriculture, Industry, Quarry etc that requires water to operate (including dairies, rural tourism accommodation, caravan parks etc) if they cannot get their water from Rous Water and they do not have enough water in their Harvetable Rights dams then they will need to buy water on the new water trading market. All those existing rural based businesses that currently use water from a bore but the bore is only licensed for domestic and stock purposes are doing so illegally and the Department will begin cracking down on them in the next few years.*

40 *I hate the fact that the water has been privatised but I also know that many nurseries, horticulture business and rural industries are using a lot of water out of bores and are doing so illegally.*

45 *That provides a bit of peace of mind that huge water intensive industries are not likely to be set up in Byron Shire. The recent example of the Middle Pocket Micro Distillery is an example of someone who knew what was happening and got in before the 1st July 2006 and got their water allocations of (53ML/year) for free."*

50 *Obviously, in rural environments water licenses are morphing into gold mines. The potential for treated effluent reuse is blatant and exposes the shortcomings of the exhibited policy document.*

*This is general comment rather than comment about the merits of the exhibited policy.*

55 *8. Proposed Charges: Whilst the concept of charges has been stated, it is impossible to comment on what it translates to at this stage. What is of concern is that charges for drinking water are to apply to treated effluent in context of*

60 *"Council will pay for all upfront costs for the design and installation of the recycled water infrastructure inside the property boundary. These costs will be recovered by the levying of the applicable drinking water rate for the recycled water consumption."*

*Unless there is an attractive difference that the market will embrace between drinking water charges and use of recycled water, then the policy will not take up. Even if the incentive for these to be lowered after the initial connection costs are recouped, there still remains the upfront cost.*

- 5 Council believes there will be greater take up of recycled water use with this policy than without.

*9. Environmental impacts of discharge into the Belongil, and Brunswick River must cease. A total catchment management policy for each STP and an implemented strategy is at least 12 years overdue.*

- 10 Council has prepared a draft Byron Shire Effluent Management Strategy which will be taken to the next Water Waste and Sewer Advisory Committee for discussion.

#### *10 Economic Implications*

- 15 *"Increasing recycled water usage reduces Council's costs through less water importation from Rous Water; decreases the business's costs through less drinking water costs and increases Council's asset utilisation with the existing Urban Recycled Water infrastructure." In principle, this statement is agreed. However, its presumptive base of take - up rate to connect to any reuse water is in question.*
- 20

Council believes there will be greater take up of recycled water use with this policy than without.

#### *Overall Comment.*

- 25 *The exhibited document is poor. It reads as 'damage control' to increasing criticism of a lack/collapse of Council's position on recycling of treated effluent from STPs to date. A comprehensive policy and strategy for each of the catchment areas for the STPs is urgently required. Consequently, this policy needs to be put aside.*

- 30 Without wetland reuse, Council reuses 11% of the effluent produced against a NSW average of 17%. If wetlands are included this this reuse volume is approximately 20% - well above the state average.

- 35 A draft Byron Shire Effluent Management Strategy that includes all the catchment areas has been prepared which will be taken to the next Water Waste and Sewer Advisory Committee for discussion.

#### **Financial Implications**

- 40 There are no financial implications as a consequence of this policy.

#### **Statutory and Policy Compliance Implications**

- 45 Compliance with the Local Government Act and Council's 2006 Byron Bay Effluent Management Strategy.

**Report No. 13.5**      **Safe Summer in the Bay, Schoolies and other large gatherings and counter-terrorism measures**

**Directorate:**      Corporate and Community Services

**Report Author:**      Joanne McMurtry, Community Project Officer  
Sarah Ford, Manager Community Development  
Peter Rees, Manager Utilities

**File No:**      I2017/1149

**Theme:**      Society and Culture  
Community Development

**Summary:**

Following another successful Safe Summer in the Bay 2016/17, with increased crowds and reduced impacts on the community, planning has commenced for Safe Summer in the Bay 2017/18.

As part of this planning process, the NSW Police have advised of the new counter-terrorism measures, required for crowds of approximately 3,000 or more people.

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**RECOMMENDATION:**

1.    **That Council note the requirement for counter-terrorism measures for community events for crowds of more than 3,000 people**
2.    **That Council work with NSW Police to implement interim arrangements to safeguard the community against counter-terrorism threats for Safe Summer in the Bay 2017/18 and Schoolies**
2.    **That Council work with NSW Police to identify permanent infrastructure arrangements to ensure the community is safeguarded against the threat of counter-terrorism for future events.**

**Report**

“Safe Summer in the Bay” 2016/2017 produced a successful New Year’s Eve and New Year’s Day (NYD) in Byron Bay. Estimated crowd numbers were up (more than 10,000 estimated in Soul Street NYE), Police reported a very small number of arrests and there were no major incidents reported by emergency services.

First Sun NYD was successful with estimated crowd numbers approximately 1,000 people attending the 5.30am event. The newly implemented traffic management plan and street closures up to the Lighthouse precinct ensured pedestrian safety and improved access for the shuttle buses taking people to the event.

A Safe Summer in the Bay Working Group managed operational aspects in the delivery of key strategies with Council’s partnership with the Byron Community Centre (BCC) continued. Council streamlined support by appointing a Project Manager to assist with a whole of Council coordination. This planning element will be built upon in future years to streamline Council’s delivery even further.

The first meeting of stakeholders for the 2017/18 event was held on the 2 August 2017. The significant outcome from this meeting was advice from NSW Police that this year’s event would need to include counter-terrorist measures. These measures are now required for all public events where more than 3,000 people are expected. Schoolies will also be impacted by these changes.

**Counter-Terrorism**

The Commonwealth Government recently released a report titled *Australia’s Strategy for Protecting Crowded Places from Terrorism*. Following is an extract from the report:

Crowded places such as stadiums, shopping centres, pedestrian malls, and major events will continue to be attractive targets for terrorists. The current National Terrorism Threat Level in Australia is PROBABLE, as outlined on [www.nationalsecurity.gov.au](http://www.nationalsecurity.gov.au) This reflects the advice of the Australian Security Intelligence Organisation (ASIO) that individuals and groups continue to possess the intent and capability to conduct a terrorist attack in Australia.

Owners and operators of crowded places have the primary responsibility for protecting their sites, including a duty of care to take steps to protect people that work, use or visit their site from a range of foreseeable threats, including terrorism..... The approach taken to protect crowded places should be nationally consistent, proportionate and, to every extent possible, preserve the public’s use and enjoyment of these places.

The strategy has a number of supplementary materials including a self-assessment tool, a security audit tool, hostile vehicle mitigation guidelines, chemical weapon guidelines, active armed offender guidelines and improvised explosive device guidelines.

Tweed – Byron Local Area Command have indicated they are required to put into place a Counter-Terrorism Plan for any large gatherings occurring within the Shire, which includes Soul St NYE and Schoolies. Further, NSW Police have requested notification for all events that involve alcohol.

**Road Barriers**

Protection against vehicle borne attack is a key focus area from NSW Police. Road barriers are required to be of sufficient capacity to prevent unauthorised access by a speeding truck.

Given the lead time to 2017/18 Safe Summer in the Bay events, NSW Police have agreed to work with Council to put in place interim protective measures to safe guard the community. At other

events around the state this has been achieved by parking a bus or other large vehicle, across all access points. In the event of an emergency, key vehicle operators should be on standby during the event to move the trucks should police and emergency services require access.

- 5 The problem is more difficult and cumbersome to solve for the “Schoolies” programme as it spans nearly 2 weeks with the critical time from 7pm to 1am each night. This will require somehow to “ring fence” the Apex Park area during this period. A short term measure would be to park mini buses and vehicles around the site however this maybe considered to be both unsightly and most likely unsatisfactory to the broader community.

- 10 Permanent infrastructure to safe guard the community may include reinforced bollards and other approved barrier systems. A further report to Council regarding permanent counter-terrorism measures will be reported to Council after Safe Sumer in the Bay 2017/18.

15 **Financial Implications**

- Interim counter–terrorism arrangements for Safe Summer in the Bay 2017/18 are expected to cost a minimum of \$30,000. For the “Schoolies” programme this cost will likely be exceeded due to the complexity of the venue and the time span. The advent of such stringent and costly counter terrorism measures should be cause for the Council to review the cost-effectiveness of events such as “schoolies” and to question their sustainability.
- 20

**Statutory and Policy Compliance Implications**

- 25 Plan for New Year in Byron Bay 2017 and the 2017 “Schoolies” programme.

**Report No. 13.6****Australia Indonesia Arts Alliance Event 28-30 September 2017****Directorate:**

Corporate and Community Services

**Report Author:**

David Royston-Jennings, Corporate Governance and Strategic Planning Officer

5

Mark Arnold, Director Corporate and Community Services

Sarah Ford, Manager Community Development

**File No:**

I2017/1158

**Theme:**

Corporate Management

10

Governance Services

**Summary:**

15

Council is asked to consider a budget submission from the Australia Indonesia Arts Alliance, endorse the co-hosting of an Indonesian Forum and associated events in collaboration with the AIAA, and request the development of an international relations policy to provide a framework which governs how Byron Shire Council interacts, coordinates and liaises with foreign government bodies and delegations.

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**RECOMMENDATION:****That Council:**

1. **Endorse the co-hosting of an Indonesian Forum and associated events with the Australia Indonesia Arts Alliance, to be held in Byron Shire from 28-30 September 2017;**
2. **Allocate \$3,000 of Council's Community Development Program's unallocated s356 donations in the 2017/18 budget to support international relations;**
3. **Reimburse the Australia Indonesia Arts Alliance for agreed expenses incurred as a co-host of the Indonesian Forum and associated events in Byron Shire between 28-30 September 2017 to the limit of the budget allocated in part 2 of this Resolution;**
4. **Consider the inclusion of an item in the 2018/19 Operational Plan budget to continue to support international relations which contribute to community aspirations as outlined in the Community Strategic Plan 2027; and,**
5. **Request staff to develop an international relations policy to provide a framework which governs how Byron Shire Council interacts, coordinates and liaises with foreign government bodies and delegations.**

**Attachments:**

25

- 1 Confidential - Australia Indonesia Arts Alliance Forum Submission to Council, E2017/84889

**Report**

Following the successful visit of an Indonesian delegation to Byron Shire between March and April 2017, facilitated in collaboration with the Australia Indonesia Arts Alliance (AIAA), the AIAA have continued to work with Bpk Yayan Mulyana, Consul General of the Republic of Indonesia, to stage an Indonesian Forum in Byron Shire between 28 and 30 September 2017.

At its Ordinary meeting held 22 June 2017, Council received a report on the adoption of its Integrated Planning and Reporting documents, including the 2017/18 Statement of Revenue Policy, Budget, and Fees and Charges. A submission provided by the Australia Indonesia Arts Alliance (Confidential Attachment 1) requested funds to facilitate such a Forum, covering catering and administrative costs, which would allow Byron Shire Council and representatives of various Indonesian government bodies to collaborate on issues such as the economy, education and coastal management. Council's resolution (17-268) did not incorporate the Australia Indonesia Arts Alliance request for funding.

In collaboration with the Mayor's Office, the AIAA have proceeded with the organisation of the Indonesia Forum and have invited 9 Indonesian delegates to speak at the Forum. The speakers are as follows:

1. Mr Lenis Kogoya (Special Staff of President)
2. Mr Teuku Sama Indra (Regent of South Aceh)
3. Mr Yossi Irianto (Regional Secretary of Bandung City)
4. Mr Mohamad Salman Fauzi (Head of Environment and Hygiene office of Bandung City).
5. Mrs Ade Indriani Zuchri (Chairperson of Indonesia Green Union)
6. Mr Deni Jasmara (Indonesia Green Union)
7. Mr Riyan Sumindar (Staff of Special Staff of President office)
8. Mr Dadan Ramdhan (Chairman of Indonesia Environment Forum West Java Province)
9. Mr Teguh Iman Maulana (Staff of South Aceh Regent)

The proposed schedule of events for the delegation include field trips facilitated by the AIAA on 28 and 30 September, with visits to Council's Byron Resource Recovery Centre and the West Byron Integrated Water Management Reserve. The Forum is scheduled for 29 September. Council have agreed to provide the following to assist with the running of the Forum, however there is currently no budget allocation:

- Use of the Council Chambers as the venue for the Forum with IT support for 15 mins and the beginning of the Forum for setting up and 15 mins at the end of the Forum for finalising the day.
- Conference Room as location for attendees to eat lunch.
- Morning tea (max 60 persons) – organised and paid for by Byron Shire Council.
- Lunch (max 60 persons) – organised by AIAA (Indonesian meal @10\$pp) and paid for by Byron Shire Council.

Councillors are encouraged to attend the Forum on 29 September and join the fields trips on 28 and 30 September as hosts to the delegation.

Council does not at present have a policy, procedure or member of staff responsible for or which provides guidance to projects, events or collaboration with foreign government bodies or delegations. This event and associated requests from the AIAA has demonstrated Councils' need to:

- Allocate resources to international diplomacy, with a focus on using international relations and establishing diplomatic ties to advance the interests and causes of the Shire. This relates to community strategy CM3.1, to 'implement collaborative partnerships that support efficient use of resources', as documented in the Community Strategic Plan 2027.

- Develop a policy framework which governs how Byron Shire Council interacts, coordinates and liaises with foreign government bodies and delegations.

**Financial Implications**

5 Council's Community Development Program currently has an unallocated s356 donations budget of \$36,200. This recommendation is that \$3,000 of this budget is used to support international relations which would assist Council in achieving its goals, as outlined in the Community Strategic Plan 2027.

10 **Statutory and Policy Compliance Implications**

15 While the Australian Government has no direct control of local government, it does have primary responsibility for international relations and diplomacy. Local governments should align their international arrangements with government policies.

**Report No. 13.7**      **Council Investments August 2017**  
**Directorate:**      Corporate and Community Services  
**Report Author:**      James Brickley, Manager Finance  
**File No:**      I2017/1243  
5 **Theme:**      Corporate Management  
                 Financial Services

**Summary:**

10 This report includes a list of investments and identifies Council's overall cash position for the month of August 2017 for Council's information.

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

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**RECOMMENDATION:**

**That the report listing Council's investments and overall cash position as at 31 August 2017 be noted.**

**Report**

In relation to the investment portfolio for the month of August 2017, Council has continued to maintain a diversified portfolio of investments. At 31 August 2017, the average 90 day bank bill rate (BBSW) for the month was 1.69%. Council's performance to 31 August 2017 is 2.59%. Council's performance is again higher than the benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits and purchasing floating rate notes with attractive interest rates.

- 5 The table below identifies the investments held by Council as at 31 August 2017:

**Schedule of Investments held as at 31 August 2017**

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Ethical ADI	Type	Interest Rate Per Annum	Current Value
24/03/17	1,000,000	NAB Social Bond (Gender Equality)	N	AA-	24/03/22	N	B	3.44%	1,011,100.17
28/10/16	650,000	Teachers Mutual Bank	P	BBB+	28/10/19	Y	FRN	3.17%	653,642.89
31/03/17	1,000,000	CBA Climate Bond	N	AA-	31/3/22	N	FRN	3.25%	1,000,000.00
23/08/17	2,000,000	NAB	P	AA-	23/11/17	N	TD	2.47%	2,000,000.00
08/08/17	2,000,000	NAB	N	AA-	06/11/17	N	TD	2.45%	2,000,000.00
03/07/17	1,000,000	NAB	N	AA-	09/10/17	N	TD	2.44%	1,000,000.00
30/08/17	2,000,000	NAB	N	AA-	30/11/17	N	TD	2.23%	2,000,000.00
08/08/17	2,000,000	Bank of Queensland	P	BBB+	05/02/18	Y	TD	2.60%	2,000,000.00
02/08/17	2,000,000	Police Credit Union	P	NR	02/11/17	U	TD	2.55%	2,000,000.00
15/08/17	2,000,000	ME Bank	N	BBB	15/11/17	Y	TD	2.45%	2,000,000.00
01/06/17	2,000,000	Beyond Bank	P	BBB	03/10/17	Y	TD	2.65%	2,000,000.00
10/05/17	2,000,000	Beyond Bank	N	BBB	13/09/17	Y	TD	2.65%	2,000,000.00
07/07/17	2,000,000	ME Bank	N	BBB	07/10/17	Y	TD	2.55%	2,000,000.00
08/08/17	2,000,000	ME Bank	P	BBB	08/11/17	Y	TD	2.45%	2,000,000.00
04/07/17	1,000,000	Bananacoast Credit Union	P	NR	04/01/18	Y	TD	2.70%	1,000,000.00
16/03/17	2,000,000	AMP Bank	P	A	18/09/17	N	TD	2.75%	2,000,000.00
09/06/17	2,000,000	NAB	N	AA-	08/09/17	N	TD	2.50%	2,000,000.00
30/08/17	2,000,000	ME Bank	N	BBB	30/11/17	Y	TD	2.45%	2,000,000.00
04/04/17	1,000,000	Bank of Queensland	N	BBB+	27/09/17	Y	TD	2.60%	1,000,000.00
04/07/17	2,000,000	Beyond Bank	N	BBB	04/10/17	Y	TD	2.65%	2,000,000.00
13/06/17	1,000,000	Auswide Bank Ltd	N	BBB-	13/10/17	Y	TD	2.60%	1,000,000.00
05/07/17	1,000,000	Police Credit Union	N	NR	05/10/17	U	TD	2.60%	1,000,000.00
17/05/17	2,000,000	ME Bank	N	BBB	20/09/17	Y	TD	2.55%	2,000,000.00
15/08/17	1,000,000	Bank of Queensland	N	BBB+	12/01/18	Y	TD	2.55%	1,000,000.00
01/03/17	1,000,000	Bananacoast Credit Union	N	NR	06/09/17	Y	TD	2.75%	1,000,000.00
03/03/17	1,000,000	Bananacoast Credit Union	N	NR	06/09/17	Y	TD	2.75%	1,000,000.00

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Ethical ADI	Type	Interest Rate Per Annum	Current Value
23/08/17	1,000,000	The Capricornian Credit Union	P	NR	23/11/17	Y	TD	2.50%	1,000,000.00
19/07/17	2,000,000	Beyond Bank	N	BBB	30/10/17	Y	TD	2.65%	2,000,000.00
23/03/17	1,000,000	Police Credit Union	N	NR	27/09/17	U	TD	2.80%	1,000,000.00
03/04/17	2,000,000	Police Credit Union	N	NR	04/10/17	U	TD	2.80%	2,000,000.00
03/04/17	1,000,000	Beyond Bank	N	BBB	13/09/17	Y	TD	2.70%	1,000,000.00
03/05/17	1,500,000	Auswide Bank Ltd	P	BBB-	08/11/17	Y	TD	2.68%	1,500,000.00
10/05/17	1,000,000	Auswide Bank Ltd	N	BBB-	15/11/17	Y	TD	2.70%	1,000,000.00
17/05/17	1,000,000	Maitland Mutual Building Society	P	NR	27/09/17	Y	TD	2.60%	1,000,000.00
02/06/17	1,500,000	ME Bank	N	BBB	04/12/17	Y	TD	2.67%	1,500,000.00
05/06/17	1,000,000	Intech Bank Ltd	P	NR	05/12/17	Y	TD	2.80%	1,000,000.00
08/06/17	2,000,000	ME Bank	N	BBB	08/12/17	Y	TD	2.65%	2,000,000.00
13/06/17	1,000,000	Bananacoast Credit Union	N	NR	13/10/17	Y	TD	2.60%	1,000,000.00
29/06/17	2,000,000	Community Alliance Credit Union	P	NR	29/09/17	U	TD	2.65%	2,000,000.00
05/07/17	1,500,000	Hunter United Employees Credit Union	P	NR	06/11/17	U	TD	2.85%	1,500,000.00
05/07/17	1,000,000	Police Credit Union	N	NR	17/10/17	U	TD	2.60%	1,000,000.00
10/07/17	1,000,000	Hunter United Employees Credit Union	N	NR	10/10/17	U	TD	2.65%	1,000,000.00
17/07/17	1,000,000	Police Credit Union	N	NR	17/11/17	U	TD	2.65%	1,000,000.00
28/07/17	2,000,000	ME Bank	N	BBB	30/10/17	Y	TD	2.45%	2,000,000.00
03/08/17	1,000,000	Maitland Mutual Building Society	N	NR	03/11/17	Y	TD	2.50%	1,000,000.00
15/08/17	1,000,000	ME Bank	N	BBB	15/11/17	Y	TD	2.45%	1,000,000.00
17/08/17	1,000,000	AMP Bank	N	A	17/11/17	N	TD	2.45%	1,000,000.00
17/08/17	1,000,000	ME Bank	N	BBB	17/11/17	Y	TD	2.45%	1,000,000.00
17/08/17	1,000,000	Bank of Queensland	N	BBB+	19/02/18	Y	TD	2.55%	1,000,000.00
23/08/17	1,000,000	ME Bank	N	BBB	23/11/17	Y	TD	2.45%	1,000,000.00
24/08/17	1,000,000	ME Bank	N	BBB	24/11/17	Y	TD	2.45%	1,000,000.00
30/08/17	1,000,000	Me Bank	N	BBB	28/11/17	Y	TD	2.45%	1,000,000.00
31/08/17	2,000,000	NAB	N	AA-	12/12/17	N	TD	2.50%	2,000,000.00
31/08/17	2,000,000	NAB	N	AA-	18/12/17	N	TD	2.50%	2,000,000.00
N/A	2,062,923	CBA Business Online Saver	N	A	N/A	N	CALL	1.40%	2,062,923.08
<b>Total</b>	<b>79,212,923</b>						<b>AVG</b>	<b>2.59%</b>	<b>79,227,666.14</b>

**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. Ethical ADI**

Y = No investment in Fossil Fuels

N = Investment in Fossil Fuels

U = Unknown Status

**Note 3.**

**Type**

**Description**

B

Bonds

Principal can vary based on valuation, interest payable via a fixed interest, payable usually each quarter.

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.

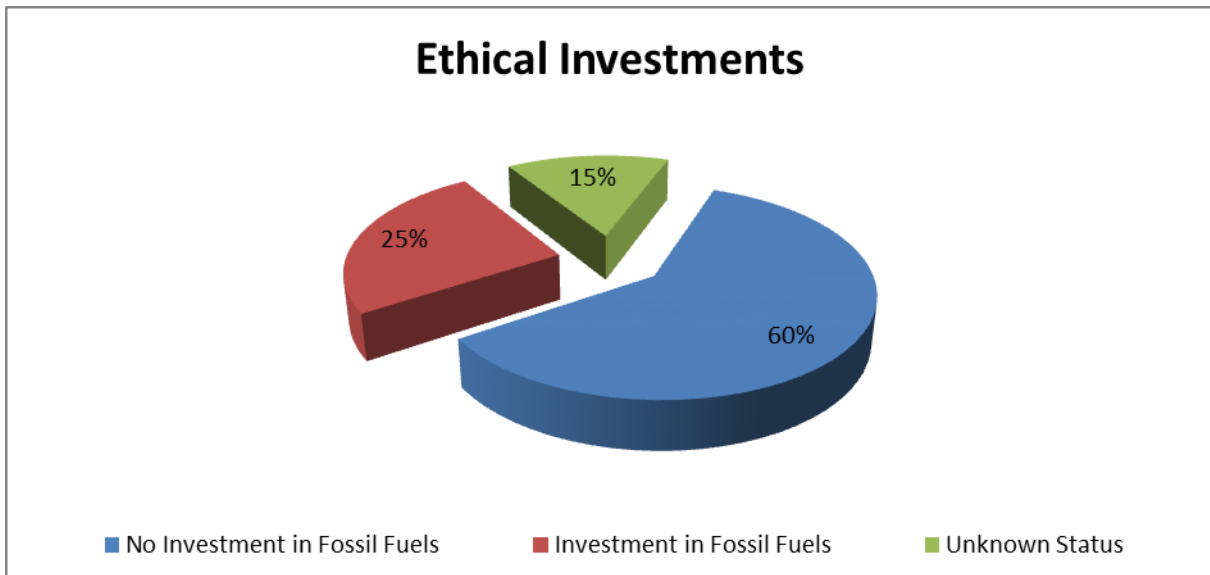
CALL

Call Account

Principal varies due to cash flow demands from deposits/withdrawals, interest is payable on the daily balance.

**5 Environmental and Socially Responsible Investing**

An additional column has been added to the schedule of Investments above, to identify if the financial institution holding the Council investment, has been assessed as an "Ethical" institution. This information has been sourced through [www.marketforces.org.au](http://www.marketforces.org.au) and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below highlights the percentage of each classification across Councils total investment portfolio.



**15** For the month of August 2017, as indicated in the table below, there is a dissection of the investment portfolio by investment type:

**Dissection of Council Investment Portfolio as at 31 August 2017**

<b>Principal Value (\$)</b>	<b>Investment Linked to:-</b>	<b>Current Market Value (\$)</b>	<b>Cumulative Unrealised Gain/(Loss) (\$)</b>
74,500,000.00	Term Deposits	74,500,000.00	0.00
1,650,000.00	Floating Rate Note	1,653,642.89	3,642.89
2,062,923.08	Business On-Line Saver (At Call)	2,062,923.08	0.00
1,000,000.00	Bonds	1,011,100.17	11,100.17
<b>79,212,923.08</b>		<b>79,227,666.14</b>	<b>14,743.06</b>

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 month of August 2017 on a current market value basis.

**Movement in Investment Portfolio – 1 to 31 August 2017**

<b>Item</b>	<b>Current Market Value (at end of month) \$</b>
<b>Opening Balance at 31 July 2017</b>	<b>74,725,216.16</b>
Add: New Investments Purchased	30,000,000.00
Add: Call Account Additions	0.00
Add: Interest from Call Account	2,449.98
Less: Investments Matured	25,500,000.00
Less: Call Account Redemption	0.00
Less: Fair Value Movement for period	0.00
<b>Closing Balance at 31 August 2017</b>	<b>79,227,666.14</b>

15 **Investments Maturities and Returns – 1 to 31 August 2017**

<b>Principal Value (\$)</b>	<b>Description</b>	<b>Type</b>	<b>Maturity Date</b>	<b>Number of Days Invested</b>	<b>Interest Rate Per Annum</b>	<b>Interest Paid on Maturity \$</b>
2,000,000.00	Police Credit Union	TD	02/08/17	182	2.70%	26,926.03
2,000,000.00	NAB	TD	08/08/17	123	2.55%	17,186.31
2,000,000.00	Bank of Queensland	TD	08/08/17	124	2.50%	16,986.30
2,000,000.00	ME Bank	TD	08/08/17	153	2.55%	21,378.08
1,000,000.00	My State Bank	TD	09/08/17	187	2.75%	14,089.04
2,000,000.00	ME Bank	TD	15/08/17	132	2.50%	18,082.19
1,000,000.00	Bank of Queensland	TD	15/08/17	180	2.70%	13,315.07
1,500,000.00	Beyond Bank Australia	TD	16/08/17	106	2.65%	11,543.83
2,000,000.00	Beyond Bank Australia	TD	16/08/17	103	2.65%	14,956.16

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	NAB	TD	23/08/17	127	2.53%	17,606.03
1,000,000.00	The Capricornian	TD	23/08/17	170	2.70%	12,808.22
1,000,000.00	Beyond Bank Australia	TD	24/08/17	92	2.65%	6,679.45
2,000,000.00	NAB	TD	30/08/17	177	2.58%	25,022.47
2,000,000.00	ME Bank	TD	30/08/17	125	2.55%	17,465.75
2,000,000.00	Beyond Bank Australia	TD	31/08/17	92	2.65%	13,358.90
<b>25,500,000.00</b>						<b>247,403.83</b>

The overall 'cash position' of Council is not only measured by what funds Council has invested but also by what funds Council has retained in its consolidated fund or bank account as well for operational purposes. In this regard, for the month of August 2017 the table below identifies the overall cash position of Council as follows:

### Dissection of Council Cash Position as at 31 August 2017

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
<b>Investments Portfolio</b>			
Term Deposits	74,500,000.00	74,500,000.00	0.00
Floating Rate Note	1,650,000.00	1,653,642.89	3,642.89
Business On-Line Saver (At Call)	2,062,923.08	2,062,923.08	0.00
Bonds	1,000,000.00	1,011,100.17	11,100.17
<b>Total Investment Portfolio</b>	<b>79,212,923.08</b>	<b>79,227,666.14</b>	<b>14,743.06</b>
<b>Cash at Bank</b>			
Consolidated Fund	3,599,450.54	3,599,450.54	0.00
<b>Total Cash at Bank</b>	<b>3,599,450.54</b>	<b>3,599,450.54</b>	<b>0.00</b>
<b>Total Cash Position</b>	<b>82,812,373.62</b>	<b>82,827,116.68</b>	<b>14,743.06</b>

## 10 Financial Implications

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

### Statutory and Policy Compliance Implications

15

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

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

to ensure the required report will be provided to Council and this will for some months require reporting for one or more months.

5 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.

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

15 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. 13.8**  
**Directorate:** Corporate and Community Services  
**Report Author:** Anna Vinfield, Manager Governance Services  
 Ralph James, Legal Services Coordinator  
**File No:** I2017/1266  
**Theme:** Corporate Management  
 Governance Services

**Summary:**

Council is required to review its delegations within the first 12 months of an election. Council may, by resolution, delegate to the General Manager any Council function other than the matters specifically set out in section 377 of the Local Government Act 1993.

Officers have reviewed the delegations and are recommending minor changes to the General Manager's delegations in line with recent amendments to the Local Government Act 1993.





No changes are recommended to the Mayor's delegation.

**RECOMMENDATION:**

**That with regard to the review of delegations, Council:**

1. **Revoke its previous delegations and adopt:**
  - a) **Instrument of Delegation to the Mayor as per attachment 1 (E2017/87215); and**
  - b) **Instrument of Delegation to the General Manager as per attachment 2 (E2017/86811)**
2. **Reconfirm its delegation of its functions for noxious weeds under the Noxious Weeds Act, 1993 to Rous County Council until such time as the delegation is revoked or re-delegated.**
3. **Reconfirm its delegations to Council's Special Purposes Committees (noted below) as set out in Council's Code of Meeting Practice (schedule B, E2016/78355):**
  - a) **Byron Shire Reserve Trust Committee**
  - b) **Planning review Committee**
4. **Note that Delegations of Authority were adopted and confirmed for all its Section 355 Committees on the 29 September 2016 (Res 16-485).**
5. **That Council reconfirm its acceptance of delegation of functions from other agencies as set out at appendix 3 (E2013/31451).**

**Attachments:**

- 1 Draft Delegation - Mayor, E2017/88052 
- 2 Draft Delegation - General Manager, E2017/88059 
- 3 Code of Meeting Practice, E2017/88063 
- 4 Council's Delegated Functions - List of Acceptances of Delegation of Functions pursuant to s381 of the Local Government Act, E2017/88065 

**Report**

Council is required to review its delegations within the first 12 months of an election. Council may, by resolution, delegate to the General Manager any Council function other than the matters specifically set out in section 377 of the Local Government Act 1993. These matters are included in the Statutory and Policy Implications section of this report.

Under changes brought about by the *Local Government Amendment (Governance and Planning) Act 2016* the authority to accept a tender can be delegated to General Managers, other than for services currently provided by Council staff members.

During its ratification, the Minister noted during the second reading speech that “*more routine tendering functions will be delegated to General Managers, while ensuring that any major decision on outsourcing that might affect current Council staff remains a decision for the Councillors*”.

The intention of the amended clause is to remove the prohibition on delegation by a council of the acceptance of any tender but, at the same time prohibit delegation of the function of accepting tenders to provide services currently provided by council staff.

All accepted tenders would still be required to be publically reported on Council’s notice board and website.

Additionally under the 2016 amendment, the General Manager can provide financial assistance under certain circumstances as per below:

- (a) the financial assistance is part of a specified program, and
- (b) the program is included in the council’s draft operational plan for the year in which the financial assistance is proposed to be given, and
- (c) the program’s proposed budget for that year does not exceed 5 per cent of the council’s proposed income from the ordinary rates levied for that year, and
- (d) the program applies uniformly to all persons within the council’s area or to a significant proportion of all the persons within the council’s area.

A number of limitations have been previously noted on the General Manager’s delegations. Minor modifications are recommended to these – tender acceptance provisions (following the changes to the Act) and increase of financial limit on bad debt write offs to improve processing efficiency.

The recommended instrument of delegation to the Mayor is at attachment 1 and for the General Manager (with tracked changes) is at attachment 2.

**Financial Implications**

Nil

**Statutory and Policy Compliance Implications**

Section 377 (General Power of the Council to Delegation), Local Government Act 1993 notes that: (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 under this or any other Act, 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,
- 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),
- 5 i) the acceptance of tenders to provide services currently provided by members of staff of the council,
- j) the adoption of an operational plan under section 405,
- k) the adoption of a financial statement included in an annual financial report,
- 10 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.

(1A) Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if:

- 30 (a) the financial assistance is part of a specified program, and
- (b) the program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and
- (c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and
- 35 (d) the program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.9      PLANNING - 10.2016.444.1 Subdivision of Two (2) Existing Lots into Five (5) Lots at 5 Bulgoon Crescent Ocean Shores**

5     **Directorate:**             Sustainable Environment and Economy  
        **Report Author:**     Paul Mills, Senior Planner  
        **File No:**                I2017/944  
        **Theme:**                Ecology  
 10                                Development and Approvals

**Proposal:**                     Subdivision of two (2) existing lots into five (5) lots  
**Property description:**     LOT: 450 DP: 238451, LOT: 448 DP: 238451  
                                       5 Bulgoon Crescent OCEAN SHORES, 91 Orana Road OCEAN SHORES

**Parcel No/s:**                5890, 62120  
**Applicant:**                 Joe Davidson Town Planning  
**Owner:**                     Ventry Developments Pty Ltd  
**Zoning:**                     R2 Low Density Residential Zone  
**Date received:**            12 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: 28/07/16 to 10/08/16
- Submissions: Seven (7)

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

**Planning Review Committee:**     18 August 2016

**Delegation to determination:**     Council

**Issues:**

- Noise and amenity impacts for adjoining property at No.89 Orana Road in view of proposed new driveway extension providing access to four (4) of the proposed lots.
- Earthworks associated with proposed internal driveway involves fill with a typical maximum retaining wall height 1.55m with acoustic fencing above. Proposed retaining wall is to be setback 900mm from the boundary with No.89 Orana Road.
- Topography, the subject site includes steeply sloping land, conditions included to require a Geotechnical Report and Geotechnical Certification.
- Ecological impacts associated with proposed removal of ten (10) trees.

**Summary:**

15     The application seeks development consent for the subdivision of two (2) existing lots into five (5) new lots. The two existing lots are at No.91 Orana Road and 5 Bulgoon Crescent. Access to proposed Lot's 1, 2, 3 and 4, is via a 5.5m wide driveway extension and upgrade to the existing access to No.91 Orana Road. Access to proposed Lot 5 is via a 3.3m wide driveway to Bulgoon Crescent.

The proposal is considered to satisfy the provisions of Byron LEP 2014 and other relevant Environmental Planning Instruments. The proposal is also considered to satisfy the provisions of Byron DCP 2014 apart from a numeric non-compliance with the 1.0m maximum height of fill control. The proposed fill/retaining wall associated with the construction of the new driveway to Orana Road reaches a maximum height of 1.55 metres (typically). The proposed earthworks are considered to achieve the objective of control to maintain the character of the area subject to conditions.

A total of seven (7) submissions were received in response to the community consultation process. The matters raised in the submissions include concerns regarding the proposed driveway access to Orana Road (vehicle noise, earthworks, retaining wall, removal of trees, visual impact and loss of amenity for the adjoining property at No.89 Orana Road), the suitability of the land for subdivision (topography), and the safety of the access point on Orana Road. The matters raised in the submissions have been addressed in this report. Following the exhibition of the application, the applicant submitted amended plans repositioning the driveway 900mm from the boundary with the property at No.89 Orana Road. Conditions have been included to require acoustic fencing and screen plantings adjacent to the driveway.

The application is considered to have sufficient merit to warrant approval subject to conditions.

**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.

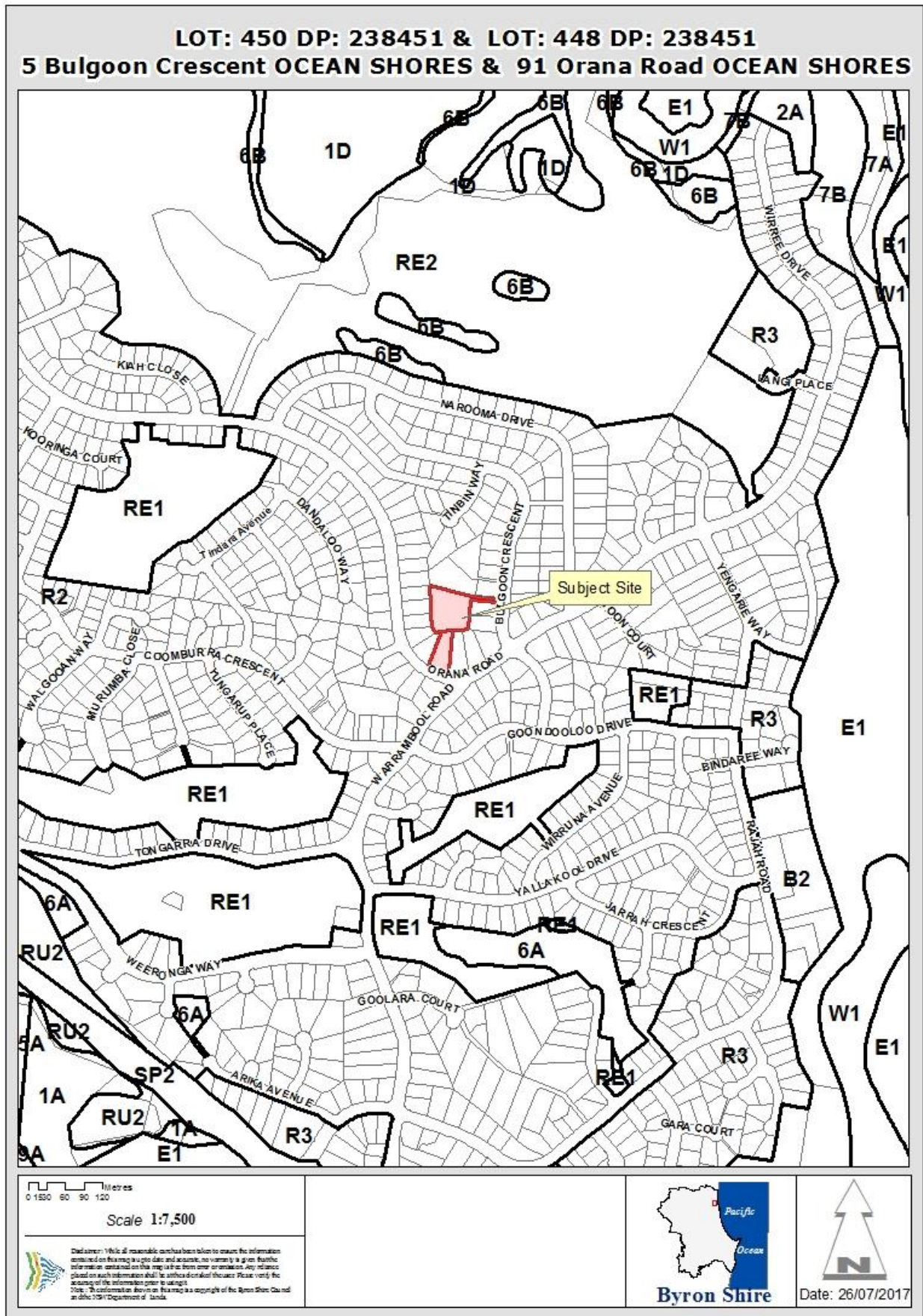
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**RECOMMENDATION:**

**That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2016.161.1 for Subdivision to create five (5) residential lots, associated infrastructure works and removal of ten (10) trees, be granted consent subject to the conditions listed in Attachment 3.**

**Attachments:**

- 1 Proposed Plans 10.2016.444.1 - 5 Bulgoon Crescent Ocean Shores, E2017/86693 
- 2 Confidential - Submissions 10.2016.444.1 5 Bulgoon Crescent Ocean Shores, E2017/70860
- 3 Proposed Conditions 10.2016.444.1 - 91 Orana Road & 5 Bulgoon Crescent, Ocean Shores, E2017/88068 



**Assessment:****1. INTRODUCTION****1.1 History/Background****Lot 450 DP 238451**

No electronic records found for a past development application over this allotment. This allotment was registered in 1969.

**Lot 448 DP 238451**

**81/2127** Building Application for a dwelling approved on 24 April 1981.

**10.2005.84.1** Development Application for Subdivision to create two (2) lots, refused consent on 12 September 2005.

**1.2 Description of the site**

The subject site comprises two adjoining lots that were registered in 1969 as part of the early stages of Ocean Shores. The subject lots are Lot 450 DP 238451, street address 5 Bulgoon Crescent, and Lot 448 DP 238451, street address 91 Orana Road. The two properties have a combined area of 6158m<sup>2</sup>.

**Lot 450 DP 238451 (No.5 Bulgoon Crescent)**

Lot 450 is a hatchet shaped allotment with narrow 4.57m wide access handle to the western side of Bulgoon Crescent with an area of 4388m<sup>2</sup>. The land falls away from Bulgoon Crescent is currently vacant and contains scattered trees.

**Lot 448 DP 238451 (No.91 Orana Road)**

Lot 448 is located on the northern side of Orana Road and has a curved boundary of 38.1 metres in length fronting the roadway and an 1770m<sup>2</sup>. The property contains an existing two-storey dwelling house of brick and tile construction. The land slopes down from the Orana Road frontage with the existing dwelling located on the higher levels of the site towards the road frontage. Vehicle access to the dwelling is available via an existing concrete driveway from Orana Road.

**1.3 Description of the proposed development**

The application seeks development consent for the subdivision of two (2) existing lots into five (5) new lots. The two existing lots are Lot 450 and Lot 448 in DP 238451. Lot 448 is proposed to be subdivided into two (2) lots, with the existing dwelling house maintained within proposed Lot 1 and a vacant proposed Lot 2 located to the rear. Lot 450 is proposed to be subdivided into three (3) lots, being proposed Lot 3, Lot 4 and Lot 5.

Access to proposed Lot's 1, 2, 3 and 4, is via a proposed 5.5m wide driveway extension and upgrade to the existing access to Orana Road. Access to proposed Lot 5 is via a proposed 3.3m wide driveway to Bulgoon Crescent within the existing 4.57m wide access handle. Table 1 contains a summary of the proposed subdivision. It is also proposed to construct an acoustic wall adjacent to the property boundary between No.91 and No.89 Orana Road. The proposed acoustic wall system is a "slim wall" form, modular wall system. The applicant has not submitted details of the height of the proposed wall.

Following exhibition of the proposal the applicant submitted revised plans which relocate the proposed access driveway for Lots 1-4 a minimum of 900mm from the boundary of the property at No.89 Orana Road.

**Table 1 – Proposed subdivision summary**

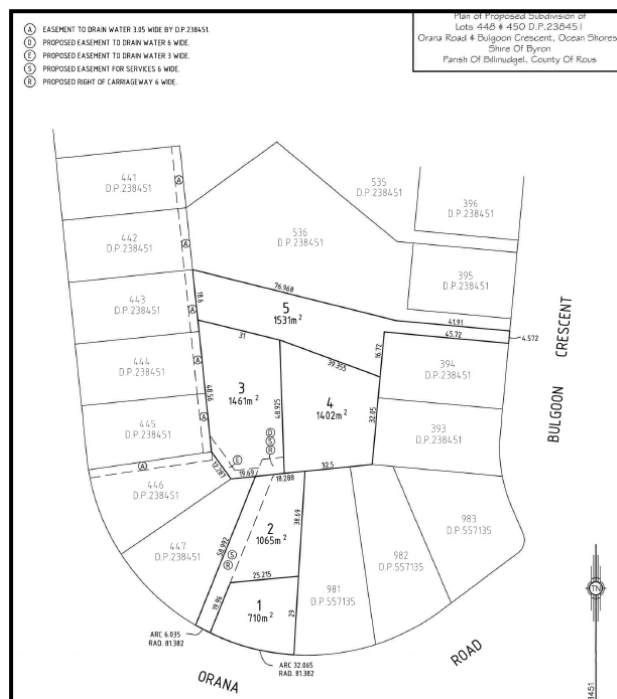
Existing Lot & Address	Proposed Lots	Proposed access arrangements
Lot 448 DP 238451 – 91 Orana Road	Lot 1 – 710m <sup>2</sup>	Off Orana Road, via proposed new 6.0m wide right -of-carriageway
	Lot 2 – 1065m <sup>2</sup>	Off Orana Road, via proposed new 6.0m wide right -of-carriageway
Lot 450 DP 238451 - 5 Bulgoon Crescent	Lot 3 – 1461m <sup>2</sup>	Off Orana Road, via proposed new 6.0m wide right -of-carriageway
	Lot 4 – 1402m <sup>2</sup>	Off Orana Road, via proposed new 6.0m wide right -of-carriageway
	Lot 5 – 1531m <sup>2</sup>	Off Bulgoon Crescent, via existing 4.57m wide access handle

It is noted the lots are generously proportioned and sized with four parcels in excess of 1000m<sup>2</sup>.

5 Trees proposed for removal include:

- Tree No. 10 – Swamp Mahogany - local native species
- Tree No. 14 – Durroby - local native threatened species
- Tree No. 16 – Silky Oak - local native species
- Tree No. 21 – Umbrella Tree - non-local native, undesirable species
- Tree No. 22 – Landscape Tree - unnamed
- Tree No. 23 – Bottlebrush - cultivated variety, non-local native
- Tree No. 24 – African Tulip Tree - exotic - undesirable species
- Tree No. 25 – Tibochina - exotic species
- Tree No. 26 – Frangipani - exotic species
- Tree No. 28 – African Tulip Tree - exotic - undesirable species

The applicant has submitted a proposed compensatory tree planting plan proposing to plant a total of 12 native trees on the site.



**Figure 1 – Proposed plan of subdivision**

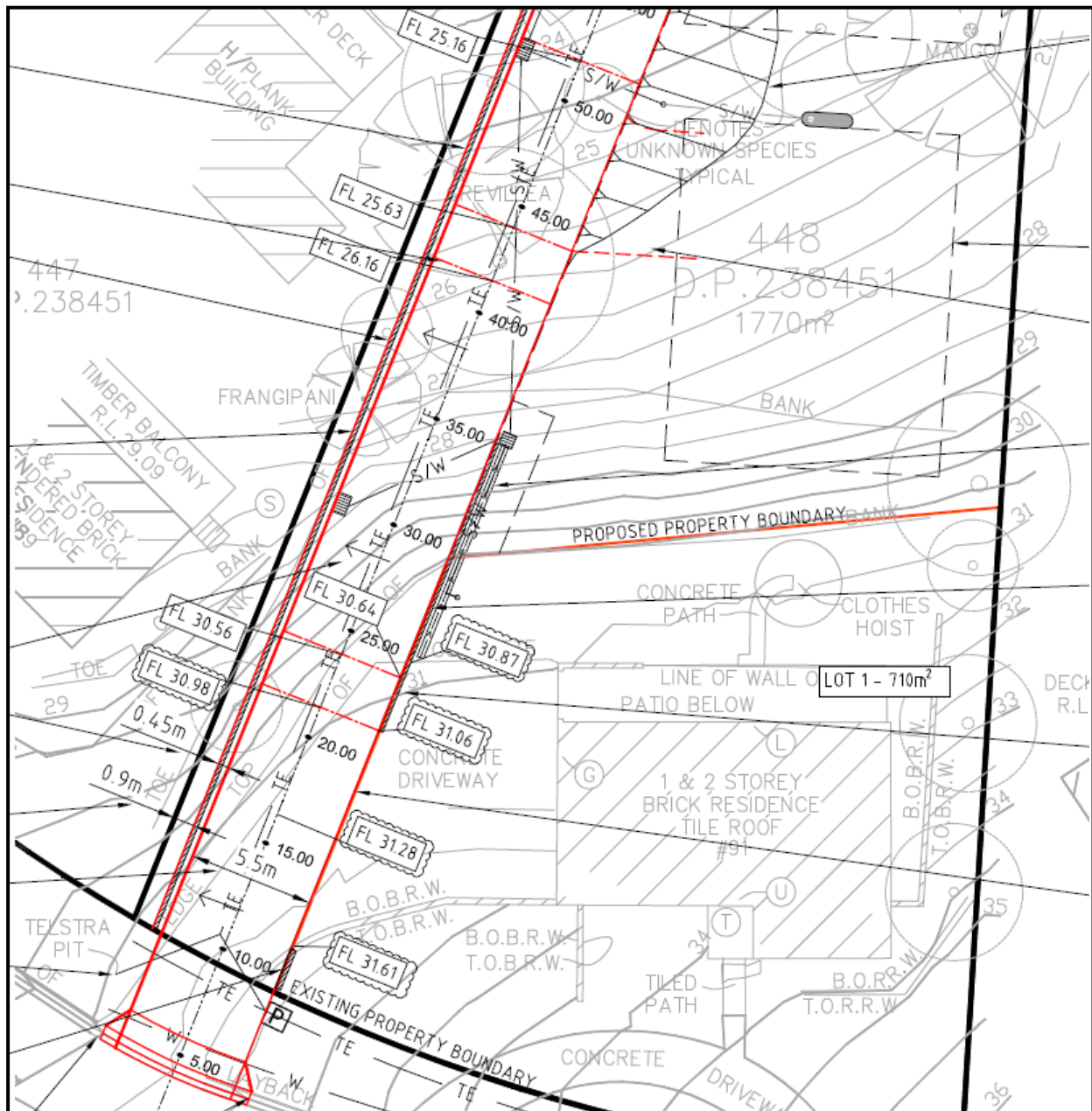


Figure 2 – Proposed revised driveway setback 900mm from boundary from No.89 Orana Road

## 2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

	Summary of Issues
Development Engineer	Stormwater management, internal and external access and slope stability. No objection to the proposal subject to conditions.
Environmental Officer	Noise impacts and SEPP No.55 (Remediation of Land). No objection to the proposal subject to conditions.
Building Surveyor	No objection to the proposal subject to fire hydrant coverage.
S94 Officer	This proposal will generate demand for additional public facilities. Section 94 Contributions applicable.
Ecologist	Proposed removal of 10 existing trees including a Durroby tree (Threatened Species). No objection to the proposal subject to conditions.
ET Engineer	The proposal generates on Council's Water, Bulk Water and sewerage system. No objection to the proposal subject to conditions. Headworks charges to apply.

**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**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The subject site is located within 100m of a cattle dip site. Council's Environmental Officer has advised that the subject site is suitable for the proposed development.		
State Environmental Planning Policy No 71—Coastal Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Stormwater and waste water from the subject site will be disposed via Council's infrastructure network. The proposal will not detract from public access to beach.		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: No issues identified.		

*\* Non-complying issues discussed below*

**3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014**

**Zone:** R2 Low Density Residential Zone

**Definition:** Subdivision (with ancillary roads and infrastructure works)

<b>LEP Summary of Requirement</b>	<b>Proposed</b>
<b>Zone R2 Low Density Residential Objectives of zone</b> <ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	The proposed subdivision is considered to be consistent with the Objectives of the R2 Low Density Residential Zone. Each of the proposed Lots have a suitable area to construct a dwelling house.
<b>Clause 4.1 Minimum subdivision lot size</b> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to ensure that lot sizes are compatible with local environmental values and constraints,</p> <p>(b) to facilitate efficient use of land resources for residential and other human purposes.</p> <p>(2) This clause applies to a subdivision of any land shown on the <u>Lot Size Map</u> that requires development consent and that is carried out after the commencement of this Plan.</p> <p>(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the <u>Lot Size Map</u> in relation to that land.</p>	The subject site is identified as having a minimum lot size of 600m <sup>2</sup> . Each of the proposed lots significantly exceeds the area specified on the minimum Lot Size Map.
<b>5.5 Development within the coastal zone</b> <p>The objectives of this clause are as follows:</p> <p>(a) to provide for the protection of the coastal environment of the State for the benefit of both present and future</p>	Whilst within the coastal zone, the development raises no issues regarding foreshore access, effluent disposal and

LEP Summary of Requirement	Proposed
<p>generations through promoting the principles of ecologically sustainable development,</p> <p>(b) to implement the principles in the NSW Coastal Policy,</p>	<p>stormwater are to be connected to existing infrastructure.</p>
<p><b>5.9: Preservation of trees or vegetation</b></p> <p>Summary of standard. Must not remove or otherwise injure any vegetation prescribed by Chapter B2 of DCP 2014, without development consent.</p>	<p>The application seeks development consent for the removal of trees for the provision of infrastructure. An assessment of the vegetation impacts has been completed in accordance with Council's DCP Chapter B2.</p>
<p><b>6.2 Earthworks</b></p> <p>(3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:</p> <p>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</p> <p>(b) the effect of the development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	<p>All earthworks as required for internal road construction are considered to satisfy the provisions of Clause 6.2.</p>
<p><b>6.6 Essential services</b></p> <p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the disposal and management of sewage,</p> <p>(d) stormwater drainage or on-site conservation,</p> <p>(e) suitable vehicular access.</p>	<p>The subject allotments are capable of being provided with the essential services required by Clause 6.6. Stormwater is to be disposed of into an existing stormwater main on the adjoining property to the west. No upgrade to the main is proposed other than a stormwater connection. On site detention will be required. Conditions to apply. Reticulated water, sewerage and electricity services available. Adequate vehicle access is also proposed.</p>

**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.

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. The subject site does not fall 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). 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 PLANS****Development Control Plan 2014**

DCP 2014 is an applicable matter for consideration in the assessment of the subject development 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 proposed development:

Part A	
Part B Chapters:	<input checked="" type="checkbox"/> B2  <input checked="" type="checkbox"/> B3  <input checked="" type="checkbox"/> B4  <input checked="" type="checkbox"/> B5  <input type="checkbox"/> B6  <input checked="" type="checkbox"/> B7  <input checked="" type="checkbox"/> B8  <input checked="" type="checkbox"/> B9  <input type="checkbox"/> B10  <input checked="" type="checkbox"/> B11  <input type="checkbox"/> B12  <input type="checkbox"/> B13  <input checked="" 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 checked="" type="checkbox"/> D6  <input type="checkbox"/> D7  <input checked="" 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.

**Development Control Plan 2014 - Issues****Chapter B2 - Preservation of Trees and Other Vegetation**

The development proposes removal of ten (10) trees to facilitate the driveway and stormwater infrastructure. Trees proposed for removal include:

- Tree No. 10 – Swamp Mahogany – local native species
- Tree No. 14 – Durroby – local native threatened species
- Tree No. 16 – Silky Oak – local native species
- Tree No. 21 – Umbrella Tree – non-local native, undesirable species

- Tree No. 22 – Landscape Tree – unnamed
- Tree No. 23 – Bottlebrush – cultivated variety, non-local native
- Tree No. 24 – African Tulip Tree – exotic – undesirable species
- Tree No. 25 – Tibochina – exotic species
- Tree No. 26 – Frangipani – exotic species
- Tree No. 28 – African Tulip Tree – exotic, undesirable species

A further two exotic trees are also likely to require removal as they are within proximity of the building envelope on proposed Lot 2. Council's Ecology Planner has recommended compensatory planting for the removal of the native trees. Appropriate conditions of consent have been recommended in this regard including the preparation of a Vegetation Management Plan.

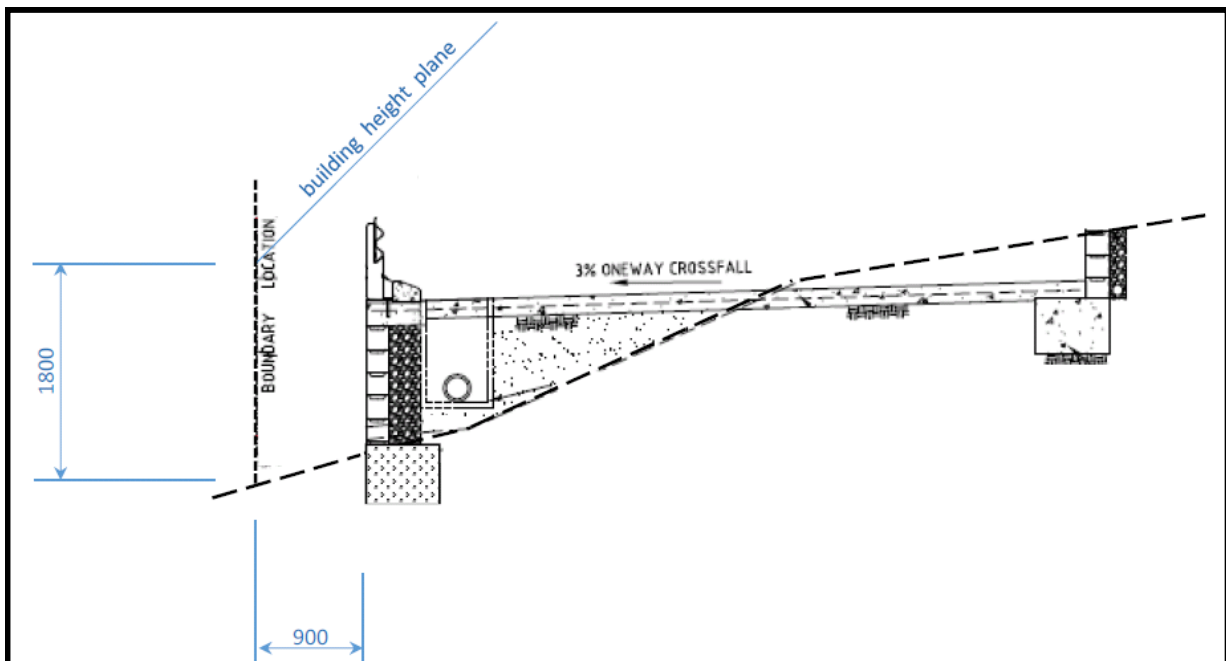
### Chapter B3 – Services

Having regard to Chapter B3 Council's Development Engineer has assessed the proposed subdivision is able to be provided with essential urban services subject to conditions of consent.

### Chapter B14 - Excavation and fill

Section B14.2 Excavation and Fill in all Zones specifies that filling must be limited to a depth of 1 metre. The proposed fill/retaining wall associated with the construction of the new driveway to Orana Road reaches a maximum height of 1.55 metres (typically).

The applicant has submitted a section drawing of the proposed retaining wall adjacent to the dwelling at 89 Orana Road (see **Figure 3**). The submitted section drawing indicates the proposed retaining wall in this location satisfies the DCP Building Height Plane control. In view of the sloping topography of the site the proposed non-compliance with the prescriptive measure is acceptable in this instance as the depth of fill satisfies the objectives of the control which seek to maintain the current and future character of the area.



**Figure 3** – Section drawing of proposed fill and retaining wall adjacent to western boundary with 89 Orana Road

### Chapter D6 - Subdivision

**1. Lot Size and shape**

*Lot sizes enable dwellings and driveways to be sited to protect natural or cultural features, and must respond to site constraints including topography, bushland, soil erosion, drainage, and bushfire risk.*

To provide adequate useable areas each of the proposed lots have a total area significantly exceeding the minimum lot size of 600m<sup>2</sup>. This additional area provides for more flexible design options for dwellings and access arrangements that assist to compensate for the steep topography. Building envelopes consistent with Councils minimum requirements (12x15m) can be sited on each allotment

**2. Vegetation removal**

*Subdivision road layout must be designed around significant stands of trees. These may be located within reserves or accommodated within the subdivision layout such that dwelling construction may be achieved without causing any undue interference with existing trees.*

The proposal involves the removal of scattered exotic and native trees. Appropriate conditions of consent are recommended for compensatory plantings.

**3. Stormwater Management**

*Development applications must demonstrate compliance with Chapter B3 Services, the Northern Rivers Local Government Development Design and Construction Manuals, Byron Shire Council Comprehensive Guidelines for Stormwater Management and relevant Australian Standards.*

Council's Development Engineer has indicated the proposal complies with DCP 2014 Section D6.2.1 Subdivision Design Guidelines relating to stormwater management.

**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**

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	It is considered that the development is unlikely to have an adverse impact on the natural environment. The loss of vegetation is unlikely to lead to a significant impact on threatened species, populations or ecological communities having regards to the sites location within an urban area. Compensatory plantings are required as per the conditions of consent.
<b>Built environment</b>	The proposal should not have a significantly adverse impact on the built environment of the locality subject to conditions for appropriate acoustic fencing and screen plantings to reduce the visual impact of the retaining wall (and acoustic fence) when viewed from No.89 Orana Road. Appropriate conditions of consent recommended to control hours of work, construction noise and builders waste. It is also recommended that a restriction be placed on the title to limit the number of dwellings to be constructed on these properties to one only having regards to the slope and topography of the land and access arrangements. Conditions of consent to apply to control construction activities, hours of work, construction noise and builders waste.
<b>Social Environment</b>	The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	The proposal will not have a significant economic impact on the locality.

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

The subject site contains steeply sloping land including the nominated building envelopes on each of the proposed lots (proposed Lot 2 has the least slope within the nominated building envelope).

- 5 As the subject land is within the R2 Low Density Residential Zone and each of the proposed lots substantially exceeds the minimum lot size to better facilitate development, the site is considered suitable for the proposed development. Conditions to apply requiring geotechnical classification of each lot and engineering plans and details for construction works.

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

The application was notified/exhibited in accordance with the Level 1 requirements of Council DCP 2017. Council's records indicate that a total of seven (7) submission were received. Following is a summary of the matters raised in the submissions.

Issue	Comment
<p>Concerns regarding the potential amount of traffic to use the driveway and the location of the second building envelope at the lower part of proposed lot 2. A road supported by a retaining wall up to 1.55m high with guard rails and handrails on top of that is proposed directly along the boundary with No.89 Orana Road. There is no fence on the common boundary between No.89 and No.91 Orana Road.</p> <p>The DA is for subdivision and construction of the driveway. Our concerns include the traffic generated which results in noise, fumes, lack of privacy, security issues, rubbish collection, the increase in housing density, the destruction of vegetation, the alteration of the local drainage and the affect the development will have on our lifestyle.</p> <p>Noise will be generated by the construction of the subdivision, construction of the dwellings on the lots and movement of vehicles up and down a driveway that for a large part exceeds 25% grade.</p> <p>The erection of a fence or noise barrier will potentially add at least another 1.8-2.0m to the 1.55+m retaining wall proposed on the boundary and will be the Ocean Shores equivalent to the 'Berlin wall' with a length of up to 70m. The visual impact of a structure with a potential height of 3.55+m on the western boundary will be substantial and adverse as well as restricting sunlight and movement of air.</p>	<p>Council's Development Engineer has assessed the traffic generated by the proposal as satisfactory having regard to the capacity of the local road network.</p> <p>The applicant has proposed to erect an acoustic fence between properties at No.89 and No.91 Orana Road. This solid fence would assist in maintaining the residential amenity of the neighbouring property having regard to noise, fumes, security and privacy.</p> <p>A condition has been recommended to require the preparation of an acoustic report in support of an acoustic fence atop the retaining wall on the western edge of the proposed driveway to attenuate vehicle noise and to mitigate intrusion from vehicle headlights.</p> <p>A Section drawing of the proposed driveway adjacent to the boundary with 89 Orana Road is shown above (Figure 3). It is anticipated the additional height of the acoustic barrier would be able to generally accord with the building height plane. A condition has been included to require the submission of a detailed vegetation management plan. This plan is to include suitable screen plantings in the 900mm setback adjacent to the driveway along the boundary with No.89 Orana Road.</p>
<p>Having an additional four lots with an access road close to a roundabout to on a steep gradient of Orana Road is dangerous and unnecessary.</p> <p>Council is respectfully requested to consider the appropriateness of the proposed frontage and</p>	<p>Council's Development Engineer has assessed the proposed driveway access arrangements having regard to the line-of-sight available on Orana Road and raised no objection to the proposal.</p>

Issue	Comment
<p>access road onto Orana Rd for Lots 1, 2, 3 &amp; 4 given the alignment and grade of Orana Rd and its capacity and safe operation (acknowledged in the DA SEE as 'some of the highest of any road in Ocean Shores') as a collector road in Ocean Shores.</p> <p>No consideration is made in the DA of simple practicalities and urban services, such as ease of transport up a driveway with a 25% (in part) grade to a safe location of the garbage bins for kerbside collection and provision of mail boxes.</p>	<p>The applicant has submitted engineering drawings for the proposed driveway including section drawings which clearly illustrate the proposed gradients of the driveway.</p> <p>Kerbside collection is available on the Orana Road frontage.</p>
<p>The proposal will detract from the value of the land at No.89 Orana Road.</p>	<p>No evidence has been submitted to suggest that the proposed development will detract from the value of any neighbouring property. Further this is not a matter for consideration under S79C of the EPA Act 1979.</p>
<p>Lots 3, 4 and 5 are proposed on land that is very steep. The DA offers no consideration or study in relation to slope or aspect of the block nor how proposed building envelopes are located in suitable positions within the lots. It appears that the slope of much of the block Lot 450 is over 30% which would be an impediment in terms of development and could be seen as a hazard under Byron's DCP 2014 Chapter D6.2.1 Subdivision Guidelines.</p> <p>The site is physical constrained. No slope analysis provided. No geotechnical assessment has been carried out for the SEE.</p> <p>NSW Government Guidelines indicate that land with a slope in excess of 30% is considered an absolute constraint and slopes between 20%-30% are a partial constraint or limitation to residential development.</p>	<p>The applicant has submitted a contour plan for the subject site which indicates the areas of the site with the steepest slope. The nominated building envelopes provided by the applicant have used the more accessible areas with the least gradient. Further the size of the lots provides for a substantial degree of flexibility for the future design of dwellings.</p> <p>Council's DCP 2014 Chapter D6 does identify slope stability as a hazard, however does not specify a percentage gradient limit for residential development.</p> <p>The applicant has submitted a Geotechnical Investigation prepared by Coffey, dated 23 August 2016. Following a review of the Investigation report Council's Development Engineer has raised no objection to the proposal subject to a condition requiring a certification from a professional engineer (experienced in soil mechanics) for the proposed works, prior to issue of a construction certificate.</p>
<p>The development does not comply with the performance criteria 2 of Byron's DCP 2014 Chapter D6.2.1 Subdivision Guidelines where Lot sizes must enable dwellings and driveways to be sited to protect natural or cultural features and must respond to site constraints including topography, bushland, soil erosion, drainage and bushfire risk. If the application complied with this criterion then no trees would have to be removed for the driveway and a retaining wall would not be required as the driveway should be sited to respond to site constraints</p>	<p>The proposed development is considered to adequately address the requirements of Council's DCP 2014 subject to conditions included in the recommendation.</p> <p>The proposed lot sizes significantly exceed the minimum lot sizes specified in LEP 2014. To provide adequate useable areas each of the proposed lots have a total area significantly exceeding the minimum lot size of 600m<sup>2</sup>. This additional space provides for more flexible design options for dwellings</p>

<b>Issue</b>	<b>Comment</b>
including the topography.	and access arrangements that address the topography.
The proposed subdivision is incompatible with the existing pattern of settlement and neighbourhood character.  The shape of the proposed lots are irregular and inconsistent with the shape of existing allotments that either adjoin or are in the immediate locality of the site.	The proposed configuration of the lots is considered to be more than compatible with that of existing lots in the area. Proposed Lot 5 is a more elongated shape and Lot 1 is slightly smaller in area but well above the minimum lot size in LEP 2014. Building envelopes consistent with Councils requirements (12x15m) can be sited on each allotment
No evidence has been provided in the SEE that the Floor Space Ratio (FSR) of the existing dwelling proposed on Lot 1 is less than 0.5:1.	Proposed Lot 1 No.1 has an area of 710m <sup>2</sup> . This allows the existing to have a total of 355m <sup>2</sup> of Gross Floor Area. It is apparent the existing dwelling has a Gross Floor Area significantly less than 355m <sup>2</sup> and therefore the Floor Space Ratio for proposed Lot 1 is well below 0.5:1.
The proposed development seeks the removal of a Coolamon tree which is not considered or listed in the application material. This is a rare subtropical rainforest tree and is listed as vulnerable in NSW. No consideration of how to minimise the impact of the development on this tree.	The applicant has submitted a seven-part test in relation to the proposed removal of the Durobby (Coolamon) tree from the site. Council. Appropriate conditions have been recommended in relation to compensatory plantings.
Concerns the proposal does not satisfy Byron LEP 2014 Clause 6.2 Earthworks, Clause 6.6 Services, Clause 5.9 Preservation of Trees or Vegetation and fails to satisfy the R2 Zone objectives relating to a low density environment.	As discussed above in the body of the report, the proposal is considered to satisfy the relevant planning controls and the objectives of the R2 Zone for subdivision. (See Section 3.2 of this report)

### **3.7 Public interest**

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

## **4. DEVELOPER CONTRIBUTIONS**

### **4.1 Water & Sewer Levies**

Council's ET Engineer has advised his development generates an additional load onto Councils Water, Bulk Water and Sewer System. Headworks charges are to apply for Water & Bulk Water (2.8ET) and Sewer (3.0 ET).

### **4.2 Section 94 Contributions**

Should the application be supported Council's Section 94 Officer has recommended a condition be included to require the payment of applicable Section 94 Contributions.

## **5. CONCLUSION**

The application is considered to have sufficient merit to warrant approval subject to conditions of consent.

**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

Provide Disclosure Statement register details here: Not applicable.

5

**Report No. 13.10      PLANNING - Report update on Council resolution 16-662 - The Farm (DA 10.2016.698.1; PP 26.2016.6.1)**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Rob Van Iersel, Consultant Planner

**File No:** I2017/1011

**Theme:** Ecology  
Development and Approvals

**Summary:**

Council considered Report 13.16 Report update on Council resolution 16-465 – The Farm at the Ordinary Meeting 15 December 2016 and resolved as follows:

**16-662 Resolved:**

1. *That Council note the report.*
2. *That Council continue to work collaboratively and as expeditiously as possible to either regularise or cease unauthorised activities and uses on the land to bring all activities into compliance.*
3. *That Council 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.*
4. *That Council states its concern regarding the ongoing issues with the OSMS and urges the landholder to take immediate action to resolve these issues to avoid environmental harm.*
5. *That Council take action should the OSMS not be operational and compliant within six months.*
6. *That where appropriate the immediate neighbours be invited to participate in discussion on any issues that directly impact them.*

This report provides an update on actions undertaken following that resolution, particularly in relation to Part 4, relating to the performance of the On-Site Sewage Management System.

**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.

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**RECOMMENDATION:**

**That Council:**

1. **Note the report.**
2. **Continue to work collaboratively to either regularise or cease unauthorised activities and uses on the land to bring all activities into compliance, through the processing of a Planning Proposal for the site.**
3. **Continue to suspend enforcement action in relation to matters within the report until such time as the Planning Proposal has been completed. 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.**

- 4. Where appropriate, invite the immediate neighbours to participate in discussion on any issues that directly impact them during the assessment of the Planning Proposal.**

**Report**

Council considered Report 13.16 Report update on Council resolution 16-465 – The Farm at the Ordinary Meeting 15 December 2016. This report presents an update on actions undertaken following that resolution, as discussed below:

**2. Continue to work collaboratively to either regularise or cease unauthorised activities and uses on the land to bring all activities into compliance, through the processing of a Planning Proposal for the site.**

In accordance with an earlier resolution of Council (**16-465**, 25.08.2016), The Farm's planning consultants lodged a Development Application (10.2016.698.1) and a Planning Proposal (26.2016.6.1) in late October 2016.

DA 10.2016.698.1 proposed:

- Change of Use of the approved "cheese making facility" to agricultural produce industry and industrial retail outlet (bakers); and
- Change in use of the existing approved dwelling house for use as ancillary offices for the existing approved restaurant and farm.

The Planning Proposal (26.2016.6.1) sought "a site-specific amendment to Byron Local Environmental Plan 2014 (BLEP14) to update Schedule 1 to permit certain additional land uses on the subject land, including:

- retail premises - shop/ food and drink premises;
- information and education facility;
- recreation facility (indoor); and
- business premises".

Both applications were placed on hold, pending discussions between Council and NSW Roads and Maritime Services (RMS) to clarify significant traffic issues associated with the roundabout to the east of the Pacific Motorway. It was acknowledged that traffic from The Farm is not the key cause of existing traffic queuing issues at this roundabout, but is a significant contributor.

Adding to these traffic issues is Council's current project examining the future widening of Ewingsdale Road, which includes a need to redesign and expand 'the hospital roundabout'. This project has the potential to impact on The Farm property and access to it.

As a result of these discussions, RMS advised that they would not object to the traffic generation associated with the existing land uses at the Farm, but that they would oppose any proposal for additional or increased land use.

Council staff also advised The Farm that the whole of the existing operation is considered to be *tourism development* as defined in Clause 6.8 of Byron LEP 2014, which operates to ensure that tourism development on agricultural land remains *small scale*.

Staff further advised that the existing operation at The Farm is considered to be inconsistent with this definition of *small scale* and that it would therefore be difficult to support the development application.

Following discussions with The Farm, development application 10.2016.698.1 was withdrawn on 19 April 2017. The applicants also agreed to amend the Planning Proposal such that it deals only with existing land uses at the site. The updated Planning Proposal was submitted on 23 August 2017. Detailed assessment of the Planning Proposal and its supporting documents has commenced and a further report will be submitted to Council in due course.

Assuming a positive assessment of that information, Council would be in a position, through the amended Planning Proposal, to look at 'regularising' the existing unauthorised uses at the site. The proposal seeks to amend Byron LEP 2014 by adding provisions into Schedule 1 to permit the existing land uses at The Farm, subject to future development consent(s). The Schedule 1 amendment will include a range of applicable criteria, which will define the range of allowable land uses and their ultimate scale.

**4. That Council states its concern regarding the ongoing issues with the OSMS and urges the landholder to take immediate action to resolve these issues to avoid environmental harm.**

**5. That Council take action should the OSMS not be operational and compliant within six months.**

Consultants for The Farm have provided a detailed report addressing the performance of the on-site sewage management system (OSMS). The monitoring and reporting follows various upgrades implemented for the existing system.

The Approval to Operate (ATO) for the system requires weekly monitoring of biochemical oxygen demand (BOD), suspended solids (SS), thermo-tolerant coliforms, free chlorine and effluent volumes. This weekly monitoring is required until three consecutive results have been recorded demonstrating compliance with levels in the table below:

Sub -surface Irrigation	Biological Oxygen Demand (BOD) (mg/L)	Suspended Solids (SS) (mg/L)	Thermo-tolerant coliforms (cfu/100mL)	Free Chlorine (mg/L)
90% of all samples	Less than 20	Less than 30	Less than 30	Between 0.2 and 2.0
Maximum Threshold	Less than 30	Less than 45	Less than 100	Less than 2.0

The report includes validation of effluent testing to March 2017 and concludes:

*"In summary, the results from 2016 to 2017 show a gradual and significant improvement towards the compliance criteria as a result of various enhancements and upgrades."*

Council staff have confirmed this gradual and significant improvement, with the effluent consistently meeting the quality objectives in the table above (i.e. more than three weeks in a row for thermo-tolerant coliforms (ecoli)\*. The results are less consistent (irregularly 3 weeks in a row) but also improving for all other analytes. Flow volumes are within the parameters for which the OSMS is designed.

Adverse public health impacts are most likely to arise from EColi contamination via contact with the effluent. To mitigate this likelihood, The Farm employs measures such as subsurface irrigation, fencing, and ongoing monitoring and maintenance.

Staff recommend that weekly monitoring and maintenance continues until regular three weekly compliance periods are achieved.

*\* Thermo-tolerant Coliforms/ E. coli are considered the best indicators of faecal contamination in water. They are present in faeces in high numbers. The presence of Thermo-tolerant Coliforms/ E. coli in water is unacceptable and indicates major health risks. Levels of Thermo-tolerant Coliforms/ E. coli are expressed as colony forming units per 100 millilitres (cfu/100ml). .*

**6. That where appropriate the immediate neighbours be invited to participate in discussion on any issues that directly impact them**

The immediate neighbours have been apprised of the progress in regard to these matters. With the recent submission of the amended Planning Proposal, staff will be in a position to meet with the neighbours to brief them more fully on the proposal. Should the amended Planning Proposal be supported, a formal community consultation process will occur prior to a recommendation to Council to prepare a draft Local Environmental Plan amendment.

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**Financial Implications**

There are no significant financial implications. Fees are applicable in relation to the amended Planning Proposal.

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**Statutory and Policy Compliance Implications**

As per comments in the report.

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**Report No. 13.11**      **PLANNING - 'Housekeeping' Amendment - Byron DCP 2014**  
**Directorate:**       Sustainable Environment and Economy  
**Report Author:**     Steve Daniels, Planner  
**File No:**                I2017/1041  
**Theme:**                Ecology  
                                 Planning Policy and Natural Environment

**Summary:**

Following the adoption of Byron DCP 2014, Council staff have prepared a program of proposed DCP amendments to be considered in this report and in future reports to Council. Circumstances that have necessitated the proposed amendments include: resolutions of Council that require amendments to the DCP; policies adopted by Council that require amendments to the DCP; amendments associated with planning proposals or Council initiatives such as Town Centre Masterplans; and issues identified through the day to day application and interpretation of the current planning controls.

The amendments proposed in this report are minor in nature and seek to address anomalies and inconsistencies that create issues when assessing development applications. These proposed amendments have been grouped together in a 'housekeeping' format. Amendments of greater complexity and implications will be reported to Council separately in due course.

**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.



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**RECOMMENDATION:**

**That Council:**

1. **proceed with preparation and public exhibition of the Byron DCP 2014 amendments proposed in this report, as detailed in Attachment 1 (#E2017/86663), Attachment 2 (#E2017/85812); and**
2. **receive a further report for consideration of submissions following the statutory public exhibition period;**
3. **Should there be no submissions, the amendments to the DCP be adopted as of the close of the statutory public exhibition period date, and notified accordingly.**

**Attachments:**

- 1 Attachment 1 - Schedule of Proposed Amendments to Byron DCP 2014, E2017/86663 
- 2 Attachment 2 - Draft Byron Shire DCP 2014 Chapter D9 - Child Care Centres, E2017/85812 

**Report**

Following the adoption of Byron DCP 2014, Council staff have prepared a program of proposed DCP amendments to be considered in this report and in future reports to Council. Circumstances that have necessitated the proposed amendments include: resolutions of Council that require amendments to the DCP; policies adopted by Council that require amendments to the DCP; amendments associated with planning proposals or Council initiatives such as Town Centre Masterplans; and issues identified through the day to day application and interpretation of the current planning controls.

- 5 The amendments proposed in this report are minor in nature and seek to address anomalies and inconsistencies that create issues when assessing development applications. These proposed amendments have been grouped together in a 'housekeeping' format. Amendments of greater complexity and implications will be reported to Council separately in due course.
- 10
- 15 Table 1 below provides a summary of the DCP amendments proposed, including rationale and description. Excerpts from the relevant DCP chapters and further details of the proposed changes are provided in Attachment 1 – Schedule of Proposed Amendments to Byron DCP 2014. Chapter D9, Child Care Centres, is a new DCP chapter described below in Table 1 - Item 12 and provided in Attachment 2.

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**Table 1 – Proposed 'Housekeeping' Amendments to Byron DCP 2014**

Item #	Provision(s)	Reason for / Description of Proposed Amendment
Item 1	Part A Preliminary	<u>Reason for Proposed Amendment:</u> <ul style="list-style-type: none"> <li>To reflect the introduction of Chapter D9 Child Care Centres (new chapter) proposed in Item 13 of this report.</li> </ul>
		<u>Description of Proposed Amendment:</u> <ul style="list-style-type: none"> <li>Insert "Chapter D9 Childcare Centres" under Part D.</li> </ul>
Item 2	Part A Preliminary  A3 Purpose and Objectives of this DCP  A6 Relationship to other Plans and Legislation	<u>Reason for Proposed Amendment:</u> <ul style="list-style-type: none"> <li>Reference to "Part 4 – West Byron Bay Site of the Byron Local Environmental Plan 1988" was excluded from sub-chapters A3 and A6 in error.</li> <li>To inform the reader of the relationship between the DCP and relevant LEP provisions.</li> </ul>
		<u>Description of Proposed Amendment:</u> <ul style="list-style-type: none"> <li>Inclusion of "provisions under Part 4 – West Byron Bay Site of the Byron Local Environmental Plan 1988" in A3 and A6.</li> </ul>

Item #	Provision(s)	Reason for / Description of Proposed Amendment
Item 3	<b>Chapter B3 Services</b>  B3.2.1 Provision of Services	<u>Reason for Proposed Amendment:</u> <ul style="list-style-type: none"> <li>To minimise the installation of transformers in roadways for private developments following increased requests from developers to install Pad Mount Transformers within adjoining road reserves. The transformers are required to ensure the developments meet Essential Energy requirements for distribution.</li> <li>A report to the Executive Team (#E2016/103016) dated 30/11/16 recommends that:   <i>Staff prepare a report to Council to consider the amendment of the DCP 2014 (B3.2.1 – Provision of Services) including information that restricts private transformers to be located within the development that they are servicing.</i> </li> </ul>
		<u>Description of Proposed Amendment:</u> <ul style="list-style-type: none"> <li>Amendment to ‘Electricity Supply’ provisions to ensure that transformers and associated infrastructure are to be contained within the development that they are servicing.</li> </ul>
Item 4	<b>Chapter B3 Services</b>  B3.2.1 Provision of Services	<u>Reason for Proposed Amendment:</u> <ul style="list-style-type: none"> <li>To ensure that planning controls applicable to the provision of telecommunications infrastructure in rural areas are responsive to advancements in telecommunications technology and the ongoing expansion of wireless telecommunications networks.</li> </ul>
		<u>Description of Proposed Amendment:</u> <ul style="list-style-type: none"> <li>Amendment to ‘Telecommunications Infrastructure’ provisions to allow the supply of fixed telephone lines to be optional for subdivisions in rural areas where it can be demonstrated that suitable telecommunications alternatives are available (e.g. mobile network, NBN Fixed Wireless network). Note: Developer uptake of alternative options to fixed line infrastructure will be subject to market demand.</li> <li>Where an alternative telecommunications service such as mobile network or access to the NBN Fixed Wireless network has been proposed, a letter from a recognised telecommunications consultant is to be provided confirming that each allotment can be serviced by such a system.</li> <li>Approvals for rural subdivisions utilising alternative means of telecommunications access will require restrictions on the title of all new allotments consistent with the concept sought by the developer</li> </ul>

Item #	Provision(s)	Reason for / Description of Proposed Amendment
		(e.g. fixed line telephone services not provided).
Item 5	<p><b>Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access</b></p> <p>Table B4.1 – (Parking Rates) in section B4.2.12 Parking schedules</p>	<p><u>Reason for Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>Development for the purpose of ‘Dual Occupancy’ currently requires car parking provision to be the same as that for “medium density housing”, which stipulates: <p><i>“1 space per 1 or 2 bed unit, 2 spaces per 3 or more bed unit, 1 visitor space per 4 dwellings or part thereof. Each dwelling to have at least one covered car space. Where dwellings are designed with studies/ offices and other areas capable of being utilised as separate sleeping quarters these will be counted as bedrooms.”</i></p> <p>The provision of car spaces for visitors is considered onerous for dual occupancy development and was not required by DCP 2010. It is considered that the use of on-street parking for visitors to dual occupancy developments is not unreasonable and as such it is recommended that the car parking rate for dual occupancy be changed from “See <i>medium density housing</i>” to “See <i>medium density housing</i>, except visitor car spaces are not required where on-street car parking is available within close proximity to the development.”</p> </li> <li>Development for the purpose of ‘Medical Centre’ currently requires “2 spaces per consulting room plus 1 space per employee/ practitioner plus any <i>dwelling</i> requirement”.</li> </ul> <p>Byron LEP 2014 defines a medical centre as:</p> <p><b><i>medical centre</i></b> means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.</p> <p>As noted above, the parking rate for ‘Medical Centre’ includes a requirement to provide parking for “any dwelling”. A medical centre does not usually include a dwelling. A dwelling is associated with health consulting rooms, which is defined by Byron LEP 2014 as:</p> <p><b><i>health consulting rooms</i></b> means premises comprising one or more rooms within (or within the curtilage of) a dwelling house used by not more than 3 health care professionals at any one time.</p> <p>Ancillary development, such as cafés, accommodation, chemists, etc. can sometimes occur with medical centres. Accordingly, the word “dwelling” should be replaced with “ancillary development”.</p>

Item #	Provision(s)	Reason for / Description of Proposed Amendment
		<p>Recent assessments of development applications by Council staff has revealed that assessment difficulties occur with applicants choosing to name rooms in the medical centre as procedure rooms, store rooms, etc. to reduce the parking requirement. Council could include a definition of a consulting room in the DCP to address this matter, however it was also found that some surrounding local government areas have parking rates for medical centres based on gross floor area (GFA) at a rate of 1/20m<sup>2</sup>. Similarly, the RMS Guide to Traffic Generating Developments has a rate of to 1/25m<sup>2</sup>.</p> <p>It is therefore recommended that the Car Parking rate for medical centre be changed from “2 spaces per consulting room plus 1 space per employee/ practitioner plus any <b>dwelling</b> requirement” to “1 space per 20m<sup>2</sup> GFA plus any ancillary development requirement”.</p>
		<p><u>Description of Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>For ‘Dual Occupancy’ parking requirements, amend “See <b>medium density housing</b>” to “See <b>medium density housing</b>, except visitor car spaces are not required where on-street car parking is available within close proximity to the development.”</li> <li>For ‘Medical Centre’ parking requirements, amend the car parking rate from “2 spaces per consulting room plus 1 space per employee/ practitioner plus any <b>dwelling</b> requirement” to “1 space per 20m<sup>2</sup> GFA plus any ancillary development requirement”.</li> </ul>
<b>Item 6</b>	<p><b>Chapter B5 Providing for Cycling</b></p> <p><b>Chapter B6 Buffers and Minimising Land Use Conflicts</b></p> <p><b>Chapter B11 Planning for Crime Prevention</b></p> <p><b>Chapter B13 Access and Mobility</b></p>	<p><u>Reason for Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>The term ‘Development Standards’ has been used throughout the DCP and is defined in the EP&amp; A Act as "provisions of an environmental planning instrument or the regulations". Given that a DCP is not an environmental planning instrument or the regulations of an environmental planning instrument, use of the term ‘Development Controls’ is considered more appropriate.</li> </ul>
		<p><u>Description of Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>Replace the term ‘Development Standards’ with the term ‘Development Controls’ wherever it occurs throughout the DCP.</li> </ul>

Item #	Provision(s)	Reason for / Description of Proposed Amendment
Item 7	<b>Chapter D1 Residential Development in Urban and Special Purpose Zones</b>	<u>Reason for Proposed Amendment:</u> <ul style="list-style-type: none"> <li>Simplify the wording of 'Minimum Street Frontage Setbacks' controls and eliminate any confusion regarding the intent of the controls.</li> </ul>
	D1.2.2 Setbacks from Boundaries	<u>Description of Proposed Amendment:</u> <ul style="list-style-type: none"> <li>Typographical change to 'Minimum Street Frontage Setbacks' controls. The specific control impacted by this change relates to the provision of car parking within setbacks.</li> </ul>
Item 8	<b>Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones</b>	<u>Reason for Proposed Amendment:</u> <ul style="list-style-type: none"> <li>To ensure that the character and amenity of the Shire's rural zones does not become compromised by over development.</li> <li>To ensure that planning controls applicable to rural zones seek to achieve a scale of residential development that is consistent with the objectives of the zone.</li> </ul>
	D2.2.3 Character & Visual Impact  D2.3.3 Expanded House (rural)  D2.7.1 Studios (rural)	<u>Description of Proposed Amendment:</u> <ul style="list-style-type: none"> <li>Introduction of planning controls that seek to limit the total number of residential buildings to six (6) per rural property. This would enable a rural property to potentially accommodate an expanded house (comprised of four buildings), a secondary dwelling (comprised of a single building) and a rural studio (single building). It should be noted that this prescriptive measure would not apply to multiple occupancy and community title development, rural workers dwellings, farm buildings, sheds and other structures meant for rural activities.</li> <li>Where more than six (6) residential buildings are proposed, the controls would require applicants to demonstrate that there is a need for more than six (6) buildings and that the rural character and rural environment will not be adversely affected by over development.</li> <li>Typographical change to rural 'Expanded House' controls to clearly specify that an expanded house is to be comprised of a main building and a maximum of three outbuildings.</li> <li>Amendment to rural 'Studios' controls to specify that studios are limited to one per property, or in the case of multiple occupancy and community title development, one per dwelling. (Note: This proposed amendment is consistent with the existing provisions of Byron DCP 2010).</li> </ul>

Item #	Provision(s)	Reason for / Description of Proposed Amendment
Item 9	<b>Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones</b>	<p><u>Reason for Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>To maintain the character and amenity of the Shire's rural zones.</li> <li>To specify development requirements that apply to the establishment of dwellings in Rural Community Title Developments.</li> </ul>
	<p>D2.6.1 Multiple Occupancy Development of Rural Land</p> <p>D2.8 Community Title Development of Rural Land (New Sub-Chapter)</p>	<p><u>Description of Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>Inclusion of controls specifying that dual occupancies are not permitted in multiple occupancy or community title developments on rural land unless otherwise specified in the multiple occupancy approval or in Schedule 1 of Byron LEP 2014.</li> <li>Inclusion of controls specifying that individual dwelling houses in Rural Community Title developments are to comply with the relevant provisions contained within DCP 2014 Chapter D2 for single dwelling houses, including D2.2 and D2.3.</li> <li>Consequential amendments to DCP 2014 Part A – Preliminary.</li> </ul>
Item 10	<b>Chapter D6 Subdivision</b>	<p><u>Reason for Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>Typically, strata subdivision takes place after the construction of buildings (e.g. a row of townhouses or a dual occupancy). However In some cases, strata subdivision will take place before all of the buildings have been constructed, resulting in a vacant lot. This scenario often occurs in staged developments where the parcel is re- subdivided in stages, leaving one lot vacant until re- subdivided further at a later stage. Another scenario may include strata subdivision for the purpose of dual occupancy where there is already an established dwelling on the parcel. In some cases, strata subdivision prior to the construction of buildings may be advantageous for the securing of development finance.</li> </ul> <p>Where a vacant lot is proposed for the purpose of dual occupancy, the purpose of the proposed controls is to ensure that all necessary services to facilitate construction on the vacant lot have been provided for, and to ensure that service provision to existing development will not be impacted.</p> <p>For all cases other than for the purpose of dual occupancy, the proposed controls refer to the Staged Development provisions (Part 5) of the <i>Strata Schemes Development Act 2015</i>. The purpose of Part 5 is to facilitate the development in stages of a parcel subject to a strata scheme and ensure that all necessary considerations have been provided for.</p>

Item #	Provision(s)	Reason for / Description of Proposed Amendment
		<p><u>Description of Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>• Inclusion of controls specifying that other than for dual occupancy development, vacant strata lots must be created as “development lots” in accordance with Part 5 of the <i>Strata Schemes Development Act 2015</i>.</li> <li>• Inclusion of controls specifying requirements to be met for strata subdivision of dual occupancies where a vacant lot is proposed. Requirements include;                             <ul style="list-style-type: none"> <li>a) One of the dwellings having been constructed and a final occupation certificate issued for that dwelling.</li> <li>b) All relevant services, infrastructure and access provisions are to be constructed and any necessary contributions to be paid, prior to the issue of the subdivision / strata certificate.</li> <li>c) Relocation of all services to facilitate construction of the development on the vacant lot without affecting service provision to existing development.</li> <li>d) Creation of a restriction on use that prohibits the construction of a dwelling on the vacant Strata lot other than in accordance with the development consent for the dual occupancy building.</li> </ul> </li> </ul>
<b>Item 11</b>	<b>Chapter D8 Public Art</b>  D8.2.1 Provision of Public Art	<p><u>Reason for Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>• Council Resolution <b>15-604</b> resolved;                             <ol style="list-style-type: none"> <li>1. <i>That Council amend the DCP Chapter D8 ‘Public Art’ to include under ‘Prescriptive Measures’ point 2 “In lieu of providing Public Art, the applicant could enter into a Voluntary Planning Agreement with Council to provide an equivalent financial contribution for the installation of Public Art in a suitable location.”</i></li> </ol> </li> </ul>
		<p><u>Description of Proposed Amendment:</u></p> <ul style="list-style-type: none"> <li>• In lieu of providing Public Art, the applicant could enter into a Voluntary Planning Agreement with Council to provide an equivalent financial contribution for the installation of Public Art in a suitable location.</li> </ul>

Item #	Provision(s)	Reason for / Description of Proposed Amendment
Item 12	Chapter D9  Child Care Centres  (New Chapter)	<u>Reason for Proposed Amendment:</u>  <ul style="list-style-type: none"> <li>To reflect Council's adopted <i>Children's Services Policy 2017</i> - Part 4.4 'Development Consent'.</li> </ul>
		<u>Description of Proposed Amendment:</u>  <ul style="list-style-type: none"> <li>Development Applications for Early Childhood Education and Care services in the Byron Shire will be considered in light of identified local need and established best practice, whereby: <ul style="list-style-type: none"> <li>ECEC facilities have a suggested maximum capacity of 90 licensed places or under; and</li> <li>30% of licensed places are allocated to children aged 0-2.</li> </ul> </li> <li>The intent of this consideration is to establish services that are responsive to the need for ECEC for children aged 0-2 rather than to discourage or prohibit service development. This consideration is not relevant to applications regarding preschools whereby funding specifications state that only children aged 3-5 are eligible for enrolment.</li> <li>Consequential amendments to DCP 2014 Part A – Preliminary.</li> </ul>

### Financial Implications

- 5 As this is a Council initiated DCP amendment, the processing costs will be borne by Council. If Council chooses not to proceed then the matter does not incur any additional costs.

### Statutory and Policy Compliance Implications

- 10 The amendment of development control plans is governed by *Environmental Planning and Assessment Regulation 2000* (Part 3 – Development Control Plans). The amendment process is summarised below:

- 15 Part 3 of the regulation states that a draft development control plan must be publicly exhibited for at least 28 days and copies of the draft development control plan are to be made publicly available. After considering any submissions about the draft development control plan that have been duly made, the council:

- 20 (a) may approve the plan in the form in which it was publicly exhibited, or  
(b) may approve the plan with such alterations as the council thinks fit, or  
(c) may decide not to proceed with the plan.

- 25 The council must give public notice of its decision in a local newspaper within 28 days after the decision is made. Notice of a decision not to proceed with a development control plan must include the council's reasons for the decision. A development control plan comes into effect on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice.

The relevant policy considerations are addressed above.

**Report No. 13.12      Update on Res 17-299 Alternative trialled options for managing our threatened coastal zone**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Chloe Dowsett, Coastal and Estuary Officer  
**File No:** I2017/1121  
**Theme:** Ecology  
Planning Policy and Natural Environment

**Summary:**

At the Ordinary Meeting 3 August 2017, Council resolved as follows:

**17-299 Resolved:**

1. *That Council write to our local members of parliament calling for a coordinated national approach to managing coastal hazards. Currently, the task of dealing with coastal hazards along Australia's vast coastline is left predominately to local councils. This enormous task is beyond the capacity of councils, states and territories. The scale of the challenge requires a national approach, national leadership and national funding.*
2. *That Council submit a bid to host the 27th NSW Coastal Conference in 2018 and the next unallocated Australian Coastal Councils Conference.*
3. *That if these submissions are unsuccessful, staff prepare a report on the implications of holding an event in Byron Shire, inviting key experts in coastal management.*
4. *That Council invites Angus Gordon to share his insights on the Collaroy tripperwall for possible adoption within Byron Shire. (Hackett/Spooner)*

This report provides an update on action undertaken following that resolution.

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**RECOMMENDATION:**

1. **That Council note the report.**

**Report**

This report provides an update on action undertaken with regard to Resolution 17-299.

Res 17-299

5

1. **That Council write to our local members of parliament calling for a coordinated national approach to managing coastal hazards. Currently, the task of dealing with coastal hazards along Australia's vast coastline is left predominately to local councils. This enormous task is beyond the capacity of councils, states and territories. The scale of the challenge requires a national approach, national leadership and national funding.**

10

A letter has been sent to the following local members of parliament:

- Tamara Smith, MLA, Member for Ballina
- Hon Ben Franklin, MLC
- Justine Elliot MP, Member for Richmond
- Senator John Williams, National Duty Senator for Richmond

15

2. **That Council submit a bid to host the 27th NSW Coastal Conference in 2018 and the next unallocated Australian Coastal Councils Conference.**

20

Staff have approached the organisers of both events and expressed Council's interest in hosting the 27th NSW Coastal Conference 2018 and the next available Australian Coastal Conference. A host has already been confirmed the 27<sup>th</sup> NSW Coastal Conference, however, Council is able to put in a submission to host the 2019 event. Further details on the process have not been received, however, the submission date for applications is anticipated to be mid-2018.

25

The next available Australian Coastal Conference is 2019 and staff have prepared and submitted an expression of interest (EOI) for hosting this event. The EOI was submitted on Friday 18<sup>th</sup> August 2017 and if successful, a more detailed application to host the event will be required.

30

3. **That if these submissions are unsuccessful, staff prepare a report on the implications of holding an event in Byron Shire, inviting key experts in coastal management.**

No further action until Council receives a response on the outcome of the EOI.

35

4. **That Council invites Angus Gordon to share his insights on the Collaroy tripperwall for possible adoption within Byron Shire.**

Mr Angus Gordon has been contacted and is available to present to Council. He is able to discuss the history of coastal management and coastal processes with a Byron context with Council but, for professional reasons, not anything to do with the current development applications lodged with the Coastal Panel for Belongil for wall 'repairs' nor anything that might influence any decisions or opinions in regard to the development applications and their assessment. This is due to Mr Gordon's engagement with the Department of Industry – Lands providing professional advice on the rock walls and consideration of owners consent.

40

In the circumstances, it would be prudent for Council to hold off any invitation to Mr Gordon until such time as the above development applications or any others in Byron Shire that he may have

involvement with have been determined by the Coastal Panel. This will avoid the situation of Mr Gordon being placed in a conflict of duties.

**Financial Implications**

5 Mr Gordon's standard daily rate is \$2,450 plus expenses including return airfare from Sydney, car hire and accommodation (if required overnight). The exercise could be undertaken in one day, with Council having up to a 4 hour window of time with Angus (11-3pm) taking into consideration travel time. A budget allocation would be needed for this as it is currently unfunded.

10 **Statutory and Policy Compliance Implications**

Nil.

**Report No. 13.13      Amendments to Council's adopted Fees and Charges - 2017/18**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Kylie Grainey, Project Officer  
James Brickley, Manager Finance

5    **File No:** I2017/1145

**Theme:** Ecology  
Development and Approvals

10    **Summary:**

Council adopted its annual Fees and Charges at the Ordinary meeting held on 22 June 2017. Part 2(d) of the resolution stated:

15            “d)    *2017-2018 Fees and Charges incorporating wording changes outlined in the Report under the heading ‘Management Comments - 2017/2018 Fees and Charges’ and with the following amendments:-*

20                    i)            *Addition of a new fee being the Information Technology Service Fee, to be levied against all new Development Applications received at 0.07% of the value of Development Applications.*

25                    ii)           *Addition of a new fee relating to Temporary Food Businesses (ie Market Stalls) for inspections to be set at \$80 for high risk, \$60 for medium risk and \$40 for low risk.*

30                    *Subject to the new fees in recommendation 2(d)(i) and 2(d)(ii) above, being exhibited for public comment for a period of 28 days, that the fees be incorporated into Council’s adopted Fees and charges for 2017/2018 should no submissions be received during public exhibition.”*

35            The resolution included a requirement to place new fees in relation to the introduction of an Information Technology Service Fee and a Temporary Food Businesses (Market Stalls) inspection fee structure on public exhibition.

The fees were on public exhibition between 13 July and 10 August 2017. One submission was received in relation to the Information Technology Service Fee.

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**RECOMMENDATION:**

**That Council adopt the amendments to the Fees and Charges 2017/18 by including the following fee:**

- 1.    Information and Technology Service fee levied against all new Development Applications (DAs) received at 0.07% of the estimated value of application.**

40    **Attachments:**

- 1            Confidential - Amendments to Council's Adopted Fees and Charges 2017\_18 - Information Technology Service Fee, E2017/88074

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**Report**

Council adopted its annual Fees and Charges at the Ordinary meeting held on 22 June 2017. Part 2(d) of the resolution stated:

- 5                   “d)   2017-2018 Fees and Charges incorporating wording changes outlined in the Report under the heading ‘Management Comments - 2017/2018 Fees and Charges’ and with the following amendments:-
- 10                   i)       Addition of a new fee being the Information Technology Service Fee, to be levied against all new Development Applications received at 0.07% of the value of Development Applications.
- 15                   ii)      Addition of a new fee relating to Temporary Food Businesses (ie Market Stalls) for inspections to be set at \$80 for high risk, \$60 for medium risk and \$40 for low risk.

20                   Subject to the new fees in recommendation 2(d)(i) and 2(d)(ii) above, being exhibited for public comment for a period of 28 days, that the fees be incorporated into Council’s adopted Fees and charges for 2017/2018 should no submissions be received during public exhibition.”

25                   The Information and Technology Service Fee and Temporary Food Business Inspection fees were placed on public exhibition between 13 July and 10 August 2017. One submission was received in relation to the Information and Technology Service Fee. No submissions were received on the Temporary Food Business Inspection Fees so as per Resolution 17-268 part 2(d), these fees are now adopted. The concerns noted in the submission related to the Information Technology Service Fee are addressed below:

**30   Information and Technology Service Fee**

It is proposed to levy the ‘Information and Technology Service fee against all development applications (DA’s) to recover costs associated with:

- 35                   •   Continuous improvement of Council’s processes and technology within the Sustainable Development division.
- The implementation and ongoing costs of the State governments ePlanning reforms;

40                   Costs associated with these initiatives have increased over time and we do not have the necessary income to cover these increases appropriately.

45                   The State government are in the process of introducing ePlanning reforms through their [planning portal](#). This will give the community the ability to be able to lodge and review development applications online and will fully integrate with Council’s current application management system.

Costs associated with these reforms are unknown at this stage.

50                   Ballina and Lismore Council’s both charge a similar Information and Technology Service fee. Ballina has levied their Information and Technology fee at 0.07% and Lismore at 0.1%. Lismore also charge an additional fixed archiving fee which varies from \$57 to \$115 depending upon the value of the application.

**Response to submission:**

<b>Submission</b>	<b>Response</b>
There is no information on public exhibition that provides justification for this fee. I have had to search the Council Report to find some background to the proposed fee.	Noted. The information was contained within the report to Council on 22 June 2017.
How does this new fee relate to the new "Scanning fee for development applications"? This scanning fee is imposed even though I always submit an electronic version of DAs that I lodge with Council.	<p>The \$30 Scanning/Archiving fee is charged to cover scanning/archiving costs of development applications and is payable on lodgement. It is charged regardless of whether electronic versions of DA's are submitted as it also covers ancillary certificates and applications, additional information and plan changes that may occur during the assessment of the DA.</p> <p>This fee has been set at \$30/development application. It is noted that other Council's charge vary from \$10 to \$200 per DA.</p>
The cost of the proposed development is a very poor representation of the likely costs involved. If Council feels that there is a need for this new fee it should be on a reducing scale with an upper limit. A \$2million commercial development will not have ten times the volume of submitted material as a \$200,000 rural dwelling.	The proposed methodology of charging is considered appropriate. A development with higher costs is likely to generate a greater workload on staff, technology and processes required to assess a development and associated certificate and/or application. As this fee is ongoing, it will enable Council to invest in better and updated technology to support the development assessment process.
The fee should not be imposed until Council finally has electronic lodgement of development applications.	The introduction of the fee will assist with funding necessary technology and processes required to implement appropriate electronic lodgement.

**Financial Implications**

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Funding for these resources can be provided by the revenue proposed to be generated by the Information Technology Service fee as this revenue is not currently included in the 2017/2018 Budget Estimates.

**10 Statutory and Policy Compliance Implications**

Section 610F of the Local Government Act 1993.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.14

**Report No. 13.14**      **PLANNING - S96 Application 10.2016.438.2 Minor changes to approved floor plan of dual occupancy dwelling, 2/4 Belongil Cres, Byron Bay**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
**File No:** I2017/1157  
**Theme:** Ecology  
Development and Approvals

### Proposal:

**Section 96**      10.2016.438.2

**Application No:**

**Proposed modification:**      S96 for Minor Changes to Approved Floor Plan for Dual Occupancy

**Original Development:**      Alterations and Additions to Dwelling 2 of Dual Occupancy

**Type of s96 sought:**

**Property description:**      LOT: 1 SP: 33853  
2/4 Belongil Crescent BYRON BAY

**Parcel No/s:**      236116

**Applicant:**      Mrs J L Hackett

**Owner:**      Mrs J L Hackett

**Zoning:**      R2 Low Density Residential

**S96 Date received:**      14 August 2017

**Original DA determination date:**      14 November 2016

**Integrated Development:**      No

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

**Issues:**      • S94 Contributions

### Summary:

An application has been received to modify the approval to provide for minor changes to the approved floor plan, primarily to open the space that was previously approved as two rooms, separated by a laundry. As approved, the additions included a room labelled 'Office/ Library' at the front, a laundry behind, with a 'studio' room to the rear.

In accordance with Council's policy, the studio and office rooms were considered to be capable of use as bedrooms, and S94 developer contributions were levied. The main purpose of the proposed modifications is to create one larger space, which is not considered as a bedroom, to therefore remove the condition relating to S94 Contributions.

Council's S94 officer has reviewed the application and agrees that the condition can be deleted. The proposal is satisfactory having regard to relevant matters for consideration and the section 96 application is recommended for approval, with the development consent to be modified as outlined in Schedule 2.

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 the Director, Sustainable Environment & Economy or 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 prepared by the Director Sustainable Environment & Economy. The 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.

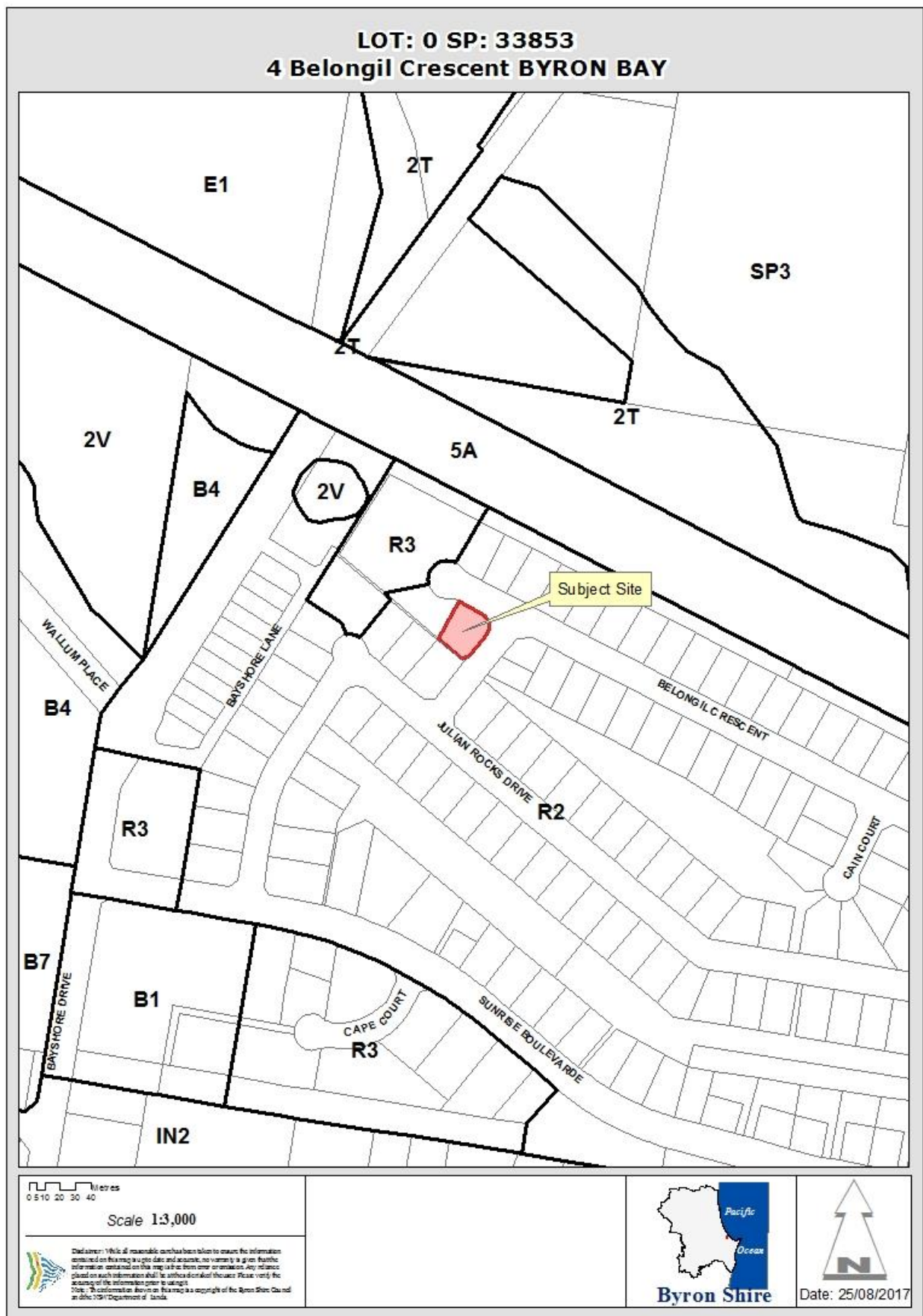
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**RECOMMENDATION:**

**That, pursuant to Section 96 of the *Environmental Planning & Assessment Act 1979*, Application No. 10.2016.438.2, for minor changes to approved floor plan for Dual Occupancy, be approved by modifying Development Consent number 10.2016.438.1 as indicated in Attachment 3.**

**Attachments:**

- 1 Plans of Proposed Modification, E2017/83855 
- 2 Existing Consent 10.2016.438.1, E2017/83867 
- 3 Modified Conditions of consent, E2017/83865 



**Report**

**1. INTRODUCTION**

**1.1. History/Background**

Building Application approved 1988 for Dual occupancy.

DA 129 of 2007 approved 15/3/2007 for removal of 1 tree (eucalypt).

Complying Development 57 of 2011 approved 1/8/2011 for additions and alterations to rear patio.

DA 10.2016.483.1 approved 14 November 2016 for alterations and additions to Dwelling 2.

**1.2. Description of the proposed development**

The application proposes to modify the approval to provide for minor changes to the approved floor plan, primarily to open the space that was previously approved as two rooms, separated by a laundry.

As approved, the additions included a room labelled 'Office/ Library' at the front, a laundry behind, with a 'studio' room to the rear.

In accordance with Council's policy, the studio and office rooms were considered to be capable of use as bedrooms, and S94 developer contributions were levied.

The main purpose of the proposed modifications is to create one larger space, which is not considered as a bedroom, to therefore remove the condition relating to S94 Contributions.

**1.3. Description of the site**

Land is legally described as: LOT: 1 SP: 33853  
 Property address is: 2/4 Belongil Cres BYRON BAY  
 Land is zoned: R2 Low Density Residential  
 Land area is: 360m<sup>2</sup>  
 Property is constrained by: Acid Sulfate Soils (Class 3)

Photo 1: Subject site. Unit 2/4 Belongil Crescent, Byron Bay.



Photo 2:  
Backyard of  
subject dwelling.



Photo 3: Single  
car garage,  
converted into  
library



## 2. SECTION 96(1A) ASSESSMENT

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### **Section 96(1A)**

Comment: The proposed modification is of minimal environmental impact. The development as modified is substantially the same as that originally approved. The application is not required to be notified.

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### **Section 96(3)**

Comment: Section 79C(1) matters are considered below.

## 3. ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

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### **Clause 115(1)**

Comment: The appropriate information has been provided.

### **Clause 117(2)**

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Comment: Adjoining owner or public notification of this application is not required.

**Clause 120(1)**

Comment: Referral to a concurrence or approval body is not required for this application.

**4. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES****4.1. State Environmental Planning Instruments**

The proposed modifications raise no issues in regard to applicable State Environmental Planning Policies.

**4.2. Byron Local Environmental Plan 2014 (LEP 2014)**

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The development is defined in the LEP 2014 Dictionary as dual occupancy;
- (b) The land is within the R2 Low Density Residential zone, according to the Land Zoning Map;
- (c) The proposal is permitted with consent; and
- (d) The proposed modifications raise no issues in regard to the Zone Objectives or any provisions of the LEP.

**4.3. 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 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.

The whole of the subject site will be mapped within the *coastal use* area. The proposed modifications raise no issues in regard to the matters contained in the draft SEPP.

**4.4. Byron Shire Development Control Plan 2014 (DCP 2014)**

The proposed modifications raise no issues in relation to any applicable DCP provision.

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

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.

<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.
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#### **4.6. The suitability of the site for the development**

The site is a serviced, unconstrained property containing an existing approved dual occupancy development. The proposed modifications are minor and do not alter the suitability of the site for the development as approved and constructed.

#### **4.7. Public interest**

The proposed modification of the development approval is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

### **5. DEVELOPER CONTRIBUTIONS**

#### **5.1. Section 94 Contributions**

As approved under Development Consent 10.2016.438.1, the additions to the dwelling include the conversion of a single car garage to provide a room labelled 'Office/ Library' at the front, a laundry behind, with a 'studio' extension to the rear.

In accordance with Council's policy, in the assessment of that application, the studio and office rooms were considered to be capable of use as bedrooms, and S94 developer contributions were therefore levied. The main purpose of the currently proposed modifications is to create one larger space, which is not considered as a bedroom, to therefore remove the condition relating to S94 Contributions.

Council's S94 officer has reviewed the application and agrees that, as now proposed, the development will not result in an increase in the demand for public facilities. Therefore, the condition relating to developer contributions can be deleted.

### **6. CONCLUSION**

The S.96 Application modifies the approved floor plan, primarily to open the space, which was approved as two rooms, separated by a laundry. As approved, the additions included a room labelled 'Office/ Library' at the front, a laundry behind, with a 'studio' room to the rear which were capable of being used as a bedroom. The proposed amendments create one larger space, which is not considered as a bedroom, and it is recommended that the condition for contributions can be deleted in this instance.

The proposal is satisfactory having regard to relevant matters for consideration and the section 96 application is recommended for approval, subject to amended conditions of consent.

### **7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

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

Provide Disclosure Statement register details here: Not applicable

**Report No. 13.15      PLANNING - DA 10.2017.258.1 - Temporary Use of Land for Wedding Venue, 46 Bay Vista Lane Ewingsdale**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Rob Van Iersel, Consultant Planner

**File No:** I2017/1229

**Theme:** Ecology  
Development and Approvals

**Proposal:**

**DA No:** 10.2017.258.1

**LEP Definition:** Function Centre

**Proposal description:** Temporary Function Centre

**Property description:** LOT: 21 DP: 793702  
46 Bay Vista Lane EWINGSDALE

**Parcel No/s:** 110340

**Applicant:** Mr R A McEwen c/- Chris Pratt, Planning Resolutions

**Owner:** Mr R A & Mrs V McEwen

**Zoning:** R5 Large Lot Residential / PART RU2 Rural Landscape / PART DM  
Deferred Matter (part 1(a) Rural; part 7(b) Coastal Habitat)

**Date received:** 25 May 2017

**Integrated Development:** No

**Public notification or exhibition:**

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 15/6/17 to 28/6/17
- Submissions received: Five

**Delegation to determination:** Council

**Issues:**

- Potential for adverse amenity impacts associated with noise and dust
- Traffic concerns McGettigans Lane/ Ewingsdale Road intersection.

**Summary:**

The application is made pursuant to the provisions of Cl. 2.8 of BLEP 2014, and proposes the use of the site as a temporary function centre, to host up to 14 weddings per annum. The application proposes a two-year approval period.

The site is located on the eastern edge of the Ewingsdale large lot residential area, and extends eastward onto the floodplain. Weddings are proposed to be held toward the central part of the property, approximately 1.2kms east of the Bay Vista Lane frontage.

Marquees would be brought into the site for each wedding and removed afterwards. The application proposes a maximum of 150 guests for each event, with temporary portable toilets and garbage facilities also provided for each event. The application suggests that the majority of wedding guests would be transported to and from the site by bus.

The application also proposes the erection of a 1.8m high acoustic barrier along part of the site entry driveway, where it adjoins neighbouring dwellings as well as the sealing of the internal access road in the vicinity of adjoining dwellings.

An acoustic report submitted with the application indicates that activities associated with wedding events are unlikely to be audible at nearby dwellings up until 10pm at night. After 10pm, activities such as amplified music and vehicle movements would be audible. The application proposes that all wedding activities will cease, and all guests will be off the site by 10pm.

The application was publically notified and five (5) submissions were received, objecting to the development. Reasons for objection centred on potential for amenity impacts, primarily associated with noise from wedding activities and dust from the currently unsealed internal access. An owner of nearby land also expressed concern about noise from events disturbing wildlife in the area.

The application as proposed addresses these concerns. Sealing of the internal access road will alleviate dust issues, whilst the infrequent nature of the use, and the relative isolation of the wedding site, is such that there is not likely to be any impacts on local wildlife.

There are significant existing traffic concerns at the intersection of McGettigans Lane and Ewingsdale Road, primarily associated with weekday peak hour congestion. The proposed temporary use will generate traffic outside of peak time, with events occurring primarily on weekends. The majority of wedding guests will be transported to and from the site by bus, as is the conventional operation for events in the Shire. In addition to the bus trips, event car trip generation is estimated at around 36 trips (in and out) per wedding. Event set up and pack up would occur on weekdays, before and after each event, and can be conditioned to occur outside of weekday peak hours.

A Noise Management and Monitoring Plan is to be submitted to Council for approval. The Plan must include protocols for the monitoring of the first three wedding events, including a requirement that a report be provided to Council following the third wedding, outlining the results of noise monitoring and compliance with the requirements of this consent. The protocols must include detailed contingency measures that would be implemented if the monitoring demonstrates that noise at sensitive receivers has exceeded that predicted in the Environmental Noise Assessment Report (TTM Consulting, dated 16/02/2017). In that case, monitoring is to be extended to the next two events, with a further report to be provided to Council at the end of this extended monitoring period. If the noise levels at sensitive receivers have not been met at either of these two events, this development consent will cease.

The application is recommended for approval consistent with the temporary use provisions of the LEP, for a maximum of 14 weddings per calendar year for a two year period.



**NOTE TO COUNCILLORS:**

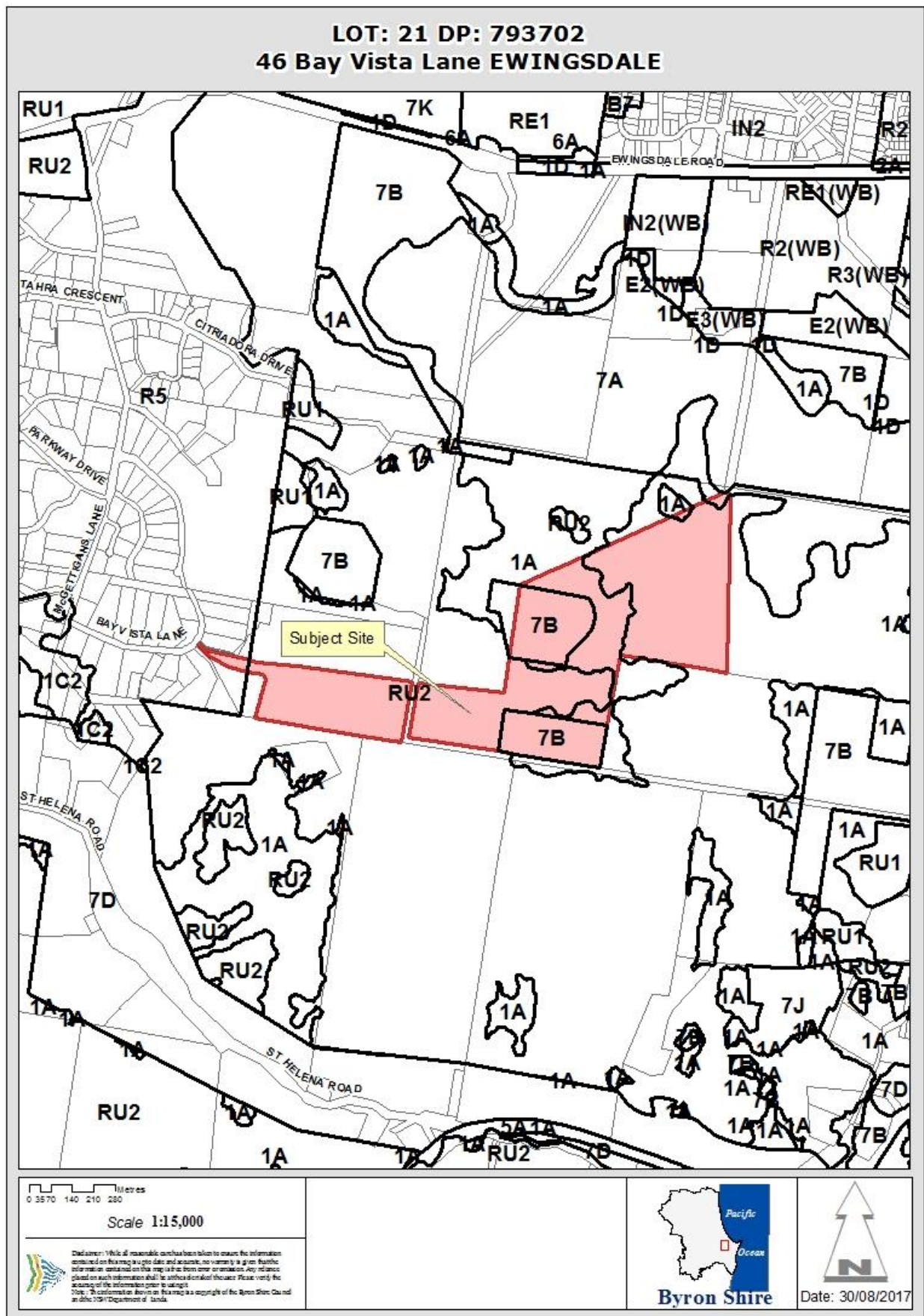
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

**RECOMMENDATION:**

**That, pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 10.2017.258.1, for a Temporary Function Centre, be approved subject to the conditions listed in Attachment 2.**

**Attachments:**

- 1 Proposed Plans 10.2017.258.1 46 Bay Vista Lane Ewingsdale , E2017/86709 
- 2 Conditions of Consent 10.2017.258.1 46 Bay Vista Lane Ewingsdale , E2017/86579 



**Report****1. INTRODUCTION****1.1. History/Background**

BA 6.1993.2286.1	Dwelling	Approved 30/07/1993
BA 6.1995.2034	Swimming Pool	Approved 09/02/1995
DA 10.1999.654.1	Subdivision (2 lots)	Refused 22/11/1999
DA 10.2000.200.1	Subdivision (2 lots)	Refused 02/11/2000
DA 10.2007.715.1	Rural Farm Shed	Approved 04/03/2008
DA 10.2008.554.1	Use of unauthorised structure as a holiday cabin	Refused 23/12/2008
DA 10.2008.590.1	Alterations and additions to farm shed	Approved 05/02/2009
DA 10.2012.433.1	Rural Tourist Facility (two holiday cabins)	Refused 12/11/2012

Reasons for refusal of the most recent application include issues associated with:

- bush fire risk, particularly relating to single access;
- potential for soil contamination – previous records of uncontrolled fill; insufficient assessment/analysis of risks;
- flooding; and
- constraints to on-site wastewater management.

**1.2. Description of the proposed development**

The application is made pursuant to the provisions of Cl. 2.8 of BLEP 2014, and proposes the use of the site as a temporary function centre, to host up to 14 weddings per annum. The application proposes a two-year approval period.

The site is located on the eastern edge of the Ewingsdale large lot residential area, and extends eastward onto the floodplain. Weddings are proposed to be held toward the central part of the property, approximately 1.2km east of the Bay Vista Lane frontage.

Marquees would be brought into the site for each wedding and removed afterwards. Marquees would typically be 10m x 20m in size and erected in the location shown in yellow below.

The application proposes a maximum of 150 guests for each event, with catering, temporary portable toilets and garbage facilities also provided for each event. Portable toilets would be supplied at a rate of 1 toilet per 20 people on site. Potable water is available from an existing Rous Water supply.

The application suggests that the majority of wedding guests would be transported to and from the site by bus, anticipating that approximately 20 people would arrive in private cars.

As originally proposed, amplified music was to cease by 11:30pm, with guests vacating the site by midnight. In response to concerns regarding potential noise impacts, the application has been amended such that all activities would cease by 10pm. This would require amplified music to cease by 9.30pm, with all guests vacating the site by 10pm.

The application also proposes the erection of a 1.8m high acoustic barrier along the northern side of part of the site entry driveway, where it adjoins neighbouring dwellings. The internal access road is also proposed to be sealed adjacent to the nearby dwellings to ensure that dust is not generated by vehicles using this access in association with events.

**Location of Weddings within Site**



- 5 Yellow – proposed site for erection of marquees  
Blue – internal parking sites

**1.3. Description of the site**

Land is legally described as:	LOT: 21 DP: 793702
Property address is:	46 Bay Vista Lane EWINGSDALE
Land is zoned:	R5 Large Lot Residential / PART RU2 Rural Landscape / PART DM Deferred Matter (part 1(a) Rural; part 7(b) Coastal Habitat under BLEP 1988)
Land area is:	54.74ha
Property is constrained by:	Flood liable land Bushfire prone land (Vegetation Buffer in marquee area) Acid Sulfate Soils (Class 2 in marquee area, Class 3 to SW) High environmental value vegetation Eco wetlands Threatened flora records in vegetation adjacent to marquee site



## 2. SUMMARY OF REFERRALS

### 5 **Development Engineer:**

#### Access:

Access is off Bay Vista Drive and is acceptable. The driveway is proposed to be bitumen sealed. Given peak hour traffic volumes of 26+ trips, it is considered appropriate to condition that the driveway is to be widened to 5.5m from the Bay Vista Lane entrance to 6m inside the property boundary.

#### Parking:

Sufficient room exists on site to make coach parking and manoeuvring work effectively. It is proposed that 4 buses will transport up to 120 guests per wedding.

#### Traffic Impacts:

The following peak traffic numbers will occur in the lead-up to a wedding, on the day of each event:

- 4 buses - 2 trips per bus (arrive and leave) = 16 trips;
- 10 guest cars - 1 trip (cars stay for the whole event) = 10 trips;
- 1 car for wedding co-ordinator (stay for the whole event) = 1 trip;
- 2 cars for bridal party (stay for the whole event) = 2 trips;
- 6 cars for wedding support (catering, photographer, etc. stay for the whole event) = 6 trips;

It is estimated therefore that each event would generate approximately 35 peak traffic movements in the lead up to each event. In accordance with DCP 2014 Chapter B4.2.1, this is regarded as a moderate traffic impact. The Ewingsdale Rd / McGettigans Lane intersection has been modelled by several consultants and all have confirmed that the intersection will "fail" by 2019 under current traffic growth conditions. If additional traffic generating developments are approved in this area the intersection will begin to fail sooner.

However, the current proposal can be supported from a traffic generation perspective for the following reasons:

- While each would generate approximately 35 peak trips, these trips will occur on weekends, mostly on a Saturday afternoon, when the intersection peak hour conditions are significantly less than the Wednesday, Thursday and Friday peak conditions.
- Any approval can be conditioned so that weddings are held only on weekends, to ensure impacts coincide only with weekend traffic.
- Peak wedding trips will typically occur at 9-10am-ish for morning weddings and 2-3pm for afternoon weddings, outside the intersection peak hour periods.
- Weddings will only occur 14 times per calendar year.
- The venue proposes to operate for 2 years, eliminating its long term impact.

**Flooding:**

The site is impacted by the 5yr through to 100yr storm event. Given the temporary nature of the venue, the low hazard flood classification, shallow flood water depth (0.1m approx.) and that the weather will keep people away, flooding is not considered a significant concern.

***Environmental Health Officer:***

Detailed conditions recommended regarding noise measures/ monitoring.

A Noise Management and Monitoring Plan will be required before an Occupation Certificate can be issued for the first event. Amongst other things, the Plan must include protocols for the monitoring of the first three wedding events, including a requirement that a report be provided to Council following the third wedding, outlining the results of noise monitoring and compliance with the requirements of this consent.

The protocols must include detailed contingency measures that would be implemented if the monitoring demonstrates that noise at sensitive receivers has exceeded that predicted in Table 11 of the TTM Environmental Noise Assessment Report (dated 16/02/2017). In that case, monitoring is to be extended to the next two events, with a further report to be provided to Council at the end of this extended monitoring period. If the noise levels at sensitive receivers have not been met at either of these two events, this development consent will cease.

**3. 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 eastern part of the site is mapped as bush fire prone land. The proposed marquee site is located at the edge of the buffer mapping, with the stand of trees to the south-east mapped as vegetation Category 1. Planning for Bushfire Protection 2006 does not contain any specific provisions relevant to the use of land for function centre.

The property contains a large cleared area that is available in the unlikely event that a wedding is disrupted by bush fire coming from the vegetation to the east. Emergency access would also be available. Overall, the proposed use is unlikely to be detrimentally impacted by bush fire.

**4. 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.

#### 4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 14—Coastal Wetlands	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: There is a very small part of the extreme north-east corner of the site that is within a SEPP 14 mapped area. The proposed wedding site is located approximately 1km away from the wetland area. The proposed wedding use would not result in any direct or indirect impacts on the wetland.		
State Environmental Planning Policy No 26—Littoral Rainforests	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: There are no mapped littoral rainforest areas in the vicinity of the site.		
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site is within land mapped in Council's Byron Coast Koala Habitat Study as being an area likely to be subject to significant koala activity. Notwithstanding that mapping, the site is unlikely to contain "potential" or "core" koala habitat as defined in the SEPP. A Koala Plan of Management, as required by the SEPP, is therefore not required.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed temporary use will not require any soil disturbance. It is considered to be acceptable in regard to the matters for consideration in this SEPP.		

#### 4.2A Byron Local Environmental Plan 2014 (LEP 2014)

5 LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of

- 10 relevance to the proposed development:
- In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 Dictionary as *Function Centre*;
  - (b) The land is within the R5 Large Lot Residential and RU2 Rural Landscape zones according to the Land Zoning Map;
  - 15 (c) The proposed development is prohibited in the both the R5 and RU2 zones, but can be permitted with consent as a *temporary use of land*, pursuant to the provisions of Cl. 2.8 (see discussion below); and
  - (d) Regard is had for the Zone Objectives as follows:

##### 20 **R5 Large Lot Residential**

*To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*

*To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*

25 *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*

*To minimise conflict between land uses within this zone and land uses within adjoining zones*

30 The proposed wedding site is outside of the R5 zoned land, which only applies to a small narrow part of the site on its western edge.

**RU2 Rural Landscape**

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

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

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

*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.*

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

The application proposes a land use that is normally prohibited. The temporary function centre use would not prevent the land from being used for primary industry purposes now or in the future, as it would occupy a very small part of the land on an intermittent basis.

15

Similarly, it will not impact on the rural character of the land as the wedding venue site is not visually prominent.

20 The use of the site for temporary functions raises the potential for land use conflicts associated with adjoining and nearby rural land uses, mainly associated with noise and traffic associated with weddings. The acoustic assessment undertaken in support of the proposal shows that there is potential for adverse noise impact at nearby residences, associated with activities after 10pm. The application, as amended, proposes that all activities associated with events at the site would cease by 10pm.

25

The noise assessment report indicates that activities at the wedding site are unlikely to be audible during the day or in the evening, when typical background noise levels are higher than after 10pm. Based on the assessment in the noise report, noise from activities at the wedding site are unlikely to be audible above background during the day and during the evening.

30

The proposed use can be considered to be a 'small-scale rural tourism use', but it is not associated with primary production or environmental conservation. It does not, however, necessarily impede either of those uses.

35

**Clause 2.8 Temporary use of land**

A function centre is prohibited in the R5 and RU2 Zones. The application seeks approval for the temporary use of the site to hold functions, under the provisions of clause 2.8 of BLEP 2014.

These provisions are addressed below:

40

1. *The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*

45 The application proposes the use of a relatively small part of the site, with all wedding facilities being brought into the site, and then removed, for each event. This temporary use, on a maximum of 14 occasions in a 12 month period, does not physically impede the ability to use the land for other permitted uses (subject to future approvals). The potential for detrimental impacts is addressed below.

50

2. *Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 14 days (whether or not consecutive days) in any period of 12 months.*

The application seeks consent for temporary function usage of 14 marquee weddings per year. Each event is likely to involve activities over three (3) days, which include set-up before and removal of facilities after each event.

- 5 The issue of the number of “days” versus the number of “events” was considered in a Land and Environment Court case, **EMRR Pty Ltd v Murray Shire Council [2016] NSWLEC 144**, which dealt with approval for a wedding venue under the cl. 2.8 provisions.

In that case, Justice Sheahan concluded:

- 10 *“The definition of “function centre” in the LEP anticipates the use of land for the purpose of events, rather than any preparatory or subsequent work associated with such events. It would be an impractical construction of the term “temporary use” if the land were able to be used only for the purpose of functions **and** associated preparatory work for a total of 52 days in a 12 month period.”*  
 15 [cl. 2.8 within Murray Shire LEP is identical to BLEP, other than allowing 52 days, whereas BLEP allows 14 days].

On the basis of this judgement, the temporary use for 14 events can be considered.

3. *Development consent must not be granted unless the consent authority is satisfied that:*  
 20 (a) *the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*

- 25 As outlined above, the temporary use will not prevent the rural use of the site, nor does it compromise the ability to pursue permitted uses in the future.

*(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*

- 30 The consideration of this provision within clause 2.8 was the basis of a decision of the NSW Land and Environment Court in the matter of **Marshall Rural Pty Ltd v Hawkesbury City Council and Ors [2015] NSWLEC 197**.

- 35 In part, this judgement, clarified the requirements for assessing adverse amenity impacts associated with proposals under Clause 2.8, finding that this test is cast in “absolute terms” and, therefore, a significantly higher threshold exists than that which would normally be applied.

- 40 This stricter test requires that the temporary use has no adverse impact on adjoining land or property. It is not open to Council to consider whether the adverse amenity impacts are “acceptable” in the circumstances. In this regard, adverse impact is considered in the light of a “reasonable person”, i.e. simply seeing or hearing an activity does not necessarily constitute an adverse impact. However, impacts that are over and above what would be considered acceptable by a reasonable person would not be permitted.

- 45 In order to assess the potential impacts of the proposal on the amenity of the locality, consideration needs to be given to adjoining properties and their land uses, which in this case are predominately associated with large-lot residential lots. There is also a school located nearby (Cape Byron Steiner School), a number of bed and breakfast-scale tourism uses and low-scale grazing. Some small-scale horticulture is being undertaken to the south and south-east of the property.

- 50 These uses, and their setting, establish the amenity of the area, and it can be expected that the rural / residential uses will be most active during the day and early evening, with a quieter rural residential setting dominating in the evenings and into the night (and potentially on days during the weekend).

55

The primary issue with respect to amenity impacts relates to having functions at the site, involving up to 150 guests, at a time when the local setting and amenity can be categorised as 'quiet'. The impacts would therefore predominantly be around noise from the events, with traffic, dust from the traffic on the unsealed internal road and visual impacts also being important considerations.

In relation to noise, the Hawkesbury decision specifically noted that assessment of potential impacts against the Industrial Noise Policy (or other such) noise threshold tests) was inconsistent with the 'strict' requirements of Clause 2.8, in that such assessments were aimed at determining whether potential noise impacts were "acceptable". Based on this more strict interpretation, the acoustic assessment should determine how noise from events relates to the existing background levels in the area. As a first step, it is important to determine whether noise from proposed activities would be audible at nearby dwellings. If noise is not audible, it could not, logically, be considered to result in an adverse impact.

The acoustic assessment submitted with the application provides a measure of the background noise levels in the area, based on noise monitoring undertaken at the site in accordance with standard practice (AS1055:1997 *Acoustics – Description and Measurement of Environmental Noise*). An unattended noise monitor was set at the proposed wedding site from Friday 25/11/2016 to Thursday 01/12/2016. Further noise measurements were taken on 25/11/2016 during the afternoon period (4:45-5:30pm).

Based on the monitoring, the acoustic consultant established the following background noise levels for each of the 'standard' time periods outlined in the EPA's Industrial Noise Policy:

<b>Time Period</b>	<b>Rating Background Level <i>L</i><sub>A90</sub> dB(A)</b>	<b>Existing Noise Levels <i>L</i><sub>Aeq</sub> dB(A)</b>
Day time (7am – 6pm)	35	54
Evening (6pm – 10pm)	36	51
Night time (10pm – 7am)	34	46

*L*<sub>A90</sub> represents noise levels present for at least 90% of the monitoring period.

*L*<sub>Aeq</sub> is effectively the average noise level during the monitoring period.

The acoustic consultant (Jason Fox, TTM) has advised that noise will not be audible if it is around 10dB(A) below the existing noise levels (*L*<sub>Aeq</sub>).

Based on the background levels measures at the site, therefore, noise from weddings will not be audible at nearby receivers if it is at or below the following *L*<sub>Aeq</sub> levels:

- Day time (7am – 6pm) 44 dB(A);
- Evening (6pm – 10pm) 41 dB(A); and
- Night time (10pm – 7am) 36 dB(A).

The acoustic assessment outlines predicted noise levels, based on noise modelling, likely to be received at three nearby dwellings, located as shown below:

- Receiver 1: Residential dwellings located on Bay Vista Lane (approx. 760m from wedding site);
- Receiver 2: Cape Byron Steiner School (approx. 580m from wedding site); and
- Receiver 3: Dwellings to the south (approx. 900m from wedding site).



The modelling predicted noise levels associated with activities typical of a wedding event, including:

- 5
- Cars and buses passing by;
  - Truck deliveries;
  - Crowd noise associated with 150 people;
  - Typical amplified music;
  - “Total noise”, which is the combined level from crowd noise and amplified music.

10

The modelling predicted the following levels relative to the identified receivers:

<b>Receiver</b>	<b>Noise Source</b>	<b>Predicted level at receiver LAeq dB(A)</b>	<b>Audible?</b>		
			<b>Day 44 dB(A)</b>	<b>Evening 41 dB(A)</b>	<b>Night 36 dB(A)</b>
1	Total noise	35	N	N	N
	Bus passing	38	N	N	Y
	Truck passing	42	N	Y	Y
	Crowd noise	29	N	N	N
	Amplified music	34	N	N	N
2	Total noise	37	N	N	Y
	Bus passing	23	N	N	N
	Truck passing	26	N	N	Y
	Crowd noise	31	N	N	N
	Amplified music	36	N	N	Y
3	Total noise	33	N	N	N
	Bus passing	<10	N	N	N
	Truck passing	12	N	N	N
	Crowd noise	27	N	N	N
	Amplified music	32	N	N	N

The results show that noise from weddings would only be audible at receivers 1 and 2 after 10pm. As outlined above, the application has been amended such that all activities are now proposed to be completed before 10pm. This would be reinforced by a condition of approval. The results also show that truck movements would be audible in the evening period at receiver 1.

5

It is unlikely that trucks would need to access the site in the evening period, as trucks would be associated with set up and pack up, which conventionally occur during normal business hours. This would be reinforced by a condition of approval.

10 While having a noise source as audible does not necessarily mean that this creates an adverse impact, it is considered that, given the rural / residential setting, noise associated with large crowds and amplified music would be unusual, and it is this 'difference' to the nature of the normal noise in the area that would generate the adverse impact.

15 In this case, however, the acoustic assessment indicates that there will not be any adverse impacts associated with noise, given that noise from the wedding activities will not be audible at the identified receivers during the events. The other potential for adverse amenity impact in this case comes from dust generation associated with wedding traffic using the internal access road.

20 That road is currently unsealed and adjoining land owners have identified that dust generation is an issue for them from current traffic on the access. The application will involve the sealing of a substantial portion of this access, particularly where it passes adjoining houses. A condition is recommended that the proposed sealing must occur prior to any weddings at the site. With that in place, there will not be any adverse amenity impact associated with dust generation from wedding traffic.

25

In terms of visual amenity, the separation distance between the proposed wedding site and existing dwellings is such that the temporary presence of a wedding marquee would not dominate any views, and would only be seen in the background distance. As such, the erection of temporary marquees will not result in any adverse amenity impacts.

30

*(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*

35

The proposed wedding site is subject to flooding. In this locality, however, flooding is associated with 'storage' and the back-up of waters from nearby and downstream drainage lines and watercourses. The erection of marquees on a temporary basis, will not exacerbate flooding or increase risks. Flooding at this site is not fast flowing and there is an ample warning time. It is very unlikely, therefore, that any wedding event would be impacted by a flooding event.

40

In terms of the environmental features of the site, there is a stand of high conservation value vegetation located relatively close to the wedding site. This vegetation will not be directly impacted by the events and their temporary nature will not result in any indirect impacts on the habitat value of that vegetation, given the infrequent nature of use.

45

*(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*

50 The site will be restored after each event, with the removal of marquees and clean-up of the site. It is recommended that the approval for the temporary use be limited to a three-year period, and the land would be returned to its current state at the end of that period.

55

**4.2B Byron Local Environmental Plan 1988 (LEP 1988)**

LEP 1988 is an applicable matter for consideration in relation to the deferred parts of the site, which retain the LEP 1988 zoning. The wedding event site and access thereto are outside of the deferred areas and therefore there are no provisions of the LEP that are directly relevant to a consideration of this application.

**4.3 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 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.

The whole of the subject site will be 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. These matters are addressed above.

**4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP& A Act because it applies to the land to which LEP 2014 applies.

The following DCP Chapters have some relevance to a consideration of the application:

Chapter B3 Services:

- Toilets will be provided via portable toilets at the rate of one toilet per 20 people on site.
- Potable water will be provided via the existing Rous Water supply.

Chapter B4 Traffic Planning:

See comments from Development Engineer above.

Chapter B6 Buffers and Minimising Land Use Conflicts:

The potential for land use conflict arises associated with noise and traffic from events at the site. These matters are discussed in detail above. It is considered that the proposal will not result in land use conflicts.

Chapter B12 Social Impact Assessment:

As above, the potential for social impacts are associated with noise and traffic from events at the site. These matters are discussed in detail above. It is considered that the proposal will not generate any social impacts.

Chapter C2 Areas Affected by Flood:

See comments from Development Engineer above.

**4.5 Environmental Planning & Assessment Regulation 2000 Considerations**

<i>Clause</i>	<i>This control is applicable to the proposal:</i>	<i>Does the proposal comply?</i>
<b>92</b>	Yes	Yes
<b>93</b>	No	N/A
<b>94</b>	No	N/A
<b>94A</b>	Yes	Conditions recommended in relation to the temporary structures (marquees) proposed

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

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.

**4.7 The suitability of the site for the development**

The site is particularly suitable to the proposed temporary use, as it contains a relatively isolated area with sufficient separation from nearby dwellings to ensure that noise from events at the site will not cause an adverse impact on the neighbourhood.

**4.8 Submissions made in accordance with this Act or the regulations**

The application was publicly notified from 15/6/17 to 28/6/17. Five submissions were received. The issues raised in these submissions are addressed below:

<b>Issue</b>	<b>Comment</b>
Quality of living will be impacted by the development, associated with noise, dust and traffic.	<p>These issues are discussed in detail in the report above.</p> <p>The internal access road is to be sealed in the vicinity of adjoining and nearby dwellings. This will limit dust generation associated with event traffic.</p> <p>The noise assessment report demonstrates that, prior to 10pm at night, event activities are not likely to be audible above background noise levels at the nearest dwellings.</p> <p>The traffic assessment indicates that peak trips associated with each event are unlikely to generate significant impacts as they occur during low traffic periods.</p> <p>The temporary nature of the proposal will also assist in ensuring that events do not compromise local amenity.</p>
Internal access road should be sealed for a significant distance past	Applicant proposes to seal a section of the road. A condition is recommended to reinforce this, requiring

adjoining houses.	sealing for a minimum distance of 280m from the property boundary into the site.
Hours for venue set up and pull-down should be restricted so that it cannot occur before 9am.	Agreed. Condition recommended. This will also assist to ensure that venue set up traffic does not add to peak hour congestion at the McGettigans Lane/ Ewingsdale Road intersection.
Visual impact of acoustic barrier.	The acoustic barrier is proposed as a 1.8m high lapped timber fence. As such, it is no different form a 'conventional' boundary fence and will, therefore, not result in a significant visual impact.
Events should cease earlier to minimise noise impacts.	<p>When the application was originally advertised, the proposed finishing time for events was 11.30pm for amplified music, with all people leaving the site by midnight.</p> <p>The applicant has since amended the proposal, such that all activities will now cease by 10pm. A condition is recommended specifying that amplified music is to cease no later than 9:30pm, with all people off site by 10pm.</p>
Impacts on wildlife and conservation efforts. Owner of 345 St Helena Rd – significant revegetation efforts over the last few years is resulting in increased wildlife movement in the area – including koalas. Concerned about noise and lighting impacts.	<p>The acoustic assessment report indicates that noise from events is unlikely to be audible above existing background levels (see discussion above). A condition is recommended to ensure that all lighting is shielded and directional to minimise light spill outside the site.</p> <p>It is apparent, therefore, that koalas move through this area, in the vicinity of the subject property. It is possible (though not known) that koalas could utilise the paperbark forest located on the site, directly adjacent to the proposed wedding site and be disturbed. However the temporary nature of the proposal means the likelihood of such impacts is considered to be low.</p>
Approval would set a precedent in relation to land within the RU2 zone.	<p>The application is assessed against the provisions of Cl.2.8 Temporary Use of Land, based on the merits of the application.</p> <p>Any subsequent application would be similarly assessed, and approval of one application provides no precedent to other circumstances.</p>
No confidence that majority of guests would arrive by bus.	<p>Discussions with a number of wedding coordinators indicate that this is the preferred way of transporting guests, and they can be more easily managed, particularly after the wedding is over.</p> <p>Use of buses is a 'normal' part of weddings in the Shire and, anecdotally, most wedding guests also prefer to use buses, as it means they can avoid dinking and driving.</p> <p>It is considered that the applicant's proposed use of 4 buses to transport up to 130 guests is a realistic and achievable proposal.</p>
Concerned that this application is a step toward a more permanent approval.	<p>Under the current planning provisions, permanent approval for a function centre is not possible.</p> <p>The applicant has requested a two-year approval period, and this, together with the restriction of annual event numbers, ensures that the use will be temporary.</p>

	It will not be possible to approve any extension of the approval at the end of the two year period, as that would confer an element of permanence.
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#### **4.9 Public interest**

- 5 The proposed development is unlikely to prejudice or compromise the public interest or create a dangerous precedent

#### **4.10 Section 5A of the EP&A Act – Significant effect on threatened species**

- 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 proposed development as it will not directly impact vegetated area. It is also considered that indirect impacts associated with event noise and/ or lighting are unlikely given the location of the site and the temporary nature of the activity.

#### **4.11 Section 5B of the EP&A Act – Have regard to register of critical habitat**

- 15 The NSW Critical Habitat Register does not identify any critical habitat on or adjacent to the site.

### **5. DEVELOPER CONTRIBUTIONS**

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#### **5.1 Water & Sewer Levies**

Water and sewer levies are not required.

#### **5.2 Section 94 Contributions**

25

No developer contributions are required.

### **6. CONCLUSION**

30

The application is made pursuant to the provisions of Cl. 2.8 of BLEP 2014, and proposes the use of the site as a temporary function centre, to host up to 14 weddings per annum. The application proposes a two-year approval period.

- 35 It is considered the development is consistent with Councils planning Controls and Policies and is recommended for approval subject to conditions of consent.

### **7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

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

40

Provide Disclosure Statement register details here: Not applicable

**Report No. 13.16**      **Draft Road Airspace Policy**  
**Directorate:**       Sustainable Environment and Economy  
**Report Author:**     Shannon Burt, Director Sustainable Environment and Economy  
                                  Kylie Graine, Project Officer  
5    **File No:**             I2017/1260  
**Theme:**               Ecology  
                                  Development and Approvals

**1 Summary:**

Council resolved in December 2016 to progress amendments to the existing Road Airspace Policy, in place since 2012, **to change the current methodology** used for acquiring a lease for Airspace use to a Section 138 Roads Act approval process. The Roads Act process is considered simpler and more efficient.

[Airspace Policy 2012](#)

Council considered a report on amendments to its Road Airspace Policy at the Ordinary Meeting held on 22 June 2017.

[http://byron.infocouncil.biz/Open/2017/06/OC\\_22062017\\_AGN\\_607.PDF](http://byron.infocouncil.biz/Open/2017/06/OC_22062017_AGN_607.PDF)

At the meeting it was resolved:

**17-        Resolved that Council:**  
**265**

1. Note the Road Airspace Policy report.
2. Undertake further consultation with impacted businesses, specifically in regard to:
  - i. level of charges; and
  - ii. transitional issues for the businesses involved.
3. After the above consultation has been undertaken provide a report back to council.

In accordance with the resolution, Council sent out letters to affected land owners with an invitation to meet and discuss proposed amendments to the policy, the level of charges to be imposed as a result of the adoption of Council's Fees and Charges and any transitional arrangements that landowners would like considered when it is reported back to Council.

Further, as a submission dated 15 June 2017 in relation to Council's draft Road Airspace Policy was received from Denton's lawyers on behalf of the Australian Hotels Association (AHA), a separate letter was sent to Denton's as well.

To date, while conversations with staff have occurred, no formal submissions have been received by Council to the above invitations. However, one of the owners advised that their previous submission to the draft Airspace Policy on 22 June is still relevant to the policy and asked it to be resubmitted. This has been provided as Attachment 2.

---

**RECOMMENDATION:**

1. That Council adopt the Road Airspace Policy with the following amendments:
  - Amend part 2 to:

This policy applies to property owners who **want, in the future, wish to use adjacent road airspace for commercial benefit. This policy does not apply to existing encroachments in road reserve air space.**

- Delete the definition of 'road air space'.


- Amend clause 5.6 to:

**In the event that no Section 138 approval has been granted, Council may issue an order under Section 107 of the Roads Act to remove the structure. Such an order is not appealable and the structure is not otherwise lawfully encroaching on road air space, Council may seek the structure's removal from the road reserve.**

- Delete part 7.

## **2. That affected land owners be notified.**

### **Attachments:**

- |   |  |
|---|--|
| 1 | Confidential - Marsdens legal advice, S2017/13353  |
| 2 | Confidential - Submission , S2017/12461  |
| 5 | 3 Draft Airspace Policy, E2017/88083  |

**Report**

Council resolved in December 2016 to progress amendments to the existing Road Airspace Policy (in place since 2010). The current Road Airspace Policy relies upon a complex and expensive option of granting a lease under the Roads Act. This lease requires the approval of the Director of Planning. Additionally, any lease in excess of three years is required to be registered on the land title. The amendments proposed sought to change the methodology from acquiring a lease for road airspace use to a Section 138 Roads Act approval process.

An amended Road Airspace Policy was placed on public exhibition between 18 May and 15 June 2017.

During that time, some property owners with buildings encroaching road air space objected to the prospect of having to pay a fee for occupying that air space.

Council sought legal advice from Marsden's in response to those objections.

Council then resolved (22 June 2017) to further consult with affected land owners about the proposed amendments to the policy, the level of charges to be imposed as a result of the adoption of Council's Fees and Charges and any transitional arrangements that landowners would like considered when it is reported back to Council.

To date, while conversations with staff have occurred, no formal submissions have been received by Council to the above invitations. However, one of the owners advised that their previous submission to the draft Airspace Policy on 22 June is still relevant to the policy and asked it to be resubmitted

The advice from Marsden's has subsequently been considered by Council's Legal Services team for the purposes of this report.

A copy of the Marsden's advice is at Confidential Attachment 1.

- Council's attention is drawn to the second paragraph on page 8.
- Council's attention is also drawn to the first two paragraphs on page 12.

**Other regulation options**

Even if Council cannot issue a Section 138 Roads Act approval for an already existing road air space encroachment, this does not mean that Council has no power to deal with an encroachment.

For instance, if there is no lawful authority for the encroachment, Council could bring criminal proceedings for a breach of Section 138.

Alternatively, it appears that some encroachments were anticipated as part of Council issuing development consent for the encroaching building. Some consents require the land owner to enter into a lease with Council to regularise the air space use. Where a land owner refuses to comply with a development consent condition regarding a lease, Council could consider bringing proceedings for development without consent. And where development consent does not provide for a lease to be entered, Council and the relevant building owner could voluntarily enter into a leasing arrangement regarding the encroachment.

**Suggested amendments to policy**

Given the advice received, it is suggested that Council make the following amendments to the Road Airspace policy:

- Amend part 2 to:

This policy applies to property owners who want, in the future, wish to use adjacent road airspace for commercial benefit. This policy does not apply to existing encroachments in road reserve air space.

- Delete the definition of 'road air space'.

- Amend clause 5.6 to:

In the event that no Section 138 approval has been granted, Council may issue an order under Section 107 of the Roads Act to remove the structure. Such an order is not appealable and the structure is not otherwise lawfully encroaching on road air space, Council may seek the structure's removal from the road reserve.

- Delete part 7.

It is noted that the air space policy has no legal effect. In that context, the changes above are recommended to provide clarity to the community about Council's ability to seek payment for encroachments in the road airspace.

### Financial Implications

The fee schedule adopted by Council is included below. It is intended that regardless of the mechanism Council adopts to charge for road airspace encroachment, the fees will be charged at the same rate.

#### Footpath dining, Airspace usage and display of goods and chattels

Bangalow	\$246.00	1152.1	N	R
Per m2.				
Brunswick Heads	\$208.00	1152.3	N	R
Per m2. Brunswick Terrace, Fingal, Park and Mullumbimbi Streets square.				
Byron Bay – Precinct 1 & 2	\$560.00	1152.4	N	R
Per m2. Jonson Street from Lawson to Bay Street, Bay Street from Jonson Street to Middleton Street, Fletcher Street from Bay Lane to Bay Street, Lawson Street from railway line to Middleton Street, Byron Street from Jonson Street to Fletcher Street, Jonson Street from Marvell Street to Lawson Street, Fletcher Street from Byron Street to Bay Lane, Middleton Street from Lawson Street to Bay Street.				
Byron Bay – remaining properties	\$350.00	1152.4	N	R
Per m2.				
Mullumbimby	\$168.00	1152.5	N	R
Per m2.				
Remainder of Shire	\$168.00	1152.2	N	R
Per m2.				

### Statutory and Policy Compliance Implications

For the reasons above, Council cannot seek payments from land owners where a building already encroaches on the road reserve. Only future encroachments can be the subject of an approval under the *Roads Act 1993*.

**Report No. 13.17      Update on Resolution 17-184 - Brunswick Heads Holiday Parks.**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
 Mark Arnold, Director Corporate and Community Services  
**File No:** I2017/1261  
**Theme:** Ecology  
 Development and Approvals

**Summary:**

The purpose of this report is to provide Council with an update on the status of **Resolution 17-184 - Notice of Rescission Motion No. 9.1 Brunswick Heads Caravan Park (Resolution 17- 120).**

It is also to seek Council support for a way forward for the purposes of amending the Plans of Management as they apply to the Terrace Reserve and also for NSWCHPT to lodge an Approval to Operate with Council for the Terrace Reserve Holiday Park.

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**RECOMMENDATION:**

**That Council:**

- 1) **Notes the following Concept Parameters as shown in Attachment 1 (#E2017/86763) and detailed below for the purposes of amending the Plans of Management for Terrace Reserve for the purposes of public exhibition of the Crown Reserves Plan of Management:**
  - a) **Southern Cypress Pine Precinct is to be restricted to short-term camping sites with no permanent residents or cabins to be relocated to the area.**
  - b) **Camping practices in Southern Cypress Pine Precinct will observe and protect structural root zones of the Cypress Pines.**
  - c) **The Trust will negotiate to form a consolidated central permanent residents' precinct which will be made to comply with the 3m set back from top of bank to any structure as a minimum. The Trust will make endeavours to achieve 10m set back from top of bank to any structure wherever feasible.**
  - d) **Remaining permanent residents will be relocated to north western precinct.**
  - e) **With the exception of the central permanent resident's precinct addressed in item 1c, Terrace Reserve operational boundary will be established to achieve 7m set back from top of bank to any short-term camp sites and 10m set back from top of bank to any dwelling sites in providing a continuous foreshore walkway.**
- 2) **Supports NSWCHPT in seeking Ministerial approval to exhibit the proposed changes to the PoM for Terrace Reserve as per the parameters above.**
- 3)
  - a) **Impose a condition on any Approval to Operate issued by Council in respect of the applications for Terrace Reserve that the operation of the caravan park/camping ground and any building or work associated with its operation must comply with all applicable standards imposed by the Local Government (Manufacture Home Estates,**

**Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, and;**

- b) Where there is any non-compliance with the Local Government (Manufacture Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, NSWCHPT commit to doing all acts and things necessary to resolve the non-compliance issues as part of the development and works programme of the relevant Holiday Park in accordance with the timing schedule and staging plan known as SCHEDULE OF COMPLIANCE WORKS AND ACTIVITIES which will form part of the Approval to Operate.**
- 4) In order to enable the development and works program set out in the SCHEDULE OF COMPLIANCE WORKS AND ACTIVITIES as per 3b and included as a condition in any Approval to Operate, the Approval to Operate be issued for a period of three (3) years.**

**Attachments:**

- 1 Plan Terrace Reserve, E2017/86763 

## Report

Council at its Ordinary Meeting held on 20 April 2017, following consideration of Notice of Motion No. 9.3 - Brunswick Heads Caravan Parks submitted by Cr Cate Cooroy, resolved as follows:

**Notice of Motion No. 9.3      Brunswick Heads Caravan Parks**  
**File No:                                I2017/426**

**17-120 Resolved:**

1. That Council reiterate its non-negotiable position that any license approvals will be only granted to NSWCHPT if the following are ensured:
  - full and wide access along all of the foreshores by meeting or exceeding legal requirements for setbacks;
  - commit to removal of encroachments from the foreshore open spaces;
  - formalised improved access to the boat ramps long enjoyed by locals;
  - public use of lot 7005 in Massey Greene;
2. That due to the recognition of the historical and community significance of the Cypress Pines in the Terrace; and the commitment to the protection of the memorial Cypress Pines in the Terrace, there is to be no short term camping or permanent residency permitted in the southern end of Terrace Park.

Subsequent to this meeting, a rescission motion was lodged and put to Council by Cr Sarah Ndiaye at the Ordinary Meeting held 25 May 2017, where it resolved as follows:

**17-184 Resolved** that Council:

1. Notes the following Concept Plans for the purposes of the public exhibition of the Crown Reserve Plans of Management;
  - a) Revised Concept Plan for Ferry Reserve Holiday Park as shown at Attachment 1.
  - b) Revised Concept Plan for Massy Greene Holiday Parks as shown at Attachment 2.
2.
  - a) Supports NSWCHPT in seeking Ministerial approval to exhibit the proposed changes to the PoM for Ferry Reserve as per 1a hereof and it notes that it shows proposed road layout, formalised public access to the Boat Ramp and 10 meter setback from the Brunswick River.
  - b) Supports NSWCHPT in seeking Ministerial approval to exhibit the proposed changes to the PoM for Massy Green as per 1b hereof and notes that it shows proposed road layout, formalised public car parking, open public space in lot 7005 including a children's play area and public access to light craft ramp and 10 meter setback from the Brunswick River.
3.
  - a) Impose a condition on any Approval to Operate issued by Council in respect of the applications in 1a and 1b that the operation of the caravan park/camping ground and any building or work associated with its operation must comply with all applicable standards imposed by the Local Government (Manufacture Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, and;
  - b) where there is any non-compliance with the Local Government (Manufacture Home

Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005 NSWCHPT commit to doing all acts and things necessary to resolve the non-compliance issues as part of the development and works programme of the relevant Holiday Park in accordance with the timing schedule and staging plan known as SCHEDULE OF COMPLIANCE WORKS AND ACTIVITIES which will form part of the Approval to Operate.

4. In order to enable the development and works program set out in the SCHEDULE OF COMPLIANCE WORKS AND ACTIVITIES as per 3b and included as a condition in any Approval to Operate, the Approval to Operate be issued for a period of three (3) years.
5. Defer consideration of the Revised Concept Plan for Terrace Reserve Holiday Park until the June Ordinary meeting and schedule in early June a further workshop with representatives from the NSWCHPT Trust, Council, Long Term Park Residents and the Community to consider the two (2) Revised Concept Plan options presented to the Councillor Strategic Planning Workshop on 11 May 2017 and working together to negotiate a suitable park design that :-
  - a) achieves compliance with the Local Government (Manufacture Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, and
  - b) recognises the historical public significance of cypress pines area
  - b) provides a suitable setback of 10 meters from the Brunswick River to allow public access (includes the Trust continuing to negotiate with park residents to achieve the 10 meter setbacks adhered to in other areas of the Brunswick foreshore), and
  - d) provides a design which includes a vegetation plan of management which will at protect the foreshore and Cyprus Pines.

Since this time, discussions between Council, Councillors and the community with NSWCHPT have ensued. There have been site meetings, site walks, workshops and discussions with all relevant stakeholders. All submissions have been reviewed by the NSWCHPT and taken into consideration in finalising plans for each of the holiday parks.

### **Ferry Reserve and Massey Greene Parks**

With regard to points 1 - 4 of Resolution **17-184**, NSWCHPT have agreed to the terms of the resolution and plans and documentation previously provided satisfies Council's requirements. These are attachments to the report to council meeting 25 May 2017.

Link to Plans [http://byron.infocouncil.biz/Open/2017/05/OC\\_25052017\\_ATT\\_606.PDF](http://byron.infocouncil.biz/Open/2017/05/OC_25052017_ATT_606.PDF)

It is now the intention of NSWCHPT to lodge Approval to Operate applications with Council for both these holiday parks.

### **The Terrace Reserve Park**

With regard to point 5, NSWCHPT have made every endeavour to satisfy the community aspirations and the legal requirements of Council with finalising design layouts for the Terrace Reserve. To this aim an amended indicative site and precinct plan are attached (Attachment 1). Note these plans have been the subject of more recent consultation with local residents and the Progress Association.

NSWCHPT now seek Council support for these plans for the purposes of amending the Crown Reserves Plan of Management for The Terrace Reserve as per the Attachment and also for an Approval to Operate for this holiday park to be lodged with Council. Wording in the recommendation has been provided for this purpose. This recommendation put forward now for the

Terrace Reserve Park will ensure consistency applies to all three holiday parks in Brunswick Head with regard to legislative requirements for planning and caravan park regulation.

**Financial Implications**

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N/A

**Statutory and Policy Compliance Implications**

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Crown Lands Act 1989  
Local Government Act 1993

**Report No. 13.18**      **Byron Energy Action Tank**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Shannon Burt, Director Sustainable Environment and Economy  
**File No:**      I2017/1291  
5 **Theme:**      Ecology  
                 Planning Policy and Natural Environment

**Summary:**

10 The Mayor recently invited a number of leaders in the local / decentralised energy space to an Energy Action Tank.

15 The purpose of the Energy Action Tank was to look at what is needed to achieve a sustainable local decentralised energy system for Byron Shire, and to plot a course to a clear, concise and achievable roadmap to: **100% renewable, 100% community by 1 September 2019.**

20 The purpose of this report is to inform Council of the Energy Action Tank; and the outcomes from the meeting for Council.

---

**RECOMMENDATION:**

1. That Council note the report.
2. That Council receive a further report once the Council owned land has been assessed for potential to support renewables, and of the implications of this in terms of process, probity and finance, should this land be sought by others for this purpose.
3. That prior to the consideration of a Council report on these issues, that a Strategic Planning Workshop be conducted to enable more detailed discussion of the propositions articulated in the report.

**Report**

Background

5 Byron Shire at it Ordinary meeting on 23 March 2017, received a report on the status of Council's Low Carbon Target and resolved to:

17-086:

- 10 1. *That Council note the 2014/15 and 2015/16 greenhouse gas emission status;*
2. *That Council note the progress of completed actions from the Low Carbon Strategy.*
- 15 3. *That Council commits to achieving a 100% net Zero Emissions Target by 2025 in collaboration with Zero Emissions Byron (ZEB).*
4. *That, as such, Council congratulates the community for its efforts thus far to realise the employment, national leadership and sustainability benefits that come from the commitment to a zero emissions future*
- 20 5. *That Council commit itself to source 100% of its energy through renewable energy within 10 years.*
- 25 6. *That Council supports the goals of Zero Emission Byron for a net zero emissions Shire in the areas of building, energy, land use, transport and waste.*
7. *That, to support the Sustainability Team, a two day a week Emissions Reduction role be established to lead the project and liaise with ZEB.*
- 30 8. *That to support the realisation of this goal in these sectors, Council provide for both Council and the community:*
  - i. *Within Council's upcoming Waste Strategy, a waste emissions reduction plan provided*
  - ii. *Within Councils upcoming Transport Strategy, a transport emission reduction modelling report be provided*
  - 35 iii. *Within Council's upcoming Rural Land Use Strategy, a land use emission reduction modelling report be provided*
  - iv. *a more detailed 100% Renewable Energy Plan be commissioned and provided*
  - v. *a Building Emissions Reduction Plan be commissioned and provided*

40 In the same report to Council, it was revealed that over 50% of the 2015/16 Byron Shire baseline greenhouse gas emissions came from electricity consumed in the commercial, industrial and residential sectors. This data was collected from Council's 3 electricity retailers by Planet Footprint.

45 With this in mind, given point 5 in resolution 17-086, and the need to transition to renewable energy generation, current energy prices and concern over energy security, the Mayor recently invited a number of leaders in this local / decentralised energy space to an Energy Action Tank.

50 The purpose of the Energy Action Tank was to look at what is needed to achieve a sustainable local decentralised energy system for Byron Shire, and to plot a course to a clear, concise and achievable roadmap to: **100% renewable, 100% community, by 1 September 2019.**

55 In layman terms this target equates to the need to generate around 70 Megawatts of locally produced renewable energy for the local community by 2019. To support this 'on the ground', in excess of 50 hectares of land is required. The other key dependencies for the target being met being finance and grid connection.

A more detailed report 'Achieving 100% Renewable Energy for Byron Shire' commissioned by Byron Shire Council through Zero Emissions Byron is provided by the link below.

<https://drive.google.com/file/d/0B0JA8phXjo5ARWNRVGNxYTJPQUE/view>

- 5 The 2019 target date now being more ambitious to that in point 5 of Resolution 17-086 (which was 2025), has implications for Council as a landowner, service provider, approver/regulator.

#### Energy Action Tank

- 10 The Action Tank was held on 1 September 2017 with over 20 Action Tank attendees from the community, industry and government sectors. The groups and experts present, including:

- Clean Energy Finance Corporation (CEFC)
- 15 ➤ Community Owned Renewable Energy Mullumbimby (COREM)
- UNSW
- Enova
- ARENA
- NSW Renewable Energy Advocacy team, NSW GOVT
- 20 ➤ Essential Energy
- Hepburn Wind
- Byron Shire Council
- Simon Corbell Ex ACT Energy Minister
- Zero Emissions Byron
- 25 ➤ local investors

The meeting was convened by a facilitator, with round table discussions held on the following:

- renewable energy technologies their applicability to the local energy system, geography and
- 30 • physical attributes of the Byron Shire
- available sites and required land attributes – Council, Crown, State, Federal and Privately owned sites
- current relevant planning requirements, perform a gap analysis to what is required and plan a
- 35 • course forward
- finance options
- grid and network requirements, including retail components
- current proposals being developed
- partners and roles
- timeframes, and
- 40 • the path to move forward

The Action Tank considered three main questions and two other considerations.

1. how much land is required and is it available?
- 45 2. what amount of funding is required and is it identified?
3. what technology is available and can we use it?

The other considerations were the ability to use the existing grid and how best to ensure the energy created and shared is community owned.

50

Key outcomes

A key outcome and success of the Action Tank was the discussions had, and the results from the day.

The answers to the three questions and considerations raised became clearer and outcomes showed the aim to be most promising. Well in excess of the land required was identified, both potentially council and private land. The pledge of land from numerous private landholdings like Byron Eco Park (8 hectares), Brunswick Eco Village (8 hectares), North Byron Parklands (5-10 hectares), Star Seed (2 hectares), and other intentional community lot owners (<50 lots) to the land pool confirmed commitment from attendees to the target.

The amount of funding required was also identified, without a dependence of using council funds and the technology in terms of a solar farm was shown to be highly possible, with design and construction to be within the two year timeframe to be an industry standard.

Essential Energy indicated their support and the capacity for the excess energy to be easily catered for within the current grid capacity and models of community ownership were shared and ways forward were proposed.

Thus, all aspects were shown to be possible, subject to further consultation and detail.

The Action Plan

As a result of the meeting an Action Plan was developed for the remainder of 2017 to clarify exact details and models moving forward, including using two week and two month timeframes.

**Two Week Sprint Goals**

*First Two Week Sprint Goals (Weeks 1-2)*

- Establish Governance and Guiding Principles Group and complete work.
- Establish Technical Scoping group and convene first meeting to set out 2 month deadlines.
- Establish a land priority list, to be then overlaid with Essential Energy's assessments.

*Second Two Week Sprint Goals (Weeks 3-4)*

- A brainstorming session to flesh out the 'sweat equity' considerations.
- A follow up meeting with Essential Energy to digest and clarify how we can work together.
- Establish Investment Group (after completion of Governance and Guiding Principles Group work), to review global models for ROI of the land, review investment return models and options, develop Integrated Capital Models for investors and build 5-6 models.

*Third Two Week Sprint Goals (Weeks 5-6)*

- Establish a working group that focuses specifically on coordinating this large-scale solar roll out.

**Two Month Deadlines**

- KEY MILESTONE: LAND OPTIONS DETERMINED (Depending on technology chosen, land requirements may be less)
- KEY MILESTONE: ESTABLISH AND FINALISE INVESTMENT MODELS
- KEY MILESTONE – COMMUNITY INVESTMENT (Community Invitation for Investment – baseline investor level established)

Attendees from the day were invited to nominate for the above tasks / working groups. A further meeting of the working group nominees is to be scheduled at the end of two months. The second

Action Tank will focus on what needs to be done on behind the meter work to ensure all aspects of the renewable energy targets and goals are met (including solar targets and actions for commercial, residential and rental properties, energy efficiency targets and actions and community engagement.)

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Implications for Council

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Council as a landowner has been asked to consider what Council land and or buildings are available with capacity to support renewables. Several Council land holdings were discussed on the day including Valances Road. A number of private land holdings as mentioned earlier in the report have also been made available for solar farm / renewables.

15

The following matters however need to be scoped on each land parcel to determine quantum of suitable land available and investment feasibility (ROI):

20

- Landowner consent
- Size, physical constraints-flooding, slopes etc.
- Any identified uses contemplated by Council's adopted Financial Sustainability Plan
- Zoning and any approval/ regulatory constraints for renewables/solar farms
- Probity issues around the need to consider competing Council land uses through an open and transparent EOI/Tender process
- Potential impact on current processes already under way with respect to nominated Council-owned land parcels e.g. Lot 12, Bayshore Drive, Council Depot, Valances Road

25

The initial assessment of the land/building and development options available to support renewable energy projects on Council land has commenced. Following the Action Tank this work has been given an initial 2-3 week turnaround time. There will also be ongoing work for key staff in order to support the Action Plan to achieve the target date by 2019. While this work is currently not in the Operational Plan/Budget, staff appreciate that ZEB initiatives are a priority for this Council.

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Further, there are also wider implications for Council as a landowner, service provider, approver/regulator that will require further consideration prior to any formal commitment being made to housing solely or in part renewable energy projects on Council land or buildings.

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These considerations need to be contemplated in the context of Council's Financial Sustainability Plan, and the recently adopted Supporting Partnerships Policy. While acknowledging that Action Tank participants have volunteered their expertise to help to progress these initiatives there are none-the-less implicit staff resourcing implications and this may require other Council priorities to be wound back to facilitate the timely delivery of Action Tank deliverables. These potential implications can be best discussed and rationalised through an extended Strategic Planning Workshop (SPW) which could be held in early November when the Mayor returns from overseas. A further Council report can then be compiled following the SPW.

40

<http://www.byron.nsw.gov.au/financial-sustainability-plan>

45

<http://www.byron.nsw.gov.au/public-exhibition/2017/08/10/supporting-partnerships-policy>

**Financial Implications**

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Dependant on the options developed by the Action Tank working group.

**Statutory and Policy Compliance Implications**

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Environmental Planning and Assessment Act 1979  
Local Government Act 1993

**STAFF REPORTS - INFRASTRUCTURE SERVICES**

**Report No. 13.19      Byron Bay Pay Parking Time Limits Review**

**Directorate:** Infrastructure Services

**Report Author:** Joshua Winter, Civil Engineer

**File No:** I2017/1162

**Theme:** Community Infrastructure  
Local Roads and Drainage

**Summary:**

As part of the review of pay parking for Byron Bay, Council staff have investigated and reviewed the appropriateness of the time limits throughout the scheme area in Byron Bay. The first point for review was the accuracy of the pay parking time limit maps currently held by Council. It was found that the maps do provide an accurate representation of the time limits throughout Byron Bay. The only changes required are updating Tennyson Street to show the 4P zone north of Marvell Street, and changing the name on the map from Lawson Lane to Lateen Lane.

The second point for review was the appropriateness of the time limits throughout the town centre. There were a number of areas found that may benefit from an alteration to the time limit, as it may improve the functionality of the scheme and cause it to work as intended, by encouraging longer term visitors to stick to the fringes of the scheme to minimise the number of cars moving around the town centre. The goal of minimising the number of cars in the town centre was identified in the Byron Bay Town Centre Master Plan and adopted by Council.

The recommended changes are outlined in the report, including the reasoning that may support these changes being implemented.

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**RECOMMENDATION:**

1. **That Council endorse for consultation the proposal of the changes to the parking time limits in the Byron Bay pay parking area as outlined below;**
  - a) **Wordsworth Street – modify 2P zone to OP (no limit) zone.**
  - b) **Shirley Street – modify 4P zone to OP (no limit) zone.**
  - c) **Lawson Street North and South Car Parks – modify from OP (no limit) to 4P.**
  - d) **Somerset Street and Butler Street Reserve – modify to free parking zone.**
  - e) **Butler Street – modify 4P zone to OP (no limit) zone.**
  - f) **Byron Street – modify 2P zone to 1P zone.**
  - g) **Fletcher Street – modify eastern side from 4P to 2P.**
  - h) **Jonson Street – modify Carlyle to Kingsley zone from 1P to 2P.**
2. **That Council staff consult with the community regarding the changes to the time limits, and provide a report for Council endorsement at either the December 2017 or January 2018 meeting, with the preference for the December meeting.**
3. **That Council approve a budget of \$5,000 for community consultation regarding the changes to time limits, from the Pay Parking Reserve.**

**Attachments:**

- 1      Byron Bay Pay Parking Update July 2017, E2017/86475 

### Report

As part of the review of pay parking for Byron Bay, Council staff have investigated and reviewed the appropriateness of the time limits throughout the scheme area in Byron Bay. This commenced with a site inspection performed on the 1<sup>st</sup> of September 2017 to confirm the accurateness of the pay parking time limit maps currently held by Council. This inspection confirmed that there were only two omissions on the map (in Figure 1 below). These included;

- Lawson Lane is currently shown on the map that should be updated to Lateen Lane.
- Tennyson Street needs updating to show a 4P pay parking area north of Marvell Street.

### PAY PARKING TIME LIMITS



Figure 1. Pay parking time limit map updated as of July 2017.

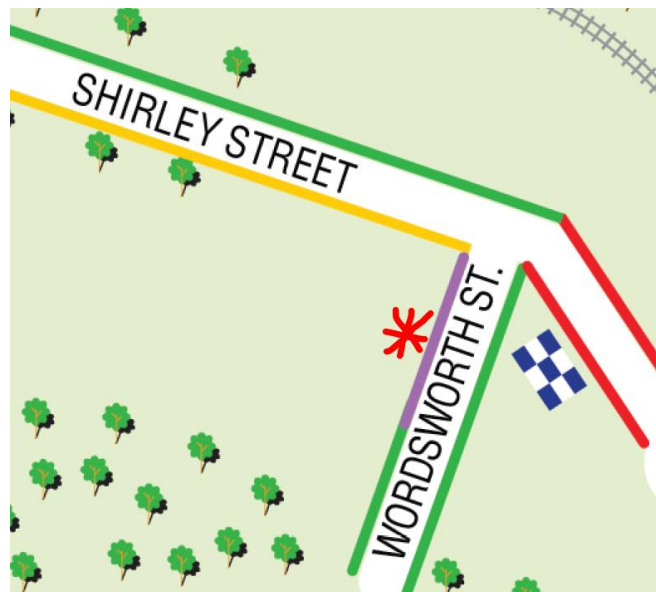
The review then proceeded to an assessment of the appropriateness of the time limits throughout the town centre. There were a number of areas identified that if the time limit was changed may cause the scheme area to function as intended by encouraging longer term visitors to stick to the fringes of the scheme to minimise the number of cars moving around the town centre. The goal of minimising the number of cars in the town centre was identified in the *Byron Bay Town Centre Master Plan* and adopted by Council. The areas identified included:-

### **Wordsworth Street**

- 10 *Issue Identified* – There is currently a 2P that was most likely implemented when the Byron Hospital was still in operation.

*Proposed Change* – Modify the 2P section to a OP section (no limit).

- 15 *Likely Result* – Encourage longer term parking outside the town centre and maintain consistency throughout Wordsworth Street.



### **Shirley Street**

- 20 *Issue Identified* – There is currently a 4P that was most likely implemented when the Byron Hospital was still in operation.

- 25 *Proposed Change* – Modify the 4P section to a OP section (no limit).

*Likely Result* – Encourage longer term parking outside the town centre and maintain consistency throughout the Shirley Street & Wordsworth Street area.

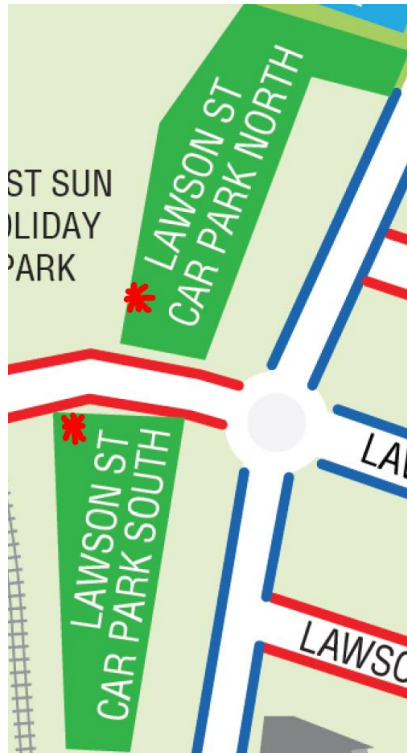


**Lawson Street North and South Car Parks**

*Issue Identified* – The Lawson Street north and south car parks currently have OP (no limit) for pay parking. This does not promote long term parking outside the town centre.

*Proposed Change* – Modify the OP (no limit) area to a 4P area.

*Likely Result* – Encourage long term parking outside the town centre.

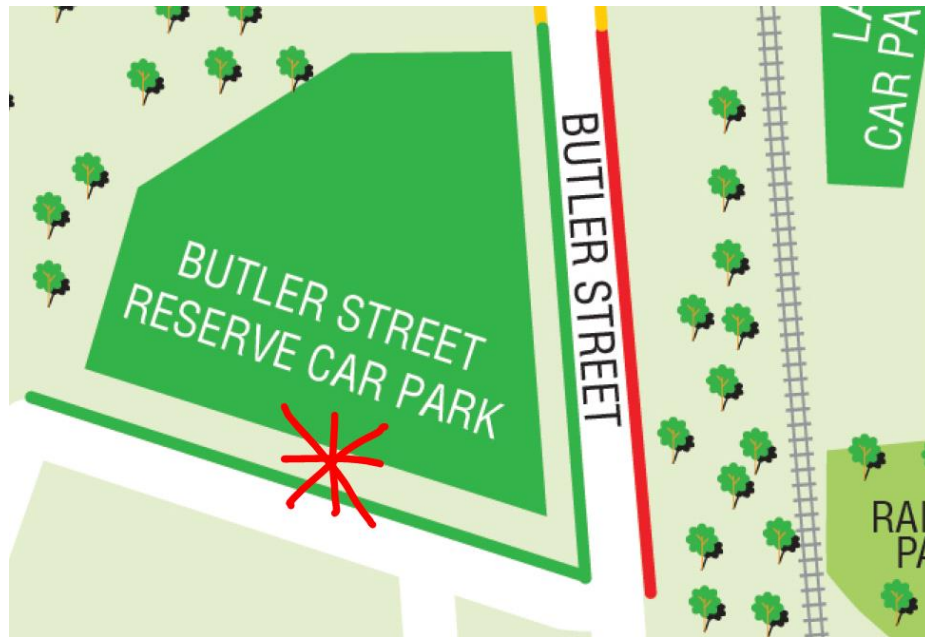


**Somerset Street & Butler Street Reserve**

*Issue Identified* – There is currently a OP pay parking area that is underutilised due to the distance from the town centre and the requirement to pay for parking.

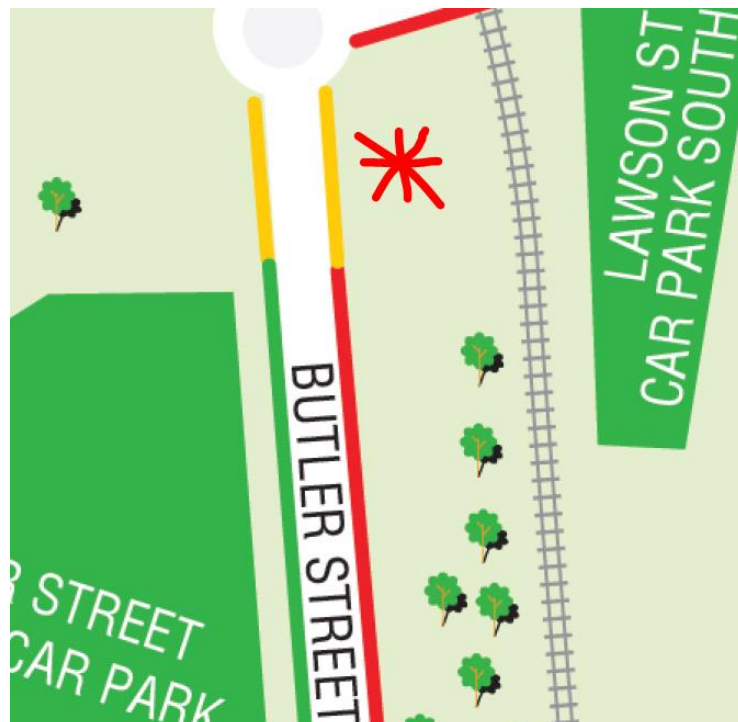
*Proposed Change* – Modify the OP area to a free parking area.

*Likely Result* – This would promote longer term parking from employees and visitors to outside the town centre and would increase safety in the reserve car park if it had higher usage.



**Butler Street**

- 5 *Issue Identified* – There is currently a 4P pay parking area that is not consistent with Butler Street and the Master Plan intention to promote long term parking outside the town centre.
- Proposed Change* – Modify the 4P area to a OP (no limit) area.
- 10 *Likely Result* – Encourage longer term parking outside the town centre and maintain consistency throughout Butler Street.



15 **Byron Street**

- Issue Identified* – Byron Street currently has a 2P zone from Jonson Street to Fletcher Street.
- 20 *Proposed Change* – Modify the 2P area to a 1P area.
- Likely Result* – Consistently encourage shorter term parking in the town centre.



**Fletcher Street**

- 5 *Issue Identified* – There is currently 4P parking along the full length of Fletcher Street on the eastern side. This does not promote longer term parking outside the town centre and provides an opportunity for employees to utilise this area for parking.
- 10 *Proposed Change* – Modify the 4P area to a 2P area.
- Likely Result* – Encourage long term parking outside the town centre.

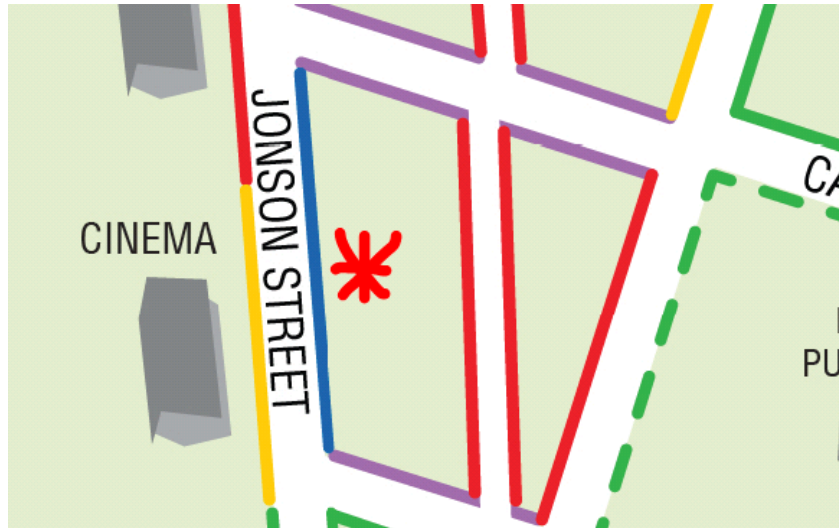


**Jonson Street**

*Issue Identified* – There is currently 1P parking zone on Jonson Street from Carlyle Street to Kingsley Street. This is not consistent with the gradual increase of time zones from the town centre.

*Proposed Change* – Modify the 1P area to a 2P area.

*Likely Result* – Gradually increase time zones as the distance from the town centre increases.

**Financial Implications**

It is estimated that \$5,000 will be required for community consultation and to provide a report to Council with the results of the community consultation.

Once the changes are endorsed by Council, it is estimated that it will cost approximately \$10,000 - \$20,000 to implement these changes, dependent on the number of changes endorsed. This will cover the cost of procuring time limit signs as well as removal of signage at Butler Street Reserve and modification of the major signage in the Lawson Street car parks (this may be able to be done using stickers). This will also cover the cost of labour to install/modify the signage.

**Statutory and Policy Compliance Implications**

Council will need to obtain RMS concurrence of any car parking time limit changes by a report to a Local Traffic Committee meeting prior to implementing any time limit changes.

**Report No. 13.20**      **Land Acquisition for Bayshore Drive Roundabout**  
**Directorate:**      Infrastructure Services  
**Report Author:**      Christopher Soulsby, Development Planning Officer S94 & S64  
**File No:**      I2017/1237  
5 **Theme:**      Community Infrastructure  
                 Local Roads and Drainage

**Summary:**

10 Council has prepared detailed design plans for the upgrading of the intersection of Ewingsdale Road (MR545) and Bayshore Drive. In order to construct the works in the most cost effective manner land acquisition will be required.

15 This report seeks a resolution from Council to acquire the land and to determine the amount of land to be acquired.

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**RECOMMENDATION:**

1. That Council acquire an area of land from Lot 6 DP 1222674 and Lot 5 DP 1222674 as shown on Option 2 in attachment 2 (E2017/85933) for the purposes of road widening.
2. That the acquisition be done by agreement.
- 3 That staff commence the process of compulsory acquisition for road widening in the event that the acquisition by agreement process fails.
- 3 That the General Manager be delegated to negotiate the price for the acquisition of the land.
- 3 That subject to the land owner's agreement Council takes an interest in Lot 5 DP 1222674 for the purposes of a drainage easement.

**Attachments:**

- 20 1 BAYSHORE RAB\_BOUNDARY OPT 1, E2017/85934   
2 BAYSHORE RAB\_BOUNDARY OPT 2, E2017/85933 

**Report**

The purpose of this report is to seek a resolution of Council to acquire the land required to construct the roundabout at the intersection of Bayshore Drive and Ewingsdale Road (MR545). A secondary purpose of this report is for Council to determine the area of land that it wishes to acquire to progress the project and to determine if Council wishes to establish a temporary detention basin to the south of Ewingsdale Road.

Infrastructure Services engaged a consultant engineering firm to undertake a concept design. This concept was presented to Councillors at the Strategic Planning Workshop of 24 March 2016. In the concept design phase it was identified that there was a Telstra communications pit that linked several major fibre optic cables. The preliminary cost estimate to relocate this pit was \$1,500,000. The consultants were instructed to redesign the roundabout (RAB) to keep it clear of the Telstra infrastructure.

A grant application based on the initial concept design was lodged with the Building Better Regions Fund. The grant application was based on the concept design as the final design had not as yet been completed by the closing date for grant applications. This grant application was successful and Council has been awarded \$2,640,254 of Federal Government funding towards the project. Council now needs finalise the funding agreement with the Federal Government and progress to tender for the construction of the RAB. The funding agreement would be based upon the amended design plans.

A determination on the acquisition is required to meet the funding agreement deadlines set by the Federal Government. The funding agreement needs to be entered into within 60 days of the notification letter from the Federal Government. The funding agreement needs to be completed by 3 October 2017 and then the project commenced within 12 weeks of the signed funding agreement. Proceeding to tender is considered commencement. The funding agreement includes project management plans inclusive of detailed milestones for expenditure of the grant funds. This agreement is currently being drafted. There is insufficient time to amend the funding agreement and modify the tender documents before the deadline if the acquisition issue is not dealt with at this meeting of Council.

The consultants have finished the amended design to have the RAB clear of the Telstra pit and this results in a requirement to acquire land to enable the construction. Staff have prepared two (2) options for acquisition and these are provided in the attachments.

**Option 1**

Requires the minimum acquisition of 1,088m<sup>2</sup> to build the stub to the south such that the developer would not be required to come back at a later date and reconstruct the central part of the RAB. This would end the construction based upon the structural engineering design of the concrete jointing plan. The area to the east of the stub is land that the developer of the West Byron DA 10.2017.201.1 was proposing to dedicate to Council for the purposes of landscaping and an entry statement to the subdivision. Council would use this area to locate an electrical substation and for landscaping treatment for the gateway project.

**Option 2**

This increases the acquisition area to 1,627m<sup>2</sup> to allow for construction of the full length of the stub to the south in concrete. The cost of these additional works would be offset against the cost of the land being dedicated. Option 2 is the preferred construction methodology for ease of construction, minimal disruption and cost efficiency for both parties.

**Detention Basins**

There are two (2) detention basins proposed on the northern side of Ewingsdale Road on either side of the Bayshore Drive. These are required for water quality and quantity control due to the

additional area of paved surface being constructed. Staff have been engaging with the landowner to seek their agreement to build a temporary detention basin south of Ewingsdale Road. This would allow the area currently occupied by the two basins to be incorporated into the landscaping plan. The temporary basin would eventually be relocated by the developer when the industrial zoned land is filled. Council would contribute to adding additional detention capacity in the developer's end of pipe basin. The area where the temporary basin is to be located would be covered by a drainage easement that could be extinguished when the land is filled. If the owner is not amenable to the temporary basin option then the current detailed design plans will remain unchanged.

**Valuation**

A valuer has been appointed to consider the value of the land required to service each of the design options. The valuation should be received in time to be provided as a late confidential attachment to this report. Council's valuer has been instructed to take the area of land that the developer would have had to use as their access road to the site into consideration when making the valuation.

**Acquisition**

Before Council can proceed to tender for the construction of the RAB a resolution to acquire the land is required.

Council may acquire the land by for the purposes of road widening under the terms of section 203 of the *Roads Act 1993*. This acquisition may be by agreement or by compulsory process.

**By Agreement**

If the acquisition proceeds by agreement staff would value to the land and then as a first option seek to have the land dedicated free of charge by the owner with the agreed value of the land to be offset against future developer contributions. Section 94 (1) of the *Environmental Planning and Assessment Act 1979* enables Council to require the payment of monetary contributions as a condition of development consent. Section 94 (6) requires that if a consent authority proposes to impose a condition requiring the payment of contributions, the consent authority must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority. This would allow the developer to dedicate the land free of charge and have the agreed value deducted from future developer contributions.

In the event that the owner is not amenable to offsetting the value of the land against future developer contributions then the General Manager should be delegated to negotiate an appropriate price based upon the valuation and to proceed with the purchase of the land. This will not have a long term detrimental impact upon Council as the cost of the land will be recouped via the developer contributions when the land is developed. Council would have to forward fund the acquisition from existing developer contributions.

**Compulsory Acquisition**

If the owner is not willing to sell the land by agreement then Council may compulsorily acquire the land under the terms of section 203 of the *Roads Act 1993* and Part 3 Division 2 of that act and the *Land Acquisition (Just Terms Compensation) Act 1991*. There is a proscriptive and time consuming process to complete the compulsory acquisition and this process should be commenced immediately and it should run in parallel with the negotiations to acquire the land by agreement to ensure that the project is not unduly delayed if the by agreement process fails.

**Financial Implications**

The acquisition of the land should be cost neutral to Council as it will be funded from developer contributions or the value of the land will be offset against future contributions. Subject to the final

grant funding agreement 50% of the cost of the land acquisition may be funded from the Federal Government grant.

**Statutory and Policy Compliance Implications**

- 5 The acquisition of land, inclusive of taking an interest in land for the purposes of the drainage easement is a function of Council that cannot be delegated. The resolution to acquire will enable staff to initiate and follow the specific processes set out in the *Roads Act 1993* and the *Land Acquisition (Just Terms Compensation) Act 1991* to acquire the land for road widening.

**Report No. 13.21**      **Durrumbul Causeway**  
**Directorate:**        Infrastructure Services  
**Report Author:**     Joshua Provis, Road and Bridge Engineer  
                                  Evan Elford, Team Leader Infrastructure Planning  
5   **File No:**             I2017/1290  
**Theme:**                Community Infrastructure  
                                  Local Roads and Drainage

**Summary:**

The Durrumbul 1 causeway at Main Arm suffered significant scour damage during the March 2017 flood event. Subsequently the causeway failed catastrophically under the weight of a fully loaded garbage truck in August 2017.

Council staff implemented a detour via Durrumbul 2 causeway and settlement road the day after the failure.

Council staff have investigated a range of construction options, prepared cost estimates for these options, analysed the pros and cons, and investigated project delivery methods, all of which are presented in this report.

This report seeks Council endorsement to complete the restoration projects without inviting tenders, through relying on the extenuating circumstances provision in section 55 (3) of the Local Government Act 1993.

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**RECOMMENDATION:**

1.    **That Council support the implementation of Option 2 – Replace Durrumbul1 Causeway**
  
2.    **That pursuant to Section 55 (3) of the Local Government Act 1993, there are extenuating circumstances which apply to the “Durrumbul 1 Causeway Reconstruction Works” such that a satisfactory result would not be achieved by inviting tenders for the following reasons:**
  - i)        **The level of service provided to the community by the Durrumbul 2 Causeway is not acceptable due to regular inundation.**
  - ii)       **It is considered more of a benefit to the community to complete the works without the tender process, than to risk not completing the proposed work as soon as possible and prior to the wet season.**
  
3.    **That Council delegate authority to the General Manager to negotiate agreement with suitable contractors to complete the reconstruction of the causeway.**
  
4.    **That approved NDRRA flood recovery funds on \$66,000 be allocated towards the reconstruction, and the balance to be funded from the renewal reserve.**

**Report**

Community Consultation:

- 5 A Letter was sent to all residents immediately after the collapse, notifying of the three (3) possible options Council were looking into, and asking for feedback.
- A high number of residents wrote back with feedback. And many called in to express their opinions directly.
- 10 At the request of some residents, Council staff met face to face on site to discuss the options and gain feedback.
- 15 The overwhelming consensus from the community is to reconstruct or repair the collapsed structure.
- It has been determined the current causeway being used as a detour (Durrumbul 2) is not a sustainable long term solution because:
- 20 1. It is far lower than Durrumbul 1 and floods too easily. Anecdotally, if Durrumbul 1 is under water for 2 days Durrumbul 2 is under water for 2 weeks. It cannot provide an acceptable level of service for the community. This has been strongly voiced by all residents.
2. The road approaches at Durrumbul 2 wash away very easily due to the low level of the crossing, which has a high maintenance cost.
- 25 3. A load limit restriction of 5t exists on this structure which is an impediment to businesses in the area.

Options:

Option	Positive	Negative
<b>1 - Repair Durrumbul 1</b>	<ul style="list-style-type: none"> <li>Fastest way to reopen the causeway</li> <li>Minimises risk of residents being cut-off by flood</li> </ul>	<ul style="list-style-type: none"> <li>Will add approximately 5 years life to the structure, after which it will require full replacement, or ongoing recurrent maintenance costs</li> </ul>
<b>2 – Replace Durrumbul 1</b>	<ul style="list-style-type: none"> <li>New structure will have 80-100yr design life</li> <li>Long term maintenance costs will be minimal</li> <li>This option represents best value for money for Council</li> </ul>	<ul style="list-style-type: none"> <li>Will take longer to complete construction (Design, procurement and then construct)</li> <li>If there is a significant rainfall event during construction, residents will be cut-off</li> </ul>
<b>3 – Demolish Durrumbul 1 causeway and formalise Durrumbul 2 causeway as the new route</b>	<ul style="list-style-type: none"> <li>Low capital cost</li> <li>Quick solution</li> </ul>	<ul style="list-style-type: none"> <li>Is seen as unacceptable by the community as would severely reduce the level of service provided</li> <li>Will attract high recurrent maintenance costs due to the prevalence of flooding at the road and causeway</li> <li>The causeway is currently load limited at 5t which is impeding access for local businesses and Council garbage truck</li> </ul>

Delivery Method:

There are 3 delivery methods available. Each will provide a different timeframe of delivery.

- 5 1. Open Tender: Design and Construct Contract
2. Open Tender Construct Only
3. Direct Engagement Design and Construct

10 The wet season commences late in the year so it is important construction is completed before this time. Otherwise the next available window could be as late as June 2018. This would be an unacceptable timeframe for the community. Thus it is suggested Council directly engage a contractor to design and construct the project.

15 To ensure value for money is achieved a range of quotes would be sought and compared with in house cost estimates and similar projects undertaken by Council.

**Financial Implications**

20 Peer reviewed concept estimates have been prepared for each of the options:

Option	Estimate
1	\$116,000 + GST
2	\$370,000 + GST
3	\$50,000 + GST

There is \$66,000 in natural disaster funding approved that can be allocated to the project.

25 It is proposed that the remainder of funding be allocated from the infrastructure renewal reserve, which is currently projecting a balance of \$600,000 at the end of financial year.

**Statutory and Policy Compliance Implications**

30 Council's procurement policy requires that works are managed in accordance with Section 55 of the Local Government Act and in accordance with the regulations.

The requirements for tendering are outlined below in an extract of Section 55 of the Local Government Act. (Note the exclusions in 55 (3))

Local Government Act 1993 No 30

Division 1 Tendering

55 What are the requirements for tendering?

40 (1) A council must invite tenders before entering into any of the following contracts:

- (a) a contract to carry out work that, by or under any Act, is directed or authorised to be carried out by the council,
- 45 (b) a contract to carry out work that, under some other contract, the council has undertaken to carry out for some other person or body,
- (c) a contract to perform a service or to provide facilities that, by or under any Act, is directed or authorised to be performed or provided by the council,
- (d) a contract to perform a service or to provide facilities that, under some other contract, the council has undertaken to perform or provide for some other body,
- 50 (e) a contract for the provision of goods or materials to the council (whether by sale, lease or otherwise),

- (f) a contract for the provision of services to the council (other than a contract for the provision of banking, borrowing or investment services),
- (g) a contract for the disposal of property of the council,
- (h) a contract requiring the payment of instalments by or to the council over a period of 2 or more years,
- (i) any other contract, or any contract of a class, prescribed by the regulations.

(2) Tenders are to be invited, and invitations to tender are to be made, by public notice and in accordance with any provisions prescribed by the regulations.

(2A) Nothing in this section prevents a council from tendering for any work, service or facility for which it has invited tenders.

(3) This section does **not** apply to the following contracts:

- a. subject to the regulations, a contract for the purchase of goods, materials or services specified by a person prescribed by the regulations made with another person so specified, during a period so specified and at a rate not exceeding the rate so specified
- b. a contract entered into by a council with the Crown (whether in right of the Commonwealth, New South Wales or any other State or a Territory), a Minister of the Crown or a statutory body representing the Crown
- c. a contract entered into by a council with another council
- d. a contract for the purchase or sale by a council of land
- e. a contract for the leasing or licensing of land by the council, other than the leasing or licensing of community land for a term exceeding 5 years to a body that is not a non-profit organisation (see section 46A)
- f. a contract for purchase or sale by a council at public auction
- g. a contract for the purchase of goods, materials or services specified by the State Contracts Control Board or the Department of Administrative Services of the Commonwealth, made with a person so specified, during a period so specified and at a rate not exceeding the rate so specified
- h. a contract for the employment of a person as an employee of the council
- i. **a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders** (*emphasis added*)
- j. contract for which, because of provisions made by or under another Act, a council is exempt from the requirement to invite a tender
- k. a contract made in a case of emergency
- l. a contract to enter into a public-private partnership
- m. if a council has entered into a public-private partnership—a contract entered into by the council for the purposes of carrying out a project under the public-private partnership (but only to the extent that the contract is part of the project that has been assessed or reviewed under Part 6 of Chapter 12)
- n. a contract involving an estimated expenditure or receipt of an amount of less than \$100,000 or such other amount as may be prescribed by the regulations (The regulations currently state \$150,000).

ICAC advise that in addition to the above requirements of Section 55 (3):

- the resolution must be passed in good faith and not merely an attempt to avoid the public tender requirement of Section 55 (1)
- poor planning should not be considered an adequate excuse for failing to adopt a competitive process (this issue is also discussed in the Department of Local Government Draft – Tendering Guidelines for NSW Local Government)

- the option of relying on clause 12 of the regulation to shorten a tender period from at least 21 days to a minimum of 7 days, on the basis there are exceptional circumstances rendering inappropriate the normal 21 day deadline, could also be considered by a Council before seeking to rely on the extenuating circumstances provision

5

Regarding the above advice, in this instance the extenuating circumstances provision still applies. A shortened tender period will not greatly improve the timeframe of project delivery. Further, applying policy procedures in relation to tender assessment and reporting provisions will not likely enable Council to determine the tender prior to Christmas 2017 such that sufficient time is provided to commence any of the repair works prior to the wet season.

10

This is certainly not a case of poor planning, all procedural matters and requirements have been applied to the collapsed causeway to date.

15

It is believed that for the “*Durrumbul 1 Causeway Reconstruction Works*”, there are currently extenuating circumstances which would result in unsatisfactory results for the community if the proposed project were subjected to the formal tender process.

20

Noting that the term ‘extenuating circumstances’ is not defined in the Local Government Act, the following points are considered relevant to the argument for extenuating circumstances:

- Durrumbul 2 Causeway at high risk of regular inundations, being at a much lower RL than Durrumbul 1
- Durrumbul 2 is load limited at 5 tonnes.
- There is a window of opportunity to effect some, if not all of the replacement works before the next wet season if a contractor can be engaged quickly
- The tender requirements of section 55 of the Act, the Regulations and Council's procedures policies will not afford an opportunity to commence construction works prior to 2018.
- It is highly likely that a shortened tender period will not provide sufficient time to follow tender and reporting procedures and maximise the time to effect the recommended construction works prior to 2018.
- The possible ramifications on final repair costs and community access restrictions that could occur in the event of inundation and or failure of Durrumbul 2 should not be underestimated.

25

30

35

The proposed “*Durrumbul 1 Causeway Reconstruction Works*” will require approvals from State Government Departments such as NSW Fisheries and Crown Lands. A REF process is required.

**REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES****Report No. 14.1      Report of the Finance Advisory Committee Meeting held on 17 August 2017**

**Directorate:** Corporate and Community Services  
**Report Author:** Mark Arnold, Director Corporate and Community Services  
**File No:** I2017/1230  
**Theme:** Corporate Management  
Financial Services

**Summary:**

This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 17 August 2017 for determination by Council.

**RECOMMENDATION:**

1. **That Council note the minutes of the Finance Advisory Committee Meeting held on 17 August 2017.**

2. **That Council adopt the following Committee Recommendation:**

**Report No. 4.1    2016/17 Financial Sustainability Plan - Update on the Action Implementation Plan as at 30 June 2017**

File No: I2017/966

**Committee Recommendation 4.1.1**

That the update report to 30 June 2017 on the 2016/2017 Financial Sustainability Plan Action Implementation Plan (E2017/68956) be received and noted.

3. **That Council adopt the following Committee Recommendation:**

**Report No. 4.2    Carryovers for Inclusion in the 2017/18 Budget**

File No: I2017/1082

**Committee Recommendation 4.2.1**

That Council note the works and services, and the respective funding shown in Attachment 1 (#E2017/77527) were carried over from the 2016/2017 financial year and adopted as budget allocation revotes for inclusion in the 2017/2018 Budget Estimates, by Council at its Ordinary meeting held on 24 August 2017.

4. **That Council adopt the following Committee Recommendation:**

**Report No. 4.3    Council Budget Review - 1 April 2017 to 30 June 2017**

File No: I2017/1084

**Committee Recommendation 4.3.1**

That Council note that it authorised the itemised budget variations as shown in Attachment 2 (#E2017/79490) which included the following results in the 30 June 2017 Quarterly Review of the 2016/2017 Budget:

General Fund - \$0 change in Unrestricted Cash Result

- a) General Fund - \$12,866,200 increase in reserves
- b) Water Fund - \$5,528,900 increase in reserves.
- c) Sewerage Fund - \$4,959,400 increase in reserves.

at its Ordinary meeting held on 24 August 2017.

**Attachments:**

- 5    1    Finance Advisory Committee 17 August 2017 Meeting Minutes, E2017/88089 

**Report**

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 17 August 2017 for determination by Council. The agenda for this meeting can be located on Council's website at:

[http://byron.infocouncil.biz/Open/2017/08/FAC\\_17082017\\_AGN\\_619\\_AT.PDF](http://byron.infocouncil.biz/Open/2017/08/FAC_17082017_AGN_619_AT.PDF)

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

Councillors were advised via a Memorandum (#E2017/82449, dated 21 August 2017) of the Committees recommendations in relation to:

- Report No. 4.2 Carryovers for Inclusion in the 2017/18 Budget
- Report No. 4.3 Council Budget Review - 1 April 2017 to 30 June 2017

These Committee Recommendations have been amended to note that the Recommendations were adopted by Council at its Ordinary meeting held on 24 August 2017.

**Financial Implications**

As per the Reports listed within the Finance Advisory Committee Meeting of 17 August 2017.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Finance Advisory Committee Meeting of 17 August 2017.

**Report No. 14.2      Report of the Audit, Risk and Improvement Committee Meeting held on 17 August 2017****Directorate:** Corporate and Community Services**Report Author:** Jessica Orr, Project Manager - Special Projects**File No:** I2017/1275**Theme:** Corporate Management  
Governance Services**Summary:**

This report provides the minutes and recommendations of the Audit, Risk and Improvement Committee Meeting held on 17 August 2017 for determination by Council.

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**RECOMMENDATION:**

1. That Council note the minutes of the Audit, Risk and Improvement Committee Meeting held on 17 August 2017.

2. That Council adopt the following Committee Recommendation(s):

**Report No. 4.1 Internal audit service provider introduction**  
File No: I2017/1037

**Committee Recommendation 4.1.1**

That the Audit, Risk and Improvement Committee note the introductory presentation and welcome O'Connor Marsden and Associates as Council's internal audit, risk and improvement services provider for the four year contract period.

3. That Council adopt the following Committee Recommendation(s):

**Report No. 4.2 Internal Audit, Risk and Improvement Committee - overview**  
File No: I2017/1038

**Committee Recommendation 4.2.1**

That the Audit, Risk and Improvement Committee:

1. Appoint Michael Georghiou as the Committee's Chairperson
2.
  - a) Note the Audit, Risk and Improvement Committee's constitution
  - b) Request Committee community members to complete acknowledgment of the Code of Conduct.

4. That Council adopt the following Committee Recommendation(s):

**Report No. 4.3 Summary of Internal Audit Program 2013 - 2017**  
File No: I2017/1083

**Committee Recommendation 4.3.1**

That the Audit, Risk and Improvement Committee:

1. Note the report from outgoing auditor Grant Thornton.

**2. Consider the report conclusions in developing the audit, risk and improvement delivery program for 2017 – 2021.**

**5. That Council adopt the following Committee Recommendation(s):**

**Report No. 4.4 2017 Interim Audit Management Letter**

File No: I2017/1087

**Committee Recommendation 4.4.1**

**That the comments provided by Management in response to matters raised in the 2017 Interim Audit Management Letter be noted by Council.**

**6. That Council adopt the following Committee Recommendation(s):**

**Report No. 4.5 Costings associated with Land and Environment Court proceedings  
Byron Shire Council ats Butler Street Community Network Inc.**

File No: I2017/1091

**Committee Recommendation 4.5.1**

**That this report be noted.**

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**Attachments:**

1 Audit, Risk and Improvement Committee Minutes 17 August 2017, E2017/87006 

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**Report**

5 The attachment to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 17 August 2017 for determination by Council. The agenda for this meeting can be located on Council's website at:

[http://byron.infocouncil.biz/Open/2017/08/ARIC\\_17082017\\_MIN\\_623.PDF](http://byron.infocouncil.biz/Open/2017/08/ARIC_17082017_MIN_623.PDF)

**Financial Implications**

10 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 17 August 2017.

**Statutory and Policy Compliance Implications**

15 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 17 August 2017.

**REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 14.3      Report of the Biodiversity and Sustainability Panel Meeting held on 31 August 2017**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
**File No:** I2017/1263  
**Theme:** Ecology  
 Planning Policy and Natural Environment

**Summary:**

This report presents the minutes of the Biodiversity and Sustainability Panel Meeting of 31 August 2017 for determination by Council.

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**RECOMMENDATION:**

1.    **That Council note the minutes of the Biodiversity and Sustainability Panel Meeting held on 31 August 2017.**

2.    **That Council adopt the following Committee Recommendation:**


**Procedural Motion    Resignation of Kate Smillie**

**Committee Recommendation**

**That the resignation from Kate Smillie be accepted and a letter of appreciation be sent to Kate thanking her for her knowledge and commitment to the Biodiversity and Sustainability Panel and Advisory Committee, over the past seven years.**

3.    **That the Biodiversity and Sustainability Panel Constitution be amended to reflect the change from seven to six community representatives.**

**Attachments:**

1      Minutes 31 08 2017 Biodiversity and Sustainability Panel, E2017/88091 

**Report**

The attachment to this report provides the minutes of the Biodiversity and Sustainability Panel Meeting of 31 August 2017 for determination by Council. The agenda for this meeting can be

located on Council's website at  
[http://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2017/08/BIO\\_31082017\\_AGN\\_635\\_A T.PDF](http://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2017/08/BIO_31082017_AGN_635_A T.PDF) :

The Panel's recommendations are supported by management and are provided in the attachment to this report.

In regards to the resignation of a community representative on the Panel, management support the amendment of the constitution at 'Point 5, Membership' to reflect the change from seven (7) to six (6) community representatives.

**Financial Implications**

As per the Reports listed within the Biodiversity and Sustainability Panel Meeting of 31 August 2017.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Biodiversity and Sustainability Panel Meeting of 31 August 2017.

**REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES****Report No. 14.4      Report of the Transport and Infrastructure Advisory Committee  
Meeting held on 17 August 2017**

**Directorate:** Infrastructure Services  
**Report Author:** Susan Sulcs, Administration Officer  
**File No:** I2017/1137  
**Theme:** Community Infrastructure  
Local Roads and Drainage

**Summary:**

The attachment to this report provides the minutes of the Transport and Infrastructure Advisory Committee Meeting of 17 August 2017 for determination by Council.

**RECOMMENDATION:**

1. That Council note the minutes of the Transport and Infrastructure Advisory Committee Meeting held on 17 August 2017.
2. That Council adopt the following Committee Recommendation(s):

**Report No. 4.1    Update on Council's Pedestrian Access and Mobility Plan (PAMP) and  
Bike Strategy and Action Plan (Bike Plan)**  
File No: I2017/1003

**Committee Recommendation 4.1.1**

1. That Council:
  - a) note the report on the update on the progress of Council's Pedestrian Access and Mobility Plan (PAMP) and Bike Strategy and Action Plan (Bike Plan);
  - b) reconsider funding streams (including section 94 revenue streams) so that Council can complete the PAMP and Bike Plan in the next 6 months; and
  - c) develop a consultants brief for the PAMP and Bike Plan
2. That a link to Council's Capital Works Program, PAMP and Bike Plan be provided to the Transport and Infrastructure Advisory Committee members.

3. That Council adopt the following Committee Recommendation(s):

**Report No. 4.2    Bridge - Asset and Risk Management**  
File No: I2017/1006

**Committee Recommendation 4.2.1**

1. That Council:
  - a) note the report on bridge asset and risk management; and

- b) support the ongoing expenditure in the draft Long Term Financial Plan to address the high risk Bridge Capital Works Program.
- 2. That the Strategic Asset Management Plan (SAMP) be provided to the Transport and Infrastructure Advisory Committee.
- 4. That Council adopt the following Committee Recommendation(s):

**Report No. 4.3 Broken Head Road Cycleway - Browning Street to Clifford Street**  
File No: I2017/1039

**Committee Recommendation 4.3.1**

**1. That Council:**

- a) note the report on the Broken Head Road Cycleway – Browning Street to Clifford Street;
- b) allocate the carried over 2016/17 budget for Broken Head Road Shared Cycleway to procure a report from a suitably qualified person to:
  - i) preview existing shared path and cycleways on Broken Head Road and Bangalow Road, between Clifford Street and Browning Street, Byron Bay;
  - ii) preview existing infrastructure against current standards and advise where upgrades may be required as part of the project;
  - iii) provide options including indicative costings which meet the Roads and Maritime Services (RMS) warrants and would likely receive RMS approval for filling the missing links along the shared path between Clifford Street and Browning Street, Byron Bay;
  - iv) identify which sections may be eligible for grant funding under the RMS Active Transport Grants Program; and
  - v) undertake critical analysis for any proposed works including swept path analysis and considerations for emergency services

- 2. That the Consultants report be reported to an Extraordinary Meeting of the Transport and Infrastructure Advisory Committee.

**5 Attachments:**

- 1 Minutes 17 08 2017 Transport and Infrastructure Advisory Committee, E2017/88094 

**Report**

5 The attachment to this report provides the minutes of the Transport and Infrastructure Advisory Committee Meeting of 17 August 2017 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 Transport and Infrastructure Advisory Committee Meeting of 17 August 2017.

**Statutory and Policy Compliance Implications**

20 As per the Reports listed within the Transport and Infrastructure Advisory Committee Meeting of 17 August 2017.

**QUESTIONS WITH NOTICE**

**Question with Notice No. 15.1 Helicopter Scenic Flights**  
**File No:** I2017/1093

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At Council's Ordinary Meeting held on 3 August 2017, Virginie Hemmery asked the following question which was taken on notice:

Can Council update the community on actions being undertaken to restrict the operation of helicopter scenic flights at Elements of Byron Resort and what compliance and prosecution action Council is pursuing regarding this unauthorised use?

**Response Director Sustainable Environment and Economy:****BACKGROUND****Premises**

The premises being used for the landing of helicopters include part Lots 1, 2, 11 and 12 in DP243218. The two helicopter landing sites are located on separate lots outside the Elements Resort complex.

**ATTACHMENT 1. A helicopter landing procedure provided by Elements with a diagram depicting the approximate location of the two helicopter landing sites.**

**Zoning**

The premises are zoned SP3 Tourist under the Byron Local Environmental Plan 2014 and 7 (f1) (Coastal Land Zone) under the Byron Local Environmental Plan 1988.

**Complaints**

Byron Shire Council has received 5 formal complaints in regards to helicopters landing at Elements.

**Response**

On 13 January 2017 Council wrote to Elements requesting the following:

*Council requests that you obtain independent planning advice in the matter and advise Council in writing within 28 days of the date of this letter as to how you intend to proceed with the matter.*

On 13 January 2017 Council also reported the issue to the Australian Civil Aviation Authority.

On 8 February 2017 Elements wrote to Council arguing that a helipad has not been constructed and therefore development consent is not required to land helicopters at the premises. Elements said that additional planning advice would be forthcoming to support their argument.

Elements again wrote to Council on 4 May 2017 claiming that the helicopter landing activities are ancillary to the resort. Elements also claimed that only 5 helicopter movements had taken place in the previous 15 months.

## CURRENT SITUATION

Under the Byron Local Environmental Plan 2014 a helipad is defined as:

**Helipad** means a place not open to the public used for the taking off and landing of helicopters.

A helipad is permitted with development consent on land zoned SP3 Tourist under the Byron Local Environmental Plan 2014.

Under the Byron Local Environmental Plan 1988 a heliport is defined as:

**Heliport** means an area or place which is used for the taking off and landing of helicopters that are available for use by the public and includes terminal buildings and facilities for the parking, servicing and repair of helicopters.

A heliport is prohibited development on land zoned 7 (f1) (Coastal Land Zone) under the Byron Local Environmental Plan 1988.

In correspondence received from Elements on 4 May 2017 the following key arguments were made.

- A. *The site does not contain a “helipad” and the use of the site is clearly not a “heliport” as defined by BLEP14 as there is no public use of the site in this regard.*
- B. *The transport of guests of the resort, on occasion, by helicopter, is ancillary to the resort use. The area utilised is the general open area of the site and there is not a specific helipad provided. Further, the use could not be characterised as a separate and independent use of the site.*

In response to argument A above it is Council's opinion that the landing of helicopters on the premises only has to be a “place” and the presence of physical structures or buildings are not required to meet the definition of a helipad under the Byron LEP 2014.

Furthermore, the place for the landing of helicopters has been specifically dedicated by Elements in their helicopter landing procedure. Council is of the view that the landing of helicopters at Elements is defined as a helipad and requires development consent.

In response to point B above the most relevant Land and Environment Court case law relating to a helipad is the matter of Christopher Peter Walker v Warringah Council (1998) NSWLEC 276 (5 November 1998). In this case the applicant (Mr Walker) successfully argued that the use of a helicopter pad on his premises for private use was ancillary to his dwelling house.

However, the circumstances in this matter were significantly different whereby the court was asked to determine whether the use was ancillary to the dwelling house and whether it was permissible in the zone with development consent. It should be noted that if a development, activity, or use is found to be ancillary, any such development, activity, or use is not exempt from the requirement to obtain development consent.

The circumstances in the Walker case were:

- The applicant and his wife are the registered proprietors of and reside at the subject property,

301 McCarrs Creek Road, Terrey Hills.

- The applicant intends to use a small two-seater helicopter for personal private transportation between his dwelling house on the subject land and various places at which he carries on business.
- The helicopter will only be used as a private means of transport for the applicant and his wife to and from work and occasionally on private social occasions.


In regards to Elements the circumstances are:

- The helipads are being used by persons that do not own and reside on the premises.
- The helipads are commercial in nature.
- The helipads are located on land that is separate from the resort complex.

Whether the helipads at Elements are ancillary development or not, it is Council's view that they require development consent.

On Monday 4 September 2017 Council wrote to Elements requiring the lodgement of a development application for a helipad within 28 days. If no such application is forthcoming Council will consider its enforcement options in accordance with Council's Enforcement Policy, which may include but is not limited to the issue of notices, orders or commencement of legal proceedings.

**Attachments:**

- 1 Helicopter landing procedure for Elements, E2017/86534 

**Question with Notice No. 15.2    Substantial Dwelling Constructions without Council Consent**  
**File No:** I2017/1094

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At Council's Ordinary Meeting held on 3 August 2017, John Anderson asked the following question which was taken on notice:

In the situation where a substantial dwelling is constructed without Council consent and where there are subsequent complaints from neighbours;

1. What criteria do council staff apply in order to determine their initial response, in terms of formal stop work orders, letters of demand, or whatever other avenues are available to them? Please describe options.
2. What criteria do council staff apply as to whether demolition or decommissioning is ordered, or whether a DA must be lodged for occupation of the dwelling, or whether such DA must be notifiable i.e. publicly advertised? Please describe options.
3. Have there been any cases in the last five years where it has been the elected council, possibly in confidential session, which has made the relevant decisions? Please describe instances or where councillors have at least been informed.

**Response Director Sustainable Environment and Economy:**

1. Council will record and assess every report alleging unauthorised activity. Council will respond to every such report unless the person raising the matter has indicated they do not wish to receive a response about council's handling of the matter, or the report is anonymous. (See point 2 for enforcement options available).
  - a. Generally speaking, Council's objectives when dealing with reports alleging unauthorised activity are to:
    - i. maintain the collective good and welfare of the community
    - ii. prevent or minimise harm to health, welfare, safety, property or the environment
    - iii. consider the broader public interest having regard to council's priorities and any resource limitations
    - iv. consider the report fairly and impartially. Not all reports will need to be investigated. A preliminary assessment of all matters will be made to determine the priority for a response, and whether investigation or other action is required. An investigation of alleged unauthorised activity may take a significant amount of time to complete, particularly where the issues are complex.
    - v. If council decides to investigate, staff will give the person who reported the alleged unauthorised activity regular feedback on the progress of the investigation, and any reasons for delay. This does not mean that the individual can expect to be given details about every aspect of the investigation or information that would compromise the integrity of the investigation. Decisions about what action should be taken by council are made at the council's discretion. This means the objective is that reports alleging unauthorised activity will be resolved to the satisfaction of council, not necessarily the person raising the matter. Council will generally try to resolve matters as quickly and informally as possible so as to avoid the need to take formal action. Council staff will endeavour to manage the expectations of people who report alleged unauthorised activity, and in particular explain that in the absence of sufficient evidence of unauthorised activity, council may be unable to take further action. They will also explain that council does not have unlimited

resources and powers to deal with reports alleging unauthorised activity. If council is unable to fully investigate or take action on a matter because it is restricted by any legal or resource limitations this will be explained to the individual. While there are certain statutory requirements that must be met in relation to notices and orders council staff will ensure that all explanatory communications are made in plain English and explain any technical language the law requires to be used.

2. Council has discretion in deciding whether to take enforcement action on the basis of the available evidence and the circumstances of the individual case.
  - a. At the conclusion of an investigation, Council may have one or more of the following options:
    - i. Take no action;
    - ii. Counsel the alleged offender;
    - iii. Issue an electronic caution;
    - iv. Issue a PIN;
    - v. Issues Notices and Orders;
    - vi. Commence criminal proceedings;
    - vii. Commence civil proceedings;
    - viii. Report broader matters to the elected council.
  - b. When deciding whether to take enforcement action, Council will consider the circumstances of the case. These include:
    - i. Has Council created an estoppel situation?
    - ii. Is the breach a technical breach only?
    - iii. When was the unauthorised activity carried out and for how long?
    - iv. How has the unauthorised activity affected the natural or built environment and the health, safety and amenity of the area?
    - v. Would consent have been given if it had been sought?
    - vi. Can the breach be easily remedied?
    - vii. Does the person in breach show contrition?
    - viii. Are there any particular circumstances of hardship affecting the complainant or the person the subject of the CRM?
    - ix. Has the person the subject of the CRM received a previous warning or other non-coercive approach or has formal legal action been taken?
    - x. Would an educative approach be more appropriate than a coercive approach?
    - xi. What are the costs and benefits of taking formal enforcement action as opposed to taking informal or no action?
    - xii. What are the chances of success if the proposed enforcement action was challenged in court?
    - xiii. Is there a draft planning instrument on exhibition that would make the unauthorised use legal?
    - xiv. What action would be reasonable and proportionate in this case?
    - xv. What would be in the public interest?
  - c. Staff consider the requirements under Chapter 17 DCP 2010 and or Part A14 DCP 2014 as to whether or not notification of any DA is required.
3. Yes, one in confidential session – Minutes from 25 May 2017 ordinary meeting below:

**Report No. 16.1 CONFIDENTIAL - Section 82B Review where development application not accepted - Prelodgement No 111.2017.55.1 - Detached Dual Occupancy -164 Orana Road, Ocean Shores  
File No: I2017/553**

**17-207 Resolved:**

1. That Council confirm its decision to not accept the development application under Section 82 B of the Environmental Planning and Assessment Act 1979.
2. That staff be requested to undertake a formal investigation into the vegetation clearing that has occurred on 164 Orana Road, Ocean Shores.
3. That the applicant be advised accordingly.

**Question with Notice No. 15.3**      **Draft Koala Plan of Management**  
**File No:**                                      **I2017/1095**

At Council's Ordinary Meeting held on 3 August 2017, Matthew O'Reilly asked the following question which was taken on notice:

Will Council consider re-exhibiting the Byron Koala Plan of Management?

**Response Director Sustainable Environment and Economy:**

A report to the Ordinary Meeting Council 23 February 2017 provided an update on the status of the Byron Coast Koala Plan of Management (KPOM).

[http://byron.infocouncil.biz/Open/2017/02/OC\\_23022017\\_AGN\\_603.PDF](http://byron.infocouncil.biz/Open/2017/02/OC_23022017_AGN_603.PDF)

In essence, the KPOM does not meet the requirements of the current State Environmental Planning Policy No 44 Koala Habitat Protection i.e. relate to core habitat because core habitat is not mapped independently within the Shire.

In advice to Council, the Department of Planning and Environment (DPE) suggested the following options for the KPOM:

1. Undertaking additional mapping to ascertain 'core habitat' then seek approval of a KPOM for core habitat - however this is problematic and also extremely costly and may not achieve the result for koala habitat protection; or
2. Council wait the outcomes of the current SEPP 44 review before than reviewing and re-submitting for approval the KPOM as a Plan (not a strategy) as the review is likely to resolve the above areas of concern as raised by DPE.

Based on staff current understanding of the SEPP 44 review and in discussion with DPE option 2 is staff's position.

As such once the SEPP 44 review is completed; the Byron Coast KPOM will be reviewed, and if required exhibited and then submitted for final approval to DPE. A definitive time on this is not possible given the dependency on the State Government for this to occur.

**Question with Notice No. 15.4      Application of Planning Law**  
**File No:                                      I2017/1096**

At Council's Ordinary Meeting held on 3 August 2017, Tom Tabart asked the following question which was taken on notice:

Given the desirability of consistency in Councils application of planning law, why has a stop work notice not been issued in relation to 139 Newes Road, Coorabell, Paradise 1, over illegal dwellings and road works close to Wilson's Creek, whereas 541 Friday Hut Road did receive a stop work notice?

**Response Director Sustainable Environment and Economy:**

1. 139 Newes Road was inspected by officers on 3 February 2017.
2. Owner of 139 Newes Road is in the process of complying with Council requirements (particularly in relation to survey plan - not within 40m of high water mark; and Rural Fire Service access).
3. 139 Newes Road had completed building – no ongoing works - so Stop Work Order not relevant.
4. 541 Friday Hut Road has been inspected by officers three times this year, and monitored in between.
5. 541 Friday Hut Road had building works in process so Stop Work order applied.
6. For further information, please refer to Council's Enforcement Policy below:  
<http://www.byron.nsw.gov.au/publications/enforcement-policy>

**Question with Notice No. 15.5**      **Waste Management**  
**File No:**                                      **I2017/1163**

At Council's Ordinary Meeting held on 24 August 2017, Tom Tabart asked the following question which was taken on notice:

I have been informed by staff that we currently have contracts to accept our waste with two tips in QLD and that they utilise Ipswich transport contractor JR Stephens to transport our waste to the tip of our choice. On the other hand in an article in the Northern Star on 2 February 2017 a staff member has stated that “council chose a garbage transport company via an open tender process and the contract winner had an existing service with a Toowoomba landfill facility”.

Which version is correct? Has the Toowoomba transport contract been terminated? Is the trucker the same company in both scenarios? Do we get to choose what tip we patronise? And if so, what is the criteria utilised to choose a tip?

### Response Director Infrastructure Services:

Council has a current contract with Veolia Environmental Services for provision of transport and disposal of waste from the Byron Resource Recovery Centre (BRRC) which was the company referred to in the Northern Star article. This contract resulted from an open tender process and commenced on 21 September 2013. The term of the contract is 5 years with the option to extend for 2 additional 12 month periods. Council does not hold any contract with JR Stephens – they subcontract to Veolia for the transport component of the entire transport and disposal contract.

Council does not get to choose the facility for disposal, rather, any change in the nominated disposal site occurs via contract variation and which must fall within the general scope of the contract specification. The disposal sites nominated in the original tender proposal were the Veolia owned and operated Wattle Glen facility for inert/bulky waste and the Veolia/JJRichards & Sons co-owned and operated TiTree bioreactor facility for putrescible waste, both in Ipswich. The Wattle Glen facility was closed by Veolia in December 2015 due to it reaching capacity and they diverted Council's inert/bulky waste component to an alternate Cleanaway operated landfill facility in Ipswich.

Following a Staff site visit to the Ti Tree Bioreactor and discussion with Veolia, Council Staff begun a trial approximately 6-8 weeks ago that involves sending all waste received at the BRRC to the TiTree Bioreactor. This is being conducted with the objective of improved operational efficiencies and environmental outcomes due to reduced truck movements resulting from better compaction and loading of waste into larger 100 cubic meter walking floor haulage vehicles.