



# Byron Shire Council



## Agenda

### Ordinary Meeting

Thursday, 4 February 2016

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

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

Mark Arnold  
Acting 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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#### **1. PUBLIC ACCESS**

#### **2. APOLOGIES**

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

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

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

#### **6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

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# BYRON SHIRE COUNCIL

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### 15. QUESTIONS WITH NOTICE

Nil

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#### **Infrastructure Services**

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

## NOTICES OF MOTION

**Notice of Motion No. 9.1      No Business In Abuse**  
**File No:                              I2016/15**

5

**I move that Council:**

1. Confirm our respect for the fundamental human rights of asylum seekers;
2. Receive a report outlining any current contracts, investments or other business relationships that Council has with companies that hold contracts in Australia's system of mandatory detention, including with Broadspectrum [formerly Transfield Services] and Wilson Security [part of the Wilson Group];
3. Deplore the impact that the activities that such companies have had and are having on asylum seekers and refugees;
4. Not consider any future business relationships with companies that hold contracts in Australia's system of mandatory detention;
5. Only support and/or contract companies, institutions and organisations that refuse to support or profit from practices which abuse the human rights of asylum seekers;
6. Adopt NBIA's (No Business in Abuse) four-part definition for such companies as attached and as summarised here: These are companies that -
  - a. have zero tolerance for child abuse, in policy and practice;
  - b. respect people's fundamental rights to freedom from arbitrary and indefinite detention;
  - c. do not treat people in a cruel, inhumane or degrading manner;
  - d. commit to transparency and independent monitoring to ensure these principles are upheld.
7. Review our procurement and investment policies to incorporate the four-part definition so as to exclude from future contracts, tenders or business dealings any companies involved in Australia's offshore and onshore immigration processing system if they fail to meet the NBIA standards;
8. Receive a report mapping Council's exposure to Broadspectrum and associated entities, and listing:
  - a. any current contracts and investments with Broadspectrum and Wilson Security;
  - b. areas where future contracts and investments could be possible with those firms.

**Attachments:**

10      1      No Business In Abuse Pledge , E2016/3104

**Councillor's Background Notes:**

15      Overwhelming evidence indicates that severe and systemic abuse of the human rights of asylum seekers is occurring within Australia's immigration processing system. This system is administered by companies which, despite this evidence, continue to contravene obligations to respect

fundamental human rights as set out for businesses in the [UN Guiding Principles on Business and Human Rights](#). This document can be found at:

[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

- 5 In addition, the preamble to the United Nations' Universal Declaration of Human Rights calls on "every individual and every organ of society" to promote and respect human rights.

Byron Shire Council is a key institution within our community and we take this responsibility seriously.

The Motion enables Council to lead by example, in encouraging responsible business practices and the adherence to human rights standards.

- 10 In October 2015, a group called No Business in Abuse (NBIA) published a report Business In Abuse: Broadspectrum's complicity in gross human rights abuses within Australia offshore detention regime. The report details the complicity of Broadspectrum (formerly Transfield Services) and its security sub-contractor Wilson Security in gross human rights abuses occurring within Australia's offshore detention regime.

- 15 The Motion seeks to fully understand our business relationships if any with Broadspectrum and its associated entities. Assuming we have none it also seeks to exclude any future relationship and more broadly to exclude future contracts, tenders or business dealings with any companies involved in Australia's offshore and onshore immigration processing system if they fail to meet the NBIA pledge requirements.

20

Recommended priority relative to other Delivery Plan tasks:

The various parts of this Motion should be timed as follows:

- parts 1, 3 and 6 are completed by the Resolution;
- 25 • parts 2 and 8 involve a check to confirm that Council has no such exposure. If that is the case, those reports can precede the reviews in part 7;
- parts 4 and 5 are achieved by execution of part 7, which should be completed mid 2016. Were that not possible, resources should be allocated in the budget for 2016-17 and the task completed in the first quarter, ie by October 2016.

30

Definition of the project/task:

(as above)

35 Source of Funds (if applicable):

If funding is required, it should be allocated in the budget for 2016-17.

40 **Signed: Cr Duncan Dey**

**Management Comments by Trish Kirkland, Manager Governance Services:**

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

45 Clarification of project/task:

The Notice of Motions requests a report outlining any current contracts, investments or other business relationships that Council has with companies that hold contracts in Australia's mandatory detention system, and seeks to adopt the NBIA's definitions into Council's business



practices to ensure Council does not enter into business dealings with companies engaged in human rights violations.

Director responsible for task implementation:

5

Director Corporate and Community Services

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

- 10 Reference is made to the Report required by Part 2 of the Notice of Motion, and Councillors are advised that Council has no current current contracts, investments or other business relationships with Broadspectrum [formerly Transfield Services] or Wilsons Security. Further Council has had no business relationship with Broadspectrum [formerly Transfield Services] or Wilsons Security within the last five (5) years. Based on this advice Councillors may wish to consider whether the Reports  
15 sought in Parts 2 and 8 are still required.

As indicated in the comments provided by Cr Dey, Parts 1, 3 and 6 are completed by the Resolution.

- 20 It is understood from the comments provided by Cr Dey, that Parts 4 and 5 are completed by the execution of Part 7.

- 25 In relation to the actions required by parts 4, 5 and 7 of the Notice of Motion these have a direct relationship with Council's adopted Financial Sustainability Project Plan, and the priority implementation of the Strategic Procurement Roadmap that is already underway.

In relation to the action required by Part 7 the following review is already being implemented in regard to procurement policies.

- 30 The Strategic Procurement Roadmap includes actions to develop a Social Procurement and Economic Development Plan to drive social, sustainable and economic development outcomes. The intention of the plan is to take a broad approach to social and sustainable procurement and this will include addressing issues such as child abuse and slave labour in our procurement supply chains.

- 35 This will include education and awareness programs (which have already commenced) and building into our Procurement Guide and associated templates appropriate measures, such as the NBIA's four part definition of non-abusive organisations, to ensure we only contract with companies that do not support or profit from practices that abuse the human rights of asylum seekers and  
40 others (such as those affected by child labour practices, etc.)

- 45 Since this work of integrating social procurement and sustainability into our procurement practices is already part of our Strategic Procurement Roadmap deliverables for 2015/16, it is anticipated that this body of work will be completed by the end of 2015/16.

- 50 In relation to the action required by Part 7 in regard to investment policies, Council at its Ordinary meeting held on 8 October 2015 considered a Notice of Motion submitted by Cr Spooner on the subject of Environmentally and Socially Responsible Investments. Resolution **15-515** adopted by Council included a new objective to be inserted into the Council's Investment Policy which provides the following guidance to Staff:-

*"Socially harmful activities are considered to be:*

- *abuse of Human Rights and Labour Rights."*

55

A further review and amendments would be needed to incorporate the four-part definition in the Policy.

5 Financial and Resource Implications:

As the Strategic Procurement Roadmap Implementation forms part of Council's Financial Sustainability Project Plan, it forms part of Council's resource and financial plans. There will be no other financial or resource implications associated with the Notice Motion.

10

Legal and Policy Implications:

15

Council's adopted Procurement and Purchasing Policy contains objectives and principles such as social sustainability, ethical behaviour and community well-being. This Policy is scheduled for a routine review, and this review will include ensuring it is consistent with Council's strategic direction and priorities for procurement, including social and sustainable procurement practices and ethical supply-chain arrangements.



PETITIONS

**Petition No. 10.1**      **Save Mullumbimby's Fig**  
**Directorate:**      Corporate and Community Services  
**Report Author:**      Gayle McCallum, Governance Officer  
**File No:**      I2015/1488  
**Theme:**      Ecology  
                          Development and Approvals

10 At Council's Ordinary meeting held on 19 November 2015 the Mayor Cr Richardson tabled a petition containing 1675 signatures and covering letter which states:

*"Save Mullumbimby's Fig*

15 *Attached is the 'Save Mullumbimby's Fig' petition that has amassed 1675 signature. Please take the time to read the comments. The petition can still be found of change.org.*

20 *Whilst not opposed to the sale and development of the land, we as a community, are very much opposed to the destruction of this majestic tree and with the lack of public consultation on the matter.*

25 *This tree does not need to be removed for any development to go ahead. As we all know the tree was initially protected. However it became apparent that if the tree were removed more money could be obtained from the sale of the land. The decision to retain the tree was then reversed (with very minimal public consultation). What we wish to reiterate is that trees in fact have a value in dollar terms as well. We feel the land is potentially worth more in the long term with the fig remaining.*

30 *We acknowledge the need for council to be financially viable but not at the cost of the natural beauty of the town. We feel this tree will only enhance the visual presentation of the proposed development. It is one of few left in Mullumbimby town centre of such age and presence and it is habitat and haven to many species of animals and rare bird life. We know it is not indigenous to the area but it IS native to some parts of northern Australia. This assertion that it is from other countries is not entirely true and cannot be used as justification for its demise.*

40 *The Byron Shire is universally known for its engaging and vibrant culture and in particular the high regard it places on sustainability and environmental issues. These values make this hire unique. We feel that this proposed development could be an opportunity to further assert our place as world leaders in profitable and eco friendly development. There is now an opportunity to show the local and wider community that our heritage trees and natural environment is valued. There are now numerous developers who work with existing landscapes and fauna, understanding that mature trees are desirable and ultimately profit increasing and that development doesn't have to destroy.*

*Thank you all for your time and consideration of our position.*

50 *Kind Regards  
 Save Mullumbimby's Fig Campaign Team"*

**Comments from Director Corporate and Community Services:**

The Mayor at the Ordinary Meeting held on 19 November 2011 moved a Mayoral Minute on the development at 70-90 Station Street Mullumbimby and it was resolved as follows:

**Mayoral Minute No. 8.1      Consideration of alternative subdivision or apartment design at 70-90 Station Street, Mullumbimby**

**File No:** I2015/1362

**Resolved** that Council:

1. Defer current proposals for the construction on 4 of the lots in the subdivision at 70-90 Station Street, Mullumbimby (DA 10.2014.404.2) for general residential development purposes.
2. **Not proceed with the removal of the large fig tree on that property without the express approval of the Council.**
3. Delegate to the General Manager the authority to enter into discussions with the North Coast Community Housing Company regarding the potential development of a range of affordable housing (80% of market rental) and community housing (including aged, disability, and low income) at 70-90 Station Street, Mullumbimby.
4. Provide a six (6) month due diligence period to the North Coast Community Housing Company to help them to ascertain whether such development options on the site are viable and able to be resourced.
5. **Require that the large fig tree is retained as part of any community housing development on the site.**
6. Engage a suitably qualified property valuer to ascertain the current market value for Lots 2, 3, 4, and 5 at 70-90 Station Street, Mullumbimby.
7. In the event that the due diligence undertaken by the North Coast Community Housing Company demonstrates that the community housing development options on the site are viable and able to be resourced, meet the expectations of the Council in terms of the proposed community/affordable housing mix, and development approval is obtained, delegates to the General Manager the authority to:
  - a) Execute a covenant over Lots 2, 3, 4 and 5 at 70-90 Station Street, Mullumbimby to restrict any development on the site to affordable and/or community housing purposes
  - b) enter into a Contract of Sale with North Coast Community Housing Company for Lots 2, 3, 4 and 5 at 70-90 Station Street, Mullumbimby at a value no less than the highest market value for the site determined by the independent property valuer.

(Richardson)

Note there are no contact details for the petitioner to be advised of the Petition outcome.

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**RECOMMENDATION:**

1. That the petition regarding Save Mullumbimby's Fig be noted.
2. That the petition be referred to the Director Sustainable Environment and Economy for information.

**Petition No. 10.2**      **Stop the closure of O'Meara's Bridge**  
**Directorate:**      Infrastructure Services  
**Report Author:**      Shane Pearce, Engineer - Bridges  
**File No:**      I2015/1579  
**Theme:**      Community Infrastructure  
                  Asset Management

At Council's Ordinary meeting held on 10 December 2015 Cr Spooner tabled a petition and covering letter containing 173 signatures. The covering letter and petition are attached.

**Comments from Director Infrastructure Services:**

Following an engineering inspection, the load limit for O'Meara's Bridge was reduced to 5 Tonnes and a range of risk management measures implemented.

A grant application has been submitted to the Federal Bridge Program and is yet to be announced.

Council has resolved 15/682 to receive a report that undertakes a needs analysis of road bridges requiring replacement and refurbishments in order to determine priorities.

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**RECOMMENDATION:**

1. That the petition regarding the closure of O'Meara's Bridge be noted.
2. That the petition be referred to the Director Infrastructure Services.

**Attachments:**

- 1 Petition - O'Mearas Bridge Covering Letter , E2016/3946
- 2 Petition - O'Mearas Bridge Signatures , E2016/3945

## DELEGATES' REPORTS

**Delegate's Report No. 12.1**     **Richmond Tweed Regional Library Committee meeting,  
Lismore 28 November 2015**

**5 File No:**                             I2015/1487

Item 6.2: The Director of Riverina Regional Library (Robert Knight) gave a presentation on the governance model and operation of Riverina Regional Library. The RRL covers 48,000 km<sup>2</sup> and 13 Council areas.

Item 7.1: TNR audited the 14/15 financials. The key result was a deficit of \$226k (\$310k before grants and contributions). This was covered from reserves that sit at about \$1.5m, close to the 30% benchmark recommended to cover leave entitlements and asset replacement.

There is depreciation (a decline of physical assets) that matches the reduction in physical books. There is an increase in electronic access. That trend is consciously made and will one day stabilise at a certain (reduced) number of books.

Item 7.2: The Committee resolved to increase this financial year's deficit from \$275k to \$420k. The changes leading to the increase of \$145k are explained on page 10-12 of the RTRL Agenda.

A new "member council contribution funding formula" was sent to member Council's for comment. Only Tweed replied. The formula (Agenda p13) was adopted by the Committee.

Item 7.3: Amongst other things, the Committee "noted" the increase of 1 FTE staff member at Byron Shire branches from 1/7/16. It also resolved to request Council approval for another increase (1 FTE staff member) for Byron Shire and an associated increase in member council contribution from 1/7/16.

Similar increases for Ballina Shire were not accepted by RTRL, who will instead receive a report on them at the next meeting in February. The RTRL Agenda had proposed:

- (a) The Committee provides in-principle support of an increase of 12 hours for a library assistant at Lennox Head branch from 1/7/16.
- (b) The Committee requests Ballina Shire Council approval for an increase of 12 hours for a library assistant at Byron Shire branches and the associated increase in member council contribution from 1/7/16.

**Signed:     Cr Duncan Dey**

**STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

**Report No. 13.1                      Amendment of policy 13/003 - Code of Conduct**

**Directorate:**                      Corporate and Community Services

**Report Author:**                  Ralph James, Legal Services Coordinator

**File No:**                              I2015/1585

**Theme:**                              Corporate Management  
Governance Services

**Summary:**

Amendments to the *Local Government Act 1993* made by the *Local Government Amendment (Councillor Misconduct and Poor Performance) Act 2015* commenced on 13 November 2015.

Councils must amend their adopted Codes of Conduct as soon as possible to reflect the amendment to clause 4.29 in the Model Code of Conduct.

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**RECOMMENDATION:**

**That Policy 13/003 - Code of Conduct be amended by:**

1.     deleting clause 4.29 in its present form, and
2.     inserting a new clause 4.29 being:

***“A councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:***

***a) the matter is a proposal relating to:***

- i) the making of a principal environmental planning instrument applying to the whole or a significant part of the council’s area, or***
- ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council’s area, and***

***b) the non-pecuniary conflict of interests arises only because of an interest that a person has in that person’s principal place of residence, and***

***c) the councillor declares the interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.”***

**Report**

The *Local Government Amendment (Councillor Misconduct and Poor Performance) Act 2015* ('**Amending Act**') commenced on 13 November 2015, introducing a host of changes to the *Local Government Act 1993* (Act) which, according to the Minister, are designed to build on earlier reforms by offering '*a more effective deterrent to serious and repeated councillor misconduct*'.

As a result of the amendments councillors will no longer be permitted to participate in the consideration of the making, amendment, alteration or repeal of an environmental planning instrument applying to the whole or a significant part of their local government area that they have pecuniary interests in unless:

- the only interest affected by the changes are the interest councillors or their relatives have in their principal places of residence; and
- they have made a special disclosure of the affected interests.

Councils must amend their adopted codes of conduct as soon as possible to reflect the amendment to clause 4.29 of the amended Model Code of Conduct.

The following part of the report deals, in general terms, with the balance of the amendments made. These amendments are provided for information and do not require amendment of the Code of Conduct.

**Three strikes policy**

Following amendments to s275 of the Act, persons who have been the subject of three or more orders for suspension from civic office for misconduct will now be disqualified from holding civic office for 5 years (being effectively two terms of council) after the date the most recent order takes effect.

In order to trigger disqualification, at least one of the suspension orders must have been made by the Departmental Chief Executive ('**Chief Executive**'), or the NSW Civil and Administrative Tribunal ('**NCAT**') on referral from the Chief Executive, after the commencement of the Amending Act.

**Expanding the definition of 'misconduct' of a councillor**

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

The Minister provided the following examples of behaviour which would be captured under the expanded definition of 'misconduct' in his second reading speech to the Parliament:

- preventing a council from making a decision by deliberately leaving a meeting to deprive it of a quorum;
- submitting large numbers of notices or questions on notice with a view to preventing the council from getting through its business;
- misusing rescission motions to prevent councils from revisiting a matter for another three months.

**Reduced response times for investigated councils**

- 5 Under changes to s434 of the Act, councils now only have 28 days (down from 40 days) to prepare a response to an investigation report prepared by Director-General under s430 of the Act. A council's response must provide written notice of the things a council has done or proposes to do to give effect to any recommendations contained in the report.

The Minister reasoned that the previous 40 day period was 'too long' where remedial action is warranted to address proven maladministration.

**Changes to performance improvement orders**

10 Varying performance improvement orders

The Minister now has the ability to vary existing performance improvement orders by giving 7 days notice to councils of the terms of the proposed variation and the reasons for it.

Reduced consultation periods

- 15 Councils now only have 7 days to respond to a notice of intention to issue a performance improvement order in all cases whereas previously the consultation period was 21 days (or 7 days in cases where the Minister considered the improvement in the council's performance was required as a matter of urgency).

Further actions

- 20 Following the introduction into the Act of s438A (7A), the Minister and other persons empowered under the Act no longer have to wait until the expiration of a performance improvement order to remedy non-compliance. Section 438A (7A) provides:

'The making of a performance improvement order, or the fact that such an order is in force, does not derogate from a power of the Minister or any other person to make any other order or take any other action under this Act.'

- 25 The change means that Minister could, for example, suspend the Council, or hold a public inquiry, during the period for compliance with a performance improvement order.

Enforcement of performance improvement orders against individual councillors

- 30 Perhaps one of the most significant changes worked by the Amending Act is the introduction of s438HA which allows the Minister to issue a compliance order against individual councillors who have failed to take action as required by a performance improvement order.

Previously the non-compliance of individual councillors could only be remedied by the suspension of the entire council.



Section 438HA provides that a compliance order may be issued by the Minister against an individual councillor after a departmental report is prepared which finds that the councillor has failed to take action as required by a performance improvement order.

The Minister must first give the councillor written notice:

- 5
- specifying the action that the councillor has failed to take;
  - specifying that the Minister proposes to issue a compliance order; and
  - inviting the councillor to make submissions about why the order should not be made within a period of not less than 7 days.

10 The Minister may issue a compliance order after considering any submissions made by the councillor. The compliance order must:

- identify the action that the councillor has failed to take under a performance improvement order; and
- specify the extent to which the councillor may use council facilities or the amount that the councillor may be paid for the purposes of taking action under the performance improvement order (as the case requires); and
- 15 ▪ specify the period (not exceeding 3 months) for which it is to remain in force.

While a compliance order remains in force against a councillor, the councillor:

- is not entitled to exercise any of the functions of the councillor other than as necessary to take the action specified in the compliance order, and
- 20 ▪ is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of council facilities, except as specified in the compliance order.

The Minister may extend the period for which the compliance order remains in force up to a further 3 months by giving written notice to the councillor.

25 At any time before or after taking action under s438HA, the Minister may request the Chief Executive to refer the matter to the NCAT. The NCAT will decide whether to conduct proceedings into the matter after considering a report prepared by the Chief Executive.

### **Dispensing with departmental misconduct investigations**

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

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

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

5

**Financial Implications**

Nil

**Statutory and Policy Compliance Implications**

10 The relevant parts of section 440 of the Local Government Act are set out below.

Council must amend its Code of Conduct to bring it into line with the Model Code of Conduct. If it does not, Council's Code of Conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct.

15

As the amendments to the Local Government Act commenced on 13 November 2015 and the Model Code of Conduct was amended accordingly the amended Model Code of Conduct has prevailed over Councils Code of Conduct to the extent of the inconsistency in clause 4.29.

20 That inconsistency will be corrected by the amendment recommended.

**440 Codes of conduct**

25 *(1) The regulations may prescribe a model code of conduct (the "**model code**") applicable to councillors, members of staff of councils and delegates of councils.*

*(2) Without limiting what may be included in the model code, the model code may:*

*(a) relate to any conduct (whether by way of act or omission) of a councillor, member of staff or delegate in carrying out his or her functions that is likely to bring the council or holders of civic office into disrepute, and*

30

*(b) in particular, contain provisions for or with respect to conduct specified in Schedule 6A.*

*(3) A council must adopt a code of conduct (the "**adopted code**") that incorporates the provisions of the model code. The adopted code may include provisions that supplement the model code.*

35

*(4) A council's adopted code has no effect to the extent that it is inconsistent with the model code as in force for the time being.*

*(5) Councillors, members of staff and delegates of a council must comply with the applicable provisions of:*

40

*(a) the council's adopted code, except to the extent of any inconsistency with the model code as in force for the time being, and*

*(b) the model code as in force for the time being, to the extent that:*

45

*(i) the council has not adopted a code of conduct, or*

*(ii) the adopted code is inconsistent with the model code, or*

*(iii) the model code contains provisions or requirements not included in the adopted code.*

As the amendment to Council's Code of Conduct is mandatory to bring it into consistency with the Model Code of Conduct there is no need to exhibit the proposed amended Policy.

50

No variation of the words in proposed clause 4.29 is possible.

The Model Code of Conduct can be found at:

55

<http://www.olg.nsw.gov.au/sites/default/files/Model%20Code%20of%20Conduct%20-%20November%202015.pdf>

**Report No. 13.2      Council Investments December 2015**

**Directorate:** Corporate and Community Services

**Report Author:** Sean Baker, Management Accountant

**File No:** I2015/1591

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 December 2015 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 December 2015 be noted.**

20

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

### Report

In relation to the investment portfolio for December 2015, Council has continued to maintain a diversified portfolio of investments. The average 90 day bank bill rate (BBSW) for the month of December is 2.34%. Council's performance for the month of December is 2.92%. Councils' performance is again higher than the benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits

- 10 The table below identifies the investments held by Council as at 31 December 2015:

### Schedule of Investments held as at 31 December 2015

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
20/06/12	500,000	HERITAGE BANK LTD BONDS	N	BBB+	20/06/17	B	7.25%	536,250.00
06/10/15	1,000,000	AUSWIDE BANK LTD (Previously Wide Bay)	P	BBB	04/01/16	TD	2.75%	1,000,000.00
09/12/15	2,000,000	NAB	P	AA-	08/02/16	TD	2.78%	2,000,000.00
04/12/15	2,000,000	NAB	N	AA-	04/03/16	TD	2.96%	2,000,000.00
03/09/15	2,000,000	NAB	N	AA-	04/01/16	TD	2.88%	2,000,000.00
08/10/15	2,000,000	BANKWEST	P	A1+	08/01/16	TD	2.85%	2,000,000.00
04/11/15	1,000,000	BANKWEST	N	A1+	02/02/16	TD	2.90%	1,000,000.00
12/11/15	2,000,000	NAB	N	AA-	12/02/16	TD	2.86%	2,000,000.00
23/11/15	2,000,000	NAB	N	AA-	22/02/15	TD	2.88%	2,000,000.00
07/12/15	2,000,000	SUNCORP	P	A+	05/04/16	TD	3.00%	2,000,000.00
06/10/15	2,000,000	AUSWIDE BANK LTD (Previously Wide Bay)	N	BBB	04/01/16	TD	2.97%	2,000,000.00
29/09/15	2,000,000	BANK OF QUEENSLAND	P	A2	24/02/16	TD	2.95%	2,000,000.00
02/10/15	2,000,000	NAB	N	AA-	02/02/16	TD	2.98%	2,000,000.00
02/11/15	2,000,000	NAB	N	AA-	01/02/16	TD	2.85%	2,000,000.00
16/10/15	1,000,000	NAB	N	AA-	14/01/16	TD	2.95%	1,000,000.00
07/09/15	1,000,000	NAB	N	AA-	07/03/16	TD	2.93%	1,000,000.00
09/12/15	2,000,000	BANKWEST	N	A1+	08/03/16	TD	3.00%	2,000,000.00
09/11/15	1,000,000	NAB	N	AA-	08/02/16	TD	2.85%	1,000,000.00
13/05/15	1,000,000	MACQUARIE BANK	P	A1	08/02/16	TD	3.00%	1,000,000.00
14/12/15	3,000,000	BANKWEST	N	A1+	14/03/16	TD	3.05%	3,000,000.00
24/12/15	2,000,000	NAB	N	AA-	24/03/16	TD	2.97%	2,000,000.00
02/11/15	2,000,000	ME BANK	N	BBB	01/02/16	TD	2.85%	2,000,000.00
02/11/15	2,000,000	ME BANK	N	BBB	01/02/16	TD	2.85%	2,000,000.00
09/11/15	2,000,000	NAB	N	AA-	08/02/16	TD	2.85%	2,000,000.00
04/11/15	3,000,000	ME BANK	N	BBB	02/02/16	TD	2.85%	3,000,000.00
05/11/15	2,000,000	NAB	N	AA-	05/02/16	TD	2.85%	2,000,000.00
20/11/15	2,000,000	NAB	N	AA-	19/02/16	TD	2.88%	2,000,000.00

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
26/11/15	3,000,000	NAB	N	AA-	26/02/16	TD	2.90%	3,000,000.00
31/08/15	2,000,000	AMP BANK	N	A	29/02/16	TD	2.90%	2,000,000.00
03/09/15	2,000,000	NAB	N	AA-	01/02/16	TD	2.88%	2,000,000.00
07/09/15	2,000,000	NAB	N	AA-	06/01/16	TD	2.90%	2,000,000.00
08/09/15	2,000,000	SUNCORP	N	A+	05/02/16	TD	2.90%	2,000,000.00
08/10/15	2,000,000	BANK OF QUEENSLAND	P	A2	07/04/16	TD	3.00%	2,000,000.00
29/10/15	2,000,000	ME BANK	N	BBB	27/01/16	TD	2.85%	2,000,000.00
09/11/15	2,000,000	ME BANK	N	BBB	08/02/16	TD	2.85%	2,000,000.00
10/11/15	2,000,000	ING BANK (Australia)	N	A2	10/05/16	TD	2.90%	2,000,000.00
10/11/15	2,000,000	BANK OF QUEENSLAND	N	A2	10/05/16	TD	2.90%	2,000,000.00
12/11/15	2,000,000	ING BANK (Australia)	N	A2	12/05/16	TD	2.90%	2,000,000.00
25/11/15	1,000,000	BANKWEST	N	A1+	23/02/16	TD	3.00%	1,000,000.00
01/12/15	2,000,000	ME BANK	N	BBB	01/03/16	TD	3.00%	2,000,000.00
03/12/15	2,000,000	SUNCORP	N	A+	01/04/16	TD	3.00%	2,000,000.00
N/A	543,968	CBA BUSINESS ONLINE SAVER	N	A	N/A	CALL	1.80%	543,967.53
<b>Total</b>	<b>77,043,968</b>					<b>AVG</b>	<b>2.92%</b>	<b>77,080,217.53</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.** **Type** **Description**  
TD Term Deposit Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.  
CALL Call Account Principal varies due to cash flow demands from deposits/withdrawals, interest is payable on the daily balance.

**Note 3.** Term Deposits can be traded on a day-to-day basis, and therefore Council is not obliged to hold the investments to the maturity dates.

For the month of December 2015, as indicated in the table below, there is a dissection of the investment portfolio by investment type. It illustrates the current value of investments has remained the same as November 2015, demonstrating a cumulative unrealised gain of \$36,250.00.

### Dissection of Council Investment Portfolio as at 31 December 2015

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
76,000,000.00	Term Deposits	76,000,000.00	0.00
543,967.53	Business On-Line Saver (At Call)	543,967.53	0.00
500,000.00	Bonds	536,250.00	36,250.00

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

77,043,967.53		77,080,217.53	36,250.00
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The current value of an investment compared to the principal value (face value or original purchase price) provides an indication of the performance of the investment without reference to the coupon (interest) rate. The current value represents the value received if an investment was sold or traded in the current market, in addition to the interest received.

The table below provides a reconciliation of investment purchases and maturities for the period 25 November 2015 to 31 December 2015 on a current market value basis.

### Movement in Investment Portfolio – 25 November 2015 to 31 December 2015

Item	Current Market Value (at end of month) \$
<b>Closing Balance at 24 November 2015</b>	<b>80,473,133.79</b>
Add: New Investments Purchased	21,000,000.00
Add: Call Account Additions	0.00
Add: Interest from Call Account	7,083.74
Less: Investments Matured	22,200,000.00
Less: Call Account Redemption	2,200,000.00
Add: Fair Value Movement for period	0.00
<b>Closing Balance at 31 December 2015</b>	<b>77,080,217.53</b>

### Investments Maturities and Returns – 25 November 2015 to 31 December 2015

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
3,000,000.00	NAB	TD	26/11/15	90	2.87%	21,230.14
2,200,000.00	Police Credit Union	TD	30/11/15	145	2.95%	25,782.19
2,000,000.00	NAB	TD	04/12/15	91	2.89%	14,410.41
2,000,000.00	Suncorp	TD	07/12/15	90	2.85%	14,054.79
2,000,000.00	NAB	TD	09/12/15	91	2.90%	14,460.27
2,000,000.00	Bankwest	TD	09/12/15	120	2.80%	18,410.96
2,000,000.00	ME Bank	TD	14/12/15	122	2.80%	18,717.81
3,000,000.00	Bankwest	TD	14/12/15	91	2.85%	21,316.44
2,000,000.00	NAB	TD	24/12/15	91	2.97%	14,809.32
2,000,000.00	Bankwest	TD	31/12/15	90	2.85%	14,054.79
<b>22,200,000.00</b>						<b>177,247.12</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 December 2015 the table below identifies the overall cash position of Council as follows:

**Dissection of Council Cash Position as at 31 December 2015**

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
<b>Investments Portfolio</b>			
Term Deposits	76,000,000.00	76,000,000.00	0.00
Business On-Line Saver (At Call)	543,967.53	543,967.53	0.00
Bonds	500,000.00	536,250.00	36,250.00
<b>Total Investment Portfolio</b>	<b>77,043,967.53</b>	<b>77,080,217.53</b>	<b>36,250.00</b>
<b>Cash at Bank</b>			
Consolidated Fund	3,130,855.71	3,130,855.71	0.00
<b>Total Cash at Bank</b>	<b>3,130,855.71</b>	<b>3,130,855.71</b>	<b>0.00</b>
<b>Total Cash Position</b>	<b>80,174,823.24</b>	<b>80,211,073.24</b>	<b>36,250.00</b>

**Financial Implications**

5

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

**Statutory and Policy Compliance Implications**

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

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

20 Council's investments are carried out in accordance with section 625(2) of the Local Government Act 1993 and Council's Investment Policy. The Local Government Act 1993 allows Council to invest money as per the Ministers Order – Forms of Investment, last published in the Government Gazette on 11 February 2011.

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

30 Council at its Ordinary Meeting held 8 October 2015 resolved through resolution **15-515** to insert a new objective into its adopted Investment Policy, which gives a third tier consideration by Council to Environmental and Socially Responsible Investments, when making investment decisions.

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

35



**“1.3 Environmentally and Socially Responsible Investments**

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

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

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

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

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

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

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

*Environmentally productive activities are considered to be:*

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

*Socially productive activities are considered to be:*

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

*Environmentally harmful activities are considered to be:*

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

*Socially harmful activities are considered to be:*

- *abuse of Human Rights and Labour Rights*
- *involvement in bribery/corruption*
- *production or supply of armaments*

- *manufacture of alcohol, tobacco or gambling products”*

A review of Council’s current investment portfolio has been undertaken to assess, in the absence of an Industry register of authorised deposit taking institutions that are committed to Environmentally and Socially Responsible lending and investing, the current extent that Council’s Investment Portfolio meets the objectives, as amended by resolution 15-515, noting that the number of the investments held were made prior to 8 October 2015. Staff have assessed that the investment funds held as at 31 December 2015, complied with Part 1 of Resolution 15-515 and the amended Policy Objectives, at the time the investment was made.

Part 1 of Resolution 15-515 being that

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

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

**Report No. 13.3**  
**Directorate:** Corporate and Community Services  
**Report Author:** Mark Arnold, Director Corporate and Community Services  
**File No:** I2015/1592  
**Theme:** Corporate Management  
General Manager's Office

**Summary:**

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

At its Ordinary Meeting on 28 August 2014 Council resolved (**14-417**) that staff conduct a review of outstanding resolutions to determine which ones currently fit within other resolutions, which ones cannot be resourced and which Council resolutions able to be closed. This report outlines resolutions according to this criteria.

In addition, at its Ordinary meeting on 19 November 2015 Council resolved (**15-590**) to receive an update and estimated date of completion for a series of outstanding resolutions. This report provides updates on those resolutions.

---

**RECOMMENDATION:**

1. That Council receive and note the information provided in this report on outstanding Council resolutions in Attachment 1 (#E2016/3708).
2. That Council note the completed resolutions in Attachment 2 (#E2016/3638).
3. That Council resolve that no further action be taken in respect of the following Council resolutions and that the resolutions be closed:

**Res 11-549**  
**Res 15-156**

**Attachments:**

- 1 Outstanding Council resolutions as at 31 December 2015, E2016/3708
- 2 Council resolutions completed between 1 October and 31 December 2015, E2016/3638

## Report

This report provides a quarterly update on the status of Council resolutions to 31 December 2015.

5 Council resolutions relate across all Activities in Council's Operational Plan with responsible officers within Council providing input into this status report.

The outstanding Council resolutions activity during the quarter is provided below:

- 169 New resolutions created during the October to December quarter
- 98 Resolutions completed during period 1 October to 31 December 2015
- 10 • 232 Outstanding resolutions as at 31 December 2015

The outstanding Council resolutions per Council terms are provided below:

- 231 Outstanding Council resolutions current Council (2012-2016)
- 15 • 1 Outstanding Council resolution from previous Council (2008-2012)
- 232 Outstanding resolutions as at 31 December 2015

An update on the status of outstanding resolutions is provided at Attachment 1 which comprises:

- 20 • previous Council Oct 2008-2012 (page 1 of Attachment 1)
- current Council Sept 2012-2016 (pages 2 to 102 of Attachment 1)

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

25 Council at its Ordinary meeting held on 28 August 2014 resolved (**14-417**) as follows:

3. *That staff conduct a review of outstanding resolutions to determine:*

- a) *Which ones currently fit within other resolutions*
- 30 b) *Which ones cannot be resourced*
- c) *Report to Council resolutions able to be closed.*

Each Quarterly Report to Council on completed and outstanding Resolutions will include a section which will allow staff to report any other Resolutions identified during the review of outstanding Resolutions that meet the criteria determined by Council in Resolution 14-417.

Table 1 provides a summary of Council resolutions that are no longer relevant or that have been superseded either by other resolutions, legislative change or other matters.

40 Table 2 provides a summary of Council resolutions that cannot be implemented due to resources not being available, allocated, or allocated to other adopted projects, services, activities or works. Any resulting decisions of Council will be incorporated into the next quarterly review of resolutions.

45 At its Ordinary meeting on 19 November 2015 Council resolved (**15-590**) to receive an update and estimated date of completion for a selection of outstanding resolutions. Table 3 provides an update on outstanding Council resolutions as per this resolution.

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

Meeting Date	Resolution No.	Report Title	Staff Comments and Recommendation
09/04/15	15-156	Marshalls Creek – canoe access	<p>This was not supported by the NPWS as under the NSW National Parks and Wildlife Act 1974 the area is classified as a nature reserve for the conservation of natural and cultural heritage values and biodiversity. The plan of management controlling use of this reserve prohibits this type development.</p> <p><b>Staff Recommendation:</b> Close resolution 15-156.</p>

**5 Table 2: Council resolutions that are not resourced**

Meeting Date	Resolution No.	Report Title	Staff Comments and Recommendation
30/06/11	11-549	Rural fire service facility and public open space at Goonengerry	<p>There has been no budget identifiable for this Council resolution since 2011 despite considerations at several budget processes for future funding. This includes a budget for the investigative, planning and approvals needed for the:</p> <ul style="list-style-type: none"> <li>Options of acquiring or leasing land for RFS and Open Space</li> <li>Provisions for strategic planning for changes to DCPs.</li> </ul> <p>Unless a budget can be provided this resolution cannot be actioned. It is recommended to finalise the resolution due to the lack of budget.</p> <p><b>Staff Recommendation:</b> Close resolution 11-549.</p>
10/10/13	13-533	Grays Lane creek crossing upgrades	<p>A budget is needed for staff, that are costed directly to projects, to continue the investigative and planning work commenced by staff some time ago. A request for the provision of this budget in 2016/17 has been made as part of the 2016/17 budget process and if allocated will allow a staff member to recommence the capital works planning and investigation work from 1 July 2016.</p> <p><b>Staff Recommendation:</b> Provision of budget to be considered as part of the 2016/17 Budget Process.</p>

Meeting Date	Resolution No.	Report Title	Staff Comments and Recommendation
22/05/14	14-240	Grays Lane Tyagarah – Planning for a road upgrade	<p>A budget is needed for staff, that are costed directly to projects, to continue the investigative and planning work commenced by staff some time ago. A request for the provision of this budget in 2016/17 has been made as part of the 2016/17 budget process and if allocated will allow a staff member to recommence the capital works planning and investigation work from 1 July 2016.</p> <p><b>Staff Recommendation:</b> Provision of budget to be considered as part of the 2016/17 Budget Process.</p>

**Table 3: Update on outstanding Council resolutions as per Resolution 15-590**

Meeting Date	Resolution No.	Report Title	Update and estimated date of completion
20/05/10	10-369	Future development of land at Ocean Shores (Polepic Pty Ltd)	<p>Action 1 is incomplete as the development has not progress to the stage where a public pathway from the eastern boundary to Flinders Way connects completed development.</p> <p>Action 2. Complete.</p> <p>Action 3. No further action is required as the developer is not proceeding with this proposal.</p> <p>Action 4. Complete.</p> <p><b>Estimated date of completion:</b> Dependent on completion of development with Lot 164 – DP 1206177</p>
24/06/10	10-457	Lot 2 DP 747876 Bangalow – former cattle dip site remediation	<p>Staff have been in discussions with DPI and have received advice that any disturbance of the contaminated land around the Bangalow Dip site is not safe or appropriate. DPI is custodian to the land contamination information and need to be consulted if any future activities are proposed on, in or around the dip site.</p> <p>It has been agreed that the best option is to cap off the land with an impervious sealed car park type surface.</p> <p>Staff are currently investigation contributions from DPI and completing a cost estimate for budget consideration.</p> <p><b>Estimated date of completion:</b> Sept 2016.</p>
30/06/11	11-549	Rural fire service facility and public open space at Goonengerry	<p>There has been no budget identifiable for this Council resolution since 2011 despite considerations at several budget processes for future funding. This includes a budget for the investigative, planning and approvals needed for the:</p> <ul style="list-style-type: none"> <li>Options of acquiring or leasing land for RFS and Open Space</li> <li>Provisions for strategic planning for changes to DCPs.</li> </ul> <p>Unless a budget can be provided this resolution cannot be actioned. It is recommended to</p>

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.3

Meeting Date	Resolution No.	Report Title	Update and estimated date of completion
			finalise the resolution due to the lack of budget.  <b>Estimated date of completion:</b> Close this resolution.
10/10/13	13-533	Grays Lane creek crossing upgrades	A budget is needed for staff that are costed directly to projects, to continue the investigative and planning work commenced by staff some time ago. A request for the provision of this budget in 2016/17 has been made as part of the 2016/17 budget process and if allocated will allow a staff member to recommence the capital works planning and investigation work from 1 July 2016.  <b>Estimated date of completion:</b> June 2017 dependent upon provision of budget in 2016/17.
21/11/13	13-621	Weed and pest management measures	The plan is largely complete however still in draft form (E2015/47736). It is intended that the final draft plan be presented the Biodiversity committee for comment and then to Council. Unfortunately since the departure of the Team Leader Natural Environment, completion has been delayed. Open Space staff will endeavour to complete the plan and review and report to Council by May 2016. All factors within the resolution have been considered within the report.  <b>Estimated date of completion:</b> June 2016.
22/05/14	14-240	Grays Lane Tyagarah – Planning for a Road Upgrade	A budget is needed for staff that are costed directly to projects, to continue the investigative and planning work commenced by staff some time ago. A request for the provision of this budget in 2016/17 has been made as part of the 2016/17 budget process and if allocated will allow a staff member to recommence the capital works planning and investigation work from 1 July 2016.  <b>Estimated date of completion:</b> June 2017 dependent upon provision of budget in 2016/17.
30/10/14	14-544	Enforcement of dog and cat free estates	Actions taken to date: <ul style="list-style-type: none"> <li>• Legal advice received 2015 on the enforcement of dog and cat free estates.</li> <li>• Signage audit completed.</li> <li>• Letters sent in December 2015 to residents advising of their obligations and that Council would take enforcement action where necessary.</li> <li>• Regular patrolling of these areas to identify if there are any roaming dogs and/or where the location of dog owners can be identified.</li> <li>• The recent restructuring of Council's workforce has dedicated an Animal Enforcement Officer for Companion Animals</li> </ul>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.3

Meeting Date	Resolution No.	Report Title	Update and estimated date of completion
			<p>matters, with the position commencing in early December 2015. This staff member will now complete the policy review.</p> <p><b>Estimated date of completion:</b> July 2016.</p>
26/02/15	15-056	Steam weeding trial	<p>Trials now carried out.</p> <p><b>Estimated date of completion:</b> Completed on 5/1/16. This resolution is now closed.</p>
26/02/15	15-062	Review of S64 charges	<p>In progress. 30 year capital plan to be completed by end of January 2016. The Developer Servicing Plans to be completed in draft form mid March 2016.</p> <p><b>Estimated date of completion:</b> April 2016.</p>
09/04/15	15-155	Roadside weed management	<p>Evaluation progressing with report back to the CIAC March meeting.</p> <p><b>Estimated date of completion:</b> March 2016.</p>
09/04/15	15-156	Marshalls Creek – canoe access	<p>This was not supported by the NPWS as under the NSW National Parks and Wildlife Act 1974 the area is classified as a nature reserve for the conservation of natural and cultural heritage values and biodiversity. The plan of management controlling use of this reserve prohibits this type development.</p> <p><b>Estimated date of completion:</b> Close this resolution.</p>
30/04/15	15-190	No right turn, Woolworths egress, Station Street, Mullumbimby	<p>Evaluation progressing.</p> <p><b>Estimated date of completion:</b> June 2016.</p>
30/04/15	15-196	Proposed No Stopping Village Green, Brunswick Heads	<p>Evaluation progressing.</p> <p><b>Estimated date of completion:</b> June 2016.</p>
21/05/15	15-214	Flying fox camp interim actions	<p>Actions taken to date:</p> <ul style="list-style-type: none"> <li>•Letter to OEH requesting funds to support development and implementation of a Flying Fox (FF) Management Plan – OEH responded that no funds available.</li> <li>•Advice also from OEH was that FF Plan not mandatory and that works can be dealt with through a REF. This approach has been taken for the Bangalow camp, however due to various land tenures at the Mullum camp, the sensitive nature of the vegetation and the ongoing presence of FF (unlike Bangalow they have not dispersed over the winter period) an abbreviated FF action plan is being prepared.</li> <li>•Letters sent to residents at Bangalow and Mullumbimby.</li> </ul>

Meeting Date	Resolution No.	Report Title	Update and estimated date of completion
			<p><u>Mullumbimby</u> RFQ to prepare a Flying Fox Action Plan was prepared and consultants engaged. Draft action plan received and reviewed by staff. Consultants currently finalising plan.</p> <p><u>Bangalow</u> REF prepared by staff and ecological assessment complete. Works to be implemented through Infrastructure budget and \$2-3k from \$20k allocated from Res 15-181 to prepare FF Management Plans. It should be noted that quotes for all works &gt;\$20,000. As such a staged approach is being taken to be within current budget allocations. Initial works to remove camphor laurels were to occur on 14 September 2015 however flying foxes returned to the site. Ongoing monitoring is occurring of camp to assess occupancy. It is likely the camp will be occupied until next winter. Works could be carried out then if camp moves on and once REF has been updated.</p> <p><b>Estimated date of completion:</b> July 2016.</p>
21/05/15	15-226	Caravan park booking rules	<p>This resolution has been completed.</p> <p><b>Estimated date of completion:</b> Completed on 5/1/16. This resolution is now closed.</p>
17/09/15	15-479 15-480	Cypress pine trees at The Terrace Caravan Park	<p>NCHP removed the Cypress Pine trees assessed as requiring removal by NCHP prior to Council engaging an independent arborist. These resolutions have been completed.</p> <p><b>Estimated date of completion:</b> Completed on 29/9/15. These resolutions are now closed.</p>

### Financial Implications

- 5 A number of resolutions note that resource constraints limit completion of action required. Council may consider the priority of the respective resolutions and whether further action is still required.

### Statutory and Policy Compliance Implications

- 10
- Council requires a quarterly report be prepared to allow it to consider the quarterly Management Plan and Budget reviews along with a review of Council resolutions.
  - Implementation of Council resolutions in accordance with the Local Government Act 1993.
  - This report has been prepared in accordance with Part 3c) of Resolution 14-417 and Resolution 15-590.

**Report No. 13.4      Appointment of new Councillor representative to Richmond Tweed Regional Library Committee**

**Directorate:** Corporate and Community Services  
**Report Author:** Gayle McCallum, Governance Officer  
**File No:** I2016/3  
**Theme:** Corporate Management  
Councillor Services

**Summary:**

Councillors appointed representatives to the Richmond Tweed Regional Library are Cr Dey and Cr Richardson. Councillors are appointed for a 4 year term in line with the Local Government Ordinary Elections unless otherwise resolved by Council.

The Richmond Tweed Regional Library Committee meeting dates have now changed and Cr Richardson advises he can no longer attend committee meetings.

The purpose of this report is seek a replacement representative for Cr Richardson on this Committee.

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**RECOMMENDATION:**

1. That Council appoint Cr \_\_\_\_\_ as the replacement representative for Cr Simon Richardson on the Richmond Tweed Regional Library Committee.
2. That Council appoint Cr \_\_\_\_\_ as the alternate delegate to the Richmond Tweed Regional Library Committee, should one of Councils appointed representatives, not be able to attend a scheduled meeting.

**Attachments:**

- 1 Richmond Tweed Regional Library 2015 Highlights, E2016/624

### Report

Cr Richardson advises, due to a change of meeting times for the Richmond Tweed Regional Library (RTRL) Committee meetings, he can no longer attend.

The RTRL Committee has two Councillor representatives appointed from each local government area and each Council may also appoint an alternate delegate if a Councillor cannot attend.

### About

*The Richmond Tweed Regional Library was established in January 1971, when Lismore City Council and Ballina Shire Council signed an agreement to develop a joint free public library service. They were quickly joined by Byron Shire Council and Tweed Shire Council, and the Richmond-Tweed Regional Library Service was created. Since then, with the strong support of these four councils, the library has grown and now offers a broad range of services including books, magazines, DVDs, community information talks and author visits. An extensive range of eResources can also be accessed online via this website.*

*The estimated population for the combined Local Government Areas within the regional library in 2012 was 203,565. All service points offer a comprehensive free public library service, including the mobile library.*

*Our Vision: We will support our communities to achieve.*

*Our Mission: To create an environment where people can discover, connect and escape with knowledge, skills, ideas and stories.*

*Our Values: Show mutual respect, strive to do our best, love doing what we do, communicate connect, listen learn.*

### Present Members

LGA (Local Government Area)	Title	Name
Ballina Shire	General Manager	Paul Hickey
	Councillor	Jeff Johnson
	Councillor	Sharon Cadwallader
Byron Bay Shire	General Manager	Ken Gainger
	Councillor	Duncan Dey
	Councillor/Mayor	Simon Richardson
Lismore City	General Manager	Gary Murphy
	Councillor/Mayor	Jenny Dowell
	Councillor	Ray Houston
Tweed Heads Shire	General Manager	Troy Green
	Councillor	Carolyn Byrne
	Councillor	Katie Milne

Meetings are held quarterly at alternate Local Government locations. Meetings commence at 10.00am to approximately 1.00pm depending on Agenda items. Morning tea and lunch is provided.

The following dates have been set for 2016:

Friday 26 February 2016 (Tweed Shire – Murwillumbah Council Chambers)

Friday 13 May 2016 (Ballina Shire – Ballina Council Chambers)  
Friday 12 August 2016 (Byron Shire – Mullumbimby Council Committee Room)  
Friday 18 November 2016 (Lismore City – Lismore Council Chambers).

- 5 Please see the Richmond Tweed Regional Library web site for past business papers of this committee <http://rtrl.nsw.gov.au>

Cr Dey has submitted a Delegates report on the RTRL Committee meeting held on 27 November 2015, which is reported in this Agenda. Attached to this report is a list of RTRL highlights for 2015.

10

**Financial Implications**

Councillors travel to and from Regional Committee meetings is reimbursed by Council and budgeted for in the Councillors Budget.

15

**Statutory and Policy Compliance Implications**

The RTRL requires the appointment of at least two Councillor members.

**Report No. 13.5                      Market Licence Agreements- Request for Proposal 2016**

**Directorate:** Corporate and Community Services

**Report Author:** Paula Telford, Leasing and Licensing Coordinator  
Trish Kirkland, Manager Governance Services

5    **File No:** I2016/12

**Theme:** Society and Culture  
Community Development

10    **Summary:**

Current Temporary Market Licences to operator artisan markets at Railway Park Byron Bay and a farmers market at New Brighton Oval New Brighton will expire on or before 31 March 2016.

15    The Sustainable Community Markets Policy 15/007 requires that all future Market Licence Agreements must be awarded by an open and competitive process.

Council will publically advertise a Request for Proposal to grant new five year licence to operate farmers markets and artisan markets on Council owned community land.

20    To ensure existing Market Licences holders are given a minimum of 6-months notice to end their current market operations, as required by the Sustainable Community Markets Policy 15/007, this report recommends granting new Temporary Licences to the existing Market Licence holders for a further seven months to include the period 1 April 2016 to 30 November 2016.

25

**RECOMMENDATION:**

**That Council:**

1.    **Note that preparations have commenced, as set out in this report, to establish long-term Market Licence Agreements via a competitive process in accord with the new Sustainable Community Markets Policy.**
  
2.    **Delegate to the General Manager the authority to grant a 8-month Temporary Market Licences, under section 46(1)(b)(iii) of the *Local Government Act 1993 (NSW)*, *subject to the provisions of section 47 of the Local Government Act 1993 (NSW)*, commencing 1 April 2016 to the existing temporary market licence holders, to ensure continuity of market operations in Byron Shire until the competitive process for long-term market licences is finalised.**
  
3.    **Apply the market licence fees as determined in the Council's adopted fees and charges, to the Temporary Market Licence.**

**Report**

The current Temporary Market Licence Agreements granted to operators of farmers markets, and artisan market on Council managed community lands will expire on 31 March 2016.

The current Temporary Licences, issued under s46(1)(b)(iii) of the *Local Government Act NSW* (1993) permits the following licensee to operate:

a) up to 52 community farmers markets in any 12 month period to:

i. North Byron Farmers Markets Incorporated at New Brighton Oval, Lot 335 DP 755687, Park Street New Brighton NSW 2486.

b) up to 29 artisan markets in any 25 weeks to:

i. Byron Bay Community Association Incorporated at Railway Park, Lot 2 DP 827049 Jonson Street Byron Bay NSW 2481.

New long-term Market Licence Agreements

The Sustainable Community Markets Policy 15/007 adopted by Council on 17 August 2015 requires that all future Market Licence Agreements must be awarded by an open and competitive process.

Council is proposing to publically advertise a Request for Proposal seeking offers for new five year Market Licences.

The Request for Proposal document will detail the minimum criteria to apply for assessment of any offers received. The minimum criteria applied will be in accordance with clause 3.63(b) of the Sustainable Community Markets Policy.

Notice to existing licensees

Clause 3.2(a) of the Sustainable Community Markets Policy 15/007 requires Council to provide at least six months notice to exiting markets licensees. As the proposed process will take in excess of 6 months to complete, as set out in the Timetable below, Council is in a position to provide that notice without any negative impacts on the proposed timetable.

To ensure the existing licensee is given adequate notice of Council's intention to issue new five year Market Licence Agreements to operate community, farmers and artisan markets on Council managed community lands, Council is proposing to:

a) grant a new Temporary Market Licence Agreements to the existing licence holders for a further seven months to include the period 1 April 2016 to 30 November 2016, and

b) provide the required notice to the exist Market Licence Agreement holders that their licenses to operate markets will end on 30 November 2016.

Sustainable Community Markets Policy 15/007 provides for temporary licences to be granted, however, for not more than 3 x 1 year consecutive terms. The current Market Managers have had many successive temporary market licence agreements whilst the new Policy was developed and endorsed. Therefore, granting a further temporary licence to existing Market Managers for a 7 month, as recommended above, will require a resolution of Council.



Table 1 – Timetable for Request for Proposal to establish 5-year Market Licenses

<b>Date</b>	<b>Action</b>
4 February 2016	Council authorises the granting of a new Temporary License to the existing license holder until 30 November 2016, subject to section 47 of the <i>Local Government Act</i> .
10 February 2016	Give 28 days notice of the Temporary Licence and Long-term Licence proposals in accordance with section 47(1) of the <i>Local Government Act</i> .
10 March 2016	Assess submissions received, and subject to assessment outcomes prepare and execute new Temporary Licences for existing Licence holders commencing 1 April 2016. If an objection is submitted Council must consult with the Minister under s47(6) of the <i>Local Government Act</i> .
1 April 2016	Formalise written notice, under the Policy, to all existing Market Licence holders that their licences will end on 30 November 2016.
30 April 2016	Finalise preparation of the Request for Proposal documentation, including new licence agreements, detailed market location and asset impact data, and development appropriate social impact value measures and KPI reporting requirements under the new agreements to support the new Policy objectives.
11 May 2016	Publically advertise the Request for Proposal to establish long-term market licences.
30 June 2016	Close of Request for Proposal advertisement.
1 July 2016 to 31 July 2016	Panel evaluation of offers received in response to the Request for Proposal
3 August 2016	Finalise report for Ordinary Council Meeting Agenda.
25 August 2016	Ordinary Meeting of Council to consider granting the new 5-year Market Licences to the preferred proposals, subject to section 47(6) requirements to consult the Minister if an objection to the proposed long-term licences was received and other development consent or other approvals requirements.
30 October 2016	Allowance for any necessary development consents and/or associated approvals to be secured by the successful proponents.
31 October 2016	Provide final advice to current licence holders of the outcomes and finalisation of current market operations by 30 November 2016.
30 November 2016	Finalise execution of new 5-year licence agreements.

1 December 2016	Commencement of all new 5-year Community Market Licence Agreements.
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### Financial Implications

Licence rental fees will be in accordance with Council's adopted fees and charges.

### Statutory and Policy Compliance Implications

The Generic Plan of Management Community Land Categorised as a Park, adopted 24 February 2005 is the relevant Plan of Management over land identified as Lot 335 DP755687, Park Street New Brighton NSW and Railway Park, Byron Bay NSW.

Relevant legislation is *Local Government Act 1993* (NSW) and includes:

- Section 46 Leases, licences and other estates in respect of community land – generally
- (1) A lease, licence or other estate in respect of community land:
    - (b) may be granted, in accordance with an express authorisation in the plan of management and such provisions of the plan of management as apply to the granting of the lease, licence or other estate:
      - (i) for a purpose prescribed by subsection (4), or for a purpose prescribed by any of sections 36E to 36N as a core objective of the categorisation of the land concerned, or
      - (ii) for a purpose prescribed by the regulations, if the plan of management applies to several areas of community land, or
      - (iii) for a short-term, casual purpose prescribed by the regulations, or
      - (iv) for a residential purpose in relation to housing owned by the council, or
  - (2) Despite subsection (1), a lease, licence or other estate in respect of community land may be granted for a purpose mentioned in subsection (1) (b) only if the purpose for which it is granted is consistent with the core objectives, as prescribed in this Part, of its categorisation.
  - (3) A council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 30 years.
  - (4) The following purposes are prescribed for the purposes of subsection (1) (b) (i):
    - (a) the provision of goods, services and facilities, and the carrying out of activities, appropriate to the current and future needs within the local community and of the wider public in relation to any of the following:
      - (i) public recreation,
      - (ii) the physical, cultural, social and intellectual welfare or development of persons,
  - (5) Purposes prescribed by subsection (4) in relation to the matters mentioned in subsection (4) (a) (ii) include, but are not limited to, maternity welfare centres, infant welfare centres, kindergartens, nurseries, child care centres, family day-care centres, surf life saving clubs, restaurants or refreshment kiosks.
  - (6) A plan of management is void to the extent that it purports to authorise the grant of a lease, licence or other estate in contravention of this section.

Section 47 Leases, licences and other estates in respect of community land –terms greater than 5 years

- (1) If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:
  - (a) give public notice of the proposal, and

- (b) exhibit notice of the proposal on the land to which the proposal relates, and  
(c) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and  
5 (d) give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.
- (2) A notice of the proposal must include:
- information sufficient to identify the community land concerned
10
    - the purpose for which the land will be used under the proposed lease, licence or other estate
    - the term of the proposed lease, licence or other estate (including particulars of any options for renewal the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)
15     - a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.
- (3) Any person may make a submission in writing to the council during the period specified for the purpose in the notice.
- (4) Before granting the lease, licence or other estate, the council must consider all  
20 submissions duly made to it.
- (5) The council must not grant the lease, licence or other estate except with the Minister's consent, if:
- (a) a person makes a submission by way of objection to the proposal, or
25   - (b) in the case of a lease or licence, the period (including any period for which the lease or licence could be renewed by the exercise of an option) of the lease or licence exceeds 21 years.
- (6) If the council applies for the Minister's consent, it must forward with its application:
- a copy of the plan of management for the land details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision
30   - a statement setting out all the facts concerning the proposal to grant the lease, licence or other estate
  - a copy of the newspaper notice of the proposal a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate
35   - if the application relates to a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years, a statement outlining the special circumstances that justify the period of the lease or licence exceeding 21 years
40   - a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate.
45
- (7) On receipt of the application, the Minister must request the Director of Planning to furnish a report concerning the application within such period as the Minister specifies.
- (8) After considering the application and any report of the Director of Planning, the Minister, if satisfied that:
- (a) subsections (1), (2) and (6) have been complied with, and
50   - (b) such consent would not contravene section 46, and
  - (c) in all the circumstances, it is desirable to grant consent, may consent to the granting of a lease, licence or other estate in respect of the whole or part of the land to which the application relates, subject to such terms and conditions as the Minister specifies.

(8AA) The Minister may consent to a lease or licence referred to in subsection (5) (b) only if the Minister is satisfied that there are special circumstances that justify the period of the lease or licence exceeding 21 years.

(8A) On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to consent to, the granting of a lease, licence or other estate in accordance with subsection (8).

(9) The Minister's consent is conclusive evidence that the council has complied with subsections (1), (2) and (6).

(10) For the purposes of this section, any provision made by a lease or licence, or by an instrument granting any other estate, in respect of community land, according to which the council:

(a) would suffer a disadvantage or penalty if the same or a similar lease, licence or estate were not to be granted, for a further term, after the expiry of the current lease, licence or other estate, or

(b) would enjoy an advantage or benefit if the same or a similar lease, licence or estate were to be so granted, is taken to confer an option for renewal for a term equal to the further term.

Section 47A Leases, licences and other estates in respect of community land –terms of 5 years or less.

(1) This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.

(2) If a council proposes to grant a lease, licence or other estate to which this section applies:

(a) the proposal must be notified and exhibited in the manner prescribed by section 47, and

(b) the provisions of section 47 (3) and (4) apply to the proposal, and

(c) on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47 (5)–(9) are to apply to the proposal.

(3) If the Minister, under subsection (2) (c), determines that the provisions of section 47 (5)–(9) are to apply to the proposal:

(a) the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47 (1)–(8), and

(b) section 47 (9) has effect with respect to the Minister's consent.

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.6**      **Report of the Planning Review Committee Meeting held on 3 December, 2015**

5    **Directorate:**            Sustainable Environment and Economy  
    **Report Author:**      Wayne Bertram, Manager Sustainable Development  
    **File No:**                I2015/1498  
    **Theme:**                Ecology  
10                              Development and Approvals

**Summary:**

15    This report provides the outcome of the Planning Review Committee Meeting held on 3 December, 2015.

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**RECOMMENDATION:**

**That the report be noted.**

20

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

### Report:

The meeting commenced at 1.30pm and concluded at 1.40pm.

Present: Crs Dey, Hunter, Cameron

5 Apologies: Cr Richardson

The following development application was reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2015.634.1	Planners North	11 Ewingsdale Rd Ewingsdale	Change of Use of Cheese Factory to Kitchen, Administrative Facilities, Expansion of Restaurant Areas and Car Parking and New Dwelling House	Level 1  5/11/15 to 18/11/15  5 submissions against	The validity of the matters raised in the public submissions.  The extent of variation to Council policies proposed.  The perceived public significance of the application.  Council

- 10 As Council has determined the original development application, the Section 96 application to modify the following development consent was referred to the Planning Review Committee to decide if the modification application can be determined under delegated authority.

The following Section 96 application was reviewed with the outcome shown in the final column.

15

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2013.562.3	Planners North	Bayshore Drive Byron Bay	S96 reduction of car parking spaces	Level 0	Delegated Authority

**Report No. 13.7      Planning - Submissions Report on Draft LEP Amendment 26.2015.4.1 - Planning Proposal for tourism related land use table and clause changes**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Chris Larkin, Major Projects Planner  
**File No:** I2015/1586  
**Theme:** Ecology  
 Planning Policy and Natural Environment

**Summary:**

This report presents the public exhibition outcomes on a planning proposal to amend Byron Local Environmental Plan (LEP) 2014 in relation to tourism related land uses. Specifically it is proposed to permit Serviced Apartments in the B4 Mixed Use Zone with consent, include the parent definition of Tourist and Visitor Accommodation as permissible with consent in the RU1 and RU2 Zones whilst prohibiting certain child uses in those zones, amend Clause 5.4(1) to enable 5 bedroom Bed and Breakfast Accommodation, whilst also nominating 1 bedroom Bed and Breakfast Accommodation as exempt development.

The planning proposal (at Attachment 1) received a Gateway determination to proceed to public exhibition from the Department of Planning and Environment and was placed on public exhibition for a period of 6 weeks from 22 October 2015 to 4 December 2015. Three public submissions have been received raising various issues. The Gateway determination required Council to consult with three government agencies including NSW Rural Fire Service (RFS). The RFS have advised they have no objection to the planning proposal proceeding, subject to an amendment to the wording of the exempt clause for 1 bedroom Bed and Breakfast Accommodation.

The Minister for Planning and Environment has issued an authorisation for Council to exercise delegation to make this LEP amendment should Council decide to proceed with it. This report recommends that Council proceed with the planning proposal as modified by a minor amendment.

**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. **Modify the planning proposal in relation Subclause 8 for exempt Bed and Breakfast Accommodation as proposed in the NSW Rural Fire Service submission to:**

***8. 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. **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.**

- 3. 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. Make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning and Environment for notification on the NSW Government legislation website.**

**Attachments:**

- |    |   |   |
|----|---|---|
|    | 1 | Final Planning Proposal for tourism related land use table and clause changes,, E2016/793 |
| 5  | 2 | Comments from NSW Rural Fire Service , S2015/14156  |
|    | 3 | Comments from NSW Government Office of Environment & Heritage , S2015/14394               |
|    | 4 | Comments from Dept of Primary Industries - Agriculture , E2015/72223                      |
|    | 5 | Confidential - Public Submissions , E2016/498   |
| 10 | 6 | Form of Special Disclosure of Pecuniary Interest, E2012/2815                              |



**Report**

Overview

5 At the ordinary meeting of 30 April 2015, Council adopted (*Resolution 15-186*) the Byron Shire Short Term Holiday Accommodation Action Plan, and resolved to prepare a planning proposal to amend Byron LEP 2014 and submit it to the Department of Planning for a Gateway Determination.

10 Two planning proposals were prepared; one to address the new requirements for holiday letting and the other to improve controls for certain types of tourism development. This report deals with the planning proposal for the other types of tourist accommodation. A report on the holiday letting planning proposal will be tabled with Council at a future meeting.

The planning proposal recommended the following amendments to Byron LEP 2014:

- 15 1. Insert Serviced Apartments in Zone B4 Mixed Use as permissible with development consent;
2. Insert Tourist and Visitor Accommodation in the RU1 and RU2 Zones as permissible with consent, and list Hotel or Motel Accommodation, Backpackers Accommodation and Serviced Apartments as prohibited;
- 20 3. Amend clause 5.4 (1) *Bed and Breakfast Accommodation* to increase the number of bedrooms from no more than 3 to no more than 5 bedrooms; and
4. Insert exempt provisions in Schedule 2 for 1 bedroom Bed and Breakfast Accommodation to enable development such as Air B&Bs.

Consultation

25 The planning proposal received a Gateway determination to proceed to public exhibition from the Department of Planning and Environment on 10 August 2015 and was placed on public exhibition for a period of 6 weeks from 22 October to 4 December 2015.

30 A condition of the Gateway determination required Council to consult with NSW Rural Fire Service, the Office of Environment and Heritage and the Department of Primary Industries. Comments have been received from all three Government Agencies and are included at Attachments 2, 3 and 4. Three public submissions were also received and are included at Attachment 5. The matters raised are discussed below.

35 **Government Agencies**

Issue	Comment
<p><b>NSW Rural Fire Service</b></p> <p>No objection to the Planning Proposal, however the amended controls have the potential to increase Tourist and Visitor Accommodation on land mapped as bushfire prone.</p> <p>Has recommended that subclause 8 for exempt 1 bedroom Bed and Breakfast Accommodation be amended to read:</p> <p><i>8. Prior to commencement, where the</i></p>	<p>It is acknowledged that Tourist and Visitor Accommodation may be located on land mapped as bushfire prone land.</p> <p>The suggested minor amendment to subclause 8 is considered acceptable and reflects the intent of Council's draft clause in that bushfire safety authority is required prior to the use of the premises as 1 bedroom Bed and Breakfast Accommodation.</p>

Issue	Comment
<p><i>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.</i></p>	
<p><b>Office of the Environment and Heritage (OEH)</b></p> <p>No objection to items 2, 3 and 4 of the Planning Proposal relating to Bed and Breakfast Accommodation and Tourist and Visitor Accommodation. However raises an issue for Serviced Apartments in the B4 Zone based on it being a land use as <b>permissible without consent</b> and the potential to impact on biodiversity and Aboriginal cultural heritage values.</p> <p>OEH have suggested that Council provide appropriate criteria for the assessment of Development Applications for Serviced Apartments in terms of Biodiversity and Aboriginal Cultural Heritage Values.</p>	<p>The current land use table for the B4 Zone permits a wide range of residential and commercial/business uses. This includes multi-dwelling housing and shop top housing. Further, the use of this zone is limited at present to three locations, two in Byron Bay and a third area in Brunswick Heads being Tweed Street (or the old Pacific Highway). The planning proposal seeks to list Serviced Apartments as <b>permissible with consent, not as permissible without consent</b>. OEH have misinterpreted the documentation sent to them.</p> <p>In terms of the matters raised the following comments are provided.</p> <p><b>Biodiversity:</b> Chapter B2 of DCP 2014 includes relevant provisions on the removal of vegetation from property. Any application that potentially had an impact on native vegetation or biodiversity values would be assessed in accordance with the DCP and other relevant provisions including and not limited to the Threatened Species Conservation Act 1997, Section 5A of the EPA Act 1979 and other relevant planning instruments where applicable. The provision of an additional set of criteria for this specific land use is not warranted in this instance.</p> <p><b>Aboriginal Cultural Heritage Values:</b> The heritage provisions contained within NPWS Act 1974 would apply to a development for Serviced Apartments in the same manner they apply to all types of development across Byron Shire. It is considered the creation of a set of specific Aboriginal heritage provisions for Serviced Apartments is not warranted.</p>
<p><b>Department of Primary Industries (DPI)</b></p> <p>No objection to items 1 and 2 in the planning proposal, but the DPI have raised issues in relation to Bed and Breakfast Accommodation as follows:</p> <ul style="list-style-type: none"> <li>Increasing the number of bedrooms from 3 to 5 – DPI</li> </ul>	<p>Bed and Breakfast Accommodation of 2 or more guest bedrooms will require the submission and approval of a Development Application. Where a land use conflict may arise it is Council's practice to request a land use conflict resolution assessment (<i>LUCRA</i>) as part of that application. Such provisions are incorporated into Chapter B6 – Buffers and Minimising Land Use Conflict under Byron DCP 2014 which incorporates Table 6 from the Living and Working in Rural Area Handbook.</p>

Issue	Comment
<p>have requested that Council is satisfied that the functionality of the rural landscape is substantially maintained in terms of land use conflict; and</p> <ul style="list-style-type: none"> <li>• Permitting 1 bedroom Bed and Breakfast Accommodation may create a land use conflict and does not support this activity as exempt development.</li> </ul>	<p>No change in Councils assessment process is being proposed for Bed and Breakfast Accommodation containing 2 or more guest bedrooms and it is considered potential impacts on the rural landscape can be appropriately managed for large Bed and Breakfast Accommodation.</p> <p>The DPI's concerns are noted on the exempt provisions, however, the concept of listing 1 bedroom Bed and Breakfast Accommodation as exempt is considered a minor matter aimed at facilitating the growth or interest in residents letting out a single bedroom for guest accommodation. This is partly in response to the various web based accommodation platforms such as "airbnb" which enables such accommodation to be advertised on a very ad-hoc basis, and for residents to derive a small or modest ancillary income to supplement their normal income sources</p> <p>It is also the smallest form of Tourist and Visitor Accommodation that will be described under Byron LEP 2014. It will enable the use to occur without the need for a Development Application, in an existing residence that has a spare bedroom, which is managed by the owner or operator who is a permanent resident of the dwelling. Any new housing that is proposed in rural areas is subject to the provisions of Chapter B6 of Byron DCP 2014, with the buffer provisions between rural dwellings and rural tourist accommodation generally identical. As such if the dwelling is utilised as a 1 bedroom B&amp;B then the buffers issue will have been considered with the approval of the dwelling.</p> <p>In summary, this type of activity is not seen as a major income generator for the owner or operator. It is domestic in scale, and if a land use conflict does arise, it will be considered in terms of the domestic characteristics of the dwelling not as a major commercial operation.</p>

**General Submissions**

Issue	Comment
<p>Council needs to ensure rural tourism types previously permissible under Byron LEP 1988 are permissible under Byron LEP 2014</p>	<p>Council is limited at present to using the standard instrument definitions in terms of defining land uses. Presently Byron LEP 2014 only permits Farm Stay Accommodation and Bed and Breakfast Accommodation in the RU1 and RU2 Zones, and Eco-tourist Facilities in the RU2 Zone. It is intended to list the parent definition of Tourist and Visitor Accommodation as permissible with consent and then specifically prescribe Serviced Apartments, Backpacker Accommodation and Hotel or Motel accommodation as prohibited.</p>

Issue	Comment
	<p>The intention of this amendment is that it will enable not only Farm Stay Accommodation, Bed and Breakfast Accommodation, but also allow other forms of Tourist and Visitor Accommodation that may not be specifically defined, but falls within the general boundaries of the first part of the parent definition, which reads:</p> <p><b><i>Tourist and visitor accommodation means a building or place that provides short term accommodation on a temporary basis.....</i></b></p> <p>Such an approach has been adopted by other Councils such as Ballina and Eurobodalla Shires so that “rural tourist accommodation” that may not fit within the strict definition of Farm Stay Accommodation or Eco-tourist Facilities could proceed with consent. Discussions with Planners at Ballina Shire indicate one DA has been submitted and approved for tourist cabins under the parent definition.</p> <p>It is considered the amendment as proposed will assist with re-instating planning mechanisms similar to Byron LEP 1988.</p>
Proposed amendment will permit Serviced Apartments, Backpacker Accommodation and Hotel or Motel Accommodation	It is intended that these three types will be listed as prohibited development in the RU1 and RU2 Zones
Serviced Apartments could be used to describe rural tourist cabin forms or a new type of definition needs to be included in the LEP	Council is limited to the suite of definitions in the Standard Instrument LEP. At this particular point in time no clear definition exists for the traditional rural tourist accommodation previously permitted under Byron LEP 1988. Serviced Apartments was considered, however the term gives rise to a building of multiple storeys located in an urban environment, and is not appropriate for a rural zone.
<p>Potential for other forms of Tourist and Visitor Accommodation being inconsistent with the objectives of the zone and in particular:</p> <p><i>“To enable the provision of tourist accommodation, facilities and other small scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality”</i></p>	This would be a matter for consideration at the Development Application stage. It is considered there would be a range of ways to ensure compliance with this objective including the removal of weeds from a property in terms of native vegetation management and rehabilitation to small scale cottage farming activities and the like (eg letting a paddock for neighbours to agist livestock on, or small horticultural activities), which are insufficient to make a viable living from, but still provide for associated primary production on the land.
Disagree with 1 bedroom Bed and Breakfast Accommodation as exempt as:	Bed and Breakfast Accommodation are currently permissible with consent across all residential and rural

Issue	Comment
<ul style="list-style-type: none"> <li>• it is unfair to existing businesses,</li> <li>• Council won't be able to control numbers, breakfast being supplied and the owner or operator being a permanent resident of the dwelling.</li> <li>• will they be registered with Council?</li> <li>• will Council check against websites such as Airbnb?</li> <li>• will exempt Bed and Breakfast Accommodation be able to operate where short term rental accommodation is not permissible?</li> </ul>	<p>zones. The draft exempt provisions will enable 1 bedroom Bed and Breakfast Accommodation to occur without consent. The short term rental accommodation provisions will also be permissible across all residential zones. It is intended that exempt Bed and Breakfast Accommodation operators register the use of the dwelling on a Council register which is currently being developed. As to compliance, Council will commence action if and when a complaint is made regarding a certain operation. Evidence could be collected by cross referencing the various web based platforms such as Airbnb.</p>

The Minister for Planning and Environment has issued an authorisation for Council to exercise delegation to make this LEP amendment should Council decide to proceed with it.

**5     Recommendation**

It is recommended that Council proceed with the planning proposal incorporating the amendments proposed by the NSW Rural Fire Service in relation to Subclause 8 for Exempt Bed and Breakfast Accommodation.

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**Financial Implications**

As a Council initiated planning proposal the administration cost has been met by Council.

**15    Statutory and Policy Compliance Implications**

Council has followed the statutory process to amend Byron LEP 2014 through this planning proposal. Council should now decide whether to proceed to finalise the planning proposal (either with or without amendments).

**Report No. 13.8      PLANNING - Expressions of Interest for membership of the Mullumbimby Masterplan Scoping Project Reference Group****Directorate:** Sustainable Environment and Economy**Report Author:** Tara McGready, Senior Planner**File No:** I2015/1588**Theme:** Ecology  
Planning Policy and Natural Environment**Summary:**

In accordance with resolution 15-555 (parts 1, 2 and 3), a draft constitution for the Mullumbimby Masterplan Scoping Project Reference Group (PRG) is tabled for Council's consideration.

Expressions of Interest (EOI) were invited from community members to be a part of the PRG and five EOIs were received. These five people have been listed in the Constitution as the proposed Community Members to be appointed to the PRG.

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**RECOMMENDATION:**

1. **That Council confirm the appointment of the five community members listed in Section 4.2 Community Members of the draft Mullumbimby Masterplan Scoping Project Reference Group (PRG) Constitution at Attachment 3 (E2016/1325) to the PRG.**
2. **That Council adopt the draft constitution at Attachment 3 (E2016/1325).**

**Attachments:**

- 1 Mullumbimby Masterplan Scoping PRG EOI invitation and information., E2016/1310
- 2 Confidential - EOI responses - Mullumbimby Masterplan Scoping PRG, E2016/1321
- 3 Draft Constitution - Mullumbimby Masterplan Scoping Project Reference Group 2016, E2016/1325

**Report**

At its Ordinary meeting of 29 October 2015, Council resolved as follows:

**5 15-555 Resolved** *(relevant part only):*

1. That Council establish a PRG to develop a draft brief, delivery plan and process for a Mullumbimby Masterplan.
2. That the Mullumbimby Masterplan PRG be comprised of three Councillors and up to five community members.
3. That the Mullumbimby Masterplan PRG report to Council and be wound up within six months of establishment subject to Council consideration of a final report.

**15 15-556 Resolved** *that Councillors Cameron, Richardson and Dey be appointed to the Mullumbimby Masterplan PRG.*

A call for Expressions of Interest (EOI) (see Attachment 1) was advertised on 10 December 2015 seeking community representatives interested in being on the Project Reference Group (PRG), with a deadline of 6 January 2016 for responses.

Five community members lodged EOIs to be a part of the PRG. Their details and responses to the selection criteria are at Attachment 2.

A draft constitution for the Mullumbimby Masterplan Scoping PRG is tabled for Council's consideration. The draft constitution is at Attachment 3.

It should be noted that Council resolution 15-555 specified up to five community members be included in the PRG. As EOIs were received from five members of the community, Section 4 'Membership' of the Draft Constitution has already been populated with those community members' names. Council should confirm that they are satisfied with appointing these community members to the PRG.

The PRG's first meeting is scheduled for 31 March 2016 from 11.00am to 1.00pm. At this meeting, the group needs to decide on the frequency of meetings, within the group's 6 month term, and confirm its acceptance of the PRG's Constitution.

**Financial Implications**

The administrative functions associated with the PRG will be undertaken using existing staff resources in the Environmental and Economic Planning section. Potential costs associated with the PRG may include expenses related to catering and meeting room hire. These costs are not anticipated to be large and will be met through the Environmental and Economic Planning Sundry Administrative Expenses (2601.006) account.

**Statutory and Policy Compliance Implications**

Nil.

**Report No. 13.9**      **PLANNING - 10.2015.353.1 Mixed use development comprising 28 Residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision at Bayshore Drive Byron Bay**

5      **Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Ian McIntosh, Assessment Officer  
                              Noreen Scott, EA Sustainable Environment and Economy  
**File No:**              I2016/9  
**Theme:**              Ecology  
 10                        Development and Approvals

**Proposal:**

Mixed use development comprising 28 residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision

**Property description:**      LOT: 3 DP: 1004514 Bayshore Drive BYRON BAY  
**Parcel No/s:**                  226780  
**Applicant:**                      Planners North  
**Owner:**                          Brandon Saul Holdings Pty Ltd  
**Zoning:**                          Zone No. B4 Mixed Use  
**Date received:**                19 June 2015  
**Integrated Development:**      Yes  
**Public notification or exhibition:**                      – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications  
    – Exhibition period: 2/7/15 to 15/7/15  
    – Submissions: For    = 0    Against = 1  
**Other approvals (S68/138):**      Not applicable  
**Planning Review Committee:**      N/A  
**Delegation to determination:**      Council  
**Issues:**                              • Bushfire Prone Land  
    • ASS  
    • JRPP - not referred as cost <\$20million

**Summary:**

Development consent is sought to construct a mixed use development within the subject allotment, known as “Habitat” previously known as “Bayshore Village”. This new proposal is to construct the mixed use part of the development, previously approved under DA 10.2011.162., within Precincts 1,3 & 4. DA 10.2011.162 has commenced with the construction of internal roadways, car parking and services infrastructure nearing completion. The development proposed incorporates the following components:

- a total of 28 dwellings across three precincts, providing a mix of dwelling types and sizes, with the majority incorporating home office/ work spaces;
- included in the overall total of 28 dwellings are 12 live/work units, comprising ground floor works space/studios, with smaller residential unit above (around 80m<sup>2</sup>).



- a commercial precinct that includes approximately 1,800m<sup>2</sup> of retail floor space, 1,900m<sup>2</sup> of office/ commercial premises floor space, a canteen/café and shared community meeting areas, reception areas and amenities;
- recreational facilities including a pool, park, and associated play facilities;
- associated internal roads, car parking, infrastructure, and landscaping; and
- subdivision (community scheme & strata title).

The proposed development has been planned over several years in consultation with both Council and the community. A site specific development control plan was adopted for the site, being Byron Development Control Plan (DCP) No. 20 – Bayshore Village, Byron Bay. This DCP has recently been incorporated into Chapter E5.5 of DCP 2014.

The proposal satisfies the prescriptive measures of the DCP.

The subject Development Application was placed on public exhibition from 2 July to 15 July 2015. One submission was received which generally supported the development but was against the size of the retail component. Given that the development satisfies the adopted provisions of DCP 2014, the proposal does not compromise the public interest.

An assessment of the impacts of the development on the natural and built environment concluded that subject to compliance with conditions of consent and for the reasons discussed within this report, the proposal is unlikely to result in a significant environmental impact. The site is appropriately zoned for mixed use development and given the site specific DCP plan is deemed to be a suitable location for the proposal.

The application is recommended for approval subject to conditions of consent.

**NOTE TO COUNCILLORS:**

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

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**RECOMMENDATION:**

**That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, Development Application 10.2015.353.1, for the construction of a mixed use development comprising 28 residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision, be granted consent subject to the conditions listed in Attachment 2 #E2016/2599.**

**Attachments:**

- 15     1     Proposed Plans 10.2015.353.1, E2016/3224  
          2     proposed consent conditions 10.2015.353.1, E2016/2599  
          3     Confidential - Submissions Recieved 10.2015.353.1, E2016/2670

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

The development site comprises a single allotment of land that was created as a result of the subdivision of Lot 25 DP 812667 under Development Consent No. 97/0171. The subject Lot (Lot 3) was one of four allotments created as part of the subdivision. Since its creation, Lot 3 has been the subject of the following Development Applications:

- 10.2004.394.1 – Stockpiling of fill material – Deferred Approval - 5 November 2004
  - 10.2005.705.1 – Stockpiling 1.5m of fill over 12500m<sup>2</sup> – Deferred Approval – 25 September 2006
  - 10.2007.177.1 – Environmental Enhancement Works – Approved 19 December 2007
  - 10.2005.705.2 – S.96 to amend conditions of stockpiling consent – Approved 4 May 2007
  - 10.2007.349.1 – Stockpiling of fill – Withdrawn 21 December 2007
  - 10.2005.705.2 – S.96 to extend the timeframe of consent – Approved 16 April 2008
  - 10.2008.360.1 – Mixed use development comprising 82 dwellings, retail, commercial and creative industrial units – Approved 18 December 2008
  - 10.2008.360.2 – S.96 to amend deferred commencement consent – Approved 27 March 2009
  - 10.2008.360.3 – S.96 to amend conditions including staging and road works – Approved 25 Feb 2010
  - 10.2008.360.4 – S.96 to amend design, layout etc. – Refused 30/08/2010
  - 10.2008.360.5 – Modification to allow only earthworks carried out in accordance with the site preparation stage to be completed under this consent – Approved 9 December 2014
  - 10.2009.12.1 – Community title subdivision of mixed use development – Approved 11 Nov 2009
  - 10.2011.162.1 – Mixed use development comprising 67 dwellings, retail, commercial and creative industrial units – Approved 14 Feb 2012
  - 10.2011.162.2 – Section 96 Modification to correct description – Approved 6 March 2012
- DA 10.2011.162.1 was approved in February 2012, providing for the construction of Bayshore Village, a mixed-use creative industry / residential hub, proposed for a site on the edge of the Byron Arts and Industry Estate, Byron Bay.

Construction Certificate 11.2010.162.1 was issued for site preparation works in November 2014 and the approved works are currently under construction. These include filling of the land and construction of internal roads and stormwater and servicing infrastructure.

**1.2 Description of the site**

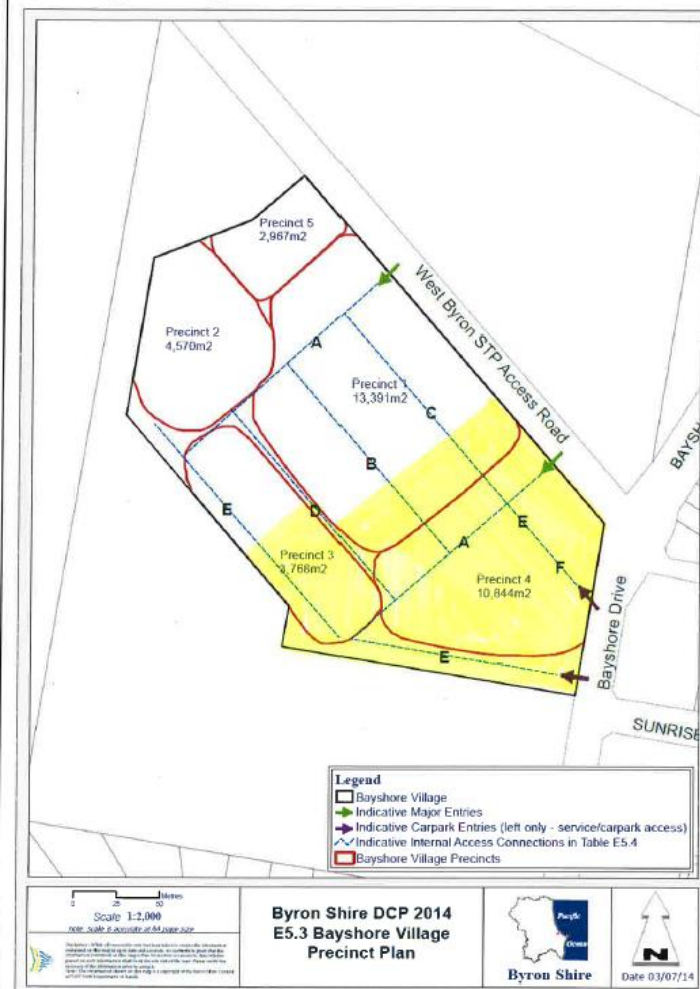
The proposed development is to be carried out upon a single allotment described as Lot 3 in Deposited Plan 1004514. The allotment is located on the western side of Bayshore Drive, near the intersection of Sunrise Boulevard in Byron Bay. The allotment has an area of 4.921 hectares and is located within the B4 Mixed Use Zone under Byron Local Environmental Plan 2014.

Vehicular access to the allotment is from Bayshore Drive to the east. A public road that leads to the West Byron Sewage Treatment Plant adjoins the site to the north. Vacant land owned by Byron Shire Council adjoins to the south and west. Residential development is located on the opposite side of Bayshore Drive to the east and the Byron Arts and Industrial Estate is located approximately 120 metres to the south of the site. The Sun Bistro has recently been constructed and is now operating, on land to the north.

The majority of the site is made up of a level/cleared/grassed paddock that has been recently filled in accordance with Council development approvals. An inspection of the site on 6 November 2015 found that filling and earthworks were being carried out in accordance with the first stage of Development Consent No. 10.2008.360 and subdivision works were being carried out in accordance with Development Consent No. 10.2011.162.1. As such, the property is largely disturbed. Part of the property is located within the 100 metre buffer of mapped bush fire vegetation.

The site has good connections to main roads and pedestrian and cycleway networks. The main north coast rail line lies to the north of the site. This rail line is currently unused, but an application to erect nearby station platforms has recently been approved by Council and the use of this railway line between the development and Byron town centre is expected in near future. Bus transport services operate between the nearby Sunrise Beach shopping centre and Byron Bay town centre. The bus route passes along the Bayshore Drive frontage of the site, with services operating to and from Byron Bay each hour, sixteen times per day. There is an established cycleway network throughout Sunrise Beach that connects the site with Ewingsdale Road, where the cycleway continues into the Byron Bay town centre.

Map E5.3 – Bayshore Village Precinct Plan



The portion of the site subject to this application is highlighted in yellow

### 1.3 Description of the proposed development

The application seeks consent for a mixed use development comprising 28 residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision. The site has a current approval, under DA10.2011.162, for a mixed use development comprising 67 dwellings, retail, commercial and creative industrial units for which a construction certificate has been granted and site works comprising roads and services infrastructure has commenced.

The development has been renamed “Habitat” and while the fundamental structure and function of the approved development remains in place some elements of the proposal have altered. The proponents are now ready to commence construction of the first stage of the refined development and a new application is necessary due to the scale and nature of the design changes. This application therefore, applies to the front 35% of the site (Precinct 4 and parts of Precinct 1 & Precinct 3). The remainder of the development will therefore be subject to future approval/s. Given that the approved site preparation works are currently under construction, this application essentially proposes the erection of buildings onto the developed site, subsequently consent DA10.2011.162.1 will have to be modified to delete all but the roadways and services infrastructure currently under construction.

The development proposed for this application is identified below as ‘Stage 1’



Key aspects of the proposal include:

- a total of 28 dwellings across three precincts, providing a mix of dwelling types and sizes, with the majority incorporating home office/work spaces;
- included in the overall total of 28 dwellings are 12 live/work units, comprising ground floor works space/ studios, with smaller residential unit above.
- a commercial precinct that includes retail floor space, office/commercial premises floor space, a canteen/café and shared community meeting areas, reception areas and amenities, and a public art installation,
- associated internal roads, car parking, infrastructure, and landscaping, and
- subdivision (community scheme), strata subdivision after buildings completed..

Precinct	Land Use	Proposed
Residential	Dwellings	6 x three bedroom dwellings
	Work spaces	All the 6 dwellings contain home offices/ workspaces (approx. 35m – 40m <sup>2</sup> each
	GFA	863m <sup>2</sup> dwellings 222m <sup>2</sup> work spaces
	Parking	Each dwelling contains two covered car spaces
Live / Work	Work spaces	12
	GFA (work space)	732m <sup>2</sup>
	Dwelling	12 x one bedroom
	GFA (dwelling)	1,001m <sup>2</sup>
	Parking	42 on street spaces
Commercial	Retail GFA	1,589m <sup>2</sup>
	Canteen / Cafe	283m <sup>2</sup>
	Commercial GFA	1,973m <sup>2</sup>
	Dwellings	10 (each with office/ workspace at street frontage)
	Residential GFA	1,248m <sup>2</sup>
	Residential workspace GFA	228m <sup>2</sup>
	Parking	157 spaces 6 loading bays

Other relevant site planning statistics are:

- total area – 4.921ha
- combined total floor space of the built development – 8,380m<sup>2</sup> (17% of site)
- overall floor space ratio – 0.17 : 1
- total number of dwellings – 28
- overall residential density – 1 dwelling per 1,757m<sup>2</sup>
- total car parking spaces – 215
- total roof area – 6,788m<sup>2</sup>
- total impervious area – 2,610m<sup>2</sup> (5% of site).



Precinct 1 Residential

The six residential buildings proposed for part of Precinct 1 are shown on Architectural Plan Set CD 409 to CD 414. Each of the dwellings contain three-bedrooms and each includes a dedicated work space, varying from around 35-40 m<sup>2</sup> in area. The construction of the two-storey dwellings comprises masonry walls on the lower level, fibre cement/ply wood wall cladding on the upper level and corrugated metal sheet roofing.

Each dwelling will have access from internal roads/lanes and each includes two car parking spaces (all dwellings in the residential precinct have car parking spaces on-site; dwellings in other precincts have parking spaces on the adjacent road network).

The residential precinct will provide an opportunity for residents to work from home, thereby reducing the need for commuting. The dwellings will also provide affordable, ecologically sustainable contemporary housing that exceeds the requirements of BASIX. Each dwelling has been located and designed to provide for adequate solar access, both to itself and to its neighbours.

Precinct 3 Live/ Work

The development of approximately 50% of the Live/Work Precinct comprises 12 individual terrace units, laid out in two separate buildings, each containing six attached dwellings. Each of the buildings is a two-storey structure with masonry walls and corrugated metal sheet roofing and are shown on Architectural Plan Set CD 407 & CD 408.

Each unit contains a ground floor workspace, with a one-bedroom unit above on the first floor, and includes individual balconies on the northern elevations.

Car parking for these units is provided within the adjacent 'Central Park Avenue' for residents and visitors.

Precinct 4 Mixed Use

The Commercial Precinct (i.e. Precinct 4) contains three separate components:

- to the east of 'Simpson Street' – the main commercial component, including shops, offices, canteen, public domain, a recycling centre, parking and loading facilities (see Architectural Plan Set CD 200 to CD 204);
- to the west of 'Simpson Street' (north) – terrace buildings containing ten dwellings, each with an associated office space (see Architectural Plans CD 401 to CD 408); and
- to the west of 'Simpson Street' (south) – a community recreation area containing a pool, park, barbeque areas, amenities, and associated play equipment (see Architectural Plans CD 400).

The main commercial component is defined by a series of narrow, two-storey buildings around a large landscaped courtyard and car park, connected by broad, level, covered walkways and verandahs. The buildings house a mix of uses including shops, offices, professional suites, a commercial kitchen and canteen, a meeting room and community hall.

The two terrace buildings are arranged immediately north and south of 'Penny Lane', with five individual units in each building. Each unit contains an office at the ground floor 'Simpson Street' frontage, with a two bedroom apartment behind and above. Each includes a rear yard/ garden opening on to a narrow rear lane that will allow residents to take garbage bins to 'Fast Lane/ Easy Street' rather than having to pass through the office space. This rear lane will have a lockable gate at each end to provide access only to residents.

The Commercial Precinct provides:

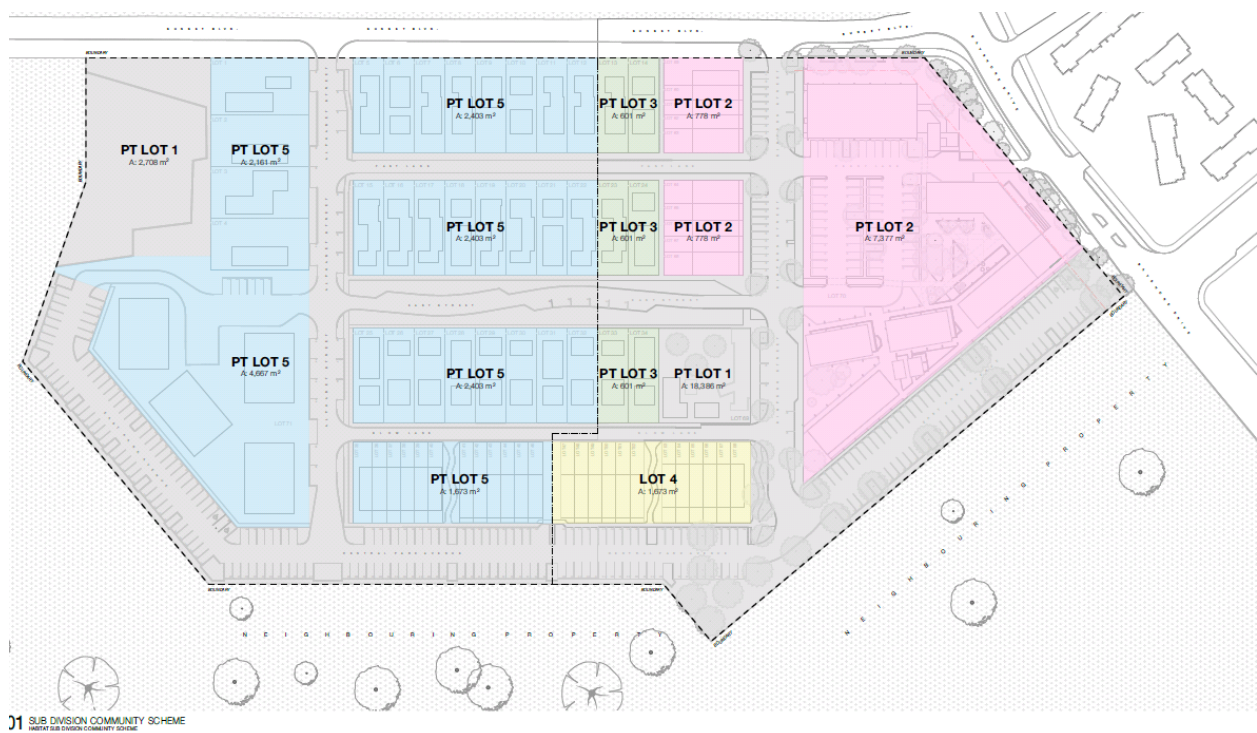
- an opportunity for affordable housing with a designated work space with ground level access;
- practical studio spaces with street frontages and parking to suit many creative industries;
- shared meeting places; and
- a recreational facility.

The Commercial Precinct will form a single community development lot in the proposed subdivision, to be further subdivided by way of a Strata Scheme. The community recreation area will form part of the Community Land within the proposed scheme.

### Subdivision:

Development consent has previously been issued for the community title subdivision of the approved mixed-use village development under DA 10.2009.12.1. It is now proposed that the subdivision scheme be updated to reflect the current proposal.

The proposed community scheme will contain a number of layers. The first layer is the overarching Community Plan, with subsequent layers of a Neighbourhood Plan (residential precinct) and a Strata Plan (commercial and live/ work precincts). The overarching Community Plan will create four community development lots plus a common community property lot. This subdivision layout is shown below.



The proposed individual Community Development lots are:

- Lot 1 – 21,094m²; Community Property Lot, containing the internal road network, the proposed recreation area and the area in the north-western corner of the lot subject to previous ecological enhancement works;
- Lot 2 – 8,933m² in three parts, containing the proposed commercial buildings and the terrace units. This lot will be further subdivided by way of Strata following construction of the buildings. That strata plan is shown in Architectural Plans CD 013 & CD 014;



- Lot 3 – 1,803m2 in three parts, containing the dwellings proposed in Precinct 1. This lot will be subdivided under the proposed Neighbourhood Scheme shown in Architectural Plans CD 012, creating individual lots for each dwelling;
- Lot 4 – 1,673m2 containing the two live/ work buildings. This lot will be further subdivided by way of Strata following construction of the buildings (see Architectural Plans CD 013 & CD 014); and
- Lot 5 – 15,707m2 being the site residue, development of which will be subject to a subsequent development application.

#### Community & Neighbourhood Management Statement

Draft Community & Neighbourhood Management Statements were approved with DA 10.2011.162.1. For the purposes of the current application, it is considered that these draft Statements remain relevant. The details of the Statements will be updated in accordance with the changes from the previous consent and with consent conditions as part of the subdivision certificate application process.

## **2. SUMMARY OF EXTERNAL REFERRALS**

	Issue
NSW Rural Fire Service	Bushfire Safety (Section 100B of Rural Fires Act 1997)

### **2.1 COMMENTS FROM EXTERNAL REFERRAL BODIES**

#### **NSW RFS**

Integrated Development for 3//1004514 - Bayshore Drive Byron Bay 2481 I refer to your letter dated 1 July 2015 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

*The development proposal is to comply with the following:*

- *Drawing titled 'Masterplan' prepared by Dominic Finlay Jones Architect Pty Ltd, numbered 0291AR01A and dated 27th April, 2015 as submitted in Figure 2 of the 'Bush Fire Threat Assessment Report' prepared by Bushfire Certifiers and dated 21st May, 2015.*
- *Drawing titled '00 Habitat Masterplan' prepared by Dominic Finlay Jones Architect Pty Ltd, numbered CD010, Issue A, dated 5th June, 2015 as submitted in Figure 5 of the 'Bush Fire Threat Assessment Report' prepared by Bushfire Certifiers and dated 21st May, 2015.*
- *Drawing titled 'Building Numbers' as submitted in Figure 6 of the 'Bush Fire Threat Assessment Report' prepared by Bushfire Certifiers and dated 21<sup>st</sup> May, 2015.*

#### Asset Protection Zones

*The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:*

*At the issue of Stage 1 subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones'.*

Water and Utilities

*The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:*

- 5     *Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.*

Access

*The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:*

- *One way roads shall be a minimum carriageway width of 4 metres. Hydrants shall not be located within the carriageway or parking bays.*
- *Two way roads shall have a minimum carriageway width of 6 metres. Hydrants shall not be located within the carriageway or parking bays.*
- *Vehicular entry/exits have a minimum carriageway width of 6.5 metres.*

Design and Construction

*The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:*

- 20     *Construction on Lots 33, 34, 23, 24 and 64-68 shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.*
- 25     *5. Construction on Lots 47-58 shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'. Construction on the north eastern elevation shall comply with Sections 3 and 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.*
- 30     *Construction on Lots 13, 14 and 59-63 shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'. Construction on the south western elevation shall comply with Sections 3 and 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of*
- 35     *'Planning for Bush Fire Protection'.*

Landscaping

*Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.*

40

**NSW Police Force**

The original proposal, DA10.2011.162.1, as granted consent, was referred to the NSW Police Force for comment with respect to the Crime Prevention Through Environmental Design (CPTED) principles. The assessing officer of the NSW Police Force contacted Council to advise that they had no issue with the proposal. No formal comments were received beyond this discussion. Subsequently this application, which is for construction of Stage 1 was not referred to the NSW Police.

45

**Local Traffic Committee**

The previous proposal went before the Local Traffic Committee on 28 September 2011.

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

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

**3.1 STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS**

<b>Requirement</b>	<b>Summary of Requirement</b>	<b>Proposed</b>	<b>Complies</b>
State Environmental Planning Policy (Infrastructure) 2007	Schedule 3 of this SEPP lists development that is defined as 'Traffic Generating Development' that is required to be referred to the RTA.	The previous consent 10.2011.162.1 was referred to the RTA who had no issues, and as this proposal is for approximately 1/3 of the previous approval it was not referred	Yes
State Environmental Planning Policy No. 55 – Remediation of Lands	The Council must: (a) consider whether the land is contaminated; and (b) if the land is contaminated, if the land is suitable in its contaminated state or after remediation; and (c) be satisfied before the land is used. Where a change of use is proposed the Council must consider a report provided by the applicant specifying the findings of a preliminary investigation (and detailed investigation if necessary) of the land in accordance with the contaminated land planning guidelines.	The site has been filled in accordance with Council approval DA 10.2011.162.1. The fill material was obtained from the Ballina Sand Quarry at Lennox Head. Under the requirements of their approval, the quarry operators were required to satisfy various approval conditions regarding the nature of the material prior to it leaving their site.	Yes
State Environmental Planning Policy No. 71 – Coastal Protection	Council must have regard for the SEPP No. 71 for development within the Coastal Zone:	The proposal is consistent with the provision with SEPP 71 as detailed in previous approval issued on the site.	
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	BASIX Certificates required for new dwelling development.	BASIX Certificates provided within Appendix I of Statement of Environmental Effects.	Yes

Building Code of Australia	The proposal must be capable of compliance with the structural and safety requirements of the Building Code of Australia.	The proposed development has been designed so that it is generally capable of compliance with the structural and safety requirements of the BCA. A condition is included in any consent issued to ensure the BCA requirements are met.	Yes
Demolition	All demolition to be carried out in accordance with AS2601 and WorkCover requirements.	No demolition is proposed.	Yes

*Issues discussed below*

### State/Regional Planning Policies and instruments – Issues

#### State Environmental Planning Policy No. 71 – Coastal Protection

- 5 Clause 18(1) of State Environmental Planning Policy No. 71 – Coastal Protection provides that a Master Plan adopted by the Minister is required for certain development listed within SEPP No. 71 unless the requirement for such is waived. In correspondence dated 5 February 2009, the Department of Planning advised that a development control plan rather than a Master Plan is required under SEPP No. 71 (Schedule 6 Clause 95 of the Environmental Planning and
- 10 Assessment Act 1979 provides that any requirement of an Environmental Planning Instrument to require a Master Plan is to be construed as requiring a development control plan under section 74D of the Act). Further, the Department of Planning advised that *“pursuant to clause 18(2) of SEPP 71, the need for a development control plan has been waived in this instance”*. In any case, a site specific development control plan has been adopted for the subject lands, being DCP No. 20
- 15 – Bayshore Village Byron Bay (Lot 3 DP 1004514), which has now been incorporated in to Byron Development Control Plan 2014 Chapter E5.5 – Bayshore Village and is assessed within the following sections of this report.

### 3.2. BYRON LOCAL ENVIRONMENTAL PLAN 1988

- 20 **Zone:** B4 Mixed Use.

**Definitions: Multi dwelling housing, Commercial premises, food shop, industry, restaurant, dwelling, dwelling-house, residential flat building**

LEP Requirement	Summary of Requirement	Proposed	Complies
<b>Objectives of B4 Mixed Use Zone</b>	<ul style="list-style-type: none"> <li>To provide a mixture of compatible land uses.</li> <li>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</li> </ul>	The proposed development itself comprises an integrated residential neighbourhood. It includes commercial, industrial, retail and residential uses that will contribute to economic growth and employment opportunities in the area. It will be compatible with the existing retail, industrial, tourist and residential uses in the locality.	Yes

<p><b>Permissible uses</b></p>	<p><b><i>Residential accommodation</i></b> <i>means a building or place used predominantly as a place of residence, and includes any of the following:</i></p> <ul style="list-style-type: none"> <li>(a) <b>attached dwellings</b>,</li> <li>(b) boarding houses,</li> <li>(c) dual occupancies,</li> <li>(d) <b>dwelling houses</b>,</li> <li>(e) group homes,</li> <li>(f) hostels,</li> <li>(g) <b>multi dwelling housing</b>,</li> <li>(h) residential flat buildings,</li> <li>(i) rural workers' dwellings,</li> <li>(j) secondary dwellings,</li> <li>(k) semi-detached dwellings,</li> <li>(l) seniors housing,</li> <li>(m) shop top housing,</li> </ul> <p>but does not include tourist and visitor accommodation or caravan parks.</p> <p><b><i>dwelling</i></b> means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.</p> <p><b><i>dwelling-house</i></b> means a building containing only one dwelling.</p> <p><b><i>attached dwelling</i></b> means a building containing 3 or more dwellings, where:</p> <ul style="list-style-type: none"> <li>(a) each dwelling is attached to another dwelling by a common wall, and</li> <li>(b) each of the dwellings is on its own lot of land, and</li> <li>(c) none of the dwellings is located above any part of another dwelling.</li> </ul>	<p>The land use table for the B4 Zone provides that residential accommodation is a permissible land use with the consent of Council in the zone. The proposed 28 dwellings comprise <i>multi dwelling housing</i> with some of the <i>dwellings</i>, contained within individual buildings (defined as dwelling-houses) and others that are contained within multi dwelling buildings (defined as residential flat buildings). Subsequently, the proposed dwellings are permissible uses with the consent of Council within the zone.</p>	<p>Yes</p>
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	<p><b>commercial premises</b> means any of the following:</p> <p>a) business premises, b) office premises, c) retail premises.</p>	<p>The proposal includes professional suites and offices located within the B4 Zone. These uses are defined as commercial premises within Byron LEP 2014. Commercial premises are permissible with the consent of Council within the B4 Zone.</p>	<p>Yes</p>
	<p><b>recreation area</b></p> <p>means a place used for outdoor recreation that is normally open to the public, and includes:</p> <p>(a) a children's playground, or (b) an area used for community sporting activities, or (c) a public park, reserve or garden or the like, and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).</p> <p><b>recreation facility</b> means a building or place used for indoor recreation, a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlour or any other building of a like character used for recreation and whether used for the purpose of gain or not, but (in the table to clause 9) does not include a place of assembly.</p>	<p>The proposal includes a community recreational area including a swimming pool amenities and table tennis centre.</p>	<p>Yes</p>

	<p><b>restaurant or cafe</b> means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.</p> <p>Note. Restaurants or cafes are a type of <b>food and drink premises</b></p> <p><b>food and drink premises</b> means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:</p> <ul style="list-style-type: none"> <li>a) a restaurant or cafe,</li> <li>b) take away food and drink premises,</li> <li>c) a pub,</li> <li>d) a small bar.</li> </ul> <p>Note. Food and drink premises are a type of <i>retail premises</i>.</p>	The proposal includes a Café	Yes
<b>2.6 Subdivision consent requirements</b>	(1) Land to which this Plan applies may be subdivided, but only with development consent.	Consent is sought for community title subdivision.	Yes
<b>3.1 Exempt Development</b>	(1) Development specified in Schedule 2 that meets the standards for the development contained in that Schedule and that complies with the requirements of this Part is exempt development.	<p>Schedule 2 lists <i>Strata Subdivision of a lawfully erected building</i></p> <p>Strata subdivision will be carried out after construction of buildings is completed.</p>	Yes
<b>4.1 Minimum subdivision lot size</b>	(4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.	Consent is sought for community title subdivision.	Yes

<b>4.1A Minimum subdivision lot size for strata plan schemes in certain rural and residential zones</b>	<p><i>(2) This clause applies to land in the following zones that is used, or is proposed to be used, for residential accommodation or tourist and visitor accommodation:</i></p> <p><i>(a) Zone RU1 Primary Production,</i></p> <p><i>(b) Zone RU2 Rural Landscape,</i></p> <p><i>(c) Zone R5 Large Lot Residential.</i></p>	<p>N/A</p> <p>The land is zoned B4</p>	Yes
<b>4.1AA Minimum subdivision lot size for community title schemes</b>	<p><i>(2) This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 1989 of land in any of the following zones:</i></p> <p><i>(a) Zone RU1 Primary Production,</i></p> <p><i>(b) Zone RU2 Rural Landscape,</i></p> <p><i>(c) Zone R5 Large Lot Residential.</i></p>	<p>Clause 4.1 (4) indicates that these requirements do not apply in relation to the subdivision of individual lots in a strata plan or community title scheme. The provisions of Clause 4.1AA do not apply, as the land is not within any of the land use zones nominated in 4.1AA (2).</p>	
<b>4.3 Height of buildings</b>	<p><i>1) The objectives of this clause are as follows:</i></p> <p><i>(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,</i></p> <p><i>(b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,</i></p> <p><i>(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i></p> <p><i>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</i></p>	<p>All proposed buildings are not greater than 9.0m which is the height of the tallest commercial building in Precinct 4</p>	Yes



<b>4.4 Floor space ratio</b>	<p><i>(1) The objectives of this clause are as follows:</i></p> <p><i>(a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,</i></p> <p><i>(b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,</i></p> <p><i>(c) to provide floor space in the business and industrial zones adequate for the foreseeable future,</i></p> <p><i>(d) to regulate density of development and generation of vehicular and pedestrian traffic,</i></p> <p><i>(e) to set out maximum floor space ratios for dual occupancy in certain areas.</i></p> <p><i>(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the <u>Floor Space Ratio Map</u>.</i></p>	The Floor Space Ratio Map shows a maximum ratio of 0.9:1 being applicable to the subject site. The proposed development has a total FSR of 0.17:1.	Yes
<b>5.5 Development within the coastal zone</b>	<p><i>The objectives of this clause are as follows:</i></p> <p><i>(a) to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,</i></p> <p><i>(b) to implement the principles in the NSW Coastal Policy,</i></p>	Whilst within the coastal zone, the site is not proximate to the coastal foreshore and therefore its development raises no issues regarding foreshore access.	Yes
<b>5.11 Bush fire hazard reduction</b>	<p>Bush fire hazard reduction work authorised by the <u>Rural Fires Act 1997</u> may be carried out on any land without development consent.</p> <p>Note. The <u>Rural Fires Act 1997</u> also makes provision relating to the carrying out of development on bush fire prone land.</p>	The NSW RFS has granted a 'Bushfire Safety Authority' for the proposed development.	Yes

<b>6.1 Acid Sulfate Soils.</b>	The subject site contains Class 3 Potential Acid Sulfate Soils. Clause 63 provides that a person must not carry out works beyond 1 metre below the natural ground surface or lower the water table by 1 metre below the natural ground surface without the consent of Council.	There will be no need to excavate below the identified threshold depth (1.7m), as such an Acid Sulfate management Plan is not required. However, given the high watertable, it would be prudent to add conditions specifying no dewatering without prior approval from Council.	Yes
<b>6.2 Earthworks</b>	(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	All the major earthworks ie as required for roads and services infrastructure are completed or are being completed under consent 10.2011.162.1.	Yes
<b>6.3 Flood planning</b>	<p>(1) The objectives of this clause are as follows:</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p> <p>(2) This clause applies to land at or below the flood planning level.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is compatible with the flood hazard of the land,</p>	The land is not flood prone.	Yes

<b>6.6 Essential services</b>	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: (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.	The site is fully serviced	Yes
<b>6.7 Affordable housing in residential and business zones</b>	<p><i>1) The objectives of this clause are as follows:</i>  <i>(a) to increase the supply of affordable housing for very low, low and moderate income earning households,</i>  <i>(b) to provide accommodation to support a diverse residential population inclusive of all income groups within Byron,</i>  <i>(c) to ensure a housing mix and tenure choice including affordable housing,</i>  <i>(d) to ensure that affordable housing is identified by the Council as in demand and located close to transport and services appropriate to the intended households.</i></p> <p>In the B4 zone Council must consider:                      (a) the need for providing, maintaining or retaining affordable housing.</p>	<p>The proposed development, 'Habitat' provides for housing affordability in a different way                      (a) by providing live/ work spaces within an overall creative industry hub, it provides opportunities for people to combine residential and employment costs.                      (b) the need for imposing conditions relating to providing, maintaining or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.</p> <p>Given the nature of this development, it is considered that there is no need for any covenants, restrictions or the like to promote housing affordability.</p>	Yes

*\*Issues discussed below*

**Byron Local Environmental Plan 2014 - Issues**

No unresolved issues.

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

No draft Environmental Planning Instruments apply to the site.

**3.3 DEVELOPMENT CONTROL PLAN 2014**

**Chapter D8 – Public Art**

5 The proposal falls within the categories of development that are triggered by Chapter D8 of Byron DCP 2014. Part E2 requires the following:

*Development to which this Element applies must include the provision of Public Art to the value of:*

- *at least 2% of the total development cost (calculated in accordance with the Environmental Planning & Assessment Regulation), or*
- 10 • *up to a maximum of \$25,000.*

The plans of the proposed development indicate that a sculpture is to be located within the main landscape courtyard within the commercial precinct of the development (in accordance with Performance Criteria 10c) of Chapter E5 of DCP 2014.

15 **Chapter E5 – Certain Locations in Byron Bay & Ewingsdale**

**Chapter E5.5 - Bayshore Village**

Chapter E5.5 - Bayshore Village, Byron Bay, was incorporated into DCP 2010 and adopted by Council on 3 March 2011. This chapter of the DCP was created exclusively for the site of the proposed development. Chapter 20 has been included in DCP 2014 as Chapter E5.5.

The previous consent (DA10.2011.162.1), for a mixed use development with 68 dwellings over the entire site was granted development consent, largely on the basis of compliance with Chapter 20 under DCP 2010. This application is a slightly modified version of the eastern 35% of the site incorporating Precinct 4 and parts of Precincts 1 & 3. As such, assessment of the relevant development controls under E5.5 is provided below:

**E5.5.4 – Design & Development Controls**

**E5.5.4 1– Land Use, Management and Environmental Assessment**

30 The proposed development satisfies the Objectives and Performance Criteria for E5.5.4.

Prescriptive Measures

1 – Land Use Density

- i. Provide for a maximum of 82 dwellings within the site.*

35 A total of 28 dwellings are proposed within the current Development Application. The proposed development satisfies the Land Use Density requirements.

2 - Setbacks

The proposed development complies with all the setback requirements.

40 3 – Buffering

The proposed development complies with all the Buffer requirements.

4 – Environmental Assessment

45 The proposed development satisfies all the Prescriptive Measures for Environmental Assessment

**Chapter E5.5.4.2 - Car Parking**

**Precinct 1 – Residential (Neighbourhood Lots 13, 14, 23, 24, 33, 34)**

Car Spaces Required: = 20   Proposed = 20

**Precinct 3 – Live-Work Area (Strata Lots 47 - 58)**

*Additional information submitted 18 November 2015 (E2015/75374) provides advice that the live work buildings on lots 47 to 52 are identical to the live work buildings on lots 53 to 58.*

Car Spaces Required: = 33   Proposed = 33

**Precinct 4 – Mixed Use (Community Lot 2)**

*Additional information submitted 18 November 2015 (E2015/75374) provides advice that the use of 1st level floor space for buildings B1, C1 to C5 is for office/commercial (i.e. not retail).*

Car Spaces Required: = 147   Proposed = Car spaces within CT Lot = 53 car spaces  
Plus communal parking spaces (94 car spaces)  
= 147

**Communal Parking**

*The proposal requires a total of 135 (8 + 33 + 94) communal car spaces to be provided. There are 141 parking spaces proposed in the community lot 1 within the stage 1 area of this application identified on the Ardill Payne Drawing numbered SK13 submitted 18 November 2015 (E2015/75374). There are sufficient parking spaces proposed to service the development in accordance with table E5.3, Chapter E5 of DCP 2014. Three (3) car spaces are shown for people with access disabilities in accordance with table E5.3, Chapter E5 of DCP 2014.*

*The additional information submitted 18 November 2015 (E2015/75374) proposes to substitute 8 car spaces for planting beds due to the abundance of parking. There is an abundance of overall parking at this stage due to the construction of the parking in accordance with the Construction Certificate 11.2011.162.1 but not within the boundary of the stage 1 works. A new development application will be required for the stage 2 works and thus the overall parking can be assessed at that stage. Conditions have been recommended to provide the minimum parking spaces calculated above for each precinct.*

**Loading Facilities**

Loading Bays Required for this application: = 11   Proposed = 11

**Bicycle Facilities (B4, B5 & E5.5.4.2, DCP 2014)**

Bicycle Facilities Required: = 31   Proposed = 48

*Conditions have been recommended to provide security arrangements in accordance with AS 2890.3 for class 2 (secure compound for employee parking) and class 3 (support rails for short term parking).*

**E5.5.4.3 – Building Design**

As demonstrated by the Architectural Plan Set all of the proposed buildings comply with the building design requirements.

**E5.5.4.4 – Site and Open Space Design**

As demonstrated by the Architectural Plan Set the proposed development complies with the all the Public Open Space, Private Open space and Universal Access requirements of E5.5.4.3.

**E5.5.4.5 – Lot Size and Subdivision**

- 5 As demonstrated by the Architectural Plan Set all of the proposed development complies with the lot size and subdivision requirements. The Community Title Development Contract and Neighbourhood Management Statement are provided as attachments to the SEE.

**E5.5.4.6 - Element - Street Design**

- 10 Complies – (Refer to Engineer's comments #A2015/17842).

**E5.5.4.7 – Water Cycle Management**

The proposal has been designed in accordance with E5.5.4.7 with respect to Water. Stormwater infrastructure as approved for subdivision works under previous DAs has or is nearing completion.

**E5.5.4.8 - Element - Ecological Enhancement**

- 15 Ecological enhancement works have been carried out within the site in accordance with previously issued development consents No. 10.2007.177.1 & 10.2011.162.

**Chapter D1 of DCP 2014**

**D1.6 – Multi Dwelling Housing & Attached Dwellings**

- 20 The proposed mixed use development is approximately one third of what was previously approved as 'Bayshore Village', is now called 'Habitat'. The proposed development complies with the detailed requirements of Part E5.5 which includes controls for multi dwelling housing

**Chapter B8 – Waste Minimization & Management**

Complies (see Waste Report, Appendix C of the Statement of Environmental Effects ).

**Chapter B13 – Access and Mobility**

- 25 The proposed development includes elevators and accessible facilities for disabled access. A notation is to be included within the consent in relation to the Disability Discrimination Act 1992.

**Chapter B4 - Traffic planning, Vehicle Parking, Circulation & Access**

**External Access**

- 30 *Access to the site is via the driveways approved, and currently under construction, by development consent 10.2011.162.2.*

**Internal Access and Parking**

*Additional information submitted 18 November 2015 (E2015/75374) provides details to demonstrate that the parking arrangements can comply with AS 2890.*

- 35 *Clause 2.4.4 (b) of AS 2890 requires the aisle width to be widened by 0.5m where there is parallel parking on one side and angle parking on the other. Where this parking arrangement occurs, there is additional width in the aisle and parking spaces to provide for the necessary increased width.*

40 **Development Control Plan 2014 - Issues**

There are no other unresolved DCP issues relating to this proposal.

**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**

**Ecological Impacts Biodiversity:**

Council has previously approved a proposal by the Proponent to enhance the habitat in this locality for the Wallum Froglet and other 'acid frogs' (DA 10.2007.177.1).

- 5 The approved enhancement works have been implemented at the site preparation & infrastructure stage of 10.2011.162.

**Traffic impacts:**

- 10 Refer to comments within Section 3.3 of this Planning Report under Traffic/Roadworks. Subject to the payment of Section 94 Contributions and the inclusion of conditions of consent in relation to intersection works, the traffic impacts associated with the development are acceptable.

**Social, Amenity and Economic Impacts:**

- 15 Concerns were raised during the assessment of the original Development Application that the proposed development may create an environment of poor residential amenity given the density of development proposed and the limited provision of open space. However, the proposal does not exceed the maximum built gross floor area requirements of DCP 2014 Chapter E5 and is consistent with the minimum open space requirements. As such, it is considered that the proposed development will result in a residential amenity that is acceptable under the DCP.

- 20 The Statement of Environmental Effects that was submitted with the original Development Application, for the entire site, includes a Social Impact Assessment, prepared in accordance with Chapter B12 of DCP 2014. The following summarises the Applicants response to the objectives of Chapter B12:

- *To assist in achieving cohesive, sustainable and resilient communities within the Shire*  
 25 'Habitat' (Bayshore Village), will create a new community that will meet this object over time. The mixed use nature of the development will assist to build resilience in this community.  
 Section 3.1 of the original Statement of Environmental Effects provides a vision statement for the development. Councillors and staff were consulted throughout the 'visioning' for this development and expressed general support for the mixed use village concepts. Note only two submissions were received against this application  
 30 'Habitat' (Bayshore Village), has been purpose designed to meet the needs of the creative and business community and provides access to employment options that are generally not currently available.
- *To minimise the negative social impacts of development such as increased traffic congestion, restriction of access to facilities, services and transport, loss of employment opportunity, loss of public safety or perceived public safety*  
 35 'Habitat' (Bayshore Village), meets this objective through reduced home to work travel and provision of shared resources and mixed uses within the community.

- 40 Social, economic and environmentally sustainable outcomes have been key considerations throughout the planning and design of this development.
- 45 The subject Development Application follows the adoption of DCP No. 20 – Bayshore Village (now Chapter E5 of DCP 2014), which was created exclusively for the development of the site. This DCP was the result of extensive economic, social and amenity assessment at a strategic planning level. The subject Development Application is generally consistent with the provisions of this DCP. The economic, social and amenity impacts associated with the proposal are likely to be positive and have been planned for on this site.

Conditions of consent have been recommended to reduce the impact of the development on the site and surrounds. It is noted that objections were received with respect to the amount of retail floor space proposed within the development. The built gross floor area proposed does not exceed the maximum prescribed within Chapter E5 of DCP 2014.

**Aboriginal Heritage Impacts:**

A cultural heritage assessment was submitted with the original Development Application (prepared by Davies Heritage Consultants Pty Ltd, dated October 2004), for the entire site. This assessment included a survey of the site which found no indigenous items material within the study area. The site is deemed to have low archaeological potential. Since this heritage assessment was undertaken, the development site has been filled in accordance with Council development approvals, further reducing the archaeological potential of the site.

**Biting insect impacts:**

A Mosquito Impact Assessment was submitted with the original Development Application. The assessment was conducted in May-June 2004. The report states that in warmer, wetter periods some species of mosquitos will increase in numbers and be of more impact on residents

The report states that the author is unable to assess the impact of the wetland that is part for the STP until it is commissioned and operational.

A site inspection and review of the Sewage Treatment Plant and wetland layout revealed that the additional 7 hectares of wetland constructed since 2004 was undertaken in the vicinity of Ewingsdale Road, which is remote from the proposed development. There was no evidence of mosquito breeding on site. It was concluded that impacts would be satisfactory in this regard.

**Food Premises:**

The proposed food premises/café within the development can be approved with conditions.

**Conclusion on Impacts:**

Subject to compliance with conditions of consent and for the reasons discussed within this report, the proposal is unlikely to result in a significant impact on the surrounding environment.

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

The development site is located on the north-western outskirts of the urban areas of Byron Bay four kilometres of the town centre. Largely developed residential land is located on the opposite side of Bayshore Drive to the east, and to the south. Commercial land containing the West Byron Shopping Centre is located to the south-east. The wetlands of the West Byron Treatment Plant are located on the opposite side of Council owned land to the west. Council owned land supporting native vegetation is located to the north.

The property has direct access to Bayshore Drive to the east and the West Byron Treatment Plant access road to the north. The land is largely devoid of significant vegetation.

The site is predominantly within the B4 Mixed Use zone. The site is also the subject of Chapter E5 of DCP 2014. This planning document was specifically written to set out the future development of the site. The planning report prepared for DA10.2011.162 for development of the entire site, as opposed to this application for the front third of the site, provides that the proposal is generally consistent with the provisions of this DCP and provides for the land uses that have been planned for the site.

An assessment of the proposal has found that the site is suitable for the development proposed. Impacts and constraints can be adequately managed by conditions of consent.

**Easement for service:**

The subject site is burdened by an easement for services located along the Bayshore Drive frontage. Discussions with Council's Water and Recycling Management Services Division indicate that the site also includes sewer services along the West Byron Treatment Plant Road frontage. Easements are required over these services as well. The Applicant submitted details to ensure that



no buildings or swimming pools associated with the development encroach in to the existing and proposed easements. A condition is to be included in the consent to ensure this requirement is met.

**5 3.6 Submissions made in accordance with this Act or the regulations**

The subject Development Application was placed on public exhibition in accordance with the requirements of Part A14 of Development Control Plan 2014. One submission was received against the proposed development. The issues raised within the submission are discussed in the table below:

<b>Issue - Objection</b>	<b>Comment</b>
Significant concern is raised to the area and potential variety of retail activity which is proposed for the site.	The market will determine what mixed retail uses will occupy the proposed retail spaces.
The proposed development is not consistent with the retail hierarchy for the West Byron locality. The development encompasses 28 apartments which do not generate demand for the amount of retail services proposed and as such is not consistent with the scale and type of retail development required for the Bayshore Village.	The provision of residential/retail/commercial uses within the development is consistent with the site specific Development Control Plan for the Bayshore Village proposal.
The West Byron locality is serviced by a neighbourhood shopping centre which is located on designated commercial zoned land. Whilst we recognise the current zoning of the land and the permissibility of shops, the site is neither located in a context of a rural village or will service a surrounding rural community as the land zoning objectives promote. Further consideration as to the type and scale of commercial development is required so as to determine the need for retail floor space and the market in which it will service given the existence of the West Byron commercial zoned land and retail facility.	As above.
The West Byron shopping centre provides retail and professional services to the surrounding locality and as such the development of the proposed retail area will fragment the commercial precinct servicing the locality.	As above.
The development site is not located within a remote or satellite location and as such is not required to provide the amount of retail floor space to sustain the daily needs of future residents. The location of the site provides ready access to retail services which are within an accessible distance to the development site.	As above.
We have concerns that the opportunity will exist to provide for a wide range of retail uses which further fragment the commercial area of the locality. There needs to be a more specific focus provided on the nature of retail uses and the nexus they have with the scale of the Bayshore Village proposal.	State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 specifically enables changes of use to be completed without requiring development consent. This includes changes from retail to retail, office to business, office to office, business to office and business to business premises (as defined within the Standard Instrument).

**3.7 Public interest**

The proposed development has been planned for many years with both Council and public consultation. The site is zoned appropriately for the uses being sought and the proposal is generally consistent with the Development Control Plan that has been adopted by Council for the land. The proposed development is not likely to compromise the public interest.

**4. DEVELOPER CONTRIBUTIONS**

**4.1 Water & Sewer Levies**

The levies for water and sewer services were calculated in accordance with the gross floor area of the commercial, retail and creative industrial units, and the number of bedrooms within the residential units. The levies were divided so as to correspond with the separate stages of the development. The levies for each stage are listed within the notes of the recommended conditions of consent.

**4.2 Section 94 Contributions**

**Developer Contributions**

Developer contributions apply to the development.

**5. CONCLUSION**

Based on the proposals compliance with the adopted development control requirements for the site, the application is recommended for approval subject to conditions of consent.

**6. RECOMMENDATION**

**It is recommended that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2015.353.1, for the construction of a mixed use development comprising 28 Residential dwellings, plus commercial and retail units, recreation facilities, associated infrastructure and subdivision, be granted consent subject to the following conditions listed in Attachment 2 #E2016/2599.**

**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

**Report No. 13.10 Coastal Hazard Management Study Byron Bay Embayment - Cost Benefit Analysis**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Catherine Knight, Coastal Officer

**File No:** I2016/11

**Theme:** Ecology  
Planning Policy and Natural Environment

**Summary:**

On 8 December 2015, a workshop was convened to discuss the most recent Office of Environment and Heritage (OEH) comments on the Cost Benefit Analysis (CBA) component of the Coastal Hazard Management Study Byron Bay Embayment (management study).

The workshop confirmed that the CBA is comprehensive and underpinned by robust costings and data. There are, however, a number of errors in the CBA, as well as several assumptions, that require correction and / or further analysis. The correction and / of further analysis of these errors and assumptions may impact on the ranking of the BCRs.

As an outcome of the CBA workshop, the consultants have been commissioned to undertake additional work on the CBA. This work commenced on 18 January 2016 and will take approximately eight weeks to complete. The total cost of this additional work is \$13,500.

In November 2015, the Minister for Planning, Rob Stokes MP, announced a package of reforms to coastal management in NSW; which are anticipated to commence in 2016. Staff intend to write to the Minister, seeking clarification on: the date of the repeal of the *Coastal Protection Act 1979* and the commencement of the new coastal management framework, the transitional arrangements that may be applicable to the finalisation of the draft Coastal Zone Management Plan Byron Bay Embayment.

---

**RECOMMENDATION:**

**That Council note:**

1. The contents of this report;
2. That staff intend to write to the Minister for Planning, Rob Stokes MP, seeking clarification on: the date of the repeal of the *Coastal Protection Act 1979* and the commencement of the new coastal management framework, the transitional arrangements that may be applicable to the finalisation of the draft Coastal Zone Management Plan Byron Bay Embayment.

**Attachments:**

- 1 DRAFT and unconfirmed Cost Benefit Analysis Workshop Meeting Minutes 8 December 2015, E2016/2675

**Report**

As per Council resolution 15-655, on 8 December 2015, a workshop was convened to discuss the most recent Office of Environment and Heritage (OEH) comments on the Cost Benefit Analysis (CBA) component of the Coastal Hazard Management Study Byron Bay Embayment (management study). The OEH comments were first reported to Council at the 19 November 2015 Ordinary Meeting (Report No. 13.9).

The workshop was attended by relevant Council staff, OEH staff and the consultants Water Research Laboratory and sub-consultant GCCM (Griffith Centre for Coastal Management). It was convened in a collaborative fashion and began with the OEH Chief Economist acknowledging that CBA's are difficult and challenging to undertake, and that there are elements of the Byron CBA that exceed what other Councils have done and in some respects it is the most comprehensive so far. Notwithstanding this, from the OEH's analysis of the CBA, they consider that there are a number of key errors affecting the size and the ranking of the benefit cost ratios (BCRs) associated with the proposed options. In addition, the OEH found that the BCRs in the CBA are extremely sensitive to key assumptions.

Detailed information was provided at the workshop regarding the OEH's review of the CBA. This was by way of an OEH handout and informal discussion. The key areas of concern were discussed and participants worked towards identifying agreed errors and omissions in the CBA, as well as areas requiring additional work and analysis.

In summary, the workshop confirmed that the CBA is comprehensive and underpinned by robust costings and data. There are, however, a number of errors in the CBA, as well as several assumptions, that require correction and / or further analysis. The correction and / or further analysis of these errors and assumptions may impact on the ranking of the BCRs.

For more details on the workshop discussion, the DRAFT unconfirmed minutes from the CBA meeting are at [Attachment 1](#), including the OEH handout by way of an addendum. It should be noted that whilst OEH input into the minutes has been provided, this input has not yet been finalised by the OEH or confirmed by other workshop participants, hence the draft and unconfirmed status of the minutes at this time.

As an outcome of the CBA workshop, the consultants have been commissioned to undertake additional work on the CBA. This work commenced on 18 January 2016. The additional works are as follows:

1. The correction of minor identified errors in the CBA.
2. The correction of property values for the Planned Retreat option, using 'marginal' as opposed to 'total' property values for the planned retreat option relative to the Status Quo.
3. Re-generation of the CBA results to account for the non-owner occupied proportion of properties, after detailed examination of ABS data most relevant to Belongil Beach properties.
4. Re-generation of the CBA results to account for the producer surplus component of tourism expenditure (original value multiplied by 0.3, as per OEH advice).
5. Sensitivity testing on a range of parameters discussed at the CBA workshop, with accompanying discussion, specifically sensitivity of the results to:
  - a. The one-off property uplift factor of 14.1%, which relates to an increase in property values in response to protective options;
  - b. The application of the 20 m trigger to the erosion escarpment as per Part J of the Development Control Plan, for the relocation or removal of development;
  - c. The affect of the various options on tourism related expenditure.
6. A revision of the Coastal Hazard Management Study Byron Bay Embayment report in light of the new information, and the issue of a final report.
7. A presentation and overview to Councillors.

The additional work will be undertaken by way of a variation to the current contract with WRL (Contract 2013 – 0034). It has been estimated by the consultant, that this work will take eight weeks to complete (excluding review). The impact of the additional work has been factored into the indicative Coastal Zone Management Plan Byron Bay Embayment (CZMP BBE) timeframes, at Table 1. It should be noted that agency review timeframes at item (7) have not been confirmed.

**Table 1 Revised *indicative* CZMP BBE timeframes as a result of additional work on the Coastal Hazard Management Study Byron Bay Embayment – Cost Benefit Analysis**

- complete  
● in progress  
● not commenced/not met

Task name and description	Indicative time frames	Task Status
<b>1) Review Risks from Coastal Hazards (Hazard Study endorsed Res 13-542)</b>	<b>Jun 2012 to Sep 2013</b>	●
<b>2) Management Options Evaluation (Management Study)</b>	<b>Oct 2013 to Mar 2016</b>	●
a) Analyse property risk and response categories	<b>May to Nov 2015</b>	●
b) Evaluate and identify technically and physically feasible management options	<b>Oct 2013 to Feb 2014</b>	●
c) Evaluate the social, environmental and economic impacts:	<b>Oct 2013 to Aug 2015</b>	●
<ul style="list-style-type: none"> <li>community consultation</li> <li>agency consultation</li> </ul>	Feb 14 to Jan 2015 Feb 14 and ongoing	● ●
<u>Other tasks:</u> <ul style="list-style-type: none"> <li>Variation 1 - funding models, sand transfer, adaptive management</li> <li>Variation 2 - Additional work on cost benefit analysis as per resolution 15-139</li> </ul>	Apr 2014 to Jan 2015 May to Aug 2015	● ●
d) Prepare draft recommendation and draft final report	<b>Dec 2014 to Nov 2015</b>	●
<ul style="list-style-type: none"> <li>Draft report (version 5)</li> <li>Review (20/07/15 to 08/11/15) and re-issue draft report (version 6)</li> </ul>	Jul 2015 Jul to Nov 2015	● ●
e) Finalise and note management study report, Councillors adopt a management strategy	<b>Aug to Dec 2015</b>	●
<ul style="list-style-type: none"> <li>Councillor workshop – overview draft (v5)</li> <li>Council meeting – CZMP update</li> <li>Council meeting – CZMP update</li> </ul>	13 Aug 2015 27 Aug 2015 17 Sep 2015	● ● ●

## 13.10

Task name and description	Indicative time frames	Task Status
<ul style="list-style-type: none"> <li>Council meeting – Finalised management study(v6)</li> <li>CBA workshop with OEH and consultants</li> </ul>	19 Nov 2015 8 Dec 2015	 
<ul style="list-style-type: none"> <li>Council meeting – note management study report and CBA workshop (Res 15-593)</li> </ul>	10 Dec 2015	
f) CBA variation and re-issue of management study report, Councillors adopt a management strategy	<b>Jan 2016 to Apr 2016</b>	
<ul style="list-style-type: none"> <li>CBA variation commenced (8 weeks)</li> <li>Council meeting – Report on CBA workshop and variation</li> </ul>	18 Jan 2016 4 Feb 2016	
<ul style="list-style-type: none"> <li>Draft CBA and Management Study report issued (v7) and reviewed</li> <li>Presentation to Councillors</li> </ul>	11 Mar 2016	
<ul style="list-style-type: none"> <li>Council meeting – Revised management study (v8) reported to Council, Councillors adopt a management strategy for the draft CZMP BBE</li> </ul>	1 Apr 2016 7 Apr 2016	
<b>3) Prepare 'Community Uses of the Coastal Zone' assessment</b>	<b>Jan 2014 to Mar 2016</b>	
<b>4) Prepare Implementation Schedule</b>	<b>Jan 2014 to Mar 2016</b>	
<b>5) Review Emergency Action Sub Plan</b>	<b>May 2014 to Mar 2016</b>	
<b>6) Prepare first draft CZMP</b>	<b>May 2014 to Apr 2016</b>	
<b>7) Review Draft CZMP (agency timeframes have not been confirmed)</b>	<b>Dec 2015 to May 2016</b>	
<ul style="list-style-type: none"> <li>CZMP BBE PRG – review draft chapters of CZMP BBE PRG</li> <li>PRG meeting</li> </ul>	Dec 2015 to May 2016 5 May 2016	
<b>8) Consider and adopt Draft CZMP</b>	<b>Jun 2016</b>	
<ul style="list-style-type: none"> <li>Councillor workshop</li> <li>Council meeting</li> </ul>	2 Jun 2016 9 Jun 2016	
<b>9) Draft CZMP exhibition</b>	<b>Jun to Jul 2016</b>	
<ul style="list-style-type: none"> <li>CZMP BBE PRG – Objective (b) Review and support CZMP exhibition activities</li> <li>Exhibition – longer than the 21 days minimum statutory requirement</li> <li>Submissions report</li> <li>CZMP BBE PRG – Objective (c) Review CZMP submissions report</li> </ul>	Jun to Jul 2016 Jun to Jul 2016	
<b>10) Prepare final draft CZMP for adoption and submission</b>	<b>Jul to Aug 2016</b>	
<ul style="list-style-type: none"> <li>Councillor workshop</li> <li>Council meeting</li> <li>Final draft CZMP submitted to Minister</li> </ul>	Jul 2016 4 Aug 2016 Aug 2016	

**Financial Implications**

At this stage, the total cost of the additional work on the CBA is \$13,500.

As reported to Council at Ordinary Meeting 19 November 2015, the Minister for Planning has advised that Council cannot claim expenditure related to the preparation of the draft CZMP BBE incurred after 31 December 2015. Accordingly, the CZMP BBE grant, funded through the Coastal Management Program, OEH, is in the process of being acquitted and will be reported to Council separately.

The additional work on the CBA is being funded using the remainder of the budget allocated towards the preparation of the draft CZMP BBE. In order to meet the indicative timeframes at Table 1, additional resources may be required to expedite the analysis of submissions relating to the exhibition of the draft CZMP BBE. At this stage, however these resources would be sourced internally.

It is not considered that additional resources would otherwise assist with expediting the preparation and submission of the draft CZMP BBE as there are a number of complex milestones involved. In addition, many of the milestone dates reflect relatively inflexible timeframes such as: those provided by the consultant for the additional work on the CBA, Council meeting timeframes (internal review of reports, scheduled meetings and winter recess in July, agenda printing and delivery), PRG timeframes and review of documents (agenda distribution, review of documents by members and agencies), as well as the statutory CZMP exhibition time (minimum 21 days) under the *Coastal Protection Act 1979*.

**Statutory and Policy Compliance Implications**

The Coastal Hazard Management Study Byron Bay Embayment is being prepared in accordance with the *Coastal Protection Act 1979* and the statutory Guidelines for Preparing Coastal Zone Management Plans (OEH, 2013). The relevant requirements under this framework have previously been reported to Council.

As announced by the Minister for Planning in November 2015, a suite of reforms to coastal zone management in NSW are currently on exhibition. According to the OEH website, last updated 13 November 2015:

*Its intended that the new framework will be finalised and in place in 2016.*

Further, the OEH indicate that there will be transition arrangements put in place, for Council's that have significantly advanced the preparation of their CZMPs under current arrangements, as follows:

*The draft Bill includes transitional provisions that allow councils to move towards the new arrangements over time. Many councils have already undertaken a significant amount of work to prepare CZMPs under the current laws, and they will not be expected to start over.*

*In order to minimise disruption, those councils that have certified CZMPs in place when the new Coastal Management Act commences, or that have submitted plans to the Minister for certification by that time, will be able to transition their CZMPs into CMPs under a staged process, and will have until 2021 to be fully compliant.*

*The Office of Environment and Heritage and other relevant NSW Government agencies will support councils through this process with operational guidance.*

The relevant clause of the draft *Coastal Management Bill 2015* is reproduced below:

**Schedule 3 Savings, transitional and other provisions****6 Certification of pending coastal zone management plans**

- (1) *If, before the repeal date, a draft coastal zone management plan has been submitted to the Minister for certification under section 55G of the former Act, but has not by that date been certified, the Minister and council may continue to deal with that plan as if Division 1 of Part 4A of that Act had not been repealed.*
- (2) *Subclause (1) ceases to have effect 6 months after the repeal date.*
- (3) *A coastal zone management plan certified and made in accordance with subclause (1) is taken to be a coastal management program prepared and adopted under this Act.*
- (4) *Subclause (3) ceases to have effect at the end of 31 December 2021.*

Council is currently under a Ministerial direction to prepare the draft CZMP BBE and submit the plan by 30 June 2015, noting that the due date for submission has now passed. The *Draft Coastal Management Bill 2015* contains a clause enabling the Minister's Direction to continue under the new legislation, unless the direction is in relation to a CZMP that has been submitted to the Minister for certification. Refer Schedule 3, clause 8 of the *Draft Coastal Management Bill 2015*, as reproduced below, which also refers to clause 6(1), reproduced above.

**8 Saving of certain directions**

- (1) *A direction to make a coastal zone management plan under section 55B (1) of the former Act is taken to be a direction to make a coastal management program under section 13 (1) of this Act.*
- (2) *This clause does not apply in relation to a draft coastal zone management plan referred to in clause 6 (1).*

Part 3 of the *Draft Coastal Management Bill 2015* contains a detailed clause (20) for the Minister to prepare a 'coastal management program' under certain circumstances, including where a Council has failed to comply with a direction. This clause is reproduced below. There is a possibility that clause 20 could be enacted in due course, should Council fail to submit a draft CZMP BBE by the time of the commencement of the new legislation.

**Part 3 Coastal management programs and manual****20 Minister to prepare coastal management programs in certain circumstances**

- (1) *If:*
- (a) *a local council has failed to comply with a direction under this Part, or*
- (b) *the Minister has refused to certify a draft coastal management program under section 17, the Minister may prepare and adopt a coastal management program for the local council as if the Minister were the local council.*
- (2) *The provisions of this Part apply, subject to the regulations, with all necessary modifications to the Minister in the preparation and adoption of the coastal management program.*
- (3) *A coastal management program certified by the Minister and adopted under this section is taken to have been adopted by the local council in accordance with this Part.*
- (4) *The Minister is to seek the advice of the NSW Coastal Council in the preparation and adoption of a coastal management program under this section.*
- (5) *The local council is to co-operate with the Minister in the preparation and adoption of the coastal management program.*
- (6) *The Minister may, by notice in writing given to a local council, require the local council to provide it with such information or records (or both) as the notice requires in connection with the preparation and adoption of the coastal management program.*



- (7) *A local council is to comply with a notice given under this section.*
- (8) *The Minister may recover from the local council concerned the costs of the Minister in carrying out functions under this section as a debt in any court of competent jurisdiction.*
- 5       (9) *Nothing in this section prevents the Minister from reporting any failure by a local council to comply with a direction under section 13 (1) or 14 (2) to the Minister administering the Local Government Act 1993 in accordance with section 30.*

10       Given that Table 1 indicates that the draft CZMP BBE is unlikely to be submitted to the Minister until August 2016, staff are intending to write to the Minister for Planning, Rob Stokes MP, seeking clarification on: the date of the repeal of the *Coastal Protection Act 1979* and the commencement of the new coastal management framework, and the transitional arrangements that may be applicable to the draft Coastal Zone Management Plan Byron Bay Embayment. The Minister's response and implications will be reported to Council.

15       Staff are preparing a submission to the state government concerning the Stage Two coastal reforms package. The matter of transitional arrangements will also be incorporated into the draft submission. Time permitting, the draft submission will be reported to Council at the next meeting.

20       The CBA workshop minutes and OEH comments, at Attachment 1, refer to Treasury Guidelines on cost benefit analysis, and draft guidance from the NSW Government on using cost benefit analysis to assess coastal management options. The draft guidance on using cost benefit analysis to assess coastal management options is included in the suite of documents currently on exhibition by the state government with respect to the Stage Two Coastal Reforms.

25       The Treasury Guidelines may be accessed at:  
[http://www.treasury.nsw.gov.au/\\_data/assets/pdf\\_file/0016/7414/tpp07-5.pdf](http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0016/7414/tpp07-5.pdf)

30       The draft guidance on using cost benefit analysis to assess coastal management options may be accessed at:  
<http://www.environment.nsw.gov.au/resources/coasts/150805-cost-benefit-analysis.pdf>

**REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 14.1      Report of the Sustainable Economy Committee meeting held on 3 December 2015**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Noreen Scott, EA Sustainable Environment and Economy  
**File No:** I2015/1580  
**Theme:** Economy  
 Economic Development

**Summary:**

The Sustainable Economy Committee meeting was held on 3 December 2015. The minutes of this meeting are attached. Recommendations resulting from this meeting are outlined within this report.

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**RECOMMENDATION:**

1. That Council note the minutes of the Sustainable Economy Committee meeting, held Thursday 3 September.
2. That Council adopt the Sustainable Economy Committee recommendation that the existing policy/ies and planning controls on commercial signage and any other related policies, be reviewed to determine how the enforcement of this policy fits with current compliance priorities.
3. That Council adopt the Sustainable Economy Committee recommendation that Council, by means of the current tourism land use amendments to Byron LEP and DCP, consider amending the LEP and DCP to permit Rural Tourist Accommodation in Zones RU1 and RU2, such that it is:
  - Not limited to just farm stay, eco-tourism or short-term accommodation land uses and allows for rural tourism themes such as health, lifestyle and food-based activities
  - Inclusive of non-accommodation based rural tourist facilities eg Crystal Castle
  - Includes the R5 Zone to the LEP amendment with regards to tourist accommodation options
  - Allows a variety of building forms and is not limited to cabins or 2 bedroom structures with a maximum floor area of 60 sqm

**Report**

Present at the meeting were:

Cr B Cameron (Chair) (BC)

Staff: Jane Laverty (Economic Development and Tourism Co-ordinator) (JL)  
Joanne McMurtry (Tourism Officer) (JM)  
Chris Larkin (Planner) (CL)  
Claire Campbell (Minute Taker) (CC)

Community: Damian Antico (DA), Keith Byrne (KB), Rob Doolan (RB),  
Dr Meredith Wray (MW), Dr Charlie Zammit (CZ), John Hertzberg (JH),  
Nicole Reeve (NR), Ted Kabbout (TK)

*Cr Cr B Cameron, (Chair) opened the meeting at 11:10 and acknowledged that the meeting was being held on Bundjalung Country.*

Apologies were received from:

Cr S Richardson, Cr S Ibrahim, Ken Gainger (General Manager), Shannon Burt (Director of Sustainable Environment and Economy), Claire McGarry (Events and Grants Officer), Delta Kay (Arakwal Corporation), Ajay McFadden (Community Rep).

It was recommended that:

The minutes of the previous SEC Committee meeting held on Thursday 3 September 2015 were confirmed.

(Doolan/Zammit)

*The recommendation was put to the vote and declared carried*

The SEC recommended the following Resolution in relation to the issue of Commercial Signage around the Byron bay town centre.

That SEC recommend to Council that the existing policy/ies and planning controls on commercial signage and any other related policies, be reviewed to determine how the enforcement of this policy fits with current compliance priorities.

(Hertzberg/ Kabbout)

*The recommendation was put to the vote and declared carried*

The SEC recommended the following Resolution in relation to Rural Tourist Accommodation within the Byron Shire.

That Council by means of the current tourism land use amendments to Byron LEP and DCP, consider amending the LEP and DCP to permit Rural Tourist Accommodation in Zones RU1 and RU2, such that it is:

- Not limited to just farm stay, eco-tourism or short-term accommodation land uses and allows for rural tourism themes such as health, lifestyle and food-based activities

- Inclusive of non-accommodation based rural tourist facilities eg Crystal Castle
- Includes the R5 Zone to the LEP amendment with regards to tourist accommodation options
- Allows a variety of building forms and is not limited to cabins or 2 bedroom structures with a maximum floor area of 60 sqm

(Doolan/ Kabbout)

*The recommendation was put to the vote and declared carried*

**10 Financial Implications**

n/a

**Statutory and Policy Compliance Implications**

15

n/a

**Report No. 14.2      Report of the Biodiversity and Sustainability Advisory Committee Meeting held on 12 November 2015****Directorate:** Sustainable Environment and Economy**Report Author:** Sharyn French, Manager Environmental and Economic Planning**File No:** I2015/1581**Theme:** Ecology  
Planning Policy and Natural Environment**Summary:**

This report provides the minutes of the Biodiversity and Sustainability Advisory Committee Meeting of 12 November 2015 for determination by Council.

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**RECOMMENDATION:**

1. That Council note the minutes of the Biodiversity and Sustainability Advisory Committee Meeting held on 12 November 2015.

2. That Council adopt the following Committee Recommendation:

**Report No. 5.1 Low Carbon Strategy Update**

File No: I2015/1102

**Committee Recommendation 5.1.1**

That the Biodiversity and Sustainability Committee receive and note the report and that the Biodiversity and Sustainability Committee congratulate Council on achieving and progressing 99% of the first year actions in the Low Carbon Strategy.

3. That Council adopt the following Committee and Management Recommendations:

**Report No. 5.3 Biodiversity and Sustainability Advisory Committee Meeting Dates 2016**

File No: I2015/1299

**Committee Recommendation 5.3.1**

That the Biodiversity and Sustainability Advisory Committee meets from 9.00am to 11.00am on the following dates during 2016:

- Thursday, 18 February 2016
- Thursday, 21 April 2016
- Thursday, 23 June 2016
- Thursday, 18 August 2016
- Thursday, 10 November 2016
- Or as required

**Committee Recommendation 5.3.2**

That if required an additional meeting be scheduled for the Biodiversity and Sustainability Committee to consider the draft 2016/17 Environmental Levy Budget.

**Management Recommendation 5.3.3**

- a) That Chris Sanderson be appointed as a voting member of the Biodiversity and Sustainability Committee and the constitution be amended accordingly.
- b) That the remaining non-voting members of the Biodiversity and Sustainability Advisory Committee be contacted to ascertain their interest in continuing and the constitution be amended according to their decision.

**Attachments:**

5

- 1 Minutes 12/11/2015 Biodiversity and Sustainability Advisory Committee, I2015/1361

**Report**

The attachment to this report provides the minutes of the Biodiversity and Sustainability Advisory Committee Meeting of 12 November 2015 for determination by Council.

**Committee Recommendation 5.3.3**

**That Chris Sanderson be invited to become a voting member of the Biodiversity and Sustainability Committee.**

**Management Comments**

In accordance with the Committee Recommendation, Management provide the following additional information and for the reasons given below alternatively recommend:

**Management Recommendation 5.3.3**

- a) That Chris Sanderson be appointed as a voting member of the Biodiversity and Sustainability Committee and the constitution be amended accordingly.**
- b) That the remaining non-voting members be contacted to ascertain their interest in continuing and the constitution be amended accordingly.**

Chris Sanderson was present at the meeting and indicated his interest in becoming a voting member of the Committee. Chris has been regularly attending the Committee meetings.

Of the four remaining non voting community representatives, one has resigned and three others did not attend a Committee meeting in 2015. It is intended to contact the three to ascertain their interest and if they no longer wish to be included as non-voting members of the Committee, amend the Constitution accordingly.

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

**Financial Implications**

As per the Reports listed within the Biodiversity and Sustainability Advisory Committee Meeting of 12 November 2015.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Biodiversity and Sustainability Advisory Committee Meeting of 12 November 2015.

**Report No. 14.3      Report of the Heritage Advisory Committee Meeting held on 17 November 2015****Directorate:** Sustainable Environment and Economy**Report Author:** Noreen Scott, EA Sustainable Environment and Economy**File No:** I2015/1589**Theme:** Ecology  
Development and Approvals**Summary:**

This report provides the minutes of the Heritage Advisory Committee Meeting of 17 November 2015 for determination of Council.

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**RECOMMENDATION:**

1. That Council note the minutes of the Heritage Advisory Committee Meeting held on 17 November 2015.

2. That Council adopt the following Committee Recommendation(s)

**Report No. 5.1 Heritage Advisory Committee administration and meeting dates**  
File No: I2015/1387

**Committee Recommendation 5.1.1**

**That the Heritage Advisory Committee:**

1. Endorse the Terms of Reference with the following amendments being:

Under the heading in 3 Membership combine Brunswick Valley and Mullumbimby Historical Society as 1 representative.

Include Jali Land Council to the membership of the Heritage Advisory Committee.

Include Donald Maughan as the Byron Bay Historical Society representative

Increase the membership of the community representatives from 3 to 4 and endorse Ms Alexandra Williams as an additional community representative.

2. Adopt the following dates for the Committee meetings for 2016, with all meetings commencing at 2.00pm:

Tuesday, 16 February 2016

Tuesday, 12 April 2016

Tuesday, 21 June 2016

Tuesday, 16 August 2016

Tuesday, 18 October 2016

Tuesday, 13 December 2016

3. That Council adopt the following Committee Recommendation:

**Report No. 5.2 Heritage Strategy**



File No: I2015/1388

**Committee Recommendation 5.2.1**

**That the Heritage Advisory Committee defer Report 5.2 Heritage Strategy to the next Committee meeting on 16 February, 2016.**

**Attachments:**

5

- 1 Minutes Heritage Advisory Committee held 17 November 2015, I2015/1395

**Report**

The attachment to this report provides the minutes of the Heritage Advisory Committee Meeting of 17 November 2015 for determination by Council.

5

**Financial Implications**

As per the Reports listed within the Heritage Advisory Committee Meeting of 17 November 2015.

10 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Heritage Advisory Committee Meeting of 17 November 2015.

**REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES****Report No. 14.4      Report of the Transport Advisory Committee Meeting held on 1 December 2015**

**Directorate:** Infrastructure Services  
**Report Author:** Susan Sulcs, Administration Officer  
**File No:** I2016/5  
**Theme:** Community Infrastructure  
Local Roads and Drainage

**Summary:**

The attachment to this report provides the minutes of the Transport Advisory Committee Meeting of 1 December 2015 for determination by Council.

**RECOMMENDATION:**

1. That Council note the minutes of the Transport Advisory Committee Meeting held on 1 December 2015.

2. That Council adopt the following Committee Recommendation:

**Report No. 5.1    Update on Byron Bay Town Centre Master Plan**  
File No: I2015/1425

**Committee Recommendation 5.1.1:**

1. That Council note that the Transport Advisory Committee was provided with an update on the Byron Bay Town Centre Master Planning process, development and progress and that the following be noted:
  - a) That transport is a key issue for the town
  - b) That public exhibition of the Master Plan has been delayed to 2016
3. That Council adopt the following Committee Recommendation(s):

**Report No. 5.2    Transport for NSW proposal, Byron Bay bus/coach interchange**  
File No: I2015/1426

**Committee Recommendation 5.2.1:**

1. That Council note the Transport Advisory Committee was provided with an update on the proposal by Transport for NSW for the development of the old Byron Bay bus/coach interchange in Jonson Street.
2. That Council
  - a) notify Transport for New South Wales that Council is near the end of a Master Planning process for the town of Byron Bay
  - b) seek from Transport for New South Wales funding assistance for the proposed location of a bus interchange in accordance with the Master Plan

3. That Council seek the assistance of the Premier of NSW, of the local member for Ballina, and other members of parliament to have Transport for New South Wales coordinate with Council on the siting of a bus interchange, in accordance with the Master Plan, west of the rail way corridor.

4. That Council adopt the following Committee Recommendation:

**Report No. 5.3 Outstanding Resolutions - Transport Advisory Committee**  
File No: I2015/1427

**Committee Recommendation 5.3.1:**

That Council note the Transport Advisory Committee was provided a list of outstanding Council Resolutions, relating to the Committee's work and an update will be provided at the March 2016 Committee meeting.

5. That Council adopt the following Committee Recommendation(s):

**Report No. 5.4 Update on parking schemes, Byron Bay**  
File No: I2015/1428

**Committee Recommendation 5.4.1**

1. That Council note that the Transport Advisory Committee was provided with an update on the progress of paid parking in Byron Bay.
2. That Council write to RMS seeking dispensation from the requirement for non exemption holders to display a parking ticket within Council's 'Pay by Plate' parking scheme.

6. That Council adopt the following Committee Recommendation(s):

**Report No. 5.5 Transport Strategy update**  
File No: I2015/1429

**Committee Recommendation 5.5.1**

1. That Council note the existing Transport Policy and that the Transport Advisory Committee is charged with developing a Draft Transport Strategy.
2. That a report be provided to the March 2016 meeting of the Transport Advisory Committee.

7. That Council adopt the following Committee Recommendation(s):

**Report No. 5.6 Pacific Highway T2E Upgrade update**  
File No: I2015/1430

**Committee Recommendation 5.6.1**

1. That Council notes that the Transport Advisory Committee was provided with an update on the progress of the T2E Pacific Highway upgrade.
2. That Council advise RMS of community and bus operator concern about new

arrangements for the post opening of the Pacific Highway T2E regarding access to the Highway from Grays Lane and disruption to existing school bus and other services, as well as potential congestion associated with Blues Fest.

3. That Council advise RMS that signage on the new T2E Pacific Highway directing traffic through Bangalow to Lismore is not supported by Council and the Bangalow community.

5 **Attachments:**

- 1 Minutes 01/12/2015 Transport Advisory Committee, I2015/1481

10

**Report**

The attachment to this report provides the minutes of the Transport Advisory Committee Meeting of 1 December 2015 for determination by Council.

The agenda may be viewed at

[http://byron.infocouncil.biz/Open/2015/12/TRAC\\_01122015\\_AGN\\_424\\_AT.PDF](http://byron.infocouncil.biz/Open/2015/12/TRAC_01122015_AGN_424_AT.PDF)

**Committee Recommendation 5.4.1**

Report No. 5.4 Update on parking schemes, Byron Bay  
File No: I2015/1428

1. That Council note that the Transport Advisory Committee was provided with an update on the progress of paid parking in Byron Bay.
2. That Council write to RMS seeking dispensation from the requirement for non exemption holders to display a parking ticket within Council's 'Pay by Plate' parking scheme.

**Management Comments**

Council's internal legal services area has provided advice that advice that will be included in the letter to RMS for confirmation.

The law is that when a driver is parked in a 'registration metered parking area' (an area defined by permissive parking signs which include both the words 'meter' and 'registration': Rule 207-1(4)), the driver must:

1. Enter their vehicle registration number; and
2. Pay the relevant fee: Road Rule 207-1(8).

In other words, displaying a ticket is not a requirement of parking in a registration metered parking area. This understanding is on the basis that the paid parking system in the Bay is a 'registration metered parking area'.

Not displaying a current ticket is only a breach of the Road Rules if a driver parks in a 'ticket parking area': Rule 207-3. A 'ticket parking area' is defined by permissive parking signs that contain the word 'ticket': Rule 207-3(2).

Given the above, the legal services view is that non-permit holders do not need to print a ticket to comply with the relevant Road Rule for a registration meter parking area. All they need to do is enter their licence plate number and pay the relevant fee at the meter.

If the parking machines that have been installed generate tickets/receipts as part of the transaction process, that is one thing, but they don't need to be displayed.

**Committee Recommendation 5.6.1**

Report No. 5.6 Pacific Highway T2E Upgrade update  
File No: I2015/1430

1. That Council notes that the Transport Advisory Committee was provided with an update on the progress of the T2E Pacific Highway upgrade.
2. That Council advise RMS of community and bus operator concern about new arrangements for the post opening of the Pacific Highway T2E regarding access to the Highway from Grays Lane and disruption to existing school bus and other services, as well as potential congestion associated with Blues Fest.
3. That Council advise RMS that signage on the new T2E Pacific Highway directing traffic through Bangalow to Lismore is not supported by Council and the Bangalow community.

**Management Comments**

In addition to the above, staff will undertake a review of T2E highway signage so as to compare what has been installed to what was proposed by the RMS as per their previously provided and consulted upon signage plan.

**Committee Recommendation 5.7.1** regarding the proposed Committee Meeting Dates for 2016

**Management Comments**

The 2016 meeting dates have been resolved as per Res 15-620 from the 10 December Council meeting.

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

**Financial Implications**

Nil, as per the Reports listed within the Transport Advisory Committee Meeting of 1 December 2015.

**Statutory and Policy Compliance Implications**

Nil, as per the Reports listed within the Transport Advisory Committee Meeting of 1 December 2015.

**Report No. 14.5      Report of the Community Infrastructure Advisory Committee Meeting held on 3 December 2015**

**Directorate:** Infrastructure Services  
**Report Author:** Susan Sulcs, Administration Officer  
**File No:** I2016/7  
**Theme:** Community Infrastructure  
Asset Management

**Summary:**

The attachment to this report provides the minutes of the Community Infrastructure Advisory Committee Meeting of 3 December 2015 for determination by Council.

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**RECOMMENDATION:**

1.    **That Council note the minutes of the Community Infrastructure Advisory Committee Meeting held on 3 December 2015.**

2.    **That Council adopt the following Committee Recommendation(s):**

**Report No. 5.2   Transport and Stormwater Revaluation**  
File No: I2015/822

**Committee Recommendation 5.2.1:**

**That Council notes the report provided to the Community Infrastructure Advisory Committee and resulting reduction in annual depreciation figures.**

3.    **That Council adopt the following Committee Recommendation(s):**

**Report No. 5.3   Update Report of Restoration of 2012 & 2013 Landslips**  
File No: I2015/1357

**Committee Recommendation 5.3.1:**

**That Council notes that 11 out of 12 of the landslips from the 2012 and 2013 Declared Natural Disasters are complete and the restoration of the one remaining landslip at “Upper Wilsons Creek – end of road” is in progress.**

4.    **That Council adopt the following Committee Recommendation(s):**

**Report No. 5.4   Status report on 2015/16 Local Roads Capital Works Program**  
File No: I2015/1367

**Committee Recommendation 5.4.1:**

**That Council notes that the Community Infrastructure Advisory Committee notes the actions taken to implement the 2015/16 Local Roads Capital Works Program.**



**Attachments:**

5

- 1 Minutes 03/12/2015 Community Infrastructure Advisory Committee, I2015/1437

**Report**

The attachment to this report provides the minutes of the Community Infrastructure Advisory Committee Meeting of 3 December 2015 for determination by Council.

The agenda may be viewed at

[http://byron.infocouncil.biz/Open/2015/12/CIAC\\_03122015\\_AGN\\_412\\_AT.PDF](http://byron.infocouncil.biz/Open/2015/12/CIAC_03122015_AGN_412_AT.PDF)

**Committee Recommendation 5.1.1** regarding the 2015/16 Bridges Program.

**Management Comments**

The committee recommendation was presented earlier to Council at the 10 December meeting via a Notice of Motion and this resulted in Res 15- 682.

**Resolved** that Council:

1. Undertake a needs analysis of road bridges requiring replacement and refurbishments in order to determine priorities.
2. Investigate further funding options for road bridge replacement and refurbishments.
3. Write to the Local State MP requesting advice and assistance regarding urgent road bridge replacements.
4. Receive a report in relation to points 1 to 3 by March 2016, to inform Council's 2016/17 budget process.
5. Consider putting up a motion for increased funding for road bridge replacement and refurbishments to the 2016 LGNSW Conference.
6. Undertake further inspections of road bridges that have or could soon have load limits, in order to understand community priorities for replacement and repairs.

**Committee Recommendation 5.5.1** regarding the proposed Committee Meeting Dates for 2016

**Management Comments**

The 2016 meeting dates have been resolved as per Res 15-618 from the 10 December Council meeting.

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

**Financial Implications**

As per the Reports listed within the Community Infrastructure Advisory Committee Meeting of 3 December 2015.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Community Infrastructure Advisory Committee Meeting of 3 December 2015.

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**CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES**

**Report No. 16.1      CONFIDENTIAL - 2015-0037 North Ocean Shores Sports Field Construction**

**Directorate:** Infrastructure Services  
**Report Author:** Nikki Bourke, Capital Projects Officer  
**File No:** I2016/2  
**Theme:** Community Infrastructure  
 Projects and Commercial Opportunities

**Summary:**

On 19 October 2015 the General Manager approved the preparation and advertisement of tenders for contract 2015-0037 North Ocean Shores Sports Field – Stages 2 and 3: Sports Field, Services and Amenities Building (E2015/68770).

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulation 2005.

**RECOMMENDATION:**

1. That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report 2015-0037 North Ocean Shores Sports Field Construction.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
  - a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure could adversely impact Council's position in the upcoming negotiations.

**OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:**

**RECOMMENDATION:**

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, 2015-0037 North Ocean Shores Sports Field Construction are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

**Attachments:**

- 1 Confidential - 24.2014.14.1 Shara Bvd Sports Field - SIGNED confidential 2015-0037 Assessment Panel Recommendation Report, E2016/2142