

NOTICE OF MEETING



BIODIVERSITY AND SUSTAINABILITY PANEL MEETING

A Biodiversity and Sustainability Panel Meeting of Byron Shire Council will be held as follows:

Venue	Conference Room, Station Street, Mullumbimby
Date	Thursday, 12 October 2017
Time	9.00am

A handwritten signature in black ink, appearing to be 'S Burt'.

Shannon Burt
Director Sustainable Environment and Economy

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL
BIODIVERSITY AND SUSTAINABILITY PANEL MEETING

BUSINESS OF MEETING

- 1. APOLOGIES**
- 2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 3. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
 - 3.1 Biodiversity and Sustainability Panel Meeting held on 31 August 2017

4. STAFF REPORTS

Sustainable Environment and Economy

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 4.1 Submissions Report on the Draft Byron Shire Flying-fox Camp Management Plan

5 **Directorate:** Sustainable Environment and Economy
Report Author: Clare Manning, Natural Environment Projects and Policy Officer
File No: I2017/1343
10 **Theme:** Ecology
Planning Policy and Natural Environment

Summary:

15 This report presents the public exhibition outcomes of the draft Byron Shire Flying-fox Camp Management Plan (Plan). Specifically it is proposed to adopt the Plan with changes to minimise the impacts of flying-foxes to the community, while ensuring long-term conservation of flying-foxes and their habitat within Byron Shire. Under a Council adopted Plan Council is eligible to take advantage of the Flying-foxes Grants Program that has been established to assist councils to manage flying-fox camps in their area, consistent with the Office of Environment and Heritage (OEH) Flying-Fox Camp Management Policy 2015 (Policy).

20 The Plan is consistent with the OEH Camp Management Plan Template and Policy to facilitate licensing of camp management actions over the next five years. The Plan is consistent with the Biodiversity Conservation Strategy 2004 (currently under review) and Operational Plan 2017-18.

25 It is intended that the information in this report be reported to the next available council meeting.

RECOMMENDATION:

That the Panel note this report on the draft Byron Shire Flying-fox Camp Management Plan and that it will be reported to the next available council meeting.

30 **Attachments:**

- 1 Byron Shire Flying-fox Camp Mgt Plan Version 5, E2017/93262 
- 2 Confidential - OEH Office Environment and Heritage Response Submission - Byron Bay LGA Flying-fox Camp Management Plan Signed D Young, E2017/79375
- 35 3 Confidential - Submission - Byron Shire Flying Fox Camp Plan - OEH Additional Information Consultation, E2017/91978
- 4 Confidential - Submission - Byron Shire Flying Fox Camp Plan - All, E2017/91500

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Report

Flying-foxes are protected under State legislation and some species are listed as threatened. Grey-headed Flying-fox are also listed as a vulnerable species under Commonwealth legislation. Flying-foxes play a crucial role in pollinating native forests and spreading seeds to ensure longevity of native bushland. Like all urban wildlife, they bring benefits and challenges to the way we live.

The draft Plan (**Attachment 1**) identifies 16 known flying-fox camps within Byron Shire but specifically how to manage flying-fox camps in Mullumbimby, Bangalow, Byron Bay (including camps located at Butler Street and Middleton Street) and Suffolk Park.

Consultation

On 4 August 2017, Council 17-290 resolved to publicly exhibit the draft Byron Shire Flying-fox Camp Management Plan for 4 weeks.

The draft Plan was on exhibited from 4 August to 1 September 2017.

Over the exhibition period, 7 submissions were received including a submission from OEH.

Submissions

Office of Environment and Heritage Submission

OEH provided extensive feedback and recommendations on the draft Plan (**Attachment 2 & 3**). Key recommendations included actions to develop a process for responding to unlawful activities in consultation with OEH and make such a process publically available via Council's website updated (refer Table 1 Compliance), and the need to improve more information on Federal, State and local government legislation and policy and their role in the delivery of the Plan (refer Table 1 Legislation and Policy).

Additionally, OEH recommended actions to improve Council's preparedness by recommending that Council develop an emergency response procedure for new and/or emerging camps with an influx of flying-foxes; an emergency response procedure for adverse weather events e.g. bushfire threat, flood or storm, extreme heat events leading to flying-foxes changing their behaviour and/ or dying. An action to develop a procedure for scheduled and/or emergency response to infrastructure maintenance associated near to or within a flying-fox camp was also recommended (refer Table 1 Planned management approach).

Public Submissions

Over the exhibition period, Council recorded 3,583 total visits in response to the draft Plan via facebook. The posting attracted 221 total facebook postings of mixed response. Six written submissions were received (**Attachment 4**).

These matters have been addressed within the Plan, and Council staff has applied the following changes to the draft Plan.

Table 1. Summary of all submissions and Council staff response.

No.	Issues Raised	Staff Comment	Staff Recommendation
	Context		
1.	To simplify implementation and reporting, reduce and tailor the objectives of the plan to consolidate similar community, ecological and statutory dot points.	Accepted	Merge objectives 1, 7 & 8 to read minimise impacts to the community while ensuring long-term conservation of flying-foxes and their habitat within Byron Shire. Plan's implementation and reporting simplified.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.1

No.	Issues Raised	Staff Comment	Staff Recommendation
2.	Clarify the status of flying-foxes.	Noted	The Plan addresses flying-fox ecology and behaviours including threats via Appendix D
3.	Include a section on all known camps in the LGA. The Plan should outline all camps including the historic, seasonal, and temporary camps throughout the LGA	Accepted	Section 1 Illustration 1.1 shows all known Flying-fox Camps in Byron Shire. A total of 16 flying-fox are known in Byron Shire.
4.	Include the Aboriginal Cultural Heritage values of the subject camps. Review the management actions in consultation with the Local Aboriginal Lands Council (LALC) and local Aboriginal knowledge holders within the community.	Accepted	<p>Council staff contacted LALCs and the Awakwal MOU Advisory Committee for input and involvement.</p> <p>Section 2 notes that 16 camps are located on Bundjalung Country of the Arakwal people, and each camp is located upon land covered by the respective Local Aboriginal Land Council (LALC). Section 8 notes that relevant LALC will be consulted and involved in any associated works on camps. This will ensure respectful consideration of the cultural values.</p>
5.	Clarify the impact on other fauna, businesses and water pollution in section 2.6	Accepted	Section 2.6 reports issue relating to the camps including impacts on businesses: for example, residences working from homes e.g. accountancy or therapists and/or direct businesses e.g. accommodation. Impacts on other fauna species: for example, reported temporary dispersal of native birds. Impacts on water pollution: for example, faecal droppings have impacted on water quality and alleged cause a decline in fish and mud crab stocks.
Community engagement			
6.	Include a section describing the agencies, stakeholders and community organisations directly involved in the implementation of the Plan to provide a clear scope for council's regulatory and support structure.	Accepted	<p>Section 1 acknowledges that GeoLink and Byron Shire Council have prepared this flying-fox management plan in consultation with the OEH and Department of Primary Industries - Crown, community groups and broader community etc.</p> <p>Section 3 tabulates stakeholders that have been consulted in the Plan and those that will need to be involved in the implementation of the Plan.</p>
Legislation and policy			
7.	Include a list any of the documents or plans held by	Accepted	Table 4.1 provides LGA & Trusts documents and their relevance to the

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.1

No.	Issues Raised	Staff Comment	Staff Recommendation
	Council or Trusts for the reserves containing the subject camps, e.g. Plans of Management or restoration plans. A summary of how these documents will interact, support or influence the outcomes of the Plan should be provided		Plan
8.	Include more information on the Biodiversity Conservation Act 2016 and its role in the delivery of the Plan	Accepted	<p>Section 4 provides more information on the Biodiversity Conservation Act 2016 and its role in the delivery of the Plan.</p> <p>The purpose of the Biodiversity Conservation Act 2016 (BC Act) is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development including conserving biodiversity, maintaining the diversity and quality of ecosystems, regulating human interactions with wildlife, and supporting conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature.</p>
9.	Consider the statutory functions of the Biodiversity Conservation Act 2016.	Accepted	Section 4 states <i>It should be noted that this Plan does not constitute a licence to undertake works. Land owners seeking to undertake works on private property will need to acquire the relevant approvals via Council and/ or OEH.</i>
10.	Include reference to the new license requirement will be a Biodiversity Conservation License, under the Biodiversity Conservation Act 2016	Accepted	<p>Section 4 notes that Part 2 Division 3 of the BC Act provides for the issuing of Biodiversity Conservation Licences to authorise the doing of an act likely to result in one or more of the following:</p> <ul style="list-style-type: none"> a) harm or attempted harm to any animal that is of a threatened species or is part of threatened ecological community b) harm or attempted harm, dealing in, or liberating a protected animal c) the picking of any plant that is of a threatened species or is part of threatened ecological community d) picking or dealing in protected plants

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4.1

No.	Issues Raised	Staff Comment	Staff Recommendation
			<p>e) damage to declared areas of outstanding biodiversity value</p> <p>f) damage to any habitat of a threatened species or threatened ecological community.</p>
	Compliance		
11.	<p>Include a section on compliance processes and the roles of the agencies involved. Management should be proactive in nature, but a compliance response is sometimes warranted. Information on what constitutes a breach of the respective legislation that applies to the reserves, ecological communities and species present should be included.</p>	Accepted	<p>Section 7 states that <i>culling is addressed here as it is often raised by community members as a preferred management method; however, culling is contrary to the objects of the BC Act and will not be permitted as a method to manage flying-fox camps.</i></p> <p>Action Table 8.1 states that <i>Council will develop a process for responding to unlawful activities in consultation with OEH and make such a process publically available via Council's website updated.</i></p> <p>Information on what constitutes a breach of the respective legislation that applies to the reserves, ecological communities and species present and triggers for informing OEH will be included.</p>
	Other ecological values		
12.	<p>Include, more detail on the referenced "coastal sand plain", which is noted in the discussion for the lack of endangered ecological community status applied to the Swamp Sclerophyll Forests found at Beech Drive, Butler Street and Middleton Street Camps. Advise presenting evidence (a soil analysis) that the sites have been assessed appropriately and lack the presence of alluvial soils and/or association with the coastal floodplain</p>	Partly Accepted	<p>Section 5 outlines desktop assessment of ecological values of each flying-fox camp including threatened species, ecological communities, critical habitat, SEPP 14 Coastal Wetlands and SEPP 26 Littoral Rainforest & criteria for High Environmental Values. Appendix C & D provides Results of ecological desktop assessment & Flying-fox ecology and behaviour.</p> <p>A soil analysis is not warranted as Council have completed extensive vegetation mapping including ground truthing (2017)</p>
	Site specific analysis of camp management options		
13.	<p>Clarify how dispersal has the potential to impact on aircraft safety</p>	Accepted	<p>The full range of options available for management of the five subject flying-fox camps were identified and reviewed throughout community consultation and Plan preparation.</p> <p>Table 7.1 supporting references</p>

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4.1

No.	Issues Raised	Staff Comment	Staff Recommendation
			include Parson et al 2008 conclude the majority of flying-foxes fly at elevations of approx. 150m, with few records of flights of up to 1,500m. Aircraft in Australia spend a relatively small proportion of their total flight time at 150m. With the exception of ultra-light aircraft, even aircraft forced to circuit an airport while waiting to land are required to do so above 300m.
14.	Supportive of Level 3 active dispersal is the only viable option for the future.	Noted.	Section 7 outlines site-specific analysis of camp management options Section 8 outlines consideration of active dispersal including cost analysis. Section 8 outlines that Council must demonstrate Level 1 & 2 actions prior to Level 3 actions e.g. dispersal as per OEH Policy.
Planned management approach			
15.	Include a section that recognises new and emerging camps, and how this will form part of the Plan's adaptive management process	Accepted	Action Table 8.1 states that <i>Council will develop an emergency response procedure for new and/ or emerging camps with an influx of flying-foxes; an emergency response procedure for adverse weather events e.g. bushfire threat, flood or storm, extreme heat events (leading to flying-foxes changing their behaviour and/ or dying) and;</i>
16.	Include a section on emergency or arising camp issues, with supporting contingency planning. The contingency planning should include the council's response, consultation, administrative process, and consent requirements to deliver on the escalating management responses. These issues may include: <ul style="list-style-type: none"> a) bushfire threat and fire protection b) serious flood or storm mitigation works c) heat event d) service location relative to the camp, such as water or sewer e) arrival of Little Red Flying-foxes in large numbers or a seasonal influx of Grey-headed or Black Flying-foxes. 	Accepted	<i>develop a procedure for scheduled and/or emergency response to infrastructure maintenance associated near to or within a flying-fox camp.</i>
17.	Include a point that all restoration activities must remain consistent with an 'Council' approved	Accepted	Section 8 action tables states that a <i>Council approved integrated VMP is required at all sites to complement the</i>

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4.1

No.	Issues Raised	Staff Comment	Staff Recommendation
	vegetation management plan		<i>Plan. The VMP would encompass site specific bush regeneration or habitat creation actions, as well as the management of vegetation removal sites with the objective of minimising adverse vegetative or habitat impacts</i>
18.	Include a process to review the plan's actions, consultation requirements and level of approval required	Accepted	Action Table 8.1 states that <i>Council will develop a procedure (a series of actions or steps taken) in order to review the Plan's actions, consultation requirements and level of approval requirements.</i>
19.	Pro-active action on emerging camps is supported for its cost effectiveness. Notwithstanding, supportive of dispersal at Mullumbimby is the only viable option for the future.	Noted	Section 8 outlines that Council must demonstrate Level 1 & 2 actions prior to Level 3 actions as per OEH Policy.
20.	Assessing the impacts of droppings on natural waterways should be included as an action	Noted	Since the early days of European settlement, people have observed that flying-foxes roost and fly along rivers and creek lines. This is a consistent behaviour developed over evolutionary time – not a response to recent environmental change. It would be hard to argue that a causal relationship with alleged recent declines in local fish and crab stocks, and therefore action within the Plan.
Human and animal health			
21.	Submission is made with reference to health related matters specifically to the individual's circumstances.	Noted	Section 6 outlines disease and flying-fox management. Additionally, Council sought professional health advice and response from NSW Primary Industries regards health matters specifically to the individual's circumstances. NSW Primary Industries have since responded to the individual specific health enquiries.
Assessment of impacts to flying foxes			
22.	Outline habitat loss, at each camp and the supplementary information provided, to provide an explanation and an appropriate assessment of actual habitat present.	Accepted	Section 9 Assessment of impacts to flying-foxes tabulates % habitat loss
23.	Include more information on the assessment of impacts, offset requirements and the role of	Accepted	Section 9 outlines that the Development Control Plan Chapter B2 prevails in regards to offsetting.

No.	Issues Raised	Staff Comment	Staff Recommendation
	vegetation management plans.		However, should the total area of clearing be greater than 0.25ha at any of the sites, then the BAM method (plots and transects) under the Biodiversity Conservation Act 2016 will be used by Council staff and a credit requirement generated.

Financial Implications

5 Council received a \$15,000 NSW Government grant to help prepare the Plan.

As part of the Funding Agreement, Council committed funds and in-kind contributions on a 1:1 basis. The Plan will address the impact of flying fox colonies located in Mullumbimby, Bangalow, Byron Bay and Suffolk Park.

10 Under a Council adopted Plan, Council is eligible to take advantage of the Flying-foxes Grants Program. This \$1 million program is funded through the OEH and is administered by Local Government NSW to address identified flying-fox management issues facing NSW councils. A combination of competitive and non-competitive funding is available up to \$50,000. Council will be
15 required to commit matching funds or in-kind contributions for any proposal on a 1:1 basis.

The Flying-fox Grant will not however fund works that primarily target noxious weeds. Such weeds are the core responsibility of landowners and are enforceable by the Biosecurity Act 2016 and local control authorities e.g. Rous County Council. Nor will the Flying-fox Grant fund a project officer.

20 Flying-fox camp management actions such as creating a buffer between camps and residents often entail trimming, removal and/or control of woody weeds such as Camphor Laurel and Lantana (e.g. Paddy's Creek, Bangalow). Under the flying-fox grant, actions proposing to remove and/or control noxious weeds may be funded, where the applicant's matching contribution focuses
25 on weed management and the flying-fox grants funding caters for other elements of the action such as community engagement, community support, erosion control and revegetation.

Statutory and Policy Compliance Implications

30 In responding to recommendation by OEH, the Plan complies with the OEH Policy, guidelines and management plan template. The Plan is consistent with the Biodiversity Conservation Strategy 2004 (currently under review) and Operational Plan 2017-18.

Report No. 4.2 **Presentation Biodiversity Conservation Strategy**
Directorate: Sustainable Environment and Economy
Report Author: Clare Manning, Natural Environment Projects and Policy Officer
File No: I2017/1432
5 **Theme:** Ecology
 Planning Policy and Natural Environment

Summary:

10 At the Biodiversity and Sustainability meeting held on 31 August 2017, a Panel recommendation was that the next Biodiversity and Sustainability Panel meeting be dedicated to a workshop and discussion on the Biodiversity Conservation Strategy.

15 Council staff will give a powerpoint presentation to the Panel.

RECOMMENDATION:

That the Biodiversity and Sustainability Panel note the presentation on the Biodiversity Conservation Strategy.

20 **Attachments:**

1 Powerpoint Presentation Biodiversity Conservation Strategy Review, E2017/94550 [⇒](#) 

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Report

Following discussion on the Environmental Levy report at the 31 August Panel meeting, the Panel recommended:

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2. *that the next Biodiversity and Sustainability Panel meeting be dedicated to a workshop and discussion on the Biodiversity Conservation Strategy and challenges and constraints to its implementation.*
- 10 Council staff will give a powerpoint presentation, Attachment 1, to update the Panel on the review of the Biodiversity Conservation Strategy including challenges and considerations in light of legislative changes such as the Biosecurity Act 2015 and Biodiversity Conservation Act 2016, for discussion.

15 **Financial Implications**

Nil

Statutory and Policy Compliance Implications

20 Nil

Report No. 4.3 **Resignation of Community Representative James Mayson**
Directorate: Sustainable Environment and Economy
Report Author: Michelle Chapman, Project Support Officer
File No: I2017/1433
5 **Theme:** Ecology
 Planning Policy and Natural Environment

Summary:

10 James Mayson resigned from the Biodiversity and Sustainability Panel on 6 September 2017.

Any resignation from the Panel needs to be reported to Council, for resolution, to amend the
15 constitution.

RECOMMENDATION:

That the Biodiversity and Sustainability Panel recommend to Council:

1. **That the resignation from James Mayson be accepted and a letter of appreciation be sent to James thanking him for his knowledge and commitment to the Biodiversity and Sustainability Panel and Advisory Committee.**
2. **That the Biodiversity and Sustainability Panel Constitution be amended to reflect the change from six to five community representatives.**

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Report

Council and the Panel received the resignation of James Mayson as a community representative on the Biodiversity and Sustainability Panel on 6 September 2017.

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The Biodiversity and Sustainability Panel constitution will need to be amended to reflect the resignation of a community representative.

Financial Implications

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Nil

Statutory and Policy Compliance Implications

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Nil