



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 7 April 2016

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

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

Ken Gainger
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL

ORDINARY MEETING

BUSINESS OF ORDINARY MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (S450A LOCAL GOVERNMENT ACT 1993)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 6.1 Ordinary Meeting held on 17 March 2016
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BYRON SHIRE COUNCIL

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Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate 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 Support for Mens Shed at Bangalow

5 File No: I2016/196

I move that Council:

- 1. Support in principle, the initiative by Lions and others to establish and operate a Men’s Shed at Bangalow; and
- 2. Allocate funding of \$10,000 to the Mens Shed project in Bangalow, as a s356 Donation to be donated in kind (by way of fees waived for example) or if not then as cash.

10

Councillor’s Background Notes:

On its website, the Australian Mens Shed Association (AMSA; mensshed.org) says:

15 The Australian Men’s Shed Association is the peak body representing more than 930 Men’s Sheds in Australia by providing practical support, specialised services and resources.

At the 2nd National Men’s Shed Conference in Manly, September 2007, Professor Barry Golding, a Men’s Shed researcher from Federation University Ballarat, stated in his key note address that “Men don’t talk face to face they talk shoulder to shoulder”. This drew unanimous mutterings of approval from all 350 delegates and the quote became the Australian Men’s Shed Associations motto.

The website goes on to say that Mens Shed is “any community-based, non-profit, non-commercial organization that is accessible to all men and whose primary activity is the provision of a safe, friendly and healing environment where men are able to work on meaningful projects at their own pace in their own time in the company of other men. A major objective is to advance the well-being and health of their male members and to encourage social inclusion”.

As Councillors heard in Brian Mackney’s submission to our Ordinary Meeting of 25 February, Bangalow has decided to host a Mens Shed and is looking for assistance to establish one on a site in the town. We also received emails in February in the same vain.

I support the project.

30 Council staff have advised that Council’s Budget Review for the September 2015 quarter included a vote of \$38,000 for s356 Contributions/Donations. This budget is yet to be allocated and could be considered to help fund this project.

Recommended priority relative to other Delivery Plan tasks:

35

Donating via the s356 system requires no more work than the consideration of Council.

Definition of the project/task:

40 Allocate \$10,000 to the Mens Shed project in Bangalow.

Source of Funds (if applicable):

Signed: Cr Duncan Dey

Management Comments by Mark Arnold, Director Corporate and Community Services:
(Management Comments must not include formatted recommendations – resolution 11-979)

5

Clarification of project/task:

Council in regard to the Notice of Motion as currently worded needs to clarify whether it wishes to either:-

10

1. Donate \$10,000 to the Bangalow Lions Club as a cash component to use how they wish for the development of the Men's Shed;

OR

15

2. Pay all Council's fees associated with the Men's Club under Council's Policy "Section 356 Donations – Reimbursement of Council Application Fees for Community Groups".

Council has in its Section 356 Donation budget for 2015/2016 a total of \$36,000 (Job No.2341.233) of unallocated moneys.

20

Council receives many requests for financial assistance for community projects and up until the insertion of these moneys into the budget it has been unable to consider those requests. Requests that have been received since Council in its September Quarterly Budget Review, included the budget allocation of \$36,000 for S356 Community Contributions and Donations, have been listed below:-

25

- Federal Community Pre-school - - removal of dangerous tree \$5,000
- Roof extension \$8,180 + DA Fees

30

- Mullumbimby SEED - Toilet Block \$10,000

- Shower van for the Homeless approx. \$80,000 + running costs \$14,000 – requesting contribution from Council.

35

It is proposed to submit a report to the May Ordinary meeting on these requests, to provide Council with a process to allow for the equitable distribution of the unallocated Section 356 Donation budget, in accordance with Council Policy, 'Section 356 Donations, Community Organisations, Other Groups and Persons'.

40

It is matter for Council to consider whether it allocates funding to Mens Shed Project in Bangalow at this meeting or defers and includes the consideration of this request as part of the May report to Council.

It should be noted that any community groups can apply for refund of Council fees under Council Policy "Section 356 Donations – Reimbursement of Council Application Fees for Community Groups". Council has on 2015/16 allocated a budget of \$2,000 (Job No. 2341.9) of which there is \$1,058 unallocated this financial year.

Comments by General Manager:

50

Council staff have previously discussed with the Bangalow Lions Club possible "in-kind" support for the construction of an ingress and egress to the new car park that has been developed on the Catholic Church land upon which the Mens' Shed has been constructed. The ingress/egress would involve the sacrifice of 4 Council car parking spaces at the end of the recently resealed Station

55

Street on-street car park. Access to the Mens' Shed car park cannot be achieved without the sacrifice of these car parking spaces. This "offer" was made on the basis that the Mens' Shed car park would be made available for parking by the general public. The Bangalow Lions subsequently determined that they would construct the ingress/egress at their cost but to date they have not sought Council's approval to do so. Council approval is necessary as this construction would require a formal decision by Council to forego four on-street car parking spaces with potential on-going revenue loss should pay parking be considered for Bangalow at some time in the future. This proposal is further complicated by Bangalow Lions still considering whether to lease car parking spaces within their car park to local business operators or alternatively commit to their new car park being available for use by the general public. These discussions provide some context to the Bangalow Lions Club's request for a financial contribution towards this project.

Director responsible for task implementation:

15 Director Corporate and Community Services

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

20 This donation could be considered when Councils considers any other requests for donations in accordance with Council's Policy 'Section 356 Donations – Community Organisations, Other Groups and Persons'.

Financial and Resource Implications:

25 If Council wishes to allocate \$10,000 to Bangalow Lions for the Men's Shed project, this will decrease the unallocated funds to \$26,000.

Legal and Policy Implications:

30 All Section 356 Donation moneys are considered and processed - under Council Policy "Section 356 Donations Community Organisations, Other Groups and Persons".

35 Requests for refund of Council fees can be considered under Council Policy "Section 356 Donations – Reimbursement of Council Application Fees for Community Groups".

Council Polices referred to above can be found on Council's web site at <http://www.byron.nsw.gov.au/policies>

Notice of Motion No. 9.2 Trial of temporary traffic calming
File No: I2016/230

I move that Council consider approval of a trial of temporary traffic calming (sand bag chicanes) along the route of Massinger – Paterson Street between Lawson Street/Lighthouse Road and Bangalow Road (along with appropriate signage).

Councillor’s Background Notes:

Community consultation with residents along Massinger and Paterson Street has highlighted speed issues along that route. Especially since the Massinger Street upgrade and paid parking has resulted in more families using this area for beach parking! Residents put forward this suggestion.

Recommended priority relative to other Delivery Plan tasks:

Along with footpath options to improve pedestrian safety.

Source of Funds (if applicable):

TBA

Signed: Cr Chris Cubis

Management Comments by Simon Bennett, Traffic and Transport Planner:

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

Clarification of project/task:

If the trial is approved, it would require implementing temporary measures to reduce traffic speed. This assumes that traffic speed is a problem. Without collection of vehicle data (speed and volume) this assumption can not be tested.

As data was collected prior to re-constructing the street, it is therefore recommended speed and volume counts again be undertaken, preferably at the same sites. This can be arranged quickly (within the fortnight) and is relatively inexpensive when compared to cost of implementing traffic calming.

Such data will then allow comparison of speed and volume data pre and post construction. The same sites will then be used for the same data collection to again be undertaken when the temporary measures are introduced. Without such data an assessment of the effectiveness of the trial will not be quantitatively possible.

The data will also help justify the extent of the treatments required and assist in any budget scrutiny (e.g. benefit to cost) or assessment when considering if the trial warrants a permanent undertaking. Such data will also help with any advice or approvals that may be sought, for example to the Local Traffic Committee (LTC) at their 1 June meeting.

Reporting to LTC is recommended, and therefore will occur if the trial is approved and prior to such measures being implemented so as to seek their advice and/or their endorsement, which if required will likely mean that the trial will need to meet RMS criteria and any applicable Australian standard, noting an intention of both is to improve safety (which is also a rationale of the proposal) and minimise risk of undertaking such actions.

Director responsible for task implementation:

Director Infrastructure Services

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

The proposal is tabled following the recent reconstruction of a section of Massinger Street.

10 The works undertaken however was a maintenance project and did not include any upgrades, enhancements or changes to existing traffic facilities.

Financial and Resource Implications:

15 There is no budget for this trial at this time.

The project for the pavement renewal of Massinger Street between Kipling Street and Carlyle Street has been delivered for less than the cost estimate and budget by about \$181,000, but it is proposed to transfer these funds to the pavement renewal of Massinger Street between Kipling Street and Lawson Street, which is in very poor condition and needs to be reconstructed to complete the full pavement renewal of this street between Lawson Street and Carlyle Street.

Therefore if Council resolve to proceed with the trial a budget will be required.

25 While sand bags and barrier boards/signs would be an inexpensive option, it is possible they are not supported by the LTC, noting such measures are typically only implemented when road works or hazardous conditions exist.

30 Therefore it is recommended the budget be provided for other possible measures (for example use of water filled barriers, pre-cast concrete islands, etc). Therefore as a guide only, a budget of \$20,000 is suggested to be made available which is expected to covers costs of all undertakings required to implement and assess the trial.

Legal and Policy Implications:

35 It is recommended that physical traffic or speed calming measures (be they temporary or permanent) conform to relevant state and national standards. This helps with consistency of implementing such measures, plus aim to improve safety and minimise risk. To this end LTC advice is recommended before the trial is undertaken.

PETITIONS

Petition No. 10.1 **Against kitchen and showers at the Girl Guides Hall, Byron Bay**
Directorate: Corporate and Community Services
5 **Report Author:** Sarah Ford, Manager Community Development
File No: I2016/126
Theme: Community Infrastructure
 Facilities Management

10 At Council's Ordinary meeting held on 4 February 2016 the Mayor tabled a petition containing 46 signatures which states:

15 *"We, the neighbours and local visitors to the Rec. Grounds, are against the proposal to put a Soup Kitchen and Toilet and Shower Facilities for the 'Homeless'..."*

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

20 The petition request is noted and alternate community uses of the Girl Guides Hall located at the Byron Bay Recreation Ground are being assessed. Other locations and proposals for the delivery of homeless services are being considered.

RECOMMENDATION:

1. **That the petition regarding the kitchen and showers at the Girl Guides Hall, Byron Bay be noted.**
2. **That the petition be referred to the Director Corporate and Community Services.**

Attachments:

- 25
- 1 Excerpt of Petition tabled at the Ordinary meeting 04/02/16 - Girl Guides Hall, E2016/9915

Petition No. 10.2 **Against the Development Plan for Lot 101 Ewingsdale**
Directorate: Sustainable Environment and Economy
Report Author: Sharyn French, Manager Environmental and Economic Planning
File No: I2016/218
5 **Theme:** Ecology
 Development and Approvals

At Council's Ordinary meeting held on 25 February the Mayor tabled a petition containing 147 signatures which states:

10 *"We the community want rural not urban"*

RECOMMENDATION:

1. **That the petition regarding Development Plan for Lot 101 Ewingsdale (Lot 101 DP 1140936) be noted.**
2. **That the petition be referred to the Director Sustainable Environment and Economy.**

Attachments:

- 1 Excerpt of Petition - Development Plan for Lot 101 Ewingsdale, E2016/15863

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 National General Assembly of Local Government 2016

Directorate: Corporate and Community Services

5 **Report Author:** Mila Jones, Corporate Governance Coordinator

File No: I2016/223

Theme: Corporate Management

Councillor Services

10 **Summary:**

15 This report is provided in accordance with Council’s Policy Mayor and Councillors Payment of Expenses and Provision of Facilities, Clause 8.4.1 “A resolution of Council is required to authorise attendance of Councillors at ...b) Australian Local Government Association National General Assembly as a voting delegate.”

20 Council has received notification that the National General Assembly of Local Government will be held from 19 to 22 June 2016 in Canberra. The Call for Motions Discussion Paper requires that motions from Councillors are to be lodged with ALGA no later than 11.59pm on Friday 22 April 2016.

RECOMMENDATION:

1. That Council authorise the following Councillors to attend the 2016 National General Assembly of Local Government to be held at the National Convention Centre in Canberra from 19 to 22 June 2016:

Cr _____ and Cr _____

2. That Cr _____ will be the voting delegate.

3. That Council endorse the following motions for submission to the National General Assembly:

Submission A _____

Submission B _____

25 **Attachments:**

- 1 National General Assembly of Local Government 2016 call for motions discussion paper, E2016/16502
- 2 National General Assembly 2016 Program and Motions Information, E2016/16510
- 30 3 Memo to Councillors - Call for motions for 2016 National General Assembly of Local Government, E2016/16544

Report

Council has received the program and registration details for the National General Assembly of Local Government (NGA) to be held in Canberra from 19 to 22 June 2016.

5 Council's Policy Mayor and Councillors Payment of Expenses and Provision of Facilities, clause 8.4.1. states "A resolution of Council is required to authorise attendance of Councillors at...b) Australian Local Government Association National General Assembly as a voting delegate."

10 Council is entitled to one voting delegate in the debating session.

Conference Motions

15 The Mayor and Councillors Payment of Expenses and Provision of Facilities Policy also states at clause 8.4.4.(b) that "Submission of motions for consideration by Council will be done by notice of motion, which can be considered during the year."

20 As motions to the NGA are to be received by ALGA no later than 11.59pm on Friday 22 April 2016 and must first be endorsed by Council prior to submission, a memo was provided to Councillors (Attachment 3) advising of the due date for Notices of Motion to be submitted in time for this Agenda and for discussion at this meeting.

25 See Call for Motions below regarding information that must be included in a motion. Staff will submit any adopted motions to ALGA on behalf of a Councillor/s following the meeting of 7 April.

Call for Motions

30 This year's theme is "Partners in an Innovative and Prosperous Australia". To be eligible for inclusion in the NGA Business Papers and then debate on the floor of the NGA, motions must follow the principles:

- 1. Be relevant to the work of local government nationally;
- 2. Be consistent with the themes of the Assembly;
- 35 3. Complement or build on the policy objectives of your state and territory local government associations;
- 4. Propose a clear action and outcome, and
- 5. Not be advanced on behalf of external third parties which may seek to use the NGA to apply pressure to Board members, to gain national political exposure for positions that are not directly relevant to the work of, or in the national interest of local government.

40 To assist Councils in preparing motions, a Discussion Paper has been prepared and can be seen at Attachment 1 to this report.

45 Motions should generally be in a form that seek the NGA's support for a particular action or policy change at the Federal level which will assist local governments to meet local community needs e.g. *That this National General Assembly call on the Federal government to restore indexation to local government financial assistance grants.*

50 As shown in the following image, motions require a clear national objective (maximum 100 words); a summary of the key arguments in support of the motion (maximum 300 words) and endorsement by Council.

National General Assembly 2016 - New Motion

State:

Postcode:

Motion

Please enter your Motion below

National Objective

Why is this a national issue and why should this be debated at the NGA? (Maximum 100 words)

Words: 0

Summary of Key Arguments

Background information and supporting arguments (Maximum 300 words)

Words: 0

Declaration

This motion has been endorsed by Council

Conference Details

5 Where: National Convention Centre, Canberra, ACT
 Dates: Sunday 19 June to Wednesday 22 June 2016

Costs:		
10 (<i>per delegate</i>)	Registration Fee (early bird received by 6 May 2016)	\$925.00
	Accommodation (<i>approx</i>) (4 nights)	\$1,000.00
	Travel (<i>approx.</i>)	\$800.00
	Total:	\$2,725.00

Financial Implications

15 Council has an allocation for conferences of \$19,100 within the 2015/16 budget (2145.04). There has been \$7,770.00 committed as at 14 March 2016. Council is therefore able to fund the cost of two delegates from this budget.

Statutory and Policy Compliance Implications

In accordance with Council's Policy Mayor and Councillors Payment of Expenses and Provision of Facilities "A resolution of Council is required to authorise attendance of Councillors at ...b)

- 5 *Australian Local Government Association National General Assembly as a voting delegate."*

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.2 PLANNING - 26.2013.2.1 - Ewingsdale Seniors Housing and Commercial Uses Planning Proposal

5 **Directorate:** Sustainable Environment and Economy
Report Author: Sharyn French, Manager Environmental and Economic Planning
Shannon Burt, Director Sustainable Environment and Economy
Christopher Soulsby, Development Planning Officer S94 & S64
10 **File No:** I2015/1582
Theme: Ecology
Planning Policy and Natural Environment

Summary:

15 The Ewingsdale seniors housing and commercial uses planning proposal for Lot 1 DP 1140936, (the Site) proposes to amend the Byron LEP 2014 to enable seniors housing, medical centre, business premises, restaurants and cafes, and shops.

20 The Site is not in an approved Local Growth Management Strategy (LGMS) or the Far North Coast Regional Strategy or draft North Coast Regional Plan. Council decided to review this unsolicited planning proposal on its merits because, at the time, there was no clear time frame for reviewing either the FNCRS or preparing a LGMS. The planning proposal is an opportunistic response to the decision by the State Government to locate the new Byron hospital on rural land adjacent to the

25 subject site at Ewingsdale. It has been publicly exhibited twice and the community feedback on both occasions has been mostly opposed to the planning proposal. With the top issues being traffic and congestion, impacts on the Ewingsdale character and quality of life, density and height of buildings, and excessive number of dwellings.

30 The seniors housing option with a medical centre and commercial uses is the preferred use put forward by the current landowners but it may not be the highest and best use of the land. There has been no holistic review of the Ewingsdale locality, how this site will influence the future of Ewingsdale or how it will interact with the new urban area at West Byron. Approving this planning proposal is pre-empting the outcome of a future strategy. Council has commenced preparation of

35 a Residential Strategy. The draft Residential Strategy is expected to be presented to Council by June 2016. This Site could be considered for urban use as part of this broader process.

In the absence of this Site being holistically considered in a strategic plan and up until now not having a sufficiently detailed traffic study, the planning proposal has been problematic. The

40 absence of a detailed traffic study resulted in significant delays to the Sites consideration. Roads and Maritime Services (RMS) advised Council on 1 August 2014 that the work undertaken by the proponent was inadequate and a demand transport model was required. At the time the proponent declined to undertake this work as they believed that the traffic assessment provided with the

45 planning proposal was adequate for the purposes of the planning proposal process. The new traffic study now provided by the proponent has shown that the location of the commercial precinct on the western portion cannot be accommodated and needs to relocate to the eastern portion.

Additionally, the roundabout at the McGettigans Lane intersection with Ewingsdale Rd will be essential for development on the eastern portion of the site to proceed. The roundabout is

50 identified in Council's section 94 plan as the 4th highest priority for expenditure of developer contributions. The higher priority works preceding this roundabout will likely exhaust all the existing s94 funds, as such Council is not in a position to fund this roundabout at this point in time. For the development to proceed the developer would need to build the roundabout. A Voluntary Planning Agreement (VPA) can facilitate this where the cost of the works undertaken by the

55 developer is offset against the urban road contributions. As the roundabout is critical to the Site's ability to be developed it must be entered into at the planning proposal stage.

5 The advice from Roads and Maritime Services on the traffic study also raised the issue of the access to the eastern portion of the site from a classified road - Ewingsdale Road. The Infrastructure SEPP states that Council must not grant consent to development on land that has a frontage to a classified road where vehicle access can be provided by another road - McGettigans Lane.

10 The proponent has prepared a draft DCP which has raised issues not previously considered in the planning proposal and which must be dealt with in an LEP. As such amendments are required to the planning proposal if Council proceeds. Under the *Environmental Planning and Assessment Act 1979*, Council may, at any time, vary its planning proposal for any reason. If Council does so, a revised planning proposal must be forwarded to the Minister who will determine if further community consultation is required. Noting that irrespective of the Ministers determination Council may decide to undertake further community consultation.

15 The draft DCP submitted by the proponent requires significant rework before Council can consider its release for public exhibition. The proponent has advised that until the LEP amendment is made no further work will be funded on the draft DCP.

20 This report provides information on the exhibited voluntary planning proposal, the draft DCP and the new traffic study. It also addresses matters for Council to consider in deciding to proceed or not with the planning proposal.

25 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

1. **That Council proceed with an amended planning proposal for Lot 101 DP1140936, Ewingsdale, subject to a draft voluntary planning agreement for the construction of the McGettigans Lane roundabout by the developer with arrangements for the offsetting of developer contributions against the cost of works for the roundabout being entered into on the making of the LEP amendment.**
2. **That the planning proposal for Lot 101 DP1140936, Ewingsdale (#E2014/39455) be amended where necessary to include the following changes:**
 - a) **amend the Additional Permitted Uses Map to show the relocation of the commercial precinct to the eastern portion of the site as defined by Precinct 5 – Rural retail,**
 - b) **amend the relevant sections of the planning proposal that describe the location of the commercial precinct,**
 - c) **include limits for the combined maximum total floor area of 3000m² for commercial uses to 1200m² and medical centre to 1800m²,**
 - d) **include an FSR of 0.3:1 and an FSR map for the site, excluding the commercial precinct on the eastern portion of the site,**
 - e) **exclude site access from Ewingsdale Road, and**
 - f) **that the proposed wording for the amendment to Schedule 1 of Byron LEP 2014**

be amended as follows:

‘Use of certain land at Ewingsdale Road, Ewingsdale:

- (1) This clause applies to land at Ewingsdale Road, Ewingsdale, being Lot 101 DP 1140936.**
 - (2) Development for the purposes of Seniors Housing, Medical Centre, Business Premises, Restaurants or Cafes, and Shops is permitted with development consent.**
 - (3) All commercial uses listed in subclause (2) are restricted to the land identified as ‘Area A’ on the Additional Permitted Uses Map and limited to a combined maximum total floor area of 1200m².**
 - (4) Medical centre uses listed in subclause (2) are restricted to the land identified as ‘Area A’ on the Additional Permitted Uses Map and limited to a maximum total floor area of 1800m².’**
 - (5) Access to the land directly from Ewingsdale Road is excluded.**
- 3. That Council forward the revised planning proposal to the Department of Planning and Environment under Section 58 of the Environmental Planning and Assessment Act 1979 for the Minister to determine if further community consultation is required and irrespective of the Ministers decision Council re-exhibits the amended planning proposal for a period of 28 days as soon as practicable together with the two draft voluntary planning proposals: the previously exhibited draft VPA in Attachment 4 and the new draft VPA on the McGettigans Lane roundabout.**
 - 4. That the draft DCP be amended in consultation with Council staff and Attachment 7, concurrently with the amendments to the planning proposal, to finalise the draft DCP expeditiously for Council’s consideration and public exhibition either with the amended planning proposal or as soon as practicable thereafter.**

Attachments:

- 5 1 Summary of Council reports and resolutions relating to Ewingsdale Seniors Housing and Commercial Uses Planning Proposal - Lot 101 DP1140936, Ewingsdale, E2016/17561
- 2 Ewingsdale Retirement Facility Traffic Study Report, E2016/18036
- 3 Response from Roads and Maritime Services regarding Traffic Study, E2016/18182
- 4 Draft Voluntary Planning Agreement for Traffic Study, E2016/227
- 10 5 Confidential - Submissions 26.2013.2.1 Ewingsdale Seniors Living Voluntary Planning Agreement, E2016/16788
- 6 Draft DCP 2014 Chapter E9 Ewingsdale Seniors Living, E2016/18391
- 7 DCP meeting minutes and matters to be addressed - Ewingsdale Seniors Living, E2016/18348
- 8 Letter from Henry Davis York re Ewingsdale Seniors Living - Comments on draft DCP and traffic study, E2016/18393
- 15

Background

The Site (Lot 101 DP1140936, Ewingsdale) has been the subject of a number of Council reports since 2011 to amend the Byron LEP to permit seniors housing and a range of commercial uses. Council resolved to proceed with an amended planning proposal at the 13 June 2013 meeting. A brief summary of the Council reports and resulting resolutions relating to the Site are provided in **Attachment 1**.

Planning Proposal to amend Byron LEP 2014

The planning proposal’s objective was to permit additional uses on the Site to accommodate the following:

- On the western portion of Lot 101:
 - (a) Seniors housing and residential care facilities; and
 - (b) Retail facilities including a supermarket and speciality stores and medical facilities in the area marked “A” on the Additional Permitted Uses Map [Figure 1]
- On the eastern portion of Lot 101 – seniors housing.

Council resolved (resolution 13-492) that this would be implemented by way of an amendment to Schedule 1 of Byron LEP 2014 as follows:

Use of certain land at Ewingsdale Road, Ewingsdale

- 1) This clause applies to land at Ewingsdale Road, Ewingsdale being Lot 101 DP 1140936.
- 2) Development for the purposes of Seniors Housing, Medical Centre, Business Premises, Restaurants or Cafes, and Shops is permitted with development consent.
- 3) All commercial uses listed in subclause (2) are restricted to the land identified as ‘Area A’ on the Additional Permitted Uses Map and limited to a combined maximum total floor area of 3000m².

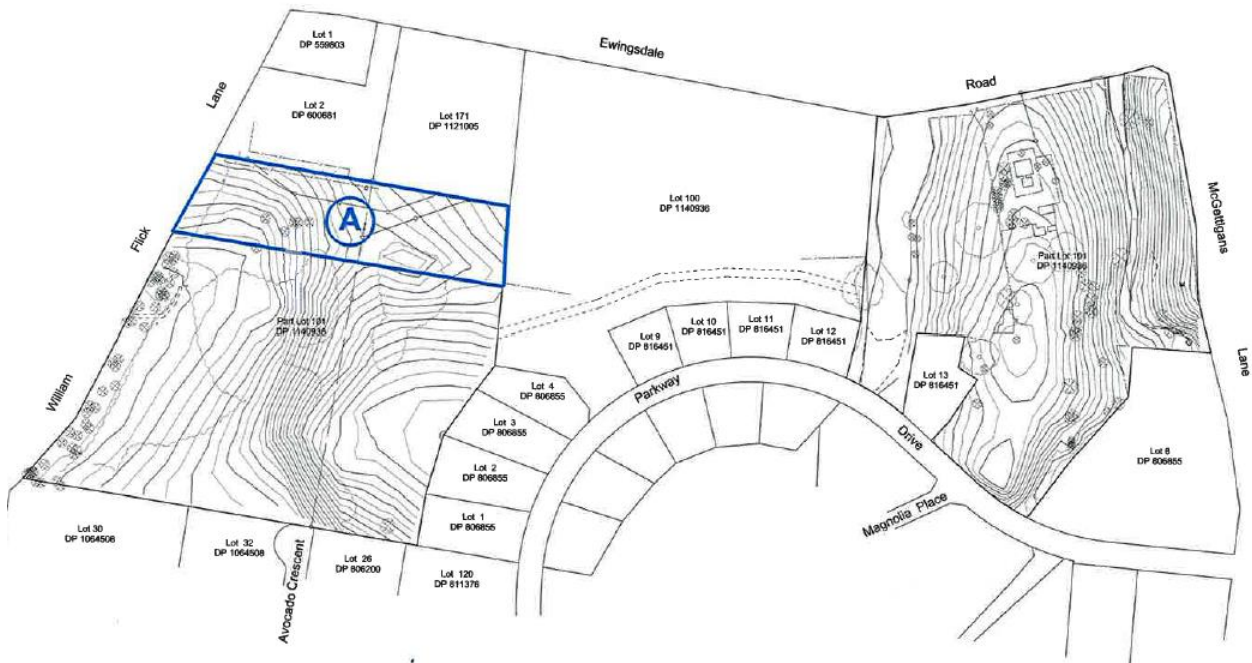


Figure 1: ‘Area A’ – Additional Permitted Uses Map

See Council's website here for a copy of the exhibited planning proposal (E2014/39455).

<http://www.byron.nsw.gov.au/public-exhibition/2014/12/08/planning-proposal-to-amend-byron-lep-2014-lot-101-dp-1140936-ewingsdale>

The most recent decision of Council on this matter was at the 17 September 2015 meeting at which Council resolved:

Resolution 15-459

1. *Proponent to prepare draft DCP along with a basic concept plan in consultation with Council and provide that to Council as soon as possible.*
2. *Proponent to prepare and complete at their own cost a Traffic demand study for the planning proposal.*
3. *Proponent and Council to finalise draft VPA so that:*
 - a) *\$15,000 is paid to Council after the LEP is amended to contribute to the wider traffic studies*
 - b) *\$3,000 is paid to Council for its legal costs to finalise the VPA*
 - c) *The VPA is to be placed on public exhibition*

This report provides an update on resolution 15-459 and matters for Council to consider in deciding to proceed or not with the planning proposal.

Traffic Demand Study

Council received from the proponent the *Ewingsdale Retirement Facility Development Control Plan Traffic Study Report (Attachment 2)* late last year. The study was forwarded to Roads and Maritime Services (RMS) for their advice. Correspondence received from RMS on the 18 January 2016 advised that:

Due to the volume of referrals received over the Christmas closedown period and leave arrangements Roads and Maritime Services will be unable to respond to your referral until mid to late February 2016.

RMS provided their advice on 29 February 2016, **Attachment 3**, advising:

RMS Advice	Staff Comment
The traffic study adequately identifies the road improvements necessary to manage Ewingsdale Rd up until 2028	<p>Noted. After 2028 the single lane roundabout at the hospital reaches saturation. This intersection will have queue length on the west approach exceeding 309m in the AM peak and 142m on the east approach in the PM peak. The SIDRA modelling undertaken by Bitzios shows that if this roundabout is upgraded to dual lane by 2028 the intersection will function acceptably.</p> <p>After 2028 the highway roundabout also reaches saturation with queues exceeding 88m down the off ramp to the Pacific Highway.</p> <p>The intersection of William Flick Lane and Ewingsdale Road will function adequately at 2028 if the right turn out is prohibited. The right turn into William Flick Lane will still be available. Traffic heading to Byron Bay from William Flick Lane will have to turn left and make a u-turn at the Pacific Highway Roundabout.</p>

BYRON SHIRE COUNCIL

RMS Advice	Staff Comment
<p>Relocation of the commercial precinct to the eastern portion of the Site is integral to traffic management along this section of Ewingsdale Rd</p>	<p>The intersection of William Flick Lane and Ewingsdale Road was originally proposed to be a roundabout to service the commercial component of the development. There is insufficient room between the Pacific Highway roundabout and the Hospital roundabouts to place another roundabout at this intersection. Not being able to construct a roundabout at this intersection required the relocation of the retail component of the commercial area to the eastern portion of the site.</p> <p>The DCP retains a commercial precinct on the western side, the medical centre (precinct P2 on Figure 2).</p> <p>Additionally the size of the area set aside for Precinct 1 in the draft DCP (Figure 2) and the type of land uses proposed eg. hairdresser, gym, spa etc will need to ensure they are of a size and scale appropriate to the adjoining seniors living development to be considered ancillary and for the sole use of the developments occupants. This is discussed in further detail in the Draft DCP section below.</p>
<p>The left in / left out proposed for precincts 5 to 8 is inconsistent with Clause 101 (2) (a) of the Infrastructure SEPP (ISEPP) as Ewingsdale is a classified road.</p>	<p>There is alternative vehicle access from a road other than the classified Ewingsdale Road. There is no reason why an access to the commercial component of the development cannot be provided off McGettigans Lane. Such an access does not need to pass through the high care component of the seniors living proposal which may have a separate access from McGettigans Lane. The draft DCP should be amended to show the commercial area accessed from McGettigans Lane and the access onto Ewingsdale Road deleted.</p> <p>ISEPP clause: <i>101 Development with frontage to classified road</i></p> <p><i>(1) The objectives of this clause are:</i></p> <p><i>(a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and</i></p> <p><i>(b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.</i></p> <p><i>(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:</i></p> <p><i>(a) where practicable, vehicular access to the land is provided by a road other than the classified road, and</i></p> <p><i>(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:</i></p> <p><i>(i) the design of the vehicular access to the land, or</i></p> <p><i>(ii) the emission of smoke or dust from the development, or</i></p> <p><i>(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and</i></p> <p><i>(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.</i></p>
<p>The roundabout at the McGettigans Lane intersection with</p>	<p>The roundabout is identified in Council's section 94 plan as the 4th highest priority for expenditure of developer contributions. Higher priority works in the plan are the Byron Bay Bypass, Bayshore Drive roundabout</p>

RMS Advice	Staff Comment
<p>Ewingsdale Rd will be essential for development on the eastern portion of the site to proceed.</p>	<p>and the Sunrise roundabout. These three projects will likely exhaust all the developer contributions currently held in trust by Council and will utilise future income into the plan until at least 2021. On this basis Council is not in a position to fund this roundabout at this point in time. As the RMS has identified this intersection upgrade as essential to the development and Council is not in a position to fund it. For the development to proceed in the absence of council s94 funds the developer would need to build the roundabout. A Voluntary Planning Agreement (VPA) would be required where the proponent enters into a cost sharing arrangement with Council and the cost of the works undertaken by the applicant is offset against the urban road contributions.</p> <p>Whilst the timing of the VPA can be at either the planning proposal stage or the development assessment stage, it is recommended the draft VPA be entered into in conjunction with the planning proposal to ensure that the proposed uses can be developed on the Site and to appropriately manage the impacts of the development on the adjoining road network.</p>

5 In summary, the issues of the relocation of the access to the commercial component to McGettigans Lane in the draft DCP, prevention of direct access to Ewingsdale Road and the timing of the construction of the roundabout and voluntary planning agreement are critical to the support of the planning proposal.

Voluntary Planning Agreement (VPA)

10 The Voluntary Planning Agreement (**Attachment 4**) was amended and made available for public inspection from 14 January to 15 February 2016. The VPA provides for a development contribution of:

- (a) \$15,000 to the Planning Authority as a contribution to the costs of traffic studies; and
- (b) \$3,000 to the Planning Authority as a contribution to the costs of the preparation of this Agreement.

15 Seventeen submissions were received, all of which objected to the VPA and or the Planning Proposal, **Confidential Attachment 5**.

Some of the submissions requested that:

- 20 1. A DCP workshop be convened which includes community representatives, adjoining neighbours, developer’s representatives, council staff and councillors prior to reporting the DCP to Council
- 2. The Traffic Study and resulting council reports be presented and discussed with adjoining residents and the Ewingsdale Progress Association prior to a final report being placed on the Council meeting agenda

25 In relation to the first issue, if the planning proposal moves forward, it is proposed that a workshop on the draft DCP be convened with the above attendees during the public exhibition.

30 If the planning proposal proceeds the VPA takes affect as follows:

This Agreement operates on and from the date that is the later of:

- (a) *the date the Amending LEP is published on the NSW Legislation website; and*
- (b) *the date the Agreement is entered into as required by Clause 25C(1) of the Regulation*

Clause 25C(1) of the *Environmental Planning and Assessment Regulation 2000* states: *A planning agreement is not entered into until it is signed by all the parties to the agreement.*

Development Control Plan (DCP)

5 A draft Development Control Plan (DCP) (**Attachment 6**) was received from the proponent on the 4 December 2015. The draft DCP proposes 8 precincts for the site, **Figure 2**, being:

- P 1: Community and recreational facilities
- P 2: Potential day surgery or self contained apartment homesteads
- P 3: Self contained retirement village apartments 1, 2 and 3 bedroom
- 10 • P 4: Self contained retirement village semi-detached villas
- P 5: Rural retail
- P 6: High care assisted living
- P 7: Low care assisted living
- P 8: Family accommodation

15

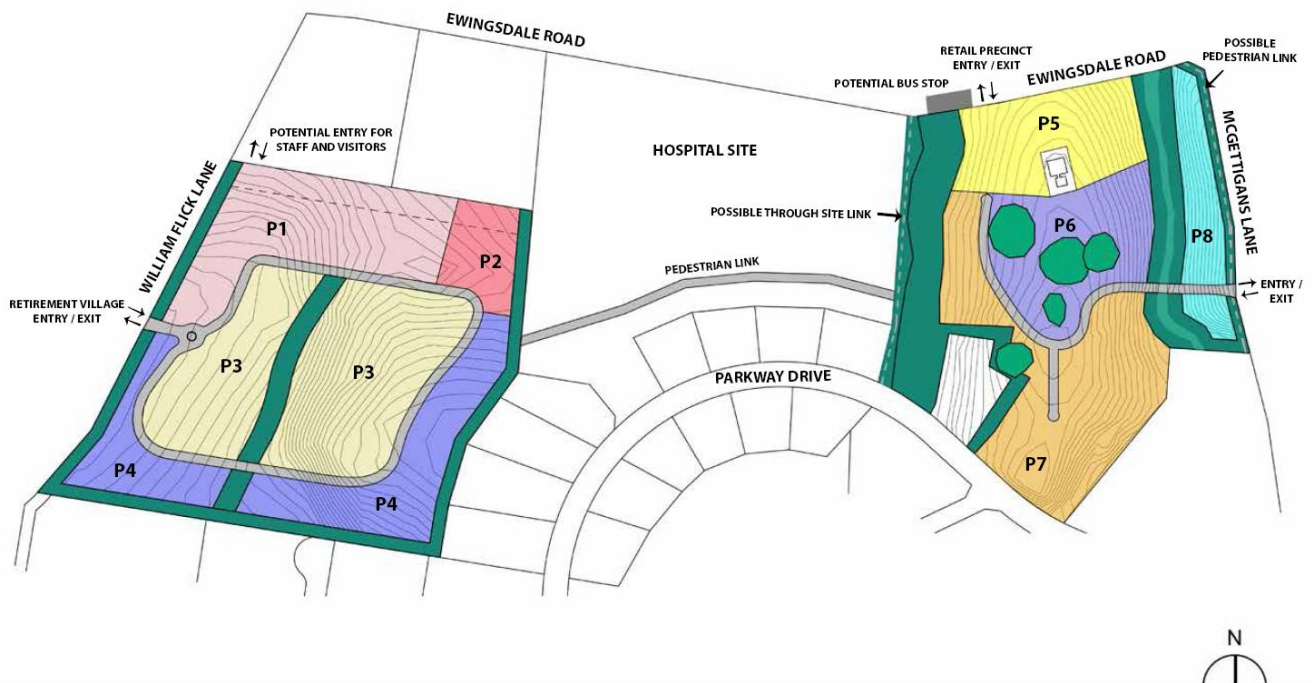


Figure 2: Eight Precincts

20 The draft DCP was reviewed by various Council staff and Council’s heritage advisor. A number of issues were identified in the review that must be addressed prior to advancing the draft DCP. A copy of the meeting minutes that include the matters to be addressed is included in **Attachment 7**.

25 On 3 March 2016, staff discussed with the proponent’s consultants the matters to be addressed in the draft DCP and the RMS advice on the traffic study. The consultants formally responded by letter dated 15 March 2016, **Attachment 8**.

In relation to the draft DCP they advised:

30 *Our client recognises that finalisation of the DCP will involve further work and it doesn't shy away from that. However, until our client has the certainty that the project will proceed, the expenditure of further resources is not appropriate.*

Once the amendment is made to the LEP, then further work on the draft DCP can be undertaken.

Whilst there are a number of issues that need to be addressed in the draft DCP the significant issues are:

1. Relocation of commercial uses to the eastern portion of the lot
2. Amount of land allocated to commercial uses
3. Floor Space Ratios
4. Visitor accommodation
5. Buffers
6. Site access

1. Relocation of commercial uses to the eastern portion of the lot

The commercial uses were exhibited in the planning proposal as applying to the western portion of the Land, **Figure 1**. The DCP now proposes, as a result of the traffic study findings, to relocate the retail portion of 'Area A' to the eastern portion of the site, with the medical centre remaining on the western portion. The medical centre is currently permissible with consent under the lands current Special Purpose zone.

The relocation of the commercial uses to the eastern portion of the Site is supported.

There is concern that retention of a commercial medical centre on the western portion doesn't accord with the RMS advice that relocation of the commercial precinct to the eastern portion of the Site is integral to traffic management along this section of Ewingsdale Rd. There is also concern that the draft DCP shows that access to the medical centre would be through the staff service driveway across Essential Energy land. No response has been received from the proponent as to what discussion have been held with Essential Energy to secure this access way.

Whilst access to the Site is a matter for the draft DCP and the development application (DA) stage, Council needs to be relatively certain that access issues can be managed in amending the LEP to enable additional uses.

If Council proceeds with the planning proposal, an amended planning proposal showing the new location of the commercial development will need to be submitted to the Minister.

2. Amount of land allocated to commercial uses

The exhibited planning proposal advised that, all commercial uses are restricted to the land identified as 'Area A' on the Additional Permitted Uses Map (**Figure 1**) and limited to a combined maximum total floor area of 3000m².

The draft DCP allocates the total maximum floor area of 3000m² to Precinct 5 on the eastern portion of the site and no floor area has been allocated to the medical centre proposed to remain on the western portion (Precinct 2).

In response to community concerns about the amount of commercial space proposed in the exhibited planning proposal, the Council report to the 17 September 2015 meeting recommended that if the planning proposal proceeds then the commercial uses be limited to a maximum floor area of 1200m² and the medical centre 1800m².

The allocation of the total maximum floor area of 3000m² to Precinct 5 (on the eastern portion), does not leave any floor area to accommodate the potential medical centre on the western portion.

A retail precinct of 3000m² is bigger than the existing 2800m² Bayshore Drive shopping centre that services all of Sunrise estate and the future West Byron development.

As reported to Council at the 9 October 2014 meeting:

Paul McFarland, a lecturer from the University of New England conducted a peer review of the Retail Floorspace Analysis (Annexure 9 in the planning proposal). The review highlights a number of unresolved issues with the retail analysis such as the limited catchment area of the study, overly optimistic projections about unmet retail demand in Byron, lack of justification for the scale of the commercial development and lack of evidence that it is only designed to cater for the proposed development, hospital visitors and adjoining residential population.

The hospital itself would normally only generate demand for a 'neighbourhood shop' size retail outlet (up to 200 m²) servicing staff, patients and visitors. Presumably the retail is therefore needed to support the seniors housing (only about 400 persons), the hospital and some of the existing Ewingsdale residents. Taking the figure from Annexure 9 of the planning proposal prepared by LOCATIQN (March 2013) of 2.2 m² per person, the seniors housing development would generate demand for 880m². Rounding these figures up suggests that 1200m² should be more than enough floor area for a future supermarket to support the projected development, the future hospital and adjoining residents. This would permit a small supermarket of about 1000m² and 200m² for cafes and other shops or business premises. 'Medical centre' uses could take up the remaining 1800m² of floor area to bring the total for all non-residential uses on the subject land to 3000m² as initially intended.

A number of potential commercial uses are proposed in Precinct 1- Recreation and community clubhouse. The uses described for this precinct in Table E9.2 of the Draft DCP include: indoor hydrotherapy pool, gymnasium, meditation and wellbeing space, hairdresser and spa, tennis court, bowling green etc. Precinct 1 includes mostly RU2 zoned land and some SP2 zoned land. Restaurants and cafes are already permissible with consent in the RU2 zone. The DCP states that these facilities are for use by the independent living precincts. Given the size of Precinct 1 to the adjoining independent living precincts, the nature and amount of facilities being proposed and public access to this precinct, it could be viewed as an additional commercial precinct to that being proposed in Precinct 2 (medical centre) and Precinct 5 (business premises, shops, restaurants and cafes).

Traffic impacts generated by known and possible commercial uses will need to be considered. RMS advice on the Traffic Study stated: *Integral to traffic management along this section of Ewingsdale Rd will be relocation of the commercial precinct (precinct 8) to the eastern portion of the subject site.* Not all commercial development is relocating to the eastern portion. The medical centre is proposed to be retained on the western side.

If some or all of the proposed facilities in Precinct 1 are made available to the general public then the resulting traffic impacts would need further consideration and an amendment to the planning proposal would be required to enable commercial uses in designated areas on both the eastern and western portion of the Site.

It is recommend that the maximum floor area limit of 3000m² for the commercial areas be retained, and limit the maximum floor area for commercial uses (Precinct 5) to 1200m² and the medical centre (Precinct 2) to 1800m². It is also recommended that no commercial uses be permitted in Precinct 1, noting that restaurants and cafes are already permissible with consent in Precincts 1 underlying RU2 zone.

3. Floor Space Ratios (FSR)

The planning proposal was silent on FSRs. If FSRs are to be designated for the Site they must be included on the FSR Maps in Byron LEP 2014; this will require a change to the planning proposal.

The draft DCP, proposes a range of FSRs as follows:

Precinct	FSR
Precinct 1: Community and recreational facilities	0.5:1
Precinct 2: Potential Day Surgery or self contained apartment homesteads	0.5:1
Precincts 3 and 4: Self contained dwellings	0.5:1
Precinct 5: Retail	limited by maximum floor area of 3000m ²
Precincts 6 and 7: assisted living	1:1
Precinct 8: family accommodation	0.5:1

The FSR proposed for the Site are based on those included in the Seniors Housing SEPP - residential care facilities and hostels have an FSR of 1:1 or less and self contained dwellings have an FSR of 0.5:1 or less.

- 5 Although the Seniors Housing SEPP doesn't apply to the land, as the SEPP generally applies to urban zoned land or land adjoining urban zoned land, the planning principles in the SEPP could be applied if considered appropriate for the semi rural location.

10 Submissions received on both public exhibitions of the planning proposal raised the issue of density. The Council report to the 17 September 2015 meeting included the comments received from both public exhibitions. One of the top three issues raised by the community was 'density including plot ratio, height and number of dwellings is excessive'. Staff's response to this was that: *'if the planning proposal proceeds it is recommended that a Floor Space Ratio Map be prepared for the site to limit any Seniors Housing to 0.3:1 under the LEP 2014. This will not apply to the commercial precinct (Area A) as it would be limited by maximum floor area'*.

- 15 The proposed 0.3:1 FSR was in recognition of the semi rural environment surrounding the Site and a means to ensure adequate landscaping is provided.

20 Council needs to consider if the proposed FSRs in the draft DCP are appropriate for the various precincts and the Sites location as they are substantially more than what was proposed in response to public feedback. The planning proposal will need to be amended to include provision for an FSR map showing Council's preferred mix of densities for the various precincts.

It is recommended that an FSR of 0.3:1 be applied to the seniors housing component of the Site in keeping with the semi rural location.

25 **4. Visitor accommodation**

The draft DCP states that Precinct 8 – Retirement village visitor accommodation, 'will provide ancillary visitor accommodation for relatives and friends of occupants of the retirement village'. It is questionable that this form of visitor accommodation is subordinate to the seniors housing as it is not necessary to the functioning of the primary use - seniors housing. Additionally, visitor accommodation could adequately function independent to the seniors housing.

35 The exhibited planning proposal did not include provision for visitor accommodation. If Council considered that this form of development is appropriate on the land, the planning proposal would need to be amended to enable this land use.

It is recommended that this form of land use (visitor accommodation) is not appropriate in this location and is not essential to the functioning of the intended primary seniors housing use. As such no amendment to the planning proposal is recommended in this regard.

5. Buffers

5 Buffers to the concrete batching plant and electric substation were raised in the community submissions and it was also raised by Essential Energy in relation to its depot and substation. The submissions were reported to Council at the 9 October 2014 and 17 September 2015 meetings. It was recommended that if the planning proposal proceeds that adequate buffers of approximately 20 metres between the concrete plant/electricity substation and any future seniors development be provided and incorporated into a site specific DCP.

10 The buffers proposed in the draft DCP are only 10 metres wide. The draft DCP will need to be amended to increase the buffer widths to 20 metres.

6. Site access

15 As previously discussed access should not be granted to the Site from a classified road, (Ewingsdale Rd), where practical alternative access roads exist. Whilst this is a matter to be considered at the DA stage, the draft DCP needs to be amended to remove this access option.

Draft DCP Amendments

20 Amendments to the draft DCP are not integral to finalising the planning proposal. If the planning proposal proceeds then it would be preferable to have an adopted DCP for the Site prior to the first DA being lodged. The proponent has advised that 'once the amendment is made to the LEP, then further work on the draft DCP can be undertaken'. Substantial work is required on the draft DCP prior to Council considering it for public exhibition.

25 It is recommended that if Council supports the planning proposal proceeding then further work be undertaken by the proponent, in consultation with Council, to finalise the draft DCP for public exhibition.

30 Planning Proposal Amendments

The intent of the planning proposal is to enable additional uses on the Site. Council must be reasonably satisfied that the Site can accommodate the additional uses. The draft DCP raises a number of issues that are not addressed in the planning proposal and the traffic study findings require changes to the planning proposal. As certain matters can only be dealt with in an LEP, if
35 the planning proposal proceeds it must be amended prior to sending to the Minister. The matters to be included in the planning proposal are:

Issue	Planning Proposal Amendment
Relocation of commercial area to the eastern portion of the Site	Amend the Additional Permitted Uses Map to show the relocation of the commercial precinct to the eastern portion of the site as defined by Precinct 5 – Rural retail. Amend the relevant sections of the planning proposal that describe the location of the commercial precinct.
Amount of land allocated to commercial uses	Amend the planning proposal to limit the combined maximum total floor area of the commercial uses to 1200m ² and limit the maximum floor area for the medical centre to 1800m ² .
Floor Space Ratios (FSR)	Amend the planning proposal to include an FSR of 0.3:1 for the seniors housing component of the Site.
Site Access	Amend the planning proposal to prevent direct access from Ewingsdale Road.

5 Section 58 of the Environmental Planning and Assessment Act 1979, states that Council may, at any time, vary its planning proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason. If Council does so, a revised planning proposal must be forwarded to the Minister who will determine if further community consultation is required. Noting that irrespective of the Ministers determination Council may decide to undertake further community consultation.

58 Relevant planning authority may vary proposals or not proceed

- 10 (1) *The relevant planning authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.*
- (2) *If it does so, the relevant planning authority is to forward a revised planning proposal to the Minister.*
- 15 (3) *Further community consultation under section 57 is not required unless the Minister so directs in a revised determination under section 56.*
- (4) *The relevant planning authority may also, at any time, request the Minister to determine that the matter not proceed.*

20 It is recommended that the planning proposal be amended and the revised planning proposal be forwarded to the Minister as required under section 58 of the EP&A Act 1979. That irrespective of the Ministers direction to undertake further community consultation, Council re-exhibits the amended planning proposal for a period of 28 days.

25 Proponent has requested the Minister to appoint an alternative relevant planning authority

Council has been advised by the Department of Planning and Environment that they have received a request from the proponent for the Minister to appoint an alternate relevant planning authority under section 54(2)(d) of the *Environmental Planning and Assessment Act 1979* to complete the planning proposal:

30 54 Relevant planning authority

- (2) *The Minister may direct that the Secretary (or any other person or body prescribed by the regulations) is the relevant planning authority for a proposed instrument in the following cases:*
- 35 (d) *the council for the local government area concerned has, in the opinion of the Minister, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner,*

40 The Department is reviewing the request and will provide a formal request to Council for comment. At the time of writing this report the formal request was yet to be received.

Conclusion

45 Given the high level of community interest and the complex nature of this Site, it would be advantageous to keep the planning proposal, DCP and VPAs coupled for transparency and for Council to make an informed decision about the appropriateness of the development uses proposed for the Site.

50 Section 25D (1A) of the EP&A Regulation 2000 requires that voluntary planning agreements are exhibited with or as soon as possible after the exhibition of a planning proposal or DA:

25D Public notice of planning agreements

(1A) *If a planning authority proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a proposed change to a local environmental plan, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation is given:*

- 5 (a) *if practicable, as part of and contemporaneously with, and in the same manner as, any public notice of the relevant planning proposal that is required under Part 3 of the Act, or*
- (b) *if it is not practicable for notice to be given contemporaneously, as soon as possible after any public notice of the relevant planning proposal that is required under Part 3 of the Act and in the manner determined by the planning authorities that are parties to the*
- 10 *agreement.*

The planning proposal was last exhibited in November /December 2014. Nearly 16 months has lapsed since the planning proposal was exhibited. The draft VPA (**Attachment 4**) was exhibited in January / February 2016, more than 12 months after the planning proposal was exhibited. As a result of public submissions from past exhibitions and the development model now proposed in the draft DCP a number of amendments are recommended to the planning proposal. To provide transparency in the process to amend the Byron LEP 2014 to enable additional uses on the Site and to ensure impacts on the adjoining road network are appropriately managed, it is recommended that the amended planning proposal be exhibited together with:

- 20 • the previously exhibited draft VPA for \$15,000 to Council as a contribution to the costs of traffic studies and \$3,000 as a contribution to the costs of the preparation of the VPA,
- along with a new draft VPA requiring the construction of the McGettigans Lane roundabout by the developer with arrangements for the offsetting of developer contributions against the cost of works for the roundabout.

25 As an adopted DCP is integral to informing a development application for the Site it is proposed that, if the planning proposal proceeds, further work be undertaken by the proponent in conjunction with Council staff to finalise the draft DCP for public exhibition. Whilst it would be preferable to exhibit the draft DCP along with the amended planning proposal, it is not a legislative requirement. However as the DCP is needed to inform a DA for the Site, it is important to finalise the DCP expeditiously to ensure a Council adopted DCP is available on the commencement of the LEP amendment in order to adequately assess any DA lodged thereafter. As such it is recommended that the work on the draft DCP occur in tandem with the amendments being made to the planning proposal and a final draft be exhibited as soon as possible, but not necessarily with the planning proposal.

Financial Implications

All Council costs in relation to the planning proposal and DCP are funded by the proponent.

40 At 30 June 2015 there was \$5,588,000 in the Byron Bay / Suffolk Park Urban Roads s94 account. The 2015/16 budget has \$1,795,000 of works being funded from this account. The year to date (20/3/2016) income is \$67,000 and if this trend continues total income for the year will be approximately \$90,000. This will leave \$3,882,100 in this account. All of this will be required for the Byron Bay Bypass. Further income into this account will be direct to the works at Bayshore Drive roundabout and then Sunrise Blvd roundabout prior to funds being directed to McGettigans Lane roundabout. It is unlikely that Council will be able to fund the McGettigans Lane roundabout with s94 funds until after 2021.

50 If the planning proposal is to proceed the roundabout at McGettigans Lane is essential. As Council cannot afford to fund these works in the next 5 years these works would have to be forward funded by the developer with the costs being offset against their developer contributions. In the absence

of a voluntary planning agreement from the developer to construct the roundabout, the planning proposal should only proceed on receipt of a draft VPA.

Statutory and Policy Compliance Implications

- 5 The Gateway Determination issued by the Department of Planning and Environment requires that the LEP be completed by 28 May 2016.

Report No. 13.3 PLANNING - 26.2013.3.1 Planning Proposal for Rezoning of Land at Tallowood Ridge Estate, Mullumbimby

Directorate: Sustainable Environment and Economy

Report Author: Fiona Sinclair, Planner

5 **File No:** I2015/1584

Theme: Ecology
Planning Policy and Natural Environment

10 **Summary:**

This report presents a Planning Proposal for the extension of the Tallowood Ridge residential estate, which seeks to alter the land use zones with consequential minimum lot size and floor space ratio changes.

15 Council staff have reviewed the Planning Proposal, as submitted by the proponent Bayview Land Development Pty Ltd, and can support an amended version of it (as shown in Attachments 1 and 2).

20 This Planning Proposal precedes the Draft Residential Strategy that Council is currently preparing as part of a shire-wide review of residential land supply and demand. It is considered that the Planning Proposal has merit to precede the new strategy for the following reasons:

- The Planning Proposal process has already commenced as Council previously resolved on 19 September 2013 (13-493) to receive and send a Planning Proposal for the extension of the Tallowood Ridge Estate to the Department of Planning and Environment (DPE) for Gateway Determination.
- 25 • This report is as a result of further advice received from the DPE.
- The proposed extension to the Tallowood Ridge residential area is largely consistent with the 'site suitability criteria mapping' that Council has prepared to inform the new Residential Strategy and the subject land is very likely to be identified in the strategy as a potential future residential release area.
- 30 • The current Planning Proposal proposes a relatively minor expansion of an existing urban area that can provide land quickly to meet short-term market demand while Council investigates longer term options through its' new Residential Strategy.

The Planning Proposal (included as Attachments 1 and 2) seeks to rezone approximately:

- 5 hectares of the existing R2 Low Density Residential zone to RU2 Rural Landscape
- 35 • 5 hectares of the RU1 Primary Production zone to RU2 Rural Landscape
- 3 hectares of the RU1 Primary Production zone to RE1 Public Recreation
- 12 hectares of the RU2 Rural Landscape zone and RU1 Primary Production to R2 Low Density Residential zone.

40 The balance of the site will remain in its current mix of zones. Changes to minimum lot size and floor space ratios will match the zone changes.

The Planning Proposal will:

- increase the opportunity for residential development by providing an increase in land supply of approximately 65 lots
- zone existing public recreation facilities to a public recreation zone

- 5
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 incorporate environmental areas (remnant vegetation and riparian corridors) into an RU2 zone as a holding pattern until further assessment for the purposes of determining environmental zones can be done consistent with the Minister for Planning and Environment's recent *117(2) Direction* regarding the application of E zones and environmental overlays in Far North Coast LEPs and the *Northern Councils E Zone Review Final Recommendations*.

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 The land has been subject to a range of studies and reports (included in Attachment 2) that support the extension of the residential zoned area. The reports demonstrate that the land is largely suitable for residential purposes and can be adequately serviced with urban infrastructure. The area is in close proximity to existing social services and will enable construction of innovative and diverse housing typologies that will contribute to the local economy. Land use buffers can be provided and the proposed future residential development will have little to no adverse impacts on existing significant agricultural lands. Minor areas of constrained land (ie steeply sloping or flood prone areas) can be dealt with at the development assessment stage through subdivision design and potential filling.

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 The Planning Proposal is consistent with all relevant SEPPs. It is consistent with most of the relevant Section 117 Directions, and where inconsistencies occur they can be justified. An assessment against the Far North Coast Regional Strategy Sustainability Criteria concluded that the proposed extension to the Tallowood Ridge Estate is appropriate.

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•
 The DPE has recently released the new *Draft North Coast Regional Plan* which is currently on public exhibition until 2 June 2016. The Draft Plan outlines a vision for the future of the North Coast and will guide strategic planning across the region over the next 20 years. An assessment against the *Draft North Coast Regional Plan* indicates that the land proposed for rezoning for residential purposes in the current Planning Proposal is not identified as 'Proposed Urban Land' and is not within the 'Urban Growth Area' boundary for Mullumbimby, as shown in the Urban Growth Area Map for Byron LGA. However the *Draft North Coast Regional Plan* specifically recognises that the DPE will be undertaking further work with Byron Shire Council to identify land suitable for inclusion in the urban growth areas and that the relevant maps will be amended accordingly. Given that the subject land is highly consistent with Council's 'site suitability criteria mapping' for inclusion in the new Residential Strategy, the subject land is very likely to be included in any future amendments to the urban growth area for Mullumbimby.

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 The Planning Proposal process has already commenced and it is therefore reasonable that the proposed rezoning of the subject land precedes the Residential Strategy currently in preparation.

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•
 There is sufficient information to enable Council to support the amended Planning Proposal (Attachments 1 and 2) and forward it to the Department of Planning and Environment for a Gateway Determination.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

- 1. That Council send the Planning Proposal to amend Byron LEP 2014 (Attachment 1) including the Sustainability Criteria Assessment and relevant technical reports (Attachment 2), to the NSW Department of Planning and Environment for a Gateway Determination,**
- 2. That Council request the Department of Planning and Environment retain delegated authority to make the LEP Amendment, as the subject land is not identified as a future urban release area and is outside the Town and Village Growth Boundary for Mullumbimby in the Far North Coast Regional Strategy,**
- 3. That Council include the areas proposed for environmental protection purposes in this planning proposal in any shire wide E zone criteria assessment that Council undertakes in the future relevant to the Minister for Planning and Environment's Section 117(2) Direction regarding the application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs.**

Attachments:

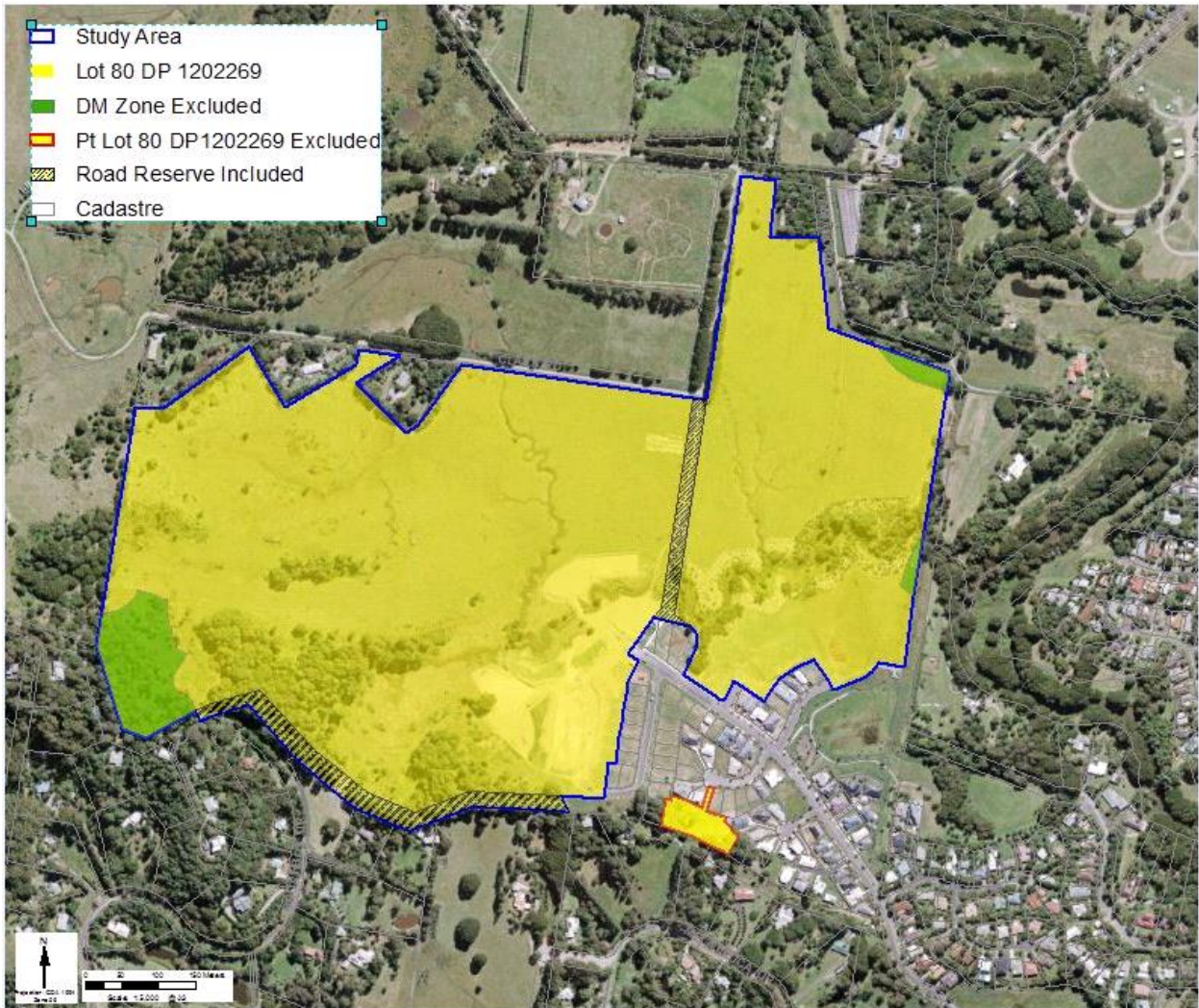
- 5 1 Planning Proposal for Tallowood Ridge, E2016/18397
- 2 Sustainability Criteria Assessment & Technical Reports, E2016/16179
- 3 Superceeded Maps from Proponent's Planning Proposal, E2016/16311
- 4 Form of Special Disclosure of Pecuniary Interest, E2012/2815

10

Report

The Planning Proposal

5 This Planning Proposal relates to land located at Tallowood Ridge Estate, Mullumbimby, described as part Lot 80 in Deposited Plan 1202269. It also affects an un-made road that traverses north / south through Lot 80 and one that abuts it immediately to the south. Lot 80 is an irregular shaped lot that is in several pieces. It has a total area of 59.1 hectares. Approximately 25 hectares is affected by zone changes in this Planning Proposal. The balance of the zones within the subject land will not change. The subject land is shown in Figure 1 below.



10 **Figure 1: Site Identification Map**

Current Zones and Controls

15 The subject land is zoned part RU1 Primary Production, part RU2 Rural Landscape, part R2 Low Density Residential and part Deferred Matter under Byron LEP 2014. The Deferred Matter land remains zoned Rural 1(a) General Rural under LEP 1988. Figure 2 below shows the current land zoning under Byron LEP 2014.

20 The Minimum Lot Size (MLS) for the RU1 and RU2 zone is 40 hectares. The MLS for the R2 zone is 400 square metres. The Floor Space Ratio (FSR) for the R2 land is 0.5:1. No FSR currently applies to the RU1 or RU2 land.

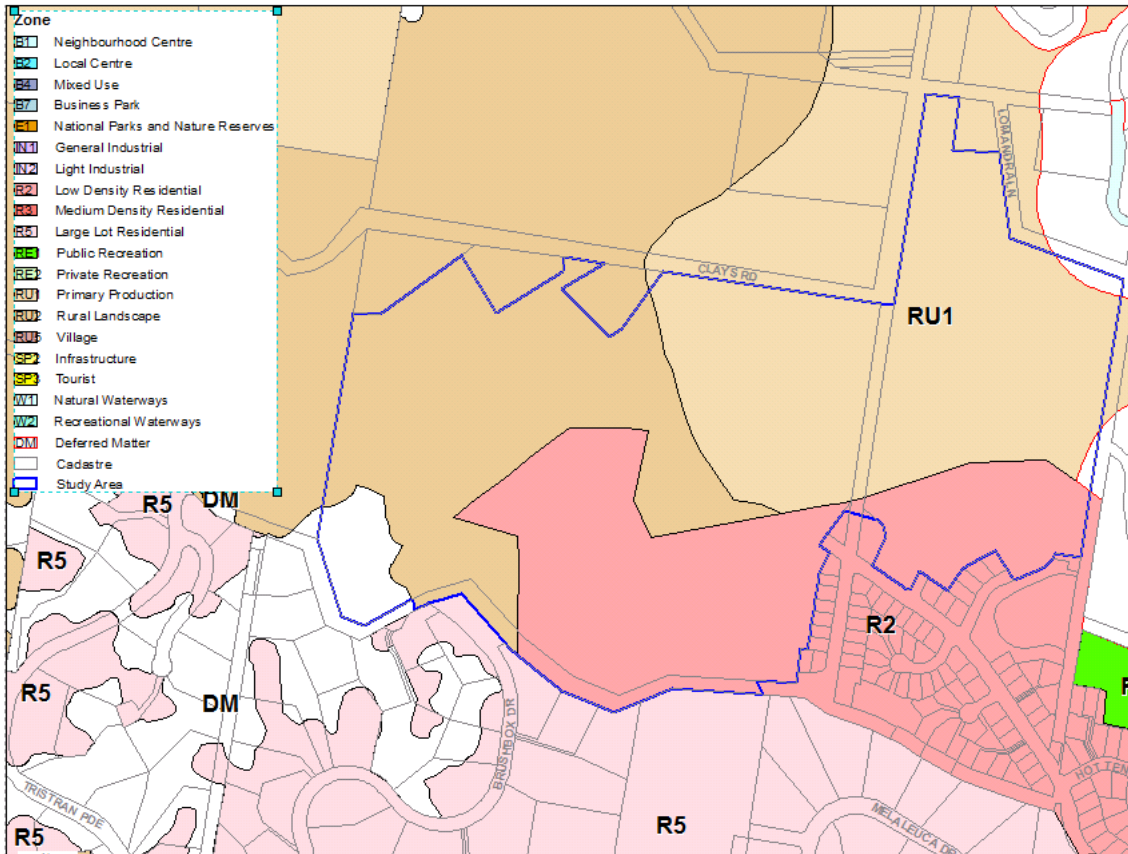
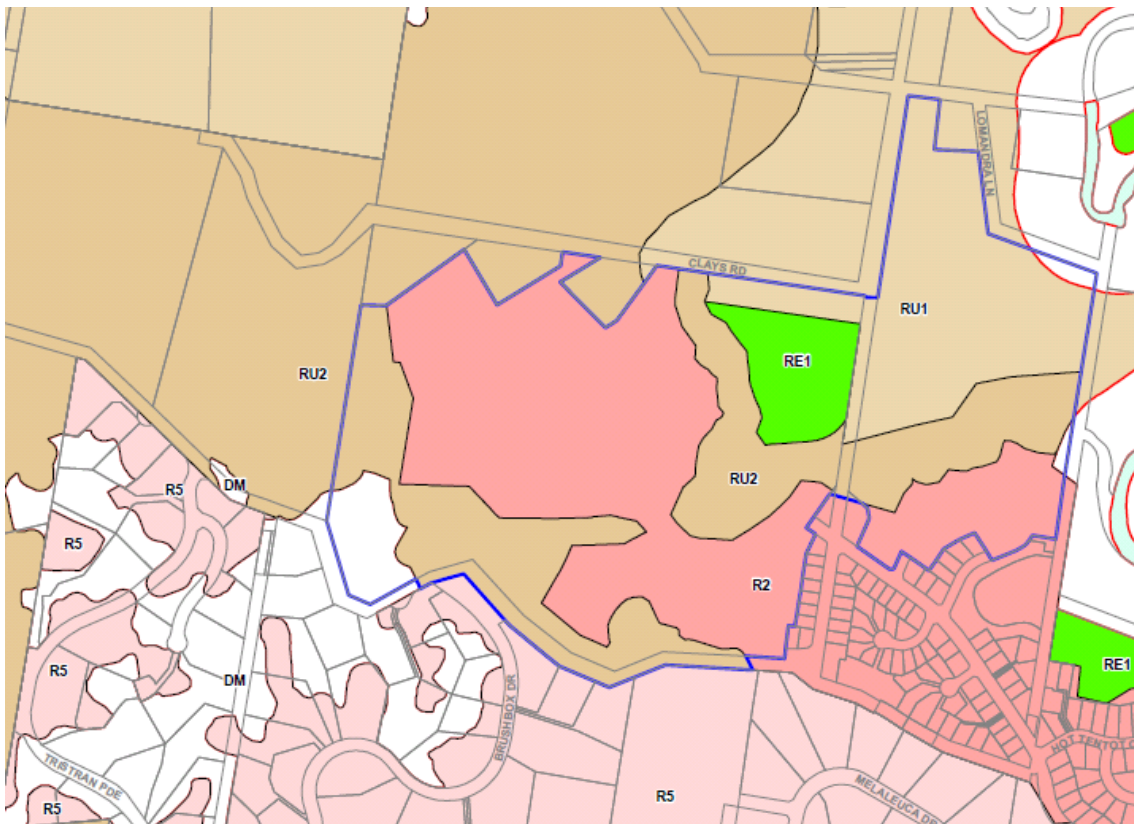


Figure 2: Current Land Zoning, Byron LEP 2014



5 Figure 3: Proposed Land Zoning, Byron LEP 2014

Proposed Zones and Controls

Council has considered the information submitted by the proponent and prepared a Planning Proposal (Attachments 1 and 2). As shown in Figure 3 above, the Planning Proposal seeks to amend the existing zones under Byron LEP 2014 to:

- 5 • permit additional residential development on the subject site;
- consolidate environmentally sensitive land (and some steep land) into a single rural zone (as a holding pattern until further assessment for the purposes of determining environmental zones is done consistent with the Minister for Planning and Environment's recent 117(2) *Direction* regarding the application of E zones and environmental overlays in Far North Coast LEPs and the *Northern Councils E Zone Review Final Recommendations*);
- 10 • allocate a public recreation zone to sports fields that are under construction;
- allocate a RU2 zone to a riparian corridor that passes through the site.

The Planning Proposal will rezone:

- 15 • approximately 5 hectares of the existing R2 Low Density Residential zone to RU2 Rural Landscape
- approximately 5 hectares of the RU1 Primary Production zone to RU2 Rural Landscape
- approximately 3 hectares of the RU1 Primary Production zone to RE1 Public Recreation
- approximately 12 hectares of the RU2 Rural Landscape zone and RU1 Primary Production to R2 Low Density Residential zone.

20 The balance of Lot 80 will remain in its current mix of zones. The three small areas of Deferred Matter cannot be amended by this Planning Proposal as they are not subject to Byron LEP 2014. They can only be amended by also amending Byron LEP 1988. It is not practicable that this be done as part of this Planning Proposal and these areas will remain as Deferred Matters for the time being. Deferred Matter areas may be considered for rezoning in the future, when Council

25 undertakes further assessment consistent with the recent 117 *Direction* regarding the application of E zones and environmental overlays in Far North Coast LEPs and the methodology outlined in the *Northern Councils E Zone Review Final Recommendations* report.

The Planning Proposal will also:

- 30 • make consequential changes to maps regarding Floor Space Ratio controls to reflect the proposed RU2, R2 and RE1 zones;
- make consequential changes to maps regarding Minimum Lot Sizes to reflect the proposed RU2, R2, and RE1 zones.

Mapping for the recommended zones and controls is included in the recommended Planning Proposal (Attachment 1).

35 *The Difference Between the Proponent's Proposal and the Recommended Planning Proposal*

The applicant submitted a Planning Proposal seeking to:

- rezone the subject land to part R2 Low Density Residential, part R5 Large Lot Residential, part RE1 Public Recreation, part SP2 Infrastructure, part RU1 Primary Production and part RU2 Rural Landscape under Byron LEP 2014;
- 40 • apply a Floor Space Ratio (FSR) of 0.5:1; 0.4:1; and 0.3:1 to different parts of the R2 zone; and
- apply a Minimum Lot Size (MLS) of 400 square metres, 600 square metres, 1000 square metres, 4000 square metres, 2 hectares, and 40 hectares variously across the suggested zones.

45 Mapping from the proponent's Planning Proposal is included in Attachment 3.

The applicant considers the Planning Proposal is needed for the following reasons:

- the current R2 Low Density Residential zone under LEP 2014 includes vegetation and riparian land worth preserving, and flood prone land that should not be developed;
- the extension to the R2 Low Density Residential zone will allow the orderly use of land for residential purposes that is also a logical extension to Tallowood Ridge Estate;
- it is an opportunity to apply the RE1 Public Recreation zone to align with a past approval for sports facilities on the site;
- to place existing stormwater infrastructure in an SP2 zone;
- to remove the Deferred Matters from the subject land; and
- in response to a Council resolution which sought to rationalise the zoning of the site.

Key differences between the proponent's proposal and the recommended Planning Proposal (prepared by Council staff) are as follows:

- The proposed R5 Large Lot Residential zone over the steep, cleared land at the western edge of Lot 80 is not supported. Given that this planning proposal pre-empts the Byron Rural Land Use Strategy which is currently being prepared, Council does not consider there is sound planning rationale for the creation of an isolated pocket of R5 zoned land as part of this rezoning. The land is very steep and will provide very few dwelling lots. It will also be land-locked with no access until the R2 land to the east is developed. It is recommended that this land remains in the RU2 zone with a 40 hectare MLS for the foreseeable future. Council could consider a dwelling entitlement for the residue lot in due course when final residential lot boundaries are established.
- There is no planning rationale to support small pocket parks or stormwater infrastructure being included in the RE1 or SP2 zones, respectively. They were approved in the R2 zone and can stay in that zone, even when they have been dedicated to Council.
- This Planning Proposal cannot change the zone of the Deferred Matter land, as requested by the proponent, as it is subject to LEP 1988.
- The Minimum Lot Size (MLS) of 400 square metres throughout the R2 zone is supported to provide flexibility to future lot sizes. A 1000 square metre lot size is supported on steeper land in the north-west corner of the subject land. All RU1 and RU2 land will have a 40 hectare MLS, consistent with the zone elsewhere in the Shire.
- A Floor Space Ratio (FSR) of predominantly 0.5:1 on R2 land is supported, with 0.4:1 in one small area at the southern boundary (to provide for bushfire buffers) and 0.3:1 on steeper land in the north-west corner.

Council staff advised the proponent, Mr Eric Freeman of Bayview Land Development, of the above modifications to the Planning Proposal by phone on 3 March 2016 and further discussions were held via phone and email on 3-4 March 2016. Mr Freeman objected to the removal of the R5 Large Lot Residential zone he had proposed over the steep, cleared land at the western edge of Lot 80. Council staff considered his objection and concluded that the land was not suitable for R5 zoning for the reasons outlined above. As such, an RU2 Rural Landscape Zone has been retained over the steep land in the recommended Planning Proposal.

Past Council Resolutions on this Planning Proposal and the Department of Planning Response
In response to Koala habitat mapping relevant to the subject land, Council resolved on 14 March 2013 (**13-143**):

“That Council invite the developer of Tallowood Ridge Estate, Mullumbimby (Lot 36 DP 1169053) to lodge a planning proposal for Council's consideration to amend Council's Local Environmental Plan to adjust the residential zone boundary.”

In May 2013 the applicant submitted a Planning Proposal to rearrange the zone boundaries on the subject land and increase the area of residential zoned land.

Council considered the Planning Proposal on 19 September 2013, and resolved (**13-493**):

5 “1. That amended plans be submitted to Council, in draft LEP 2012 format, addressing the steeper slopes on the western portion of the land showing:

- a) Land Zoning,
- b) Minimum Lot Size, and
- c) Floor Space Ratio.

10 2. That Council forward the amended planning proposal to the Department of Planning and Infrastructure for a Gateway Determination.

3. That should the Department of Planning and Infrastructure issue a positive Gateway Determination, prior to the planning proposal being placed on public exhibition a Development Control Plan or Concept Plan for the new residential areas needs to be prepared to adequately address the following issues at a minimum:

- 15 i) Buffer areas between existing rural/residential lots,
- ii) Buffer areas to existing drainage lines, and
- iii) Riparian areas along boundaries for potential koala habitat regeneration.”

20 In relation to Item 3 above, the zone boundaries proposed in the Planning Proposal deal with these buffer issues. The current masterplan for the site (refer Figure 3 of Attachment 1) also indicates bushland revegetation works to restore the riparian buffer at different stages of the approved subdivision development. No further development controls or plans are required for this rezoning.

25 Amended mapping was supplied to Council and the Planning Proposal was sent to the Department of Planning and Environment (DPE) on 26 February 2014, requesting a Gateway Determination. Discussions ensued at officer level about what information was missing, and on 19 May 2014 Council’s then Executive Manager Planning and Environment, requested that the DPE allow Council to withdraw the Gateway Determination so the applicant could have time to submit additional information. The DPE advised in a letter dated 27 May 2014 that it would stop the Gateway process at Council’s request. The Department followed that up on 2 June 2014, advising Council specifically what was needed if this Planning Proposal was to proceed. The issues notified by DPE are:

- 30 • A variation to the growth boundary in this instance can be sought subject to satisfying the sustainability criteria in the FNCRS.
- 35 • A revised proposal should address each of the criteria in detail to assist in justifying the rezoning.
- 40 • Any revised proposal needs to address this matter and clearly identify the land subject to the rezoning.
- 45 • There are a number of inconsistent statements within the Planning Proposal, for example in relation to value of the vegetation on site and the extent of land subject to the proposed rezoning.
- The Planning Proposal needs to provide justification for the inconsistency with the current Mullumbimby Settlement Strategy and the reasons why it’s appropriate that a variation be supported prior to reviewing and updating the strategy.
- The proposal involves areas of steep, flood prone and regionally significant agricultural land. The proposal could be strengthened if greater detail was provided on how these matters are being addressed. Consideration could be given to the proposed minimum lot size to address these issues, in particular on the steeper areas of the land.

The applicant has now provided additional information in response to the DPE concerns which has been used to inform the Planning Proposal (in Attachments 1 and 2).

Key Issues

- 5 • Far North Coast Regional Strategy and the Sustainability Criteria
- Draft North Coast Regional Plan
- Mullumbimby Settlement Strategy, 2003
- Vegetation
- Steep land
- 10 • Regional farmland
- Flood prone land
- State policy and planning controls

Far North Coast Regional Strategy and the Sustainability Criteria

15 The majority of the subject site is located outside the Town and Village Growth Boundary Areas under the Far North Coast Regional Strategy (FNCRS). That part of the subject site that is zoned R2 Low Density Residential is within the “existing urban footprint”, but no part is identified as “proposed future urban release areas”.

20 The FNCRS specifically provides that innovative development proposals can be considered, even if they affect land located outside of the Town and Village Growth Boundary maps. To be considered, the land needs to be located outside of the coastal area (it must be located west of the Pacific Highway), and it must be demonstrated that the site satisfies the Sustainability Criteria listed in Appendix 1 to the FNCRS.

25 The subject land is located west of the Pacific Highway and the Sustainability Criteria Assessment that addresses each criterion in detail is attached to this report (Attachment 2). The Sustainability Criteria Assessment concludes that the Tallowood Ridge Estate Planning Proposal (as amended) satisfies the Sustainability Criteria and should be supported by the DPE.

Draft North Coast Regional Plan

30 The DPE has recently released a new *Draft North Coast Regional Plan* which is currently on public exhibition until 2 June 2016. The Draft Plan outlines a vision for the future of the North Coast and will guide strategic planning across the region over the next 20 years. An assessment against the *Draft North Coast Regional Plan* indicates that the land proposed for rezoning for residential purposes in the current Planning Proposal is not identified as ‘Proposed Urban Land’ and is not within the ‘Urban Growth Area’ boundary for Mullumbimby, as shown in the Urban Growth Area Map for Byron LGA. However the *Draft North Coast Regional Plan* specifically recognises that the DPE will be undertaking further work with Byron Shire Council to identify land suitable for inclusion in the urban growth areas and that the relevant maps will be amended accordingly. Given that it is highly consistent with Council’s ‘site suitability criteria mapping’ for inclusion in the new Residential Strategy, the subject land is very likely to be included in any future amendments to the urban growth area for Mullumbimby.

Mullumbimby Settlement Strategy, 2003

40 The Mullumbimby Settlement Strategy was prepared in 2003. It contained four locations that may yield residential lots, but only Tallowood Ridge has progressed in the last 12 years. A new residential strategy is in preparation and will be exhibited as a draft in 2016. The extension to Tallowood Ridge Estate is proposed to be included in that strategy. The subject land will potentially provide 65 extra lots. It is a logical expansion and “rounding off” of an existing urban area that can provide suitable land quickly to meet short-term market demand while Council continues to investigate longer term options through its new Strategy. The Planning Proposal process has

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already commenced and it is therefore reasonable that it precedes the Residential Strategy currently in preparation.

Vegetation

5 A flora and fauna assessment has been undertaken for the site and it identified some small areas of regenerating lowland sub-tropical and dry rainforest that have ecological value at the southern boundary. Some significant flora species have been located and will also be protected. The site has limited koala food trees (about 4%), but those that are present will be protected. Council's new High Environmental Values mapping (currently in preparation and not yet endorsed by Council) shows that the land is largely free of constraints and is not in a recognised local or regional wildlife corridor.

10 The Planning Proposal seeks to protect remnant fauna habitat and environmentally sensitive areas on the site through the use of an RU2 Rural Landscape zone (as a holding pattern until further assessment for the purposes of determining environmental zones can be done consistent with the Minister for Planning and Environment's recent *117(2) Direction* regarding the application of E zones and environmental overlays in Far North Coast LEPs and the *Northern Councils E Zone Review Final Recommendations* report. Specifically:

- by zoning riparian areas on each side of an existing drainage channel system between residential zoned and good agricultural land, and
- by protecting in perpetuity the Sclerophyll forest in the south and south-west corner of the subject site which provides habitat for a range of fauna.

Steep land

25 The majority of the site that is proposed to be included in a R2 Low Density Residential zone is not steep land. However, it does contain small areas that are greater than 20% slope at the edges. This land is not impossible to develop for residential purposes but can create problems with infrastructure such as roads and pipelines. It can also lead to excessive cut and fill to create house sites. In some circumstances it may be more prone to land slip, however slope alone is not the only factor that leads to landslips. The geotechnical assessment undertaken for the site identifies some areas as having a moderate slip potential and these areas are not proposed for residential development.

30 The steepest land on the site will be retained in the RU2 zone on the western and southern boundary of Lot 80. A small area of steep land where there may be some surface instability, located in the north-western corner of the site, will be zoned R2 but will be allocated a 1000 m² MLS to reflect the need to have larger lots on steeper sites. Further consideration of the slope issue can occur during detailed subdivision design.

35 Regional farmland

40 The subject land contains approximately 20 hectares of regionally significant agricultural land identified in the Northern Rivers Farmland Protection Project. However, only about 0.5 hectares of this will be zoned R2 Low Density Residential (because it's isolated from the main area). An area of approximately 3 hectares will be zoned RE1 Public Recreation to reflect an existing consent for sports facilities. The balance of the regionally significant farmland will be retained in the RU1 and RU2 rural zones. The existing and proposed residential development will be buffered from the consolidated area of regionally significant farmland by a riparian area. The impact on farmland will be minimal. An assessment against the Northern Rivers Farmland Protection Project criteria for using farmland for urban development is included in the Planning Proposal.

Flood prone land

The subject land is partly flood prone and studies (as well as past court cases) have identified some of the land is affected in 20 Year ARI flood events or greater. The Draft North Byron Flood Study is on public exhibition from 18 January to 29 February 2016. The flood study maps and discusses flood behaviour for the entire Brunswick River catchment including the subject land. It looks at flooding up to the extreme event known as a Probable Maximum Flood (PMF), which is a flood with an annual return interval of greater than 500 years. Taking this extreme PMF map, the subject land is affected slightly more than previously expected (approximately 2 hectares of proposed R2 land), but in the same location. This level of flooding on the edge of a floodplain can be dealt with by filling of the land. Small amounts of filling in a fringe locality typically have a low probability of affecting other flood prone areas.

An extract of the Draft North Byron Flood Study mapping is included in the Sustainability Criteria Assessment (Attachment 2).

This Planning Proposal includes most of the flood prone land as either RU1, RU2 or RE1. This land will be mostly retained as either a riparian buffer or for agriculture. It also includes the approved sports fields. The Planning Proposal also removes some areas of flood prone land from the R2 zone and places it in the RU2 zone. Approximately 1 hectare of flood affected land adjacent to the north/south drainage line and near Clays Road is proposed for inclusion in the R2 zone. This land is west of the connector road from the estate to Clays Road and will need to be filled if it is to be used for dwellings. Inclusion of this area in the R2 zone will provide flexibility in road design and lot layout. Infrastructure associated with residential development may be located on flood prone land, if appropriate. Should any development in flood prone areas be contemplated, the provisions of existing clause 6.3 of the Byron LEP 2014 will apply at the development application stage.

25 State Policy and Planning Controls

The Planning Proposal is generally consistent with the applicable State Environmental Planning Policies. The key SEPPs that require particular consideration are *SEPP 55 Remediation of Land*, *SEPP (Rural Lands) 2008*, *SEPP 44 Koala Habitat Protection* and *SEPP 71 Coastal Protection*. These are addressed in more detail in the attached Planning Proposal (Attachment 1).

30 The Planning Proposal is generally consistent with the relevant Section 117 Directions. It is justifiably inconsistent with Direction 1.2 - Rural Zones; 1.3 - Mining, Petroleum Production and Extractive Industries; 2.1 - Environment Protection Zones; 4.2 - Mine Subsidence and Unstable Land; 4.3 - Flood Prone Land. In all cases the inconsistency is reasonable and should not inhibit the Planning Proposal from getting a Gateway Determination.

35 The Planning Proposal is inconsistent at this stage (pending consultation with Rural Fire Service) with Direction 4.4 - Planning for Bushfire Protection. It is not anticipated that there will be any issues in dealing with bushfire protection on this site.

All Section 117 Directions are addressed in more detail in the attached Planning Proposal (Attachment 1).

40 Conclusion

The Planning Proposal attached to this report is consistent, or justifiably inconsistent with State and Council strategies and policies, and therefore has sufficient merit to be supported. The Sustainability Criteria Assessment concludes that the Tallowood Ridge Estate Planning Proposal satisfies the Sustainability Criteria and should be supported by the Department of Planning and Environment, notwithstanding the land is not identified in the Town and Village Growth Boundary of the FNCRS.

Council should proceed with this Planning Proposal to amend Byron LEP 2014 to apply the R2 Low Density Residential zone, RE1 Public Recreation zone, RU1 Primary Production zone, and RU2 Rural Landscape zone over part of Lot 80 DP 1202269 as shown in Attachment 1. It should also amend the Minimum Lot Size and Floor Space Ratio maps for this land as shown in Attachment 1.

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Because of the work undertaken to date for this Planning Proposal and the relatively simple approach that is recommended, no further information or specialist reports are likely to be required prior to exhibition of the Planning Proposal.

Financial Implications

10 If Council chooses to proceed with the Planning Proposal, it is able to recover the processing costs for an applicant-initiated LEP amendment. Council has already received an amount from the applicant to cover initial costs associated with preparing this Council report. If the Planning Proposal is to proceed through the Gateway Determination process then full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the Planning Proposal will not proceed.

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If Council chooses not to proceed then the matter does not incur any additional costs.

Statutory and Policy Compliance Implications

The relevant policy considerations are addressed above and in the attached Planning Proposal.

Report No. 13.4 **PLANNING - Submissions Report on Draft LEP Amendment**
26.2015.5.1 Planning Proposal for Short Term Rental Accommodation
Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Major Projects Planner
5 **File No:** I2016/146
Theme: Ecology
 Planning Policy and Natural Environment

10 **Summary:**

15 This report presents the public exhibition outcomes on a planning proposal to amend Byron Local Environmental Plan (LEP) 2014 in relation to Short Term Rental Accommodation (Holiday Letting). Specifically it is proposed to permit this activity as exempt development for dwellings comprising 3 bedrooms or less and where being used for less than 90 days in a calendar year. For dwellings that cannot satisfy the exempt provisions, an enabling clause is proposed whereby development approval can be sought to use the dwelling for short term rental accommodation.

20 The planning proposal 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. Fifty eight public submissions have been received raising various issues. The Gateway determination required Council to consult with two 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 short term rental accommodation.

25 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.

30 **NOTE TO COUNCILLORS:**

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

RECOMMENDATION:

1. **That Council modify the planning proposal in relation to the exempt provisions as proposed in the NSW Rural Fire Service submission to state:**
 6. ***Prior to commencement, where the dwelling is located on mapped bushfire prone land, a bushfire safety authority under Section 100B of the Rural Fires Act 1997 shall be obtained and all conditions of the Bushfire Safety Authority must be complied with.***
2. **That Council forward the modified planning proposal to amend Byron LEP 2014, as included in Attachment 1 of this report, to NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared, under section 59(1) of the Environmental Planning and Assessment Act 1979.**
3. **That Council liaise with Parliamentary Counsel's Office (PCO) as necessary to finalise the content of the draft LEP and to enable PCO to issue an Opinion that the plan can be made.**

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

Attachments:

- 1 Final Planning Proposal for Short Term Rental Accommodation , E2016/16026
 - 5 2 Comments from NSW Rural Fire Service , S2015/14155
 - 3 Letter from Destination NSW, S2015/13936
 - 4 Confidential - Combined pdf of Submissions 26.2015.5.1 short term rental accommodation holiday letting part1, E2016/20024
 - 10 5 Confidential - Combined pdf of Submissions 26.2015.5.1 short term rental accommodation holiday letting Part 2, E2016/20025
 - 6 Form of Special Disclosure of Pecuniary Interest , E2012/2815
-
- 15 1.

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 inter alia 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 in response to the resolution, one to address the new requirements for short term rental accommodation (holiday letting) and the other to improve controls for certain types of tourism development. A report on the controls for certain types of tourism development was tabled at the 4 February 2016 meeting and subsequently adopted (*Resolution 16-026*). This report deals with the planning proposal for short term rental accommodation.

15 In summary, the planning proposal recommended the following amendments to Byron LEP 2014:

- 20 1. Insert a new clause into the LEP to permit dwelling to be able to be used for short term rental accommodation on a commercial basis with development consent. The clause will limit the number of occupants to 2 per bedroom (excluding children under 5 years of ages).
2. Insert exempt provisions in Schedule 2 for Short Term Rental Accommodation where the dwelling comprises a maximum of 3 bedrooms, is not used for more than 90 days in a calendar year, limits the number of occupants, and requires compliance of additional measures in relation to fire safety, amenity impacts, and management of complaints.

25 Council has also proposed amendments to Byron DCP 2014 to facilitate changes anticipated by both Planning Proposals and to give guidance to developers, land owners, Council and the wider community as to planning matters for consideration at the development application stage. The Draft DCP amendments will be tabled at a later Council meeting.

30 **Consultation**

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.

35 A condition of the Gateway Determination required Council to consult with NSW Rural Fire Service and Tourism NSW (now Destination NSW). Comments have been received from these Government Agencies and are included at Attachments 2 and 3.

40 **Government Agency Submissions**

NSW Rural Fire Service

45 The Rural Fire Service (RFS) noted that the planning proposal is not consistent with S117 Direction 4.4 Planning for Bush Fire Protection, particularly in relation to Item 5(b) – “introduce controls that avoid placing inappropriate developments in hazardous areas”. Notwithstanding this inconsistency the RFS have raised no objection to the planning proposal proceeding subject to a minor amendment for the exempt development provisions as follows.

50 *Prior to commencement, where the dwelling is located on mapped bush fire prone land, a Bush Fire Safety Authority under S100B of the Rural Fires Act 1997 shall be obtained and all conditions of the Bush Fire Safety Authority must be complied with.*

It is recommended that this amendment be supported to ensure any bushfire issues are appropriately investigated and managed prior to a dwelling being used for short term rental accommodation as requested by the RFS

5 Destination NSW

The Gateway Determination required Council to consult with Tourism NSW (now Destination NSW). Destination NSW have advised they do not comment on planning proposals for Local Environmental Plans.

10 Public Submissions

The Planning Proposal was exhibited for 6 weeks from 22 October to 4 December 2015 in accordance with the Gateway Determination. Council was also required to consult with the Holiday Rental Industry Association (HRIA). Council received 58 submissions including comments from the HRIA. The following issues were raised and staff have provided comments for Council's consideration.

15

No.	Issues Raised	Staff Comment
	General	
1.	Suggest that Council wait for the conclusion of a current NSW enquiry into holiday letting	The Enquiry is yet to conclude and make any recommendations in relation to planning controls. The Gateway determination from the Department of Planning and Environment has provided Council with a 12 month timeframe for the draft LEP amendment to be finalised. Discussions with the DPE indicate that Council should progress with the Planning Proposal.
2.	All holiday lets should require DA There should not be any exempt provisions	Council has resolved to introduce limited exempt provisions.
3.	Planning controls should not be used to address behavioural problems; The Holiday and Short Term Rental Code of Conduct should be the basis for managing the issue, with STRA remaining exempt	The planning controls will assist with ensuring land owners, operators and holiday makers abide by the Code of Conduct. Where such properties are managed as per the Code then it is unlikely that properties will come to Council's attention in terms of any undesirable behavioural problems.
4.	There should not be any controls on STRA, as there are existing nuisance laws in place to handle 'problems'	A number of NSW councils have introduced planning controls to legitimise the use of dwellings as STRA and to remove any potential for legal challenges on the permissibility.
5.	Support the provisions in urban/residential areas, but should not be applied in rural areas	Council has resolved to support STRA in all zones where the dwelling has been approved.
6.	Secondary dwellings should not be allowed to be used for STRA – these were 'allowed' as an affordable housing initiative.	Secondary dwellings have been approved under the SEPP (Affordable rental Housing) 2007 for that purpose and not for STRA.
7.	Experience – STRAs with an on-site manager result in fewer incidents of	Noted.

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No.	Issues Raised	Staff Comment
	disturbance	
8.	Number of bedrooms – should be restricted to ‘approved’ bedrooms	Noted.
9.	Operators welcome the provisions, which will ‘clean up’ those who are doing wrong	Noted.
10.	Controls should not operate within RU1 and RU2 zones	Council has resolved to support STRA in all zones where a dwelling is permissible and has been approved.
11.	Council should work with tourism authorities to develop an independent grading system for STRA properties	Noted – following the introduction of planning controls local tourism authorities could liaise with Council to develop such a grading system.
12.	Council should apply noise limits as determined by the EPA’s Industrial Noise Policy	The provisions of the <i>Protection of the Environment Operation Act 1997</i> which covers noise issues applies in Byron Shire at all times.
13.	Regulations could have a negative impact on the Byron Shire economy	As STRA is not a permissible use at present, it is unlikely the introduction of planning controls to make it a permissible use will have an adverse impact on local economies.
14.	Costs of obtaining approvals is excessive	DA Fees are established under the EPA Act 1979 and associated Regulations. Fees for a change of use application where no building or demolition work is proposed is currently set at \$285 (Clause 250 EPA Regulations 2000).
15.	Do not support the need for development consent for STRA. All dwellings with 4 bedrooms or less should be exempt	Noted.
16.	Will proposed changes be applicable within ‘Deferred Matters’?	No - the Proposed amendments will only apply to land under Byron LEP 2014.
17.	Requirements for DA should not apply to existing cases, just to new ones	Controls will apply to all properties in Byron LEP 2014 unless the development has an existing historical approval to be used for STRA.
	<i>Impacts on Housing & Rental Availability</i>	
18.	<p>Increased use of STRA will reduce the amount of permanent rental accommodation available and increase the current housing affordability issues</p> <p>Longer term rentals are restricted to winter periods. After that, rents increase substantially, and availability of ‘residential rental’ is severely restricted</p> <p>Linked to impacts on affordability/ availability. Residents ‘forced out’ of Byron Bay</p>	Noted.

	Community Impacts	
19.	Absentee owners have no connection to the community STRA significantly changes the culture and social fabric – particularly in Byron Bay	Noted.
	Exempt Provisions	
20.	90 day period should be clarified to mean '90 days occupancy' and not '90 days availability' Exemptions should be limited to rentals to relatives of residents and for much shorter period than 90 days per annum 90 day period is too long for an exempt activity	The 90 day period relates to occupancy of the dwelling as a short term rental. Use of the dwelling by family members and relatives would be considered as normal residential use of the dwelling as opposed to letting it out to unrelated holiday makers. Council has resolved to use 90 days in the exempt clause.
21.	Should require that owners/ managers 'must attend in person' when responding to complaints	In terms of responding to complaints, if the matter can be resolved by way of a phone call, then that is considered a suitable response. However if a complaint is not resolved, then it may be escalated to become a substantiated complaint. A land owner would seek to avoid having a substantiated complaint registered against their property.
22.	Children under 5 should not be excluded from maximum number of people (suggest changing to 2 and under)	Council has resolved to exempt children under 5 from the calculations.
23.	Exempt provisions should include maximum number of people, rather than people per bedroom. This should be included on signage	The numbers per bedroom generate a maximum number per household on a sliding scale based on the bedrooms in the house.
24.	Clarity required for "substantiated complaint" – if 2 or more residents complain about a single incident, is this more than 1 complaint? "Substantiated complaint" should be replaced by "Written complaint"	This has been previously reported to Council in that a substantiated complaint is one that has been investigated and proven – not just a written complaint.
25.	Suggest that Council develop a fact sheet on how to successfully resolve neighbours complaints Suggest that Council run information sessions for owners/ managers	With the introduction of planning controls Council will need to consider running information sessions and prepare fact sheets on handling noise complaints and the like.
26.	Font size on A3 sign should be increased from 40mm to 50mm, and the Registration Number should be included	A minimum 40mm font is considered adequate.

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27.	Requirement for signage creates security concerns, highlighting that a dwelling is holiday let and therefore will have vacant period	Land owners could remove such signage when a property is not being holiday let, It is noted some real estate agencies place holiday let signage at the front of properties already.
28.	Suggest including a control prohibiting 'visitors' after 10pm and before 8am, with a maximum of 6 between those times Use of outdoor areas and pools should be prohibited between 9pm and 8am	Specific measures prohibiting provisions relating to visitor hours and use of outdoor areas and pools have been removed from the exempt clause in part on the direction of the Department of Planning and Environment to simplify the controls. Also and as discussed in the Planning Proposal in the event that a noise issue eventuates from visitors, this could develop into a substantiated complaint which the operator would normally seek to avoid should they wish to continue operating.
29.	Should include requirement for STRA owner to have appropriate public liability insurance	Appropriate insurance is a civil matter for land owners to consider.
30.	Both indoor and outdoor areas within STRA should be fitted with functioning soundproofing	It is considered soundproofing a building and or its outdoor areas is not warranted. As discussed above any STRA that generated an adverse impact through noise may lead to a complaint. The premises would no longer be compliant with the exempt provisions should more than 2 substantiated complaints be made.
Enforcement		
31.	Concerns that investigation/enforcement will be beyond the current Council resources – policy cannot be effective without properly resourced enforcement. Council should have a ranger on call 24/7 In particular, exempt provision of 90 day limit – how are days recorded and by whom?	As discussed in previous reports to Council, appropriate resources will need to be made available for enforcement. Where a complaint is made regarding a property being used for more than 90 days, Council would commence investigation proceedings and take appropriate action.
32.	Enforcement relies on neighbours making complaints	Noted.
33.	Current enforcement undertaken by Holiday Letting Organisation is not working well; not resolving issues	The HLO is one organisation providing a management service for land owners. Without controls being formally in place it is difficult to judge the success or otherwise of current property managers in resolving holiday letting issues.
34.	Council enforcement is essential. Self-regulation does not sufficiently protect neighbourhood amenity. Enforcement of number of guests per bedroom is difficult if not impossible. Council must be willing to 'shut down' operations subject to substantiated	It is intended that Council will take enforcement action for properties that generate substantiated complaints.

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	complaints.	
35.	It is vital that someone is available to attend STRA properties upon complaint to resolve issues – (available 24/7, able to attend within 30 mins)	The issue is the resolution of the complaint within 30 minutes. Where it is not resolved within this time frame it is anticipated the complaint will be escalated to Council or the Police where an investigation may deem it to be a substantiated complaint.
<i>DA Considerations</i>		
36.	Objections from neighbours should be seriously considered in assessing applications	Noted.
37.	Provisions should include clear definition of 'when the amenity of neighbourhood is reduced'	Council will rely upon the POEO Act 1997 and general noise criteria for when neighbourhood amenity is impacted upon. Issues of privacy and overlooking are easier to identify and will become obvious from either the DA plans or from a site inspection.
<i>Commercial/ Tourist Zones v Residential Areas</i>		
38.	STRA should be restricted to defined commercial/ tourism zones Holiday letting is a commercial use which should not be allowed in a residential area	Council has resolved to support STRA in all zones where a dwelling is permissible and has been approved.
<i>Impact on Property Values and Rating Issues</i>		
39.	PP is unclear whether commercial rates will apply – clarity required	Rating of properties is a matter for consideration under the Local Government Act 1993 and not the planning proposal.
40.	STRA in residential areas will increase property values, which will increase rates. This will negatively affect residents who do not wish to use their dwellings for STRA	Unimproved Land Values are used to determine the level of rates charged. These are affected by a range of factors. The impact of STRA on land values is not a matter for planning consideration.
41.	Owners/ operators should be required to pay 'commercial' rates (suggest a rate per bed) or additional infrastructure charges of some sort	As discussed above this is not a matter for the planning proposal.
42.	Residents negatively affected by noisy STRA should receive a rate reduction	As discussed above this is not a matter for the planning proposal.
43.	Owners should not be required to pay commercial rates – unnecessary financial burden – STRA is no more 'commercial' than long-term rental	As discussed above this is not a matter for the planning proposal.
<i>Submissions specific to areas outside Byron Bay</i>		
44.	Costs for obtaining approvals would be passed on to tenants. In areas outside of Byron Bay (i.e. prime area), this would impact on viability of STRA	Noted – matter for individual land owners as to how they would recover any costs with operating the STRA.
45.	Issues outside of Byron do not require the same procedures – exempt	In drafting the shire wide exempt provisions separate provisions for different areas of the

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	development should not be limited to 90 days; DAs should not be required	shire have not been considered.
46.	Requiring owners to offer their properties through existing agents would provide sufficient control	Noted.
47.	Plan fails to adequately address economic impacts of proposal, particularly impacts on tourism economy, particularly relevant to Brunswick Heads	Considering STRA is not a permissible use at present, it is unlikely the introduction of planning controls to make it a permissible use will have an adverse impact on local economies.
	<i>Car parking</i>	
48.	Additional car parking should be required – more than existing residential provisions	Car parking rates are considered adequate.
	Holiday Rental Industry Association	
49.	<p>The 2013 Code of Conduct referenced in the PP is no longer operative – replaced by National Version 24 March 2015</p> <p>Important legal distinction – STRA ‘guest’ not ‘tenant’ – guests are not subject to Residential Tenancy laws and are therefore owner/ manager control of anti-social behaviour is much easier than in the case of ‘conventional’ residential tenant – Code of Conduct provides appropriate controls</p> <p>Prohibitions / DA requirements could result in reduction in supply of around 1,415 rooms – associated loss of visitor expenditure and economic impacts. Flow-on impact on property values, jobs etc – PP does not assess the significance of these impacts</p> <p>Suggest change to definition: <i>“Short term residential accommodation means a dwelling, or part of a dwelling, that provided short-term accommodation, but does not include bed and breakfast accommodation or serviced apartments. “Short-term” means each stay does not exceed three consecutive months.”</i></p> <p>Exempt provisions: <ul style="list-style-type: none"> - limiting to 3 bedrooms is unnecessary and inappropriate - limiting to principal residences </p>	<p>It is Council’s preference that any Code of Conduct be endorsed by the NSW Department of Planning and Environment.</p> <p>Noted - Council encourages landowners to actively manage guests and evict them if required.</p> <p>Council is endeavouring to introduce planning controls to ensure STRA is a legitimate land use under the Planning Scheme and to enable the activity to occur with consent or as exempt development.</p> <p>The final wording of any LEP clause will be a matter for Parliamentary Counsel.</p> <p>The Planning Proposal with exempt and DA provisions was prepared following consultation with the community, stakeholders and councillors. Provisions regarding number of bedrooms, number of occupants and days rented per annum for exempt are considered reasonable, and if development is not able to comply with the exempt provisions, then land owners can apply via a development application.</p> <p>The use of DA and Exempt provisions is consistent with planning provisions already endorsed by the Department of Planning for other Councils (e.g. Gosford, Wyong LEPs).</p> <p>Owners consent from body corporate is consistent with similar provisions introduced into the Wyong LEP 2013.</p>

	<p>excludes the majority of existing STRA properties in Byron</p> <ul style="list-style-type: none"> - limiting to 90 days is unnecessary; could result in residential properties remaining vacant for long periods - should allow 2 people per bedroom, plus 2, with no restriction on children of any age <p>Suggests:</p> <ul style="list-style-type: none"> - STRA to be exempt in dwellings containing no more than 6 bedrooms; - The owner or manager must comply with the Holiday and Short Term Rental Code of Conduct <p>STRA proposals that do not meet the suggested exempt criteria should be dealt with as Complying Development</p> <p>Requiring consent of owners' corporations in strata/ community schemes is inappropriate</p> <p>Excluding properties after 2 substantiated complaints – this will be dealt with in the Code of Conduct by delisting 'rogue properties' by delisting from the major digital platforms</p>	<p>Council would encourage all digital platforms to delist 'rogue' operators that fail to abide by the conditions of approval and have generated more than 2 substantiated complaints to prevent them from advertising there properties for STRA. This will assist Council in managing non complaint properties.</p>
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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 the Exempt category for Short Term Rental Accommodation.

10

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.

20

Report No. 13.5 Draft Coastal Zone Management Plan Byron Bay Embayment

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy
Sharyn French, Manager Environmental and Economic Planning
Catherine Knight, Coastal Estuaries Officer

File No: I2016/216

Theme: Ecology
Planning Policy and Natural Environment

Summary:

The draft Coastal Zone Management Plan for the Byron Bay Embayment (draft CZMP) is currently being prepared and is due to be tabled and considered by Council for adoption at the Extra Ordinary Meeting on 12 May 2016 for public exhibition to commence on 12 May 2016. This is in accordance with Res 16-028.

The 'Coastal Hazard Management Study – Byron Bay Embayment' (WRL, 2016), herein referred to as the 'Management Study', is a key document for informing the preparation of the draft CZMP and for developing a coastal hazard risk management strategy for Belongil Beach.

On 10 December 2015, Council noted version 5 of the management study (Res 15-655). Since this time, the cost benefit analysis component of the management study, as well as other parts of the main report, have been revised and updated. The revised work is in response to comments by the state government Office of Environment and Heritage on the cost benefit analysis, and also Res 16-028. The Management Study (Final Revision 1.0) is tabled for consideration and noting by Council.

After due consideration of the Management Study, as well as other information, including the legislative and policy framework for preparing the draft CZMP, a number of coastal hazard risk management strategies are recommended for Council's consideration, and incorporation into the draft CZMP. This includes an adaptive 'seawall with walkway' strategy for Belongil Beach, with accompanying adaptive planning and development controls.

Estimated costings associated with the recommended strategy for Belongil Beach are provided in the Management Study. These costs are in the order of \$15M. A preliminary funding model was developed for the Management Study, made up of private landowners (80% contribution), Council, State Government Coastal Management Program and Crown Lands (almost 7% each). For Council, this amount will be a minimum of approximately \$1M, for which funding will need to be determined, assuming other parties make their respective contributions. The development of a collaborative funding model for coastal hazard risk management at Belongil Beach, will be a prerequisite to implementing and realising any potential management strategy or action, as prescribed in the draft CZMP.

The current, but incomplete version of the draft Coastal Zone Management Plan Byron Bay Embayment (draft CZMP) is tabled for noting by Council, in accordance with Res 16-028. This version of the CZMP incorporates the management strategies recommended in this report.

The CZMP Project Reference Group (PRG) members are invited to submit feedback on the version of the draft CZMP attached to this report, where such feedback has not already been received. PRG feedback will be considered in preparing the next draft of the CZMP, which, in accordance with Res 16-028, is due to be tabled and considered by Council for adoption for public exhibition on the 12 May 2016.

RECOMMENDATION:

- 1. That Council note the revised Coastal Hazard Management Study – Byron Bay Embayment (Final Revision 1.0)', prepared by the consultants Water Research Laboratory (2016).**
- 2. That Council adopt the following management strategies for incorporation into the draft coastal zone management plan Byron Bay Embayment:**
 - a) an adaptive 'seawall with walkway' strategy for managing coastal hazard risks at Belongil Beach, with six main components:**
 - i) Develop funding Model.**
 - ii) Develop impact monitoring program.**
 - iii) Design 'seawalls with walkway'.**
 - iv) Develop planning and development controls and conditions for 'seawalls with walkway'.**
 - v) Construct 'seawalls with walkway' – incorporating two public beach accesses (plus the Manfred Street access) and dune revegetation works.**
 - vi) Revise and update coastal hazard land use and development planning controls – providing for adaptation of development.**
 - b) Jonson Street Protection Works - upgrade works, remove spur groynes and improve beach access and amenity, as per Council resolution 14 – 66, and monitor impacts.**
 - c) Revise and update coastal hazard land use and development planning controls - for development at The Pass to Clarkes Beach, Main Beach, Cavvanbah (First Sun Caravan Park to Border Street), and North Beach, providing for adaptation of development.**
 - d) Dune revegetation and 'soft' dune stabilisation - for all precincts, as a 'supporting' coastal hazard risk management strategy.**
 - e) Emergency action sub plan for coastal erosion emergencies - applicable to all precincts, as a 'supporting' coastal hazard risk management strategy.**
 - f) Coastal hazard investigation Lighthouse Road and Captain Cook Car Park - investigation of future coastal hazard risks and bedrock levels at and adjacent to Lighthouse Road and Captain Cook Car Park.**
 - g) Coastal hazard investigation Marine Parade, Wategos Beach - investigation of future coastal hazard risks (inundation) and integrity of existing ad hoc coastal protection works at, Wategos Beach.**
 - h) Monitor coastal processes and impacts on North Beach.**
- 3. That Council note the draft Coastal Zone Management Plan Byron Bay Embayment (Draft CZMP) as attached to this report and the review status of the draft CZMP by the CZMP Project Reference Group, as detailed at Table 1 of this report.**

Attachments:

- 1 Executive Summary Coastal Hazard Management Study - Byron Bay Embayment FINAL Revision 1
Water Research Laboratory (WRL) Technical Report 2013/28, E2016/18876
- 5 2 DRAFT CZMP BBE - Part A General Information, E2016/18890
- 3 DRAFT CZMP BBE - Part B Coastal Hazards and Risk Management, E2016/18893
- 4 DRAFT CZMP BBE - Part C Community Uses, E2016/18894
- 5 DRAFT CZMP BBE - Part D Open Coast Ecosystem Health, E2016/18895
- 10 6 DRAFT CZMP BBE - Part E Draft Emergency Action Sub Plan, E2016/18936

Report

The draft Coastal Zone Management Plan for the Byron Bay Embayment (draft CZMP) is currently being prepared for exhibition in May 2016 (as per Res 16-028).

The 'Coastal Hazard Management Study – Byron Bay Embayment' (WRL, 2016), herein referred to as the Management Study, is a key document for informing the draft CZMP, providing an assessment of potential strategies, and recommended actions, with respect to coastal hazard risk management for the Byron Bay Embayment.

The Management Study (Final, dated 5 November 2015) was noted by Council in November 2016 (Res 15-655). Since this time, the cost benefit analysis component of the study, as well as other parts of the main report, have been revised. This revision was required in response to comments from the state government Office of Environment and Heritage (OEH), as reported to Council on 4 February 2016.

The Executive Summary from the Management Study (Final Revision 1.0) is at Attachment 1. The full Management Study report (Final Revision 1.0), can be downloaded from Council's website at: <http://www.byron.nsw.gov.au/coastal-hazard-management-study-for-the-byron-bay-embayment>

The additional work on the CBA and Management Study is reflected in the results provided at Table ES.2 of the Executive Summary at Attachment 1. This additional work accords with Res 16-028, part 7 (reproduced below), with reference to the 'BSC base case'. The BSC base case may be compared to the consultants' 'best estimate' case. From ES.2, the best performing economic option is the adaptive scheme with engineered 'seawall with walkway' (only) for both the BSC base case and the consultant's best estimate.

16-028 Resolved that Council (relevant part only):

7. Urgently instructs consultants Water Research Laboratory and sub-consultants Griffith Centre for Coastal Management that in addition to the latest commissioned work, the revised CBA must:

- a) Include Benefit Cost Ratio (BCR) tables which apply the original consideration of all affected properties irrespective of their owner-occupier status.*
- b) Include BCR tables which apply the current Valuer General valuation of all affected properties.*
- c) Include BCR tables which apply the original tourist expenditure values (i.e. not reduced by a factor of 0.3).*
- d) Include BCR tables which retain the one-off property uplift factor (14% reverse premium) to property values.*

It is recommended that Council note the revised Coastal Hazard Management Study – Byron Bay Embayment (Final Revision 1.0)', prepared by the consultants Water Research Laboratory (2016).

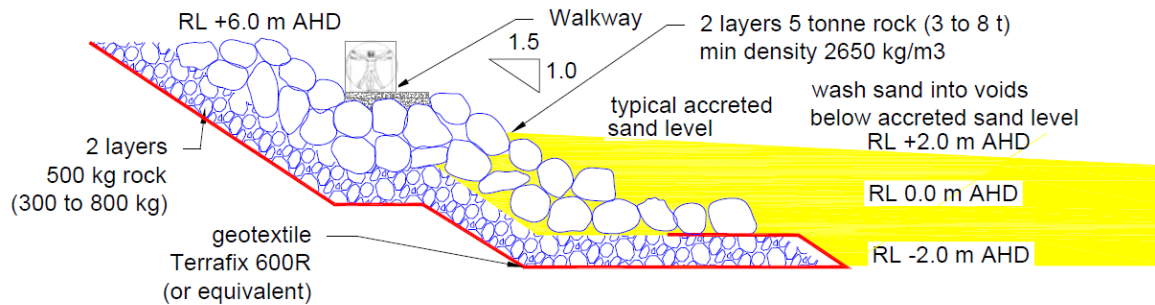
With reference to the management study, the following recommendation was made by the consultant for Belongil Beach:

WRL recommends that as a minimum, the status quo be improved with Stage 1 (engineered seawall) of Option 6, the adaptive scheme. This sub option as a standalone measure has the best economic performance. The full three stage adaptive management protection scheme has components of:

- Stage 1: Seawall with walkway (Figure ES.2);*
- Stage 2a: An initial self-filling trial groyne;*
- Stage 2b: Additional groynes; and*
- Stage 3: Small scale sand nourishment.*

Progress to later stages would be warranted if triggers within the adaptive scheme are reached, however, economic modelling indicates that, relative to the status quo, increased beach width over a 1 km stretch of Belongil is not economically viable.

5 A preliminary design for the 'seawall with walkway', as developed for the management study, is depicted at Figure 1 below.



10 **Figure 1 Preliminary seawall design incorporating alongshore access (WRL, 2016)**

In addition to the above recommendation for Belongil Beach, the management study recommends a number of coastal hazard risk management strategies for the other areas of the Byron Bay Embayment. These are detailed at Attachment 1, section ES.8.

15 After due consideration of the management study report, as well as other information, including the legislative and policy framework for preparing the draft CZMP, the coastal hazard risk management strategies recommended for incorporation into the draft CZMP are detailed below.

20 Belongil Beach

The strategy recommended for Belongil Beach is underpinned by the consultant's recommendation concerning Stage 1 of the 'adaptive management protection scheme', i.e. 'engineered seawall with walkway'. Additional measures are required however for meeting legislative requirements and for providing for 'adaptation' in response to implementation, funding, and climate based uncertainties.

25 The additional measures proposed are:

- 30 a) tailored planning controls and conditions for the 'seawalls with walkway', with conditions on the works for: monitoring, maintenance, management of impacts, potential modification, upgrade or removal;
- b) revised and updated, adaptive planning controls and conditions on development in coastal hazard areas.

35 Accordingly, an adaptive 'seawall with walkway' strategy is recommended for managing coastal hazard risks at Belongil Beach, with six main components, some of which may be implemented in parallel:

- 40 a) Develop funding Model.
- b) Develop impact monitoring program.
- c) Design 'seawalls with walkway'.
- 45 d) Develop planning and development controls and conditions for 'seawalls with walkway'.

- e) Construct 'seawalls with walkway' – incorporating two public beach accesses (plus the Manfred Street access) and dune revegetation works.
- 5 f) Revise and update coastal hazard land use and development planning controls – providing for adaptation of development.
- g) Compliance and enforcement.

10 As per the consultant's recommendation, there is a possibility that other stages in the 'adaptive management protection scheme' may be implemented at some time in the future. These stages are beyond the scope of the draft CZMP implementation timeframe, which is 15 years, and will require further investigation, including analysis of the impacts of implementing Stage 1 of the 'adaptive management protection scheme'.

15 Other areas

The following strategies are recommended for managing coastal hazard risks in other areas of the Byron Bay Embayment:

- 20 a) Jonson Street Protection Works - upgrade works, remove spur groynes and improve beach access and amenity, as per Council resolution 14 – 66, and monitor impacts.
- 25 b) Revise and update coastal hazard land use and development planning controls - for development at The Pass to Clarkes Beach, Main Beach, Cavanbah (First Sun Caravan Park to Border Street), and North Beach, providing for adaptation of development. Compliance and enforcement.
- 30 c) Dune revegetation and 'soft' dune stabilisation - for all precincts, as a 'supporting' coastal hazard risk management strategy.
- 35 d) Emergency action sub plan for coastal erosion emergencies - applicable to all precincts, as a 'supporting' coastal hazard risk management strategy.
- e) Coastal hazard investigation Lighthouse Road and Captain Cook Car Park - investigation of future coastal hazard risks and bedrock levels at and adjacent to Lighthouse Road and Captain Cook Car Park.
- 40 f) Coastal hazard investigation Marine Parade, Wategos Beach - investigation of future coastal hazard risks (inundation) and integrity of existing ad hoc coastal protection works at, Wategos Beach.
- g) Monitor coastal processes and impacts on North Beach.

Draft CZMP

45 In accordance with part 9 of Resolution 16-028, as reproduced below, the draft CZMP BBE is herein tabled for Council's consideration at Attachments 2 to 6. Columns 1 and 2 of Table 1 explain the various parts of the draft CZMP, as composed of separate parts (or attachments).

50 **16-028 Resolved that Council (relevant part only):**

9. Amends the indicative CZMP BBE time-frames contained on page 82 of report 13.10 as follows:

- 55 *a) Task 2(f). A report will be presented to Council at the 7 April Ordinary Meeting containing the management strategy for the draft CZMP BBE for adoption, as well as all other draft sections of the CZMP for consideration.*

- b) Tasks 7 & 8. Prepare first draft CZMP for adoption at and Extraordinary meeting of Council on 12 May 2016.
- c) Task 9. CZMP is exhibited for 28 days from 12 May to 10 June.
- d) Task 9. PRG reviews submissions and reports to Council.
- e) Task 10. An Extraordinary Meeting will be convened on 29 June to adopt a final draft CZMP for adoption and immediate submission on 30 June 2016.

Given the timeframes imposed by Res 16-028 (part 9), the draft CZMP attached to this report, most notably Part B, has been written under the assumption that the coastal hazard risk management strategies recommended in this report are adopted, without amendment, by Council. Pending the outcome of this report, various parts of the draft CZMP, especially Part B, may require revision and re-writing.

CZMP Project Reference Group (CZMP PRG) – Review of draft CZMP

As per the CZMP PRG Constitution and as reported to Ordinary Meeting 17 March 2016, Report No. 13.8, an objective of the CZMP PRG is as follows:

- a) *Review draft CZMP BBE and provide feedback to staff prior to the tabling of the draft CZMP BBE at a Council meeting, and prior to the draft CZMP BBE being ‘adopted for public exhibition’.*

The CZMP PRG has reviewed several chapters of the draft CZMP already and feedback has been received from several members. Table 1 details the review of the draft CZMP chapters by the PRG.

Due to strict timeframes and resources available to meet these timeframes, consideration of feedback already obtained from CZMP PRG members has not been incorporated into the version of the draft CZMP as attached to this report. The CZMP PRG feedback will be incorporated into the next version, to be tabled at Extraordinary Meeting 12 May 2016.

Given the timeframes imposed by Res 16-028 (Part 9), it should be noted that the CZMP PRG may not review the draft CZMP, in its entirety, prior to it being tabled for adoption for exhibition at Extraordinary Meeting 12 May 2016. Table 1 details the drafting and review status of the various parts of the draft CZMP, as attached to this report, and expectations in terms of the final PRG review outcome.

Table 1 Structure, drafting and review status of the draft CZMP, as per attachments 2 to 6 of this report

Attachment to this report	Part / Section	Drafting Status	Current PRG Review Status	Consideration of PRG comments	Final PRG review outcome
<u>Attachment 2</u>	Part A – General Information	Mostly complete. Appendix 2 incomplete: - Councillor workshops - Council resolutions	Most parts already reviewed by PRG. Since PRG review: - minor edits - Vision Statement added - Management Objectives added - Appendix 1 and 2 added.	Feedback on new material invited, due 21 April. Feedback will be considered as part of preparing 12 May draft CZMP.	PRG review objective will be satisfied.
<u>Attachment 3</u>	Part B – Coastal Hazards and	Coastal hazards and risk assessment -	Coastal Hazards and Coastal Hazards Risk	Feedback on new material invited, due 21	PRG review objective will be

BYRON SHIRE COUNCIL

Attachment to this report	Part / Section	Drafting Status	Current PRG Review Status	Consideration of PRG comments	Final PRG review outcome
	Risk Management	complete Coastal hazards risk management strategy – incomplete, dependent on Council resolution (outcome of this report). Appendix 2 - incomplete Detailed funding schedules outstanding.	Assessment moved from Part A to Part B. Already reviewed by PRG. Since PRG review: - minor edits - updated to WRL (2016). - coastal hazards risk management strategy added.	April. Feedback will be considered as part of preparing 12 May draft CZMP.	partially satisfied.
<u>Attachment 4</u>	Part C – Community Uses	Almost complete.	Most parts already reviewed by PRG. Since PRG review: - inclusion of Management Objectives to Table 3 and 4. - Amendments to Indigenous Cultural Heritage section (C2). - section 6.5 removed.	Feedback on new material invited, due 21 April. Feedback will be considered as part of preparing 12 May draft CZMP.	PRG review objective will be mostly satisfied.
<u>Attachment 5</u>	Part D – Open Coast Ecosystem Health	Almost complete.	Most parts already reviewed by PRG. Since PRG review: inclusion of Management Objectives to Table 1.	Feedback on new material invited, due 21 April. Feedback will be considered as part of preparing 12 May draft CZMP.	PRG review objective will be mostly satisfied.
<u>Attachment 6</u>	Part E – Emergency Action Sub Plan	Partially complete – propose general content to remain as per draft EASP (2011), with an update to reflect Council's organisation structure, relevant consultation	None reviewed by PRG.	Feedback invited, due 21 April. Feedback will be considered as part of preparing 12 May draft CZMP.	PRG review objective will be mostly satisfied.

Attachment to this report	Part / Section	Drafting Status	Current PRG Review Status	Consideration of PRG comments	Final PRG review outcome
		activities.			

It is recommended that Council note the draft Coastal Zone Management Plan Byron Bay Embayment, as attached to this report, and the review status of the draft CZMP by the PRG, as detailed at Table 1.

5

Financial Implications

The management study includes preliminary costings and hypothetical funding models for the adaptive management protection scheme, detailed at sections 11.6 and 11.7, and summarised at Section ES.7, Attachment 1. Noting that only Stage 1 'seawalls with walkway' is being recommended for the draft CZMP in this report.

10

The engineering costs associated with Stage 1 of the Belongil Beach strategy, have been estimated by the consultant to be in the order of \$15M. There are assumptions that underpin these costings, and the figures should be read and interpreted within the context of these assumptions, which have not been tested or validated.

15

A preliminary funding model was developed for the Management Study for the Belongil Beach strategy, and is summarised at Section ES.7 of Attachment 1. This model includes private landowners (80% contribution), Council, State Government Coastal Management Program and Crown Lands (almost 7% each). For Council, this amount will be a minimum of approximately \$1M, for which funding will need to be determined (assuming other parties make their respective contributions). The development of a collaborative funding model for coastal hazard risk management at Belongil Beach, will be a prerequisite to implementing and realising any potential management strategy or action, as prescribed in the certified CZMP.

20

25

It is intended that a more detailed hypothetical funding model for coastal hazard risk management at Belongil Beach, will be provided in the 12 May draft CZMP and / or accompanying Council report. The financial implications of the coastal hazard risk management strategies that are endorsed by Council, as an outcome of this report, for all precincts, will be detailed in the 12 May Council report.

30

The costs associated with the preparation of the management study were reported to Council on 19 November 2015. Table 2 provides updated costings associated with the management study, with additional costs largely associated with the revisions to the CBA.

35

Table 2 Expenses and funding (ex GST) for preparing the Coastal Hazard Management Strategy Byron Bay Embayment (WRL, 2016) as at time of preparing report

Expenditure Description	BSC Funds (\$)	State Government Funds (\$)	Total Expenditure* (\$)
Original contract amount	50,000	49,500	99,500
Variation 1: investigation sand transfer system, funding split	18,000	18,000	36,000
Variation 2: additional cost benefit and distribution analysis	27,340	0	27,340
Formal response Cost Benefit Analysis (CBA) comments	1,950	0	1,950
Additional meetings, workshops	2,760	2,620	5,380
CBA workshop: 8 December 2015	4,130	4,130	8,260
Variation 3: Revision to cost	13,500		13,500

benefit analysis (estimated)			
Miscellaneous (e.g. catering and advertising)	1,454	0	1,454
Total	119,134	74,250	193,384

* Excluding internal Council costs for managing and administering the project, reviewing reports etc.

Statutory and Policy Compliance Implications

5 The draft CZMP is being prepared in response to a Ministerial Direction under Part 4A of the *Coastal Protection Act 1979* and in accordance with the 'Guidelines for Preparing Coastal Zone Management Plans' (OEH, 2013).

10 Part A, Appendix 1 of the draft CZMP, at Attachment 2, details the statutory and legislative framework under which the draft CZMP is being prepared.

15 Part B of the draft CZMP, at Attachment 3, provides more details with respect to the statutory and policy compliance implications of the Belongil Beach management strategy that has been recommended for adoption by Council, refer Tables 9 and 10.

20 It should be noted that, in accordance with section 55G (2) of the CP Act, Council must consult with relevant public authorities prior to submitting the draft CZMP to the Minister, in the manner as specified in the 'Guidelines for Preparing Coastal Zone Management Plans' (OEH, 2013). With reference to Section 1.3 of OEH, 2013, this manner is as follows:

A council submitting a draft CZMP to the Minister for certification is to also provide to the Minister copies of written correspondence from public authorities supporting any actions contained in the draft CZMP which they are responsible for or that affect their land or assets.

25 Consultation with public authorities is being facilitated through the activities of the CZMP PRG and it is envisaged that the process detailed above will be carried out during the exhibition of the draft CZMP. Whilst staff will make every effort to receive written confirmation from public authorities as per the requirements of the CP Act, and within the CZMP timeframes as per Res 16-028, this
30 cannot be guaranteed, as there are factors, such as the response times from agencies, that are beyond the control of staff.

Report No. 13.6 **Report of the Planning Review Committee Meeting held on 10 March 2016**

Directorate: Sustainable Environment and Economy
Report Author: Wayne Bertram, Manager Sustainable Development
File No: I2016/222
Theme: Ecology
Development and Approvals

5

10 **Summary:**

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

15

RECOMMENDATION:

That the report be noted.

20

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

Report:

The meeting commenced at 1.00pm and concluded at 1.10pm.

Present: Crs Dey, Hunter, Cameron

5 Apologies: Nil

As Council determined the original development applications, the Section 96 applications to modify the following development consents were referred to the Planning Review Committee to decide if the modification applications could be determined under delegated authority.

10

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

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2001.438.4	Geolink Consulting	23B Sunrise Lane Ewingsdale	S96 to modify conditions of approval	Level 2 7/1/16 to 20/1/16 No submission received	Delegated Authority
10.2015.353.2	Brandon Saul Holdings Pty Ltd	Bayshore Drive Byron Bay	S96 amend condition 26 to allow staging of developer contributions	Level 0	Delegated Authority

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.7 **Potential Bulk Closure of Road Reserves Suffolk Park DP11632 to be held by Council as operational land for sale to adjoining landowners**

5 **Directorate:** Infrastructure Services
Report Author: Deanna Savage, Administration Officer Infrastructure Services
File No: I2016/117
Theme: Community Infrastructure
10 Projects and Commercial Opportunities

Summary:

15 Council has received some enquiries into the potential purchase of Council owned road reserve / lanes within DP11632.

20 Approximately half of Council Road Reserves in this DP have already closed and on-sold to adjoining land owners, this report proposes that Council move forward on the closure of the whole of DP11632 to allow the remaining adjoining landowners the opportunity to purchase these lots once closed.

RECOMMENDATION:

1. **That Council endorses the closure of all remaining Council road reserves / lanes in DP11632 as one application to Crown, so they can be held by Council as operational land for sale to adjoining landowners.**

2. **That Council endorses all fees associated with the application to Crown, including but not limited to:**
 - a) **advertising costs associated with application**
 - b) **Crown application fees**
 - c) **Council’s surveyors fees, sub division, survey and valuation**

3. **That Council ascertain market value per square meter of Council owned Road Reserve in DP11632 by retaining a suitably qualified Valuer and delegate to the General Manager the authority to enter into a contract for the sale of each lot, once created, for a value no less than the highest value placed on per square meter by the independent Valuer.**

4. **Without limiting the delegation to the General Manager to negotiate a contract suitable to the Council, terms and conditions of any contract will include requirements for:**
 - a) **the applicant to pay all costs associated with the individual purchase of lots in DP11632 once operational land, including but not limited to:**
 - i) **Council application fees**
 - ii) **all registration fees**
 - iii) **legal costs**

 - b) **that lots, once created and sold, be consolidated into corresponding property parcel numbers.**

5. **An easement over portions of each lot for the purposes of providing Stormwater**

Discharge is to be created, with each lot being determined individually. This will be done within the guidelines of 'Building over Pipelines and Other Underground Structures' Policy No 4.20.

- 6. That Council authorise the affixing of the Council seal to and the signing of all documents necessary to affect any sale and transfer of lots in DP11632 of Council operational land at Suffolk Park.**

Attachments:

- 5 1 Signed Statutory Declaration of Anthony John Buckley for DP 11632 stating that work was completed on lane ways, E2016/3203
- 2 Letter from NSW Land & Property Information regarding Roads and Lanes in DP11632 (refers to E2015/29035), S2015/6791
- 3 Letter to Manager at Crown Lands Newcastle re clarification of closure of DP11632 (enclosing letter S2015/6791), E2015/66808
- 10 4 'Building Over Pipelines and Other Underground Structures' Policy No. 4.20 adopted 8/10/09 Res No. 09-798 (Current_Policies), DM906135

Report

Land Information

5 DP 11632 – Suffolk Park – Road Reserve Lanes

Information/Background

10 DP 11632 was registered in 1922 by Frederick Lyle Suffolk. The land had been purchased in 1910.

15 In the late 1970s early 1980s Council opened up to all land owners the possibility of closing and purchasing the lanes / road reserves in between the properties. They were offered to adjoining landowners and to properties next door, not necessarily adjacent to the property. This has created a somewhat zigzag effect along the lanes closed, with some easements created, land locks and the remainder having been grassed over.

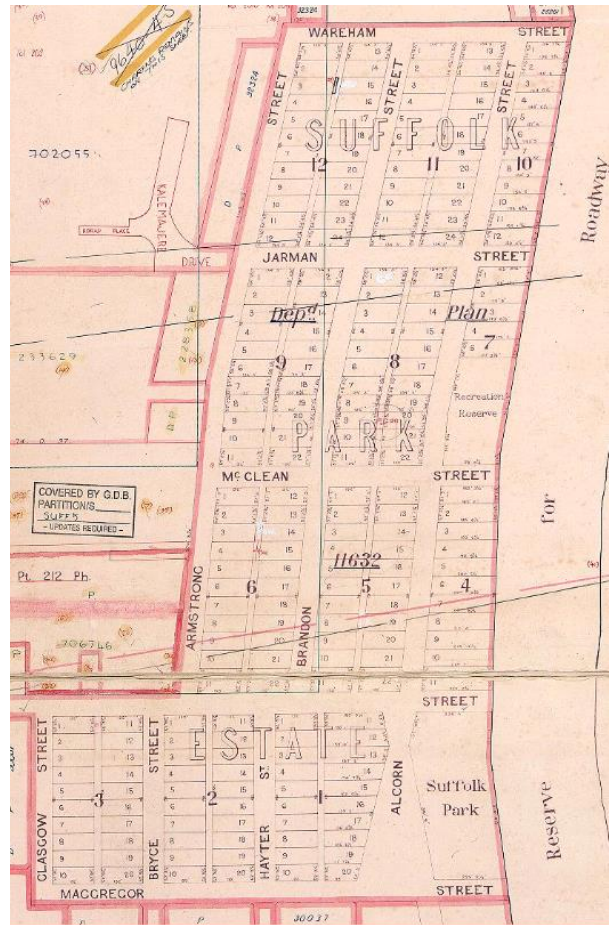
25 The laneways in Suffolk Park were never properly constructed and development of this sub-division didn't really start until the late 1950s. The lanes however, were used for the collection of night-soil and as access to the rear of properties in the late 1960s and early 1970s.

30 Due to the lack of use by Council now and the fact that DP 11632 was registered in the 1920s, so historical information is limited, evidence of previous use is difficult to ascertain on site. A light covering of a hailstone type of material was apparently used on these laneways. Use of most of the laneways for access stopped after Council sewer mains were laid in the laneways in the mid 1970s. The recollections of Council officers employed at that time have formed the basis of Council's claim to previous use of the laneways. A Statutory Declaration has been signed by a long standing employee of Council, Anthony Buckley, who has been with Council for over 34 years and recalls doing work on these lanes. (Attachment 1 E2016/3203)

40 The last closure and sale of land in this DP was finalised in December 2015. Due to the Crown needing evidence of prior works, this transfer and sale took close to three (3) years to finalise successfully in Council's favour. Council then sought to confirm in writing the status of the lanes and roads within DP 11632 for all future closures and sales to proceed without delay. Attachment S2015/6791, letter from the Land and Property Information, confirms that:

45 *"In respect of your question as to the status of the roads and lanes in the above Deposited Plan (registered in 1922), I advise that section 336(3) of Local Government Act 1919 (now repealed) operated to vest, on registration of the plan, those roads and lanes in the then local Council."*

50 This letter, however, only clarifies that the lanes do vest in Council as Council Road Reserve. Council still has to prove the use of the lanes and prior works being completed on the lanes.





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There have been further requests by adjoining land owners to purchase the road / laneways in this DP. The Geocortex images above show in red the open road / laneways that have the potential for closure and sale to adjoining land owners.

5

The letter written to the Manager Crown Lands Newcastle (Attachment 3 E2015/66808) has been passed to Michele Hurcum from Crown Lands Grafton. She has stipulated that the letter may accompany the application for closure, however the letter only clarifies that the road reserves / lanes are roads vested in Council, it still does not clarify that the road reserves / lanes were constructed. The Statutory Declaration signed by Anthony Buckley will also accompany the application, to help show that work was completed on these lanes, as well as the fact that 60 odd applications have been dealt with since 1974 within Crown Lands and all have stayed vested with Council and sold to adjoining land owners.

10

15 **Financial Implications**

Council will need to outlay the initial costs associated with Closing of DP 11632. Fees associated with the application to Crown include:

20

- advertising costs
- Crown application fees
- Council's surveyors fees, sub division, survey and valuation

25

Council will also need to retain the services of a suitably qualified Valuer to ascertain market value per square meter of Council owned Road Reserve in DP11632.

30

Once the Road reserve / laneways are closed and individual lots become Council operational land, the applicant is to pay all costs associated with the individual purchase of the lots, including but not limited to:

- Council application fees
- all registration fees
- legal costs

35 **Statutory and Policy Compliance Implications**

Local Government Act 1993

Once the land becomes Operational there are no limitations on Council's capacity to sell the land.

40

Local Government (General) Regulation 2005

Pursuant to clause 400, the seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

45

ROADS ACT 1993 – Sect 43

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

50

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

55

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

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

5 Building over Pipelines and other underground Structures Policy No 4.20
Policy included as Attachment 4 (DM906135).

Report No. 13.8 **Status Report - Footpath at Marine Parade, Wategos**
Directorate: Infrastructure Services
Report Author: Rob Serventi, Contract Engineer
File No: I2015/1422
5 **Theme:** Community Infrastructure
 Local Roads and Drainage

Summary:

10 To update Council on the current project status for the provision of improved pedestrian and traffic infrastructure linking existing pathways in Marine Parade, Wategos.

RECOMMENDATION:

That in relation to the Marine Parade Pedestrian and Traffic Impact Assessment Report a one-way traffic flow with a mix of parallel and 45 degree parking on beach side whilst maintaining existing parallel parking on the residential side (Option 3) is endorsed.

OR

That in relation to the Marine Parade Pedestrian and Traffic Impact Assessment Report a Shared Zone that provides better vehicle speed regulation in a highly pedestrianized environment (Option 4) is endorsed.

Attachments:

- 1 Draft Consultant's Report on Marine Parade Pedestrian and Traffic Impact Assessment, E2016/17825
- 2 Marine Parade Options Summary - March 2016, E2016/17462
- 20 3 Additional Parking West end of Marine Parade, E2016/17676

Report

Background

5 Council engaged the services of consultants to develop options for the provision of a 2m wide pedestrian footpath in Marine Parade, Wategos. The new footpath was required to link the existing footpath at the western end of Marine Parade with the existing National Parks and Wildlife Service (NPWS) footpath at the eastern end of Marine Parade to Cape Byron.

10 4 options developed include:

- Option 1 – two-way traffic flow with parallel parking both sides where practicable.
- Option 2 – One-way traffic flow with a mix of parallel and 45 degree parking on beach side only
- Option 3 – One-way traffic flow with a mix of parallel and 45 degree parking on beach side whilst maintaining existing parallel parking on the residential side.
- 15 • Option 4 - Shared zone that opens the beach promenade to Marine parade and provides additional parking at the approach roads to Marine Parade.

20 The existing and additional parking spaces for each option are shown in the table below:

Option	Traffic Flow	Existing Parking #	Additional Parking	Additional Pedestrian Amenity
Option 1	Two Way	61	18	no
Option 2	One Way	61	24	no
Option 3	One Way	61	35	no
Option 4	Two way Shared Zone	61	18	yes

Between Pandanus Lane and Julian Parade

25 Council’s consultant has completed a pedestrian and traffic impact assessment, which is attached and includes a Road Safety Audit to identify hazards recommends Option 4 - Shared Zone as the preferred technical solution.

30 The attached Marine Parade - Options Summary – March 2016 outlines the main design issues considered for each option, the pros and cons of each, and provides some commentary in relation to impacts, costs and benefits, including existing and additional future staged parking.

The Local Traffic Committee (LTC) considered the options at their meeting held 24 June 2015 and recommended:

35 **RECOMMENDATION:**

That Council supports the Local Traffic Committee endorsement of either of the proposed one-way traffic options for the beach front section of Marine Parade, Wategos from west to east through to the intersection of Julian Place.

40

The resolution of Council at its meeting on 16 July 2015 after consideration of the LTC recommendation above was as follows:

Res 15-360

That this matter be deferred until after further consultation with the Wategos residents and community at large and a briefing to Councillors at a Strategic Planning Workshop regarding the three options and the results of the any consultation.

Preliminary Consultation

The preliminary consultation undertaken by the consultant was as follows:

Wategos Beach Protection Association

Draft submission provided E2015/51280 regarding the three options.

Site meeting held 10 August 2015 and the main discussion points were:

- keep “2-way traffic” opposed to one way traffic
- consider “Shared Zone” alternative option, include landscape design and minimal barrier fencing
- “Shared Zone” could be an interim solution
- preference for pedestrian movement over parking spaces
- look at traffic flows and parking restrictions (time, no stopping, resident schemes, etc) around entire loop.
- improve signage to reduce accidental visits to Wategos

National Parks & Wildlife Service (NPWS)

- prefer Option 2 keep “2-way traffic” opposed to one way traffic
- retaining walls be consistent with rock walls near picnic area
- fencing be consistent with NPWS Fence
- concrete path be consistent with existing
- confirm road boundary
- NPWS get approval for fitness station
- consider mobile vendor station in road reserve

A briefing was provided to Councillors at a Strategic Planning Workshop held 13 August 2015.

Issues considered at the workshop included:

- costs
- potential impacts to traffic flow (if one-way option adopted) with respect to vehicles that need to return back to the area to gain parking spaces
- impacts to local residential amenity
- footpath treatments
- parking demand and number of spaces available
- need for detailed traffic assessment of the area and associated impacts
- consideration of a shared zone and approval processes

Action since the August 2015 Strategic Planning Workshop

Pedestrian and traffic counts have been undertaken in December 2015 and January 2016 to inform a pedestrian and traffic impact assessment report on the four options above.

The Marine Parade pedestrian and traffic impact assessment report on the four options has been developed by Council’s consultants to assess road and pedestrian safety issues, traffic

management issues and impacts of the two one way options, a two way option and a shared zone concept. Potential for future formalisation of parking has also been analysed in the consultant's report, which is attached.

- 5 The report identifies deficiencies for road and pedestrian signage, pedestrian amenity and safety and suggestions for improving the parking turnaround and recommends a Shared Zone preferred treatment to best cater for the high number of pedestrians that are on Marine Parade.

10 A briefing was provided to Councillors at a Strategic Planning Workshop held 11 February 2016 on the four options.

Next Steps and Design Development

15 After the resolution by Council of an endorsed option, design development and detailed design shall be commenced and includes:

- Detailed land and services survey
- Development of design to respond to Traffic / Pedestrian Impact Assessment
- Development of design to incorporate coastal process hazards management

20

- Project approvals
- Detailed design / construction documentation
- Updated construction estimate
- Ecological assessment
- Review of Environmental Factors

25

The final design will need to adequately cater for recommendations or key issues identified in the Draft Coastal Zone Management Plan Byron Bay Embayment, specifically with respect to coastal processes, hazards and their management at this location.

30 It is envisaged that the works would be undertaken in 2016/2017 subject to provision of the required additional funding as part of the 2016 / 2017 budget process.

Financial Implications

35 Funding for Marine Parade Footpath in 2015/16 is \$241,300 with costs to date being \$63,601. This leaves a balance of \$177,699.

Currently there is no funding being offered from NPWS.

40 Preliminary Costs for the four Concept Designs are:

- Option 1 – Two way traffic flow \$445K
- Option 2 – One-way traffic flow \$380K
- Option 3 – One-way traffic flow \$460K

45

- Option 4 – Shared zone – \$480K

Costs are preliminary estimates only to facilitate option selection and are subject to further geotechnical investigation and detailed design, including investigation of the foreshore revetment structure works under Marine Parade.

50 Additional funding will be needed in 2016/17 to undertake the works associated with the preferred Council solution.

Statutory and Policy Compliance Implications

There are no negative implications proposed in this report.

Report No. 13.9 **Byron Bay Pay Parking Scheme - criteria for 6 month review**
Directorate: Infrastructure Services
Report Author: Simon Bennett, Traffic and Transport Planner
File No: I2016/46
5 **Theme:** Community Infrastructure
 Local Roads and Drainage

Summary:

10 The purpose of the report is to establish the criterion for the first formal review of the scheme, noting that Council resolved such review occur within 6-months of it operating. Accordingly the review, and any changes it may warrant, will be reported to Council June 2016.

15 This report makes no recommendations in regard to changes to the meter registration (pay parking) scheme that began operating in Byron Bay December 2015.

20 To assist the review and to provide an avenue for formal feedback, a survey, as provided at Attachment 1, is proposed to be made available. This survey is designed and proposed for three reasons.

25 For one, it will further explore questions outlined at Table 2 of this report which were included in the Byron Bay Chamber of Commerce February 2016 conducted survey which, as briefly discussed in this report, provides a mixed response in regard to the economic impact of pay parking but makes clear three concerns shared by some of the 98 respondents: the lack of credit card/request for coins; that 1P and 2P time limits are considered too short and restrictive; and a preference that permit holders need not interact with the meter.

30 Secondly, the survey at Attachment 1 is designed to remain current and available at all times (for example online) to assist with a formal and ongoing channel of feedback and thirdly provide a basis for comparison for future reviews.

35 Undertaking such future reviews, as with a formal review within 6-months of it first operating, is consistent with Roads and Maritime Services (RMS) requirements, whose criteria for such a review must also be considered and is outlined at the end of this report.

RECOMMENDATION:

That the criterion proposed for the 6-month review, including the proposed survey, be endorsed and reported back to Council in June 2016.

Attachments:

40 1 Proposed Pay Parking Survey for 6-month Review and beyond, E2016/18399

Report

Council introduced a meter registration pay parking scheme in Byron Bay in three (3) distinct stages.

- 5 Stage 1 – 23 December 2015 1-hour (1P) and 2-hour (2P) commenced;
- Stage 2 – 17 January 2016 four-hour (4P) and all day (0P) sites included; and
- Stage 3 – 11 March 2016 start of credit card payment at the meter.

10 By 11 March, and despite the inability to make credit card payments, meter revenue had surpassed \$500,000. Ten days later, by the 21 March, meter revenue had neared \$610,000 with credit cards accounting for \$34,000 (or 31%) of revenue since it became operational. Based on these trends meter revenue is on track to meet projected revenue (after costs) of \$2M pa.

15 Exceeding projections is the uptake of the pay parking exemption (hereon referred to as an ePermit). Table 1 below details the uptake of the ePermit (by permit type) and vehicles registered with the scheme as at 26 February 2016.

20 Given that account holders can have a 25% free loading for 2 or more permits purchased a simple calculation can not be made on revenue. However it can be confirmed the total value of new ePermits by 21 March 2016 was \$341,979, which includes those upgrading from the old coupon to the new scheme and explains the odd number and unrounded number.

25 Table 1: permits and vehicles registered as at 26 February 2016

Type	Permits	Plates
Residents	6,903	6,903
Workers	178	178
Business accounts	56	126
Pensioners	3,027	3,005
Trade/commercial accounts	52	108
Totals	10,216	10,320

30 As per the proposed criterion, a more detailed analysis of permits will be provided as part of the 6-month review, which will also include effort to understand postcode and locality breakdown, plus the frequency permits are being used. Doing so will help understand the value of the permit and allow comparison of the parking occupancy of permit holders versus those that pay the meter, which the parking study indicated could be as low as 30% being locals at peak periods and as high as 70% locals in non-peak.

35 Such analysis will also help understand the potential take-up of the swipe card which Council has resolved to provide at a one-off cost of \$27.50. It is anticipated such a card will be purchased mainly by those that enter their plate at the meter frequently, if not daily, as it will contain the details of a single licence plate only and will remove the need to manually enter those same details at the meter on the proviso the end-user instead registers the vehicle licence plate each time they park by using the swipe card in a similar manner of making a contactless credit card payment.

45 More immediately however it is proposed that to gauge the potential uptake of the swipe card it be included as part of the public submission period recommended for April/May which is aimed to further help the 6-month review.

Such a submission period, with specific questions such as those at Attachment 1, is proposed to be undertaken via a web-based survey to allow stakeholder and community feedback. In addition

5 to providing an ability to gain quantitative data for typically qualitative (or subjective) matters, such a survey will also help provide a formal channel for feedback (now and in the future) and assist with improving and reviewing Council’s educational and information material, including at the meter, FAQs, plus understand the improvements to be made to Council’s and the permit page websites.

10 Undertaking such a survey should also help highlight where extra customer service attention is required, including further staff training and their understanding of and on the scheme including its administrative systems so as to ensure consistency and accuracy ensues for both the administration of, and communications about, the scheme is being provided.

15 And as noted, there is benefit that this survey always be available in some form to ensure consistency with future reviews and allow a formal process for ongoing feedback. More specifically, undertaking such a survey as shown at Attachment 1 as part of the 6-month review will help further explore the questions within the Byron Chamber of Commerce (ex-BU) February 2016 conducted survey which resulted in 98 responses (n=98). The survey is available online at <https://www.surveymonkey.com/r/CQ635SR> and Table 2 lists the questions and a summary of the responses to that survey as provided to Council by the Chamber.

20 Table 2: questions and summary of responses to BBCoC pay parking survey

Question	Summary of responses
What is the name of your business?	98 respondents
At what email address would you like to be contacted?	98 respondents
Has paid parking improved being able to find a car park during the peak Christmas holiday period?	48.98% said Yes; 25.7% said No 9.18% said Same, 13.27% said Other or provided comments
What was customer feedback on paid parking during the peak holiday period?	7.14% stated feedback was Positive; 55.10% stated it was negative; 21.43% said it was 'mixed'; 16.33% said there was 'none'
Has paid parking changed your customers' shopping habits for the better or worse?	6.12% said it was 'better'; 56.12% stated it was 'worse'; 37.76% said it was the 'same'
As a local, has paid parking changed your shopping habits for accessing the CBD?	36% said no; 37% said yes and using 'outer' regions more; 26.8% said other or provided comment
Has paid parking had a financial impact on your business?	Of the 88 responses to this question, near 54% said turnover was the same or slight increase
Has your customer patronage been impacted by paid parking?	50% stated it was the same or busier, while 30% stated it was less busy and 20% found it very quiet
Do you have any other business feedback on the implementation of paid parking for Council?	All 98 respondents provided a comment in regard to this question as discussed below

25 As shown in Table 2 above, while the CoC survey drew a mixed response on the impact pay parking has had on trade, it did highlight three clear concerns in response to Q9 . The first has since been resolved however, that being credit card payments be available at the meter.

30 The second trend was that time limits in 1P (1-hour) and 2P (2-hour) locations are seen by some respondents as to short of duration, despite the fact such time limits did not change and did exist prior to pay parking, and have done so for many years, e.g. 1P in Jonson Street and Lawson Street and 2P in Fletcher Street. If anything, this appears to suggest that the interaction with the meter each time a vehicle is parked (as required by Council) is reinforcing the time limit and therefore making people more acutely aware of the parking duration they have. Such an assumption however can be tested against infringement and Licence Plate Recognition (LPR) data during the

review.

5 However if it is found to be true that interacting with the meters has changed behaviour, i.e. greater compliance with the sign-posted time limit is occurring, then it would appear to diminish the argument of a third trend notable within the chamber's survey results which was the request by several respondents that permit holders need not interact with the meter at all when they park.

10 While this change could be made by Council, as it is Council policy and not a regulatory requirement of NSW Road Rules or a Meter Parking Registration scheme, it is not recommended, at this time at least.

15 The entry of the licence plate at the meter provides reliable and valuable data in regard to permit and parking use/turnover; and if such a change to Council's policy is to considered it is recommended it be done when the 6-month review is completed and on the proviso a licence plate recognition (LPR) system is equipped in Council's patrol car which is fully integrated with the meters, which was always intended to occur after the new meter scheme was fully operational.

20 **Criterion for review of pay parking**

The following is proposed as the criteria for the 6-month pay parking review which will be reported to Council June 2016.

- 25 1. e-PERMITS (i.e. pay parking exemptions): total; type; postcode and registration analysis; use/occupancy; method of obtainment and proof; plus provide audit at 6-month review to determine fraudulent use/ineligibility, and where applicable, consider restricting the postcode options on the online application form to Byron shire only.
- 30 2. METER: turnover/use; permit (free) Vs paid use; merchant fees; use/demand of printing tickets; faults and complaints; revenue - cash Vs card; additional costs beyond contract; value of comprehensive maintenance agreement (as per tender) versus actual hours/duties, e.g. calls to fault line, number of automated faults, response times, time to fix a fault, etc.
- 35 3. INFRINGEMENTS: review pre and post pay parking infringement type, number issued and revenue; types of meter infringements; Road Rules and related implications (if any).
- 40 4. TIME LIMITS: review adequacy and mix; survey/review areas that are subject of requests received; consider changes in holistic fashion not via ad-hoc changes with report to Local Traffic Committee/Council.
- 45 5. PARKING CHANGES: for example dedicated motorcycle spots, use/demand/options for Butler Street Reserve and other all day areas, such as change from 4P to all day at Lawson Street south and north car parks.
- 50 6. REVENUE AND COSTS: compare actual versus forecast and use of car parks and revenue derived pre and post new scheme; consider funds allocated to crown versus council general funds; also consider monthly lease fee, advertising, signage and staffing/administration.
- 55 7. RMS GUIDELINES: as per the Pay Parking guidelines outlined below (see Policy Implications).

As noted, while this criterion is proposed for the 6-month review, no changes to the pay parking scheme however is proposed by this report and that none be implemented until such a review is reported.

Financial Implications

5 Nil at this time. The review will be conducted by staff. Funding remains available in budget which was set aside for implementing pay parking. This will be used if extra costs are incurred, but expected to be minimal and at most include newspaper advertising.

Statutory and Policy Compliance Implications

10 NSW Road Rules and regulation as related to a Meter Registration Parking Scheme is relevant and needs to be considered in any changes that may arise from the forthcoming review.

15 As for the review itself, it is recommended it also incorporates the criteria of the RMS Pay Parking guidelines including submission of the completed review to the RMS after Council has received it in June 2016.

The current version of the RMS Pay Parking Guideline is available online:
<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/payparkingv4.pdf>

20 *Section 17 – Effectiveness Audit* is most relevant to Council’s review. On page 2, the guidelines state the purpose of such an audit is to:

25 *...ensure the appropriateness and effectiveness of pay parking schemes implemented by parking authorities and also assist in the planning and implementation of future schemes.*

More specifically Section 17 states the “*benefits of monitoring and conducting*” an audit, which includes:

- 30 • determine if the objectives of the scheme are achieved, including RMS own objectives as outlined at Section 3 of their guidelines, the most relevant believed to be:
 - 35 ○ *safety and traffic efficiency gains in the context of travel demand management;*
 - *provide equitable access to parking spaces; and*
 - *where demand exceeds supply, ration parking areas to allow short and medium parking during business hours, ;*
- *ensure that a pay parking scheme remains the appropriate parking control solution;*
- 40 • *Provide a valuable supplement to the studies carried out before establishing the scheme;*
- *Identify any unexpected or unacceptable impacts that warrant modification/s;*
- *Provide objective information to the road users on the effectiveness of the scheme.*
- 45 • *Provide information on the performance of the scheme or individual elements of the scheme which may be useful to the parking authority and RMS for future schemes.*
- *Provide information for RMS to assist with any future updating of the policies and guidelines in this document or amendments...*

50 Section 17 of the RMS guideline also states that:

55 *...the term ‘audit’ is intended to be used as a formal examination of the scheme and its performance rather than an informal system of spot checks and assessment. A typical audit, besides being a formal examination of the scheme and its performance, would also include a questionnaire with feedback*

from the road users and all the relevant stakeholders (ie. the NSW Police Force, Local Government and Shires Association, councils and declared organisations).

5 Initially, while a self-audit is proposed, RMS reserves the right to undertake an independent audit of any scheme.

The 'measure of effectiveness' of a scheme is defined as the means of quantitatively or qualitatively determining the success as well as the appropriateness of the scheme.

10 To this end the RMS guideline provides the following "check list" which:

...should be used as a minimum when conducting the effectiveness audit:

- 15
- Appropriateness of the scheme in meeting the objectives listed in Section 3 of these guidelines.
 - Appropriateness of the location/s.
 - Utilisation levels / occupancy of parking spaces.
 - Level of parking turn over.
 - Level of illegal parking (eg. over stay, not paying the parking fee, meter feeding etc.).
 - Improvements to traffic flows, traffic speeds and traffic safety.

20

 - Level of enforcement and number of penalty notices issued.
 - Improvement to the environment.
 - A questionnaire survey of road users and stakeholders.

25 Lastly in regard to the audit, the RMS guideline also states that within one month of conducting the audit, the completed audit report is to be submitted to the RMS.

30 And while not specifically part of the RMS audit requirements, it is recommended the Council review does also consider the criteria as stated at Appendix A of the RMS guideline for the "Evaluation of new means of, and schemes for, payment of parking fees (pay parking devices or systems) in meter, ticket, phone and coupon parking schemes."

35 While such criteria (as follows) is used by RMS for evaluating new schemes, it is believed their consideration in the Council review will assist in any future audit the RMS may themselves undertake.

A.1 Meter parking

40 The following criteria will be used in the evaluation of parking meters and the means of, and schemes for, payment of parking fees in meter parking schemes:

- Ease of use and understanding of the operation of the machine by the motorists including clear and readable instructions on the machine in ambient lighting conditions.
- Acceptance of coins of various denominations.
- Ability to use other payment methods such as smart cards, credit cards, and mobile phones in addition to cash (notes or coins or both).

45

- Ease of enforcement.
- Administrative simplicity.
- Maintenance aspects.
- Environmental friendliness.

50

- Vandal and fraud proof aspects.
- How quality is to be assured over a long period of time.

Report No. 13.10 **Bridge replacement priorities**
Directorate: Infrastructure Services
Report Author: Phil Warner, Manager Assets and Major Projects
File No: I2016/161
5 **Theme:** Community Infrastructure
 Local Roads and Drainage

Summary:

10 The purpose of this report is to address Res 15-682 pertaining to a needs analysis of road bridges requiring replacement and refurbishments in order to determine priorities. This report is to advise Council on:

- 15 a) the condition status of bridges;
b) present a methodology for the assessment and prioritization of bridge works and in particularly bridge replacements; and
c) provide an update on the purchase of surplus steel Australian Defence Force (ADF) bridges.

RECOMMENDATION:

25 **That detailed investigation commence for the deployment of the recently purchased surplus 25m and 35m Australian Defence Force (ADF) bridges for the replacement of James and O'Meara's Bridges respectively.**

Report

The purpose of this report is to address Res 15-682 pertaining to a needs analysis of road bridges requiring replacement and refurbishments in order to determine priorities.

5

Separately Council considered a report at 25 February 2015 meeting regarding the potential purchase of surplus Australian Defence Force steel bridges. This report also makes reference to the associated resolution (Res 16-077).

10 Overview of status

Council has 31 road bridges and the following summary table shows the type and average condition of those:

Construction Type	Number of Bridges	Average Condition
Timber	9	3.7 - Fair to Poor
Concrete	18	2.7 - Good to Fair
Steel	1	4 - Poor
Other - mixed	3	3.3 – Fair to Poor
All	31	3.1 - Fair

15

The timber bridges were generally built many years before the others and thus it can be expected that they are nearest to the end of service life.

20

Some 11 road bridges are in Poor Condition of which 6 road bridges have load limits , and at least 3 of these (Booyong Bridge, O'Mearas Bridge and Parkers Bridge are at risk of being closed within say 5 years unless their refurbishment or replacement is funded.

25

Some 15 other bridges are at Condition 3 and progressing towards becoming problematic in the future.

30

Many of the timber bridges are at the end of their service life and load limits are affecting the level of service available to the community. Many of these are not viable to invest in major repairs or refurbishment, but require replacement with new bridges, either steel, concrete or fibreglass component bridges.

35

The Timber Bridge Management Report from the IPWEA (NSW) Roads and Transport Directorate (May 2015) notes that bridges in poor condition have a very high risk profile and represent a clear backlog that needs to be managed. Since 2005, bridges across NSW in the medium risk zone have been progressing into the high risk zone at about the same rate that bridges have been renewed with the additional funding programs from Councils and the NSW Government.

Status of individual bridges

40

The broad status of individual bridge condition (in order of the bridge number assigned by Council) is as follows:

Road Bridge Name	Condition – Overall Status	Type of Structure	Last Inspection and Type	2016 Inspection Proposed and Type
Byron Creek	4 - Poor	Doolan (concrete) deck/timber girders and piles	26/10/15 – Level 2 -bored	Level 2

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13.10

Road Bridge Name	Condition – Overall Status	Type of Structure	Last Inspection and Type	2016 Inspection Proposed and Type
J C Snow	3 - Fair	Concrete	4/3/15 – Level 2	Level 1
O'Meara's	4 - Poor	Timber	23/7/15 – Level 2 - bored	Level 2
Parkers	4 - Poor	Timber	22/10/15 – Level 2 -bored	Level 2
Scarrabelottis	4 - Poor	Steel	June 2015 – Level 3 -Phase 1 - High Level	Level 3 - Phase 2 – High Level
Booyong	4 - Poor	Timber	20/10/15 – Level 2 -bored	Level 2
South Arm	4 - Poor	Timber	26/10/15 – Level 2 -bored	Level 2
Belongil Creek	4 - Poor	Concrete	4/3/15 – Level 1	Level 2 – or later if repairs undertaken
Ureka Road	1 – As built	Concrete	4/3/15 – Level 2	Level 1
Keyes	3 - Fair	Concrete	4/3/15 – Level 2	Level 1
Donaghy's	3 - Fair	Concrete	4/3/15 – Level 1	Level 2
Upper Main Arm	3 - Fair	Timber	10/10/15 – Level 2 -bored	Level 2
Palmwoods	3 - Fair	Concrete	22/2/15 – Level 2	Level 1
Settlement	3 - Fair	Concrete	26/2/15 – Level 1	Level 2
Sherries	3 - Fair	Concrete	26/2/15 – Level 1	Level 2
Williams	3 - Fair	Concrete	26/2/15 – Level 1	Level 2
Azalea Street	2 - Good	Concrete	27/2/15 – Level 2	Level 1
Chinbible Creek	4 - Poor	Concrete	27/2/15 – Level 2	Level 1
Kings Creek	3 - Fair	Concrete	27/02/15 – Level 1	Level 2
North Ocean Shores	3 - Fair	Concrete	4/03/15 – Level 1	Level 2
Orana	3 - Fair	Concrete	2/03/15 – Level 1	Level 2
Possum Creek	1 – As built	Concrete	4/3/15 – Level 2	Level 1
Willows Road	1 – As built	Concrete	26/2/15 – Level 1	Level 2
Sherrington	3 - Fair	Timber	26/2/15 – Level 1	Level 2 (bored)
Pocket Road	3 - Fair	Concrete	26/2/15 – Level 1	Level 2
Wilson Creek (Pioneer)	3 - Fair	Concrete	2/3/15 – Level 1	Level 2
English	3 - Fair	Timber	4/3/15 – Level 1	Level 2 (bored)
Thompsons	4 - Poor	Timber	19/10/15 – Level 2 -bored	Level 2
Palm Tree Creek	4 - Poor	Steel/Timber	3/3/15 – Level 2	Level 1
Coral Avenue	2 - Good	Doolan (concrete) deck/timber girders and piles	27/2/15 – Level 2	Level 1
Saltwater Creek	1 – As built	Steel/Timber	27/2/15 – Level 2	Level 1
James	4 - Poor	Timber	21/10/15 – Level 2 -bored	Level 2

Other road bridges in the Shire which are managed by others include:

- 5
1. Federation Bridge – RMS
 2. St Helena – SRA – to be replaced
 3. McCauley's Lane – SRA – to be replaced

There are 12 footbridges in Byron Shire; the following three have been recently inspected:

Foot Bridge Name	Condition – Overall Status	Type of Structure	Last Inspection and Type	2016 Inspection Proposed and Type
Brunswick	2 - Good	Timber	3/3/15 – Level 2	Level 2 (bored)
Helen Street	2 - Good	Steel/Timber	2/3/15 – Level 1	Level 2
Tallow Creek	4 - Poor	Timber	23/10/15 – Level 2 - bored	Level 2

10

Bridge replacement priorities

The following table presents information on five bridges that are in the most need of replacement.

Bridge Name	Bridge Age	Existing Length	Existing Lanes and Load Limit	Comment
James (Booyong Rd)	1940	22m	1 lane -15 Tonne	Temporary bridge closure possible with alternative route available. Potentially critical for heavy plant and equipment supply to Scarrabelottis Bridge
O'Meara's (Binna Burra Rd)	1930	33.1m	1 lane – 5 Tonne	Temporary bridge closure possible with alternative route available.
Scarrabelottis (Scarrabelottis Rd)	1972	33.6m	1 lane – 10 Tonne	Replacement of second-hand Bailey bridge. No alternative route presents renewal challenges.
Parkers (Friday Hut Rd)	1936	28.2m	1 lane – 3 Tonne	Temporary bridge closure possible with alternative route available.
Booyong (Booyong Rd)	1961	36	1 lane – 3 Tonne	Temporary bridge closure possible with alternative route available.

15 The following matrix is a proposed basis for the assessment and prioritization of bridge works and in particularly bridge replacements.

Factor	Measure as %	Weighting	Score out of 100
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BYRON SHIRE COUNCIL

Factor	Measure as %	Weighting	Score out of 100
Funded – Section 94 or External	% of project cost funded	10%	
Road Function in Road - Network	Bridge AADT*/ Bridge Group Highest AADT*	20%	
Alternative Access Available	Yes = zero No = 100%	30%	
Bridge Load Limit	42 Tonne = Normal LL = Load Limit Measure =(42 – LL)/42	20%	
Alternate Route Travel Time times affected vehicles and school bus passengers	(Extra travel time x ((AADT*x % Heavy Trucks)+ Number of School Bus Passengers Affected))/Bridge Group Highest Tally	20%	
Total = 100%			Maximum 100

*AADT – Average Annual Daily Traffic – how many vehicles per day

This draft matrix has been applied to the five bridges requiring replacement as follows:

BRIDGE	TOTAL SCORE (Maximum = 100)
Booyong	25
James	25
O'Meara's	50
Parkers	56
Scarrabelottis	50

5

The potential weakness in the above assessment is that it only reflects the current status which could change. For example, if James Bridge were to be load limited to 5 Tonne the result would alter as follows:

BRIDGE	TOTAL SCORE (Maximum = 100)
Booyong	25
James	62
O'Meara's	50
Parkers	56
Scarrabelottis	50

10

Council has been successful in purchasing two modular surplus ADF steel bridges of 25m and 35 m lengths. It is possible further ADF steel bridges will be available in the future.

The current one lane bridges that Council may want to replace with surplus ADF are as follows:

Priority	Bridge Name	Existing Length	Ideal ADF Length	Alternative ADF Length	Comment
1	James	22m	25m	30	
2	O'Meara's	33.1m	35m	40	
3	Scarrabelottis	33.6m	35m	NA	
4	Parkers	28.2	30	25	
5	Booyong	36	40	35	

5 It is recommended that investigation and pre-construction effort for deployment of the two bridges be targeted to replace:

1. James Bridge – 25m modular steel bridge
2. O'Meara's Bridge – 35m modular steel bridge

10 The primary reasons for this recommendation are as follows:

Construction/ Launching

15 Both O'Meara's and James bridge sites have suitable river bank cross sections that enable a safer launch from rollers inside the span of the bridge, whereas the Scarrabelottis Bridge site is problematic because of the steepness of the launch bank.

35m ADF Bridge

- 20 a) The Scarrabelottis bridge replacement is complicated for a range of reasons including the constraint of moving plant, and material across the 10 Tonne Load limited bridge (the only access).
- 25 b) The Scarrabelottis Bridge replacement has the potential for a different bridge type – a Uni-Bridge – single lane, either adjacent to the existing bridge or on the existing foundations subject to further assessment.
- 30 c) Booyong Bridge has lower traffic volumes and viable alternative routes. It may prove feasible to be closed rather than to be replaced.

25m ADF Bridge

- 35 a) Parkers Bridge is longer than is ideal for deployment of the 25m ADF bridge.
- 40 b) James Bridge is the primary access for a larger precinct including school buses and the Pork Processing facility employing 85 persons. It is also the preferred access for the replacement of Scarrabelottis Bridge. Although recent bridge inspections did not require a further reduction of the load limit from the existing 15T (because of some emergency works undertaken), this is only a temporary state in the current rate of aging and deterioration. A future severe load limit on this bridge would be very problematic with substantial impacts on the community.

45 It will be essential that there is community consultation in the proposed bridge replacement projects because it is probable the existing bridges will need to be closed for an extended period.

Sources of funding

The majority of Council's bridges are part of the rural road network, as such there are very limited applicable sources of S94 funding. An exception is the renewal of Blindmouth Creek crossing which is progressing using available S94 funds.

- 5 The bridge program, and in particular bridge replacements, will need to be funded through a combination of prioritized Council funds and Federal/ State Government grants.

The current draft 2016/17 budget and the associated forward estimates include \$7.9 m for the bridge program.

10 In August 2015, Council applied to Round 2 of the National Bridge Replacement Program (which had \$100M to offer Councils on a 50/50 cost sharing basis) for the following three projects with a total cost of \$5.9M.

- 15
1. Blindmouth Creek Crossing at Main Arm Road, Main Arm
 2. O'Meara's Bridge
 3. Scarrabelottis Bridge

20 None of these applications were successful against some 250 applications seeking \$330M of which 141 projects have been funded.

25 Council has since had informal feedback from the Department of Infrastructure and Regional Development which may assist in any future applications under Round 3 and beyond. It was suggested that Blindmouth Creek Crossing may be successful in the next round, O'Meara's Bridge is probably unlikely to be successful and that Scarrabelottis Bridge does not serve a large enough community to be successful.

30 In December 2015, Council applied to Round 2 of the NSW Fixing Country Roads program. The expression of interest was for \$1.95m to refurbish James, Parkers and Booyong bridges. Council has been advised it was not successful to move to the formal application stage. The focus of this program is to improve road freight productivity and the program is administered by the freight unit of Transport for NSW.

35 There is a further NSW program called Bridges for the Bush. The challenge of achieving grant funding for bridges on comparatively minor country roads is highlighted by the stated purpose of this program. *The NSW road network is critical to the movement of freight in Australia. Half the nation's road freight and three quarters of all interstate road freight journeys are on NSW roads. With the road freight task predicted to nearly double by 2030, significant investment in the NSW road network is required to meet the demand for increased access of larger, safer and heavier freight vehicles. Addressing the state's deficient rural bridges is a key priority for NSW investment as the bridges currently present the most critical restrictions to freight access. The Bridges for the Bush initiative will enhance freight productivity in country NSW. It is an investment in critical infrastructure to remove a number of significant freight pinch points or bottlenecks on the state road network and to improve the safety and reliability of some old bridge structures.*

45 **Conclusions**

50 Council has been able to purchase two surplus ADF bridges and it is possible further ADF steel bridges will be available in the future.

It is recommended that detailed investigation be completed for use of the 35m bridge to replace O'Meara's Bridge and use of the 25m bridge to replace James Bridge.

55 The replacement of Scarrabelottis Bridge presents a number of technical challenges. It is possible that further detailed investigation will reveal that it may not be viable to install a larger ADF bridge

on the alignment of the current bridge. A smaller one lane bridge built adjacent to the existing bridge maybe the best option.

5 Opportunities for grant funding must continue to be explored. Successful grant applications will variously accelerate the timing of bridge replacements and also allow funds to be directed to other priority works.

10 The bridge program going forward will need to be funded annually to complete ongoing risk management actions, inspections, maintenance and the renewal of poor condition elements/ components of bridges. This last area of action is critical in minimizing the need for load limits and also reducing the overall condition of a bridge deteriorating to a point where complete replacement is the only cost effective option. A good example of this approach in action is the recent work on Byron Creek Bridge at Bangalow.

15 The 2015 Byron Creek Bridge inspection and load limit assessment identified one very weak pile that without strengthening would bring the load limit down to 15 Tonne. Council strengthened the pile in-situ and the general access limit of 42.5 Tonne remains in place. The following photographs show the installed pile support.



20

Consideration needs to be given to the benefit and cost of replacing some bridges on minor rural roads where clear and viable alternative routes exist. The high capital cost and ongoing maintenance costs may not be justified in terms of use and a sustainable level of service. A potential example is Booyong Bridge, pictured below.

25



Booyong Bridge (Wilsons River)

5 Financial Implications

Financial implications have been addressed in the above section on sources of funding.

- 10 The proposed detailed investigations and detailed designs for the replacement of James and O'Meara's bridges will be costed and any necessary budget adjustments reported to the March quarterly review.

Statutory and Policy Compliance Implications

- 15 Council has an adopted Asset Management Policy. In cases where the deterioration of bridges indicates that the capacity to service the general access limit of 42.5 Tonne, appropriate risk management measures are deployed until the replacement/ renewal of the bridge or bridge components is possible. These risk management measures include load limits, vehicle limits, speed limits, vehicle monitoring, and signage.

Report No. 13.11 **Refund of Trade Waste Non Compliant Charges**
Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2016/232
5 **Theme:** Community Infrastructure
 Sewerage Services

10 **Summary:**

A partial refund of non-compliance charges paid by the owners of Bay Leaf and Ginger Pig under Councils' revenue policy is considered appropriate. The partial refund is calculated as \$13,741.97.

15 Trade waste non-compliance charges were levied in this case due to ongoing delays in achieving compliance with Council requests in relation to liquid trade waste issues at the above premises.

In this case there were mitigating circumstances due to negotiations between the tenant and the property owner.

20 As a consequence of the way liquid trade waste penalty charges accrue, it is considered the penalty realised in this case is disproportionate to Councils' costs in the matter.

RECOMMENDATION:

25 **That a refund of \$13,741.97 of Trade Waste charges be made to Ginger Pig premises assessment.**

Report

Following a request from the owner of premises Bay Leaf and Ginger Pig it has been agreed to review the trade waste charges that have been applied in this case.

5 Directives from the NSW Department of Industries - Water, require that Council adopt trade waste policies and procedures in accordance with the NSW Trade Waste Regulations 2009. The trade waste penalty charges adopted in Councils' revenue policy reflect these state government requirements.

10 Trade waste non-compliance charges are not often used but have generally proven to be an effective means of achieving compliance in problematic cases. These charges accrue to the property owner under the sewer rating system and apply based on a premises water usage for an entire three month billing period. The penalty that accrued in this case was exacerbated by delays that arose with negotiations between the owner and tenant. These delays in complying with Council requirements resulted in accrual of penalty charges over three billing periods.

15 Councils' costs have been assessed based on the trade waste officers supervision time and standard trade waste charges that would normally have accrued during the period.

20 It is considered reasonable to refund that part of the penalty fees that are in excess of Councils costs in the matter.

Financial Implications

25 Total Penalty charges \$15,671.92

Reapplying the trade waste charges without the penalty amounts to \$585.95 for the three billing periods.

30 This then suggests a reversal of \$15,085.97 (\$15,671.92-\$585.95).

The amount of the reversal is further reduced by Council's costs of \$1,344.00.

35 This therefore suggests a total write off of \$13,741.97.

A report to Council is required as the GM only has delegation to consider debts up to \$5,000.

40 Recommendation: That a refund of \$13,741.97 be approved by Council.

A credit of this magnitude has no material financial impact on the sewer budget.

Statutory and Policy Compliance Implications

45 Nil.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 1 March 2016

5 **Directorate:** Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
Sarah Ford, Manager Community Development
File No: I2016/217
Theme: Society and Culture
10 Community Development

Summary:

15 The Arakwal Memorandum of Understanding Advisory Committee met on 1 March to discuss the Arakwal Identified Area in the Byron Bay Cemetery, the Ti Tree Lake Plan of Management progress, Indigenous Projects Grant programs, community events and planning matters.

RECOMMENDATION:

- 20
1. That Council note the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 1 March 2016.
 2. That Council adopt the following Committee and Management Recommendation:

Report No. 5.1 Arakwal Identified Area in the Byron Bay Cemetery
File No: I2016/42

Committee Recommendation 5.1.1

That the progress of the investigations into the establishment of an identified area for Arakwal People in the Byron Bay Cemetery and request for the provision of further details from the Arakwal Corporation regarding scope and size be noted.

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

Report No. 5.2 Ti Tree Lake PoM Update
File No: I2016/44

Committee Recommendation 5.2.1

1. That Council note that the Arakwal MoU Advisory Committee:
 - a) Considered the draft signage proposed to be installed on Council land in the Ti Tree Lake Aboriginal Place area;
 - b) Approved the locations for this signage to be installed in the Ti Tree Lake Aboriginal Place area.
2. That the progress in the matter of Taylors Lake Road restricted access be noted.
3. That the Council, as a stakeholder, support the National Parks and Wildlife Service Ti Tree Lake Plan of Management.

4. That Council adopt the following Committee and Management Recommendation:

Report No. 5.3 Indigenous Projects Grant Applications Updates

File No: I2016/45

Committee Recommendation 5.3.1

- 1. That the successful grant application for the “Singing Up Country” for Aboriginal language and arts projects in the Byron Shire be noted.**
- 2. That Council note that staff have reapplied to NSW Department of Heritage for funding to undertake an Aboriginal Cultural Heritage Planning Study for the Byron Shire.**

Attachments:

5

- 1 Minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting 1 March Minutes, I2016/150
- 2 Ti Tree Lake Preliminary Plan of Management, E2015/26736

10

Report

The attachment to this report provides the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting of 1 March 2016 for determination by Council.

5 The following additional information is provided in support of Committee Recommendation 5.2.1 in relation to the report to the Committee on the Ti Tree Lake Plan of Management.

The Arakwal MoU states:

10 *1.2.2 Ti Tree Lake (Taylors Lake)*
This area is one of the most significant sites to the Arakwal people. It is their objective to have this area protected as an Aboriginal site. Arakwal would like to protect this area from all forms of tourism and development. Arakwal have requested that, as a matter of priority, any developments
15 *regarding zoning, consultation with other community groups, proposed developments, tourism operators and Council, consider the cultural significance of this area. Further, that Council provide transparent information to Arakwal on any matters relating to the Ti Tree Lake areas, especially in regard to proposed developments on or around the area.*

20 Ti Tree Lake is south of Byron Bay. Oral histories explain that both the present Ti Tree Lake and another lake to the north once formed one large lake. Today, a sand barrier has formed between them where sand mining occurred.

25 The buffer around the lake is home to wetlands, littoral rainforest and other coastal lands and habitats. Land to the north of Ti Tree (Taylor's) Lake was also declared an Aboriginal Area in June 2010 (NPWS). Ti Tree (Taylor's) Lake Aboriginal Place encompasses the lake, as well as a buffer of surrounding land owned by the Jali Aboriginal Land Council, the National Parks and Wildlife Service and Byron Shire Council.

30 In March 2015 National Parks and Wildlife Service's (NPWS) Area Manager, Sue Walker contacted Byron Shire Council regarding a Plan of Management for the Ti Tree(Taylors) Lake Aboriginal Place. On 27 April Council staff met with Dianne Mackey from NPWS and Delta Kay (NPWS/ Bundjalung of Byron Bay, Arakwal People) to discuss a potential partnership approach in the creation and implementation of a Plan of Management for the Aboriginal Place, including the buffer lands around the lake. The Jali Aboriginal Land Council has also been approached as an important partner in the process. At this meeting a draft Preliminary Draft Management Plan was presented for discussion (Attachment 1).

35 This report recommends that Council as a key stakeholder support the adoption of the Ti Tree Lake Plan of Management. On basis that Council supports the Plan of Management staff will write to National Parks and Wildlife Service advising of this support.

40 Council's participation in a comprehensive and strategic Plan of Management (PoM) to protect the cultural and natural values of the lake fits within the scope and intention of the Arakwal Memorandum of Understanding (MoU).

45 Staff have worked to address the actions outlined under Council's responsibilities in the draft Ti Tree PoM. The Arakwal MoU Advisory Committee has discussed the implementation of the Ti Tree Lake PoM at its May 2015, November 2015 and March 2016 meetings. The committee recommendation from the most recent meeting is as detailed below:

Committee Recommendation 5.2.1

50 **1. That the Arakwal MoU Advisory Committee:**

- a) **Consider the draft signage attached to this report to be installed on Council land in the Ti Tree Lake Aboriginal Place area;**
- b) **Approve the locations for this signage to be installed in the Ti Tree Lake Aboriginal Place area.**

5

2. That the Arakwal MoU Advisory Committee note the progress in the matter of Taylors Lake Road restricted access.

10

3. That the Arakwal MoU Advisory Committee recommend that Council, as a stakeholder, support the NPWS Ti Tree Lake Plan of Management.

Part 3 of the above recommendation has been amended in the recommendations made to this report to reflect, should Council adopt the recommendation, that Council support for the NPWS Ti Tree Lake Plan of Management.

15

Management Comments

20

The committee recommendations are supported by management and are provided in the attachment to this report. The committee recommendations made in this report have been amended to read as recommendations from the Committee for adoption by Council.

Financial Implications

25

As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 1 March 2016.

Statutory and Policy Compliance Implications

30

As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 1 March 2016.

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 14.2 Report of the Heritage Advisory Committee Meeting held on 16 February 2016

5 **Directorate:** Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
File No: I2016/219
Theme: Ecology
10 Development and Approvals

Summary:

15 This report provides the minutes of the Heritage Advisory Committee Meeting of 16 February 2016 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Heritage Advisory Committee Meeting held on 16 February 2016.

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

Report No. 5.1 Heritage Strategy
File No: I2015/1590

Committee Recommendation 5.1.1

That the Committee note the comments/notes discussed at the meeting held 16 February 2016, and the discussions on the development of the Heritage Strategy for Byron Shire inclusive of the 4 points as follows:

Identify

- **Missing Potential Items – Further Assessment**
- **Aboriginal Study**
- **Natural Heritage**
- **Pioneers Heritage – Risk of Loss**
- **Bangalow Conservation**
- **Social Heritage**
- **Vulnerable non-listed in each area**
- **Trees and Stumps**
- **Orchards Arboretums**
- **Additional Listings**
- **Green Frog – (Steam Locomotive)**

Protect

- **National and State Laws**
- **Local Level**
- **Byron LEP 2014**
- **DCP Provisions**
- **Notification**
- **Transparency**
- **Heritage Item v Conservation Area**

- **Concern about Irreversible Loss**
- **Demolition by Neglect**
- **Community vigilance**
- **State Level Heritage Listings**

Enhance

- **Grants – Local Fund**
- **Correct Use of Materials Colours**
- **Adaptive Re-Use**
- **Heritage Rebate Valuations**
- **Sympathetic Extension – Investment and Retention of Item**
- **Restoration/Reconstruction**
- **Secondary Dwellings , Good neighbour development– Complementary Designs – DCP Controls**
- **Dual Occupancy Infill**
- **Curtilage**

Promote

- **Awareness of Consent - Regulations**
- **Information Kits**
- **Frequently asked Questions**
- **Press Release**
- **Bangalow Colour Schedules**
- **Researched with Options**
- **Education**
- **Masterplans**
- **Interpretation**
- **Murals**
- **Location relevance**
- **Ongoing maintenance**
- **Content**
- **Apps – Trails Information**
- **Walk of Fame – The people Social Significance – Each Community**

Committee Recommendation 5.1.2

That all Committee members are welcome to send in suggestions or comments for the draft Heritage Strategy content to Council, and these comments will be combined and forwarded to the Heritage Advisor.

Committee Recommendation 5.1.3

That the Heritage Advisor bring back a draft Heritage Strategy to the next Committee meeting scheduled for the 12 April, 2016 for further discussion.

Committee Recommendation 5.1.4

That June Grant be appointed as the alternate Community Representative for Leonard Bates.

Committee Recommendation 5.1.5

That the “WW1 Memorial Coastal Cypress Pines, at the Terrace Crown Reserve at Brunswick Heads”, be assessed for heritage significance and added as a local heritage item to the LEP.

Attachments:

5

- 1 Minutes Heritage Advisory Committee held 16 February, 2016, I2016/56

Report

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

5

The Agenda for the meeting can be found via the following link:

http://byron.infocouncil.biz/Open/2016/02/HER_16022016_AGN_538_AT.PDF

10 **Committee Recommendation**

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

15 **Financial Implications**

As per the Reports listed within the Heritage Advisory Committee Meeting of 16 February 2016.

Statutory and Policy Compliance Implications

20

As per the Reports listed within the Heritage Advisory Committee Meeting of 16 February 2016.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.3 **Report of the Community Infrastructure Advisory Committee Meeting held on 3 March 2016**

5 **Directorate:** Infrastructure Services
Report Author: Tony Nash, Manager Works
 Phil Warner, Manager Assets and Major Projects
File No: I2016/214
Theme: Community Infrastructure
10 Asset Management

Summary:

15 The attachment to this report provides the minutes of the Community Infrastructure Advisory Committee Meeting of 3 March 2016 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Community Infrastructure Advisory Committee Meeting held on 3 March 2016.**

2. **That Council adopt the following Committee Recommendation:**

Report No. 5.1 **Status report on 2015/16 Local Roads Capital Works Program**
File No: I2015/1503

Committee Recommendation 5.1.1

20 **That Council notes the actions taken to implement the 2015/16 Local Roads Capital Works Program.**

3. **That Council adopt the following Committee Recommendation:**

Report No. 5.2 **Capital Renewal and Maintenance of Rural Drainage Assets**
File No: I2016/40

Committee Recommendation 5.2.1

That Council use the information in the report about ‘Capital Renewal and Maintenance of Rural Drainage Assets’ to inform future budget planning and the provision of additional funds for rural drainage assets in conjunction with funding for other asset classes.

4. **That Council adopt the following Committee Recommendation:**

Report No. 5.3 **Level of Service - Sealed Road Network**
File No: I2016/108

Committee Recommendation 5.3.1

That Council undertake community consultation on Levels of Service for the road network, in association with the Community Satisfaction Survey due in June 2016.

5. That Council adopt the following Committee Recommendation:

Report No. 5.4 Update Report on Restoration of 2012 & 2013 Landslips.

File No: I2016/115

Committee Recommendation 5.4.1

That Council notes that 11 of the landslips from the 2012 and 2013 Declared Natural Disasters are complete and the restoration of the one (1) remaining landslip at Upper Wilsons Creek (end of road) will be complete in March 2016.

6. That Council adopt the following Committee Recommendations:

Report No. 5.5 Update report about Federal Drive, Goonengerry

File No: I2016/118

Committee Recommendation 5.5.1

That Council note:

- 1. The status of the planning and preconstruction activities for the Federal Drive, Goonengerry Road reconstruction project.**
- 2. The expected start date for the road works as mid 2016.**

7. That Council adopt the following Committee Recommendation:

Report No. 5.6 Quality Control in Road Construction Works and Pothole Filling

File No: I2016/119

Committee Recommendation 5.6.1

Committee Recommendation:

That Council note the information contained in the report about 'Quality Control in Road Construction Works and Pothole Filling'.

5

Attachments:

- 1 Minutes Community Infrastructure Advisory Committee Meeting 3 March 2016, I2016/199

10

Report

The attachment to this report provides the minutes of the Community Infrastructure Advisory Committee Meeting of 3 March 2016 for determination by Council.

- 5 The agenda may be viewed at <http://www.byron.nsw.gov.au/meetings>

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

10 **Financial Implications**

As per the Reports listed within the Community Infrastructure Advisory Committee Meeting of 3 March 2016.

15 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Community Infrastructure Advisory Committee Meeting of 3 March 2016.

Report No. 14.4 Report of the Transport Advisory Committee Meeting held on 10 March 2016

Directorate: Infrastructure Services
Report Author: Simon Bennett, Traffic and Transport Planner
File No: I2016/227
Theme: Community Infrastructure
Local Roads and Drainage

5

Summary:

10

The attachment to this report provides the minutes of the Transport Advisory Committee Meeting of 10 March 2016 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Transport Advisory Committee Meeting held on 10 March 2016.

15

2. That Council adopt the following Committee Recommendation:

Report No. 5.1 Outstanding Resolutions - Transport Advisory Committee
File No: I2016/193

Committee Recommendation 5.1.1

1. That Council note that the Transport Advisory Committee regard the following as completed:

- a) Resolution 14-409, on the proviso it informs the development of Council's bike plan which is to be drafted and subject of consultation during 2016 and to be concluded during the 2016/17 financial year
- b) Resolution 14-565, on the basis that Part 2 is continued and superseded as follows:
 - (i) Broken Head Road, Suffolk Park (bike plan project no. 73, between the Beech Drive roundabouts) is given priority for design, costing, consultation and funding, with options to be reported back to the Committee at the next meeting for the development of a continuous cycleway link between Suffolk Park and Byron Bay which follows the road corridor
 - (ii) Bangalow Road (from Browning Street to Old Bangalow Road) and Broken Head Road (from Old Bangalow Road to Beech Drive) continues to be pursued
 - (iii) two Bangalow projects, being Rafton's Road for an off-road path (bike plan project no. 43) and a path adjacent to Lismore Road, from Rifle Range Road to town (project no. 40), are developed with a project scope to assist determine their priority, cost and community acceptance, plus assist with the Bangalow master plan (place making) process to be undertaken in 2016

(iv) the bike plan review includes a revision of those projects within Council's s94 contributions plan

(v) those projects to be undertaken as per Resolution 15-131

- c) Resolution 13-649, subject to the undertaking of the pedestrian and cyclist counts and inclusion of crash data described and reported back to the next Committee meeting
- d) Resolution 15-528, the completion of which will be subject of the Council report which reviews the first six months of Byron Bay pay parking
- e) Resolutions 16-037, 16-038, 16-040 and 16-041

3. That Council adopt the following Committee Recommendation:

Report No. 5.2 Proposed Development and Contents of a Council Transport Strategy
File No: I2016/194

Committee Recommendation 5.2.1

- 1. That Council notes the Transport Advisory Committee is working toward the development of a Shire-wide Transport Strategy.
- 2. The following should be considered for Objectives in the Strategy:
 - a) the desire to move toward zero emissions
 - b) telecommunications
 - c) access issues
 - d) improvement of public transport
 - e) addressing inter town gaps
 - f) the 'measuring' of outcomes
 - g) efficiency and costs
 - h) sustainability
 - i) quadruple bottom line assessment
 - j) feasibility
 - k) anticipation and acknowledgement of land use and corridor analysis
 - l) renewable energy, rapid transport backbone system

4. That Council adopt the following Committee Recommendation:

Report No. 5.3 Byron Transport Information Day
File No: I2016/195

RECOMMENDATION:

That Council notes that Northern Rivers Social Development Council (Transport Development Officer) is planning a 'Byron Transport Information Day', (funded by Transport NSW) in Mullumbimby in May 2016.

5

Attachments:

- 1 Minutes Transport Advisory Committee Meeting 10/03/16, I2016/211

10

Report

The attachment to this report provides the minutes of the Transport Advisory Committee Meeting of 10 March 2016 for determination by Council.

5

The agenda may be viewed at <http://www.byron.nsw.gov.au/meetings>.

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

10

Financial Implications

As per the Reports listed within the Transport Advisory Committee Meeting of 10 March 2016.

15

Statutory and Policy Compliance Implications

As per the Reports listed within the Transport Advisory Committee Meeting of 10 March 2016.

Report No. 14.5 **Report of the Water, Waste and Sewer Advisory Committee Meeting held on 3 March 2016**

Directorate: Infrastructure Services

Report Author: Peter Rees, Manager Utilities

5 Michael Matthews, Manager Open Space and Resource Recovery

File No: I2016/225

Theme: Community Infrastructure
Water Supplies

10 **Summary:**

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 3 March 2016 for determination by Council.

15

RECOMMENDATION:

1. **That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 3 March 2016.**

2. **That Council adopt the following Recommendation:**

Report No. 5.1 **Updates of Previous Action Items**

File No: I2015/1403

Committee Recommendation 5.1.1

1. **That Council notes the information and updates in relation to Action Items 1 – 5 from the Water, Waste and Sewer Advisory Committee meeting held 8 October 2015.**
2. **That Council recognise the Committee’s preference that three (3) bin stations be part of at least some bin stations, in particular Main Beach and Railway Park, and a report be provided to Council outlining the value and viability of such a service.**
3. **That Council investigate alternatives to using potable water (e.g. recycled water) as the Additional Flow, cited on page 21 (page 13 of #E2015/62158) of attachment 1 to report 5.1.**

3. **That Council adopt the following Committee Recommendation:**

Report No. 5.2 **Ongoing supply of Kitchen Caddies**

File No: I2015/1404

Committee Recommendation 5.2.1

1. **That Council advertise the fee of \$5 (plus GST) for a kitchen caddy, for a period of 28 days seeking submissions from the public in accordance with clause 610F of the NSW Local Government Act 1993.**
2. **That if no submissions are received against the fee during the exhibition period, Council adopt the fee of \$5 (plus GST) for a replacement kitchen caddy.**
3. **That if submissions are received during the exhibition period against the fee, a report be brought to Council.**

4. That Council adopt the following Committee Recommendation:

Report No. 5.3 Policy for Water Leaks

File No: I2016/8

Committee Recommendation 5.3.1

1. That the Agenda for the next Water, Waste and Sewer Advisory Committee meeting include a report on uptake under Sections 2.2 to 2.5 of Policy 12/006. The report is to include a redacted list with columns:
 - date applied
 - date determined
 - water consumed
 - average water consumed over previous 2 years
 - \$ paid for water
 - \$ waived for sewer
 - nature of leak and repair
 - average water consumed since repair
2. That the following matters be considered for a revision of the Policy:
 - a) Council's response time (2.2e) and consistency of ongoing communication between Council and the resident
 - b) what happens if the owner has owned the property for less than two years (2.2g)?
 - c) consider redefining leakage (2.2c)

5. That Council adopt the following Committee Recommendation:

Report No. 5.4 Introduction of Price On Application fee for bulk loads of putrescible waste deposited at the Byron Resource Recovery Centre

File No: I2016/138

Committee Recommendation 5.4.1

1. That Council advertise the fee 'Price On Application for Bulk Volumes of Putrescible Waste (subject to staff approval)' for a period of 28 days, seeking submissions from the public in accordance with clause 610F of the NSW Local Government Act 1993.
2. That if no submissions are received during the exhibition period against the fee, Council adopt the fee of 'Price On Application for Bulk Volumes of Putrescible Waste (subject to staff approval)'.
3. That if submissions are received against the fee during the exhibition period, a report be brought to Council.

6. That Council adopt the following Committee Recommendation:

Report No. 5.5 Review of Council's Waste Disposal Strategy 2009

File No: I2016/141

Committee Recommendation 5.5.1

That Council endorse the development of a revised 'Waste Disposal Strategy', utilising the recommended short, medium and long term options presented in the following report 'Review of Council's Waste Disposal Strategy 2009'.

7. That Council adopt the following Committee Recommendation:

Report No. 5.6 Brunswick Valley Sewage Treatment Plant Daily Flows from Dec 2010 to Feb 2016

File No: I2016/148

Committee Recommendation 5.6.1

- 1. That Council note Average Dry Weather Flow (ADWF) for Brunswick Valley STP is of the order of 1.1 ML/day (eg November 2014).**
- 2. That Council note the three highest Wet Weather Flows on record for Brunswick Valley STP since its commissioning at the end of 2010 were:**

**23.4 ML/day in April 2013;
19.6 ML/day in February 2015; and
17.3 ML/day in March 2013.**
- 3. That Council receive annual updates of the above figures (ADWF, PWWF) via its Water, Waste and Sewer Committee, or equivalent.**
- 4. That Council receive similar data via its Water, Waste and Sewer Committee, or equivalent, for its other three STPs.**

5 Attachments:

- 1 Minutes Water, Waste and Sewer Advisory Committee Meeting 03/03/16, I2016/162**

10

Report

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 3 March 2016 for determination by Council.

- 5 The agenda may be viewed at <http://www.byron.nsw.gov.au/meetings>

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

10

Financial Implications

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 3 March 2016.

15

Statutory and Policy Compliance Implications

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 3 March 2016.

Report No. 14.6 Report of the Belongil Catchment Advisory Committee Meeting held on 8 March 2016

Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2016/262
Theme: Community Infrastructure
Sewerage Services

5

Summary:

10

The attachment to this report provides the minutes of the Belongil Catchment Advisory Committee Meeting of 8 March 2016 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Belongil Catchment Advisory Committee Meeting held on 8 March 2016.**

15

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

Report No. 5.1 Proposed Committee Meeting Dates 2016
File No: I2016/197

Committee Recommendation 5.1.1

That the committee seek to meet on the following Mondays in 2016 at 9 am:

**18 April
30 May
27 June**

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

Report No. 5.2 Belongil Swamp Drainage Union Negotiations
File No: I2016/198

Committee Recommendation 5.2.1

That a report be brought to the next Belongil Catchment Advisory Committee Meeting outlining possible Union Drain management options including:

1. **Council supporting drain management by the Drainage Union, which may include the Union operating in a more conforming manner (DPI letter of 10 February 2015 E2016/15181)**
2. **Dissolving the existing Drainage Union management and Council establishing a new body**
3. **Dissolving the existing Union management and Council taking over management responsibilities**

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

Report No. 5.3 Belongil Creek Fate of the Effluent Alternative Flowpath Project
File No: I2016/200

Committee Recommendation 5.3.1

That a report about the 'Belongil Creek Fate of the Effluent Alternative Flowpath Project' be brought to the next Belongil Catchment Advisory Committee Meeting.

Attachments:

5

1 Minutes 08/03/2016 Belongil Catchment Advisory Committee, I2016/210

Report

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 3 March 2016 for determination by Council.

5

The agenda may be viewed at <http://www.byron.nsw.gov.au/meetings>

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

10

Financial Implications

As per the Reports listed within the Belongil Catchment Advisory Committee Meeting of 8 March 2016.

15

Statutory and Policy Compliance Implications

As per the Reports listed within the Belongil Catchment Advisory Committee Meeting of 8 March 2016.

20

QUESTIONS WITH NOTICE

Question with Notice No. 15.1 Herbicide Use
File No: I2016/220

5

Cr Duncan Dey asks the following questions:

1. What is the format in which Council records the volumes of herbicides it uses within the Shire?
2. Is such data broken down into types or brands of herbicide?
3. Does the data include the sectors of Council using the herbicide or the geographical areas of application?
4. Can Council please supply annual data or for another time period for the most recent 5 years of record?
5. What other public authorities or agencies use herbicides within the Shire (eg RMS, railways, NPWS)?
6. Do those authorities publish their annual usage and is that information available on a Shire area basis?

Response Director Infrastructure Services:

Due to timeframe required to complete answers to the Question with Notice, staff were not available to finalise the response for the collation of the meeting agenda, however will be available at the time of the next ordinary meeting 28 April 2016.

1. Open Space and Works records the volume of herbicides within the shire electronically (Excel) with the following details captures
 - Operator
 - Date
 - Time
 - Situation
 - Location
 - Product
 - Method
 - Target Weeds
 - Age Class
 - Weed Density
 - Weather
 - Amount
 - Additives
 - Ratio
 - Total Mix LThe Bush Regeneration have historically captured data electronically (Excel)
 - Date
 - Site
 - Hours worked
 - Product and quantity

2. Yes
3. Data is separated into management areas of council and is further broken down to Open Space, Roads, Cemeteries and broad localities, for example Ocean Shores Parks.
4. Data will be available by the next ordinary meeting.
5. It is our understanding that all government agencies that manage land within the shire use or have used herbicides as a means to control weeds. A list will be available by the next ordinary meeting.
6. This is being investigated by staff and advice will be provided by the next ordinary meeting.