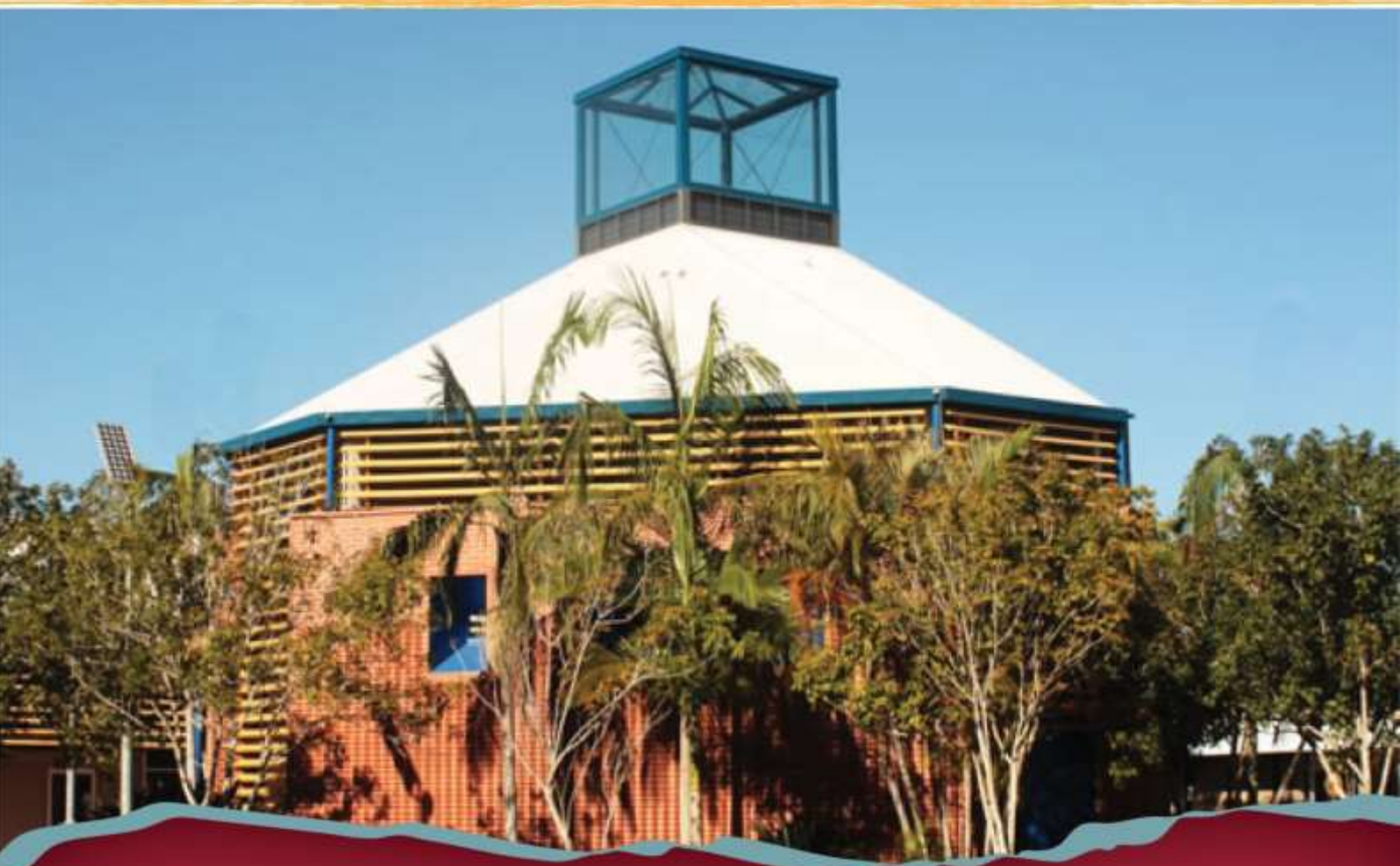




Byron Shire Council



Agenda

Extraordinary Meeting

Wednesday, 29 June 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
EXTRAORDINARY MEETING

BUSINESS OF EXTRAORDINARY MEETING

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2. APOLOGIES

3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

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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.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 4.1 **2016/17 Operational Plan**
Directorate: Corporate and Community Services
5 **Report Author:** Trish Kirkland, Manager Governance Services
 James Brickley, Manager Finance
File No: I2016/39
Theme: Corporate Management
10 Governance Services

Summary:

15 Council at its Ordinary Meeting held on 28 April 2016 considered *Report No. 13.1 Public Exhibition - Draft 2016/17 Operational Plan, including Statement of Revenue Policy* and adopted (Resolution **16-221**) the Draft 2016/2017 Operational Plan (including the Statement of Revenue Policy – incorporating the 2016/2017 Budget and 2016/2017 Fees and Charges) for the purpose of public exhibition.

20 Council placed these documents on public exhibition from 12 May 2016 with a closing date of 9 June 2016.

25 This report allows Council to consider any submission and the proposed amendments to the content of these documents prior their formal adoption by Council, and for this purpose two Recommendations have been provided to allow for this to occur.

RECOMMENDATION 1:

That Council consider the submissions received during the public exhibition period for the Draft 2016/2017 Operational Plan (including the Statement of Revenue Policy incorporating the 2016/2017 Budget and 2016/2017 Fees and Charges)

(Note: Council is required to consider the submissions received prior to the adoption of the 2016/2017 Operational Plan (including the Statement of Revenue Policy incorporating the 2016/2017 Budget and 2016/2017 Fees and Charges)

RECOMMENDATION 2:

1. **That Council adopt the 2016/2017 Operational Plan, inclusive of the Statement of Revenue Policy (incorporating the 2016/2017 Budget and 2016/2017 Fees and Charges) as contained in Attachment 2 (E2016/46096) and Attachment 3 (E2016/50671).**
2. **That Council**
 - a) **introduce new fees for:**
 - i) **the hire of the Senior Citizen’s Hall in Byron Bay (\$15.00/hour for regular users and \$20.00/hour for casual users)**
 - ii) **use of the Auditorium at the Cavanbah Centre (Casual User Yearly Pass (Junior) - \$330.00 and Casual User Yearly Pass (Senior) - \$420.00) and advertise these fees for public comment for a period of 28 days.**
 - b) **Adopt the new fees and incorporate these changes into Council’s adopted Fees and Charges for 2016/17, should no submissions be received.**

Attachments:

- 1 Confidential - 2016-17 Submissions, E2016/50262
- 2 FINAL 2016-2017 Operational Plan (for adoption 29 June 2016), E2016/46096
- 5 3 Draft 2016/17 Fees and Charges presented to Council 29 June 2016, E2016/50671

10

Report

Background

5 The Integrated Planning and Reporting Framework requirements legislated by the NSW State Government as part of the Local Government Act 1993 (Sections 402 to 406) apply to all Councils in NSW.

The requirements of the Integrated Planning and Reporting mandate that Council must develop:

- 10
- A ten year Community Strategic Plan
 - A four year Delivery Program
 - A one year Operational Plan
 - Resourcing Strategy - to support the implementation of the Delivery Program (includes the
- 15 Long Term Financial Plan, Workforce Management Plan, Asset Management Plan)

The 2016/2017 financial year will be the fifth year of operation by Byron Shire Council under the Integrated Planning and Reporting requirements.

20 Council implemented the Integrated Planning and Reporting requirements as a Group 3 from 1 July 2012, and reviewed the plans as required within 9-months of the new Council (June 2013) for 1 July 2013.

25 The 2013-2017 Delivery Program, in accordance with Section 404, details the Principal Activities to be undertaken by the Council to implement the strategies established by the Community Strategic Plan within the resources available under the resourcing strategy.

30 An annual Operational Plan, in accordance with Section 405(2) of the Local Government Act, has been adopted (included the Statement of Revenue Policy) before the beginning of each financial year outlining the Actions to be undertaken in that year as a sub-plan of the 2013-2017 Delivery Program. The information for inclusion in the Statement of Revenue Policy is defined in Clause 201 of the Local Government (General) Regulation 2005.

Resourcing Strategy - Long Term Financial Plan

35 Council is required under the Integrated Planning and Reporting framework to annually review its Long Term Financial Plan (“LTFP”).

40 The next review of the LTFP will be subject to Council formally adopting the 2016/2017 Operational Plan (including the Statement of Revenue Policy – incorporating the 2016/2017 Budget) which will then become the base case financial scenario plus the financial scenarios contained in Council adopted Council Improvement Plan as part of its ‘Fit for the Future’ response.

45 The final 2016-2026 LTFP will be reported to Council following the adoption of 2016/2017 Operational Plan after considered by the Finance Advisory Committee at its Meeting to be held on 18 August 2016.

2016/2017 Operational Plan (including Statement of Revenue Policy - Budget Estimates and Fees and Charges)

50 Council at its Ordinary Meeting held on 28 April 2016, following consideration of *Report No. 13.1 Public Exhibition - Draft 2016/17 Operational Plan (including Statement of Revenue Policy)* resolved (Resolution **16-221**) as follows:

55 ‘1. That Council adopt for exhibition the Draft 2016/2017 Operational Plan (including the draft

Statement of Revenue Policy, comprising Budget Estimates, Rates and Charges, Borrowings and Fees and Charges).

- 5 2. *That the Draft 2016/2017 Operational Plan (including the draft Statement of Revenue Policy, comprising Budget Estimates, Rates and Charges, Borrowings and Fees and Charges) be placed on public exhibition for a period of 28 Days.*
- 10 3. *That Councillors hold a workshop, at the Strategic Planning Workshop 26 May 2016 on the 2016/17 draft budget before it is reported to Council at 29 June 2016 meeting as part of the Report on the Operation Plan and Revenue Policy.*
- 15 4. *As a part of this workshop councillors receive a staff briefing on the following matters:*
- 15 a) *The operation and management of the Cavanbah Centre:*
- 15 i) *The original business plan covering the ongoing operation and management of the facility*
- 20 ii) *A financial analysis of the operational costs of running the centre since it opened*
- 20 iii) *An analysis of the projected utilisation rates compared to actual utilisation rates for the centre since it opened*
- 20 iv) *Any management plans to address the accumulated budget deficit experienced by the centre*
- 25 b) *Market fees*
- 25 c) *operational management of Valances Road Sewage Treatment Plant including intended demolition costs*
- 30 d) *Any items that may be referred from the Finance Advisory Committee Meeting on 12 May 2016.'*

Public Exhibition and Submissions

35 In accordance with Resolution 16-221, the Draft 2016/2017 Operational Plan (including the Statement of Revenue Policy – incorporating the 2016/2017 Budget and 2016/17 Fees and Charges) was placed on public exhibition from 12 May 2016 to 9 June 2016 for community feedback and input.

40 A full copy of the draft document was placed on Council's website www.byron.com.au and was also available at the community access points throughout the Shire, and public notices were made in the community electronic newsletter and in local newspapers.

45 This Report has been prepared to allow Council to firstly, consider the submissions received and any proposed amendments to the content of the documents and secondly, to adopt these documents with or without amendment/s having considered the submissions.

Council received twenty four submissions on the draft document, and these are summarised in Table 1.

50 Council is required to consider any submissions received during the exhibition period on the Draft 2016/2017 Operational Plan.

Should Councillors need to refer to the full copies of the submissions; these have been provided as Attachment 1 to this report, on a strictly confidential basis. The full copies of the submissions

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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contain personal information such as names and addresses of the person's lodging submissions which are relevant matters to be taken into consideration in determining this matter.

Table 1 – Submissions Received

5

Doc No.	Regarding	Staff comment
E2016/35433	Erection of signs in Fingal Lane, between Tweed and Park Streets, as per Council Resolution 14-345	Unfunded Council resolution from 2014. Currently unfunded in Draft 2016/17 Budget documents.
E2016/35769	Rifle Range Road intersection – “will this cover the turning lanes required to make this intersection safe for the school buses picking up and dropping off students?”	No, the proposal is to undertake detailed design and the liaison with RMS for the works on the State Road.
	Leslie Street/Station Street crossing – “is this additional to the money already spend in 2015/16 because this work appears to have been done already?”	This budget is to construct a concrete path from Leslie St to the stairs and from the stairs to Station Street, including handrails on the stairs, across the railway corridor.
	Refurbishment of toilet block adjacent to the Bangalow Hotel	Work was commenced in 2015/16.
	Repair of degraded pavement on Deacon Street	Not funded in Draft 2016/17 Budget documents. Project will need to be reviewed and prioritise into future programs.
E2016/35770 E2016/35772	Sewer Services Capital Works Alternate treated effluent discharge to Belongil estuary	Item in 2015/16 budget \$350,000 will be carried over to 2016/17. The recycled water program is a Council resolution.
E2016/38789	Sealing Coopers Creek Road	Not funded in Draft 2016/17 Budget documents.
E2016/39142	Erosion of the creek bank along Marshalls Creek, New Brighton Road	This will require further investigation and recommendations.
E2016/40146 E2016/40143 E2016/40973 E2016/40989 E2016/40991 E2016/41448	Clearing roadside vegetation and reconstructing creek crossings on Upper Wilsons Creek Road	Clearing roadside vegetation adjacent to the roads is an operational request. If more works or more frequent works are to be done then an increase in the operational budget for this activity would be required. This can be considered as part of the SRV as proposed in Council's Improvement Plan. The upgrade or replacement of the causeways is not funded in Draft 2016/17 Budget documents.
E2016/40564	Brunswick Heads Infrastructure: <ul style="list-style-type: none"> • Public toilets in Pilgrim Park • Replacement of Pedestrian Bridge • Identification of urgent road and footpath works • Construction of permanent toilets and shower block near the surf club/tennis courts 	<p>Public Toilets in Pilgrim Park: The public toilets in Pilgrim Park are subject to Council consideration.</p> <p>Toilets near Surf Club/Tennis Courts: The toilet block at the Brunswick Surf Club is Council owned. Council maintains and cleans the block and due to the location of the toilets is required to be transportable in structure.</p> <p>Replacement of Pedestrian Bridge: Not funded in Draft 2016/17 Budget</p>

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Doc No.	Regarding	Staff comment
		documents. Identification of urgent road and footpath works: No specific locations identified in submission for funding in Draft 2016/17 Budget documents. It is recommended that any locations needing maintenance be considered for funding from the 2016/17 Operational budgets and that any capital projects be identified by the BHPA and submitted for future budget considerations.
E2016/40940	Mullumbimby Public School Entrance Point	The stormwater drainage at the front of the school needs to be improved to resolve the problem identified in the submission. Total estimated cost is between \$15,000 to \$20,000. The project is not funded in Draft 2016/17 Budget documents. For the project to proceed Council would need to defer other projects that are revenue funded.
E2016/40987	Footpath for Kolora Way, Ocean Shores	This project was considered recently as part of the projects for allocation of funding generated by the proceeds from the Roundhouse land sales. (Res 16-298). It was not supported by Council.
E2016/41444	Undertake a survey of Settlement Road Mullumbimby, property boundaries, produce a concept design and cost estimate for road upgrading/major maintenance and report back to management and Council	\$30,000 proposed in Draft 2016/17 Budget documents for this work.
E2016/41447 E2016/41451 E2016/41465 E2016/41470	Address the variety of issues on Grays Lane, Tyagarah	The submissions all request works for the road to improve road conditions, safety for all road users, reduce / stop road kill of animals, reduce impact of flooding, etc. \$50,000 proposed in Draft 2016/17 Budget documents to allow for: <ul style="list-style-type: none"> • detailed discovery and review of all Council reports, letters and other documents associated with this road; the meetings with property owners; and any conditions of consent associated with the approval of the developments of properties using this road. • commence the engineering survey, concept design, cost estimate of costs, geotechnical investigations, ecological assessments and all other associated studies necessary to complete a report on the options available to Council for capital upgrading of the gravel road section of Gray's Lane. • report the matter to Council and

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Doc No.	Regarding	Staff comment
		continue consultation with the property owners for a joint shared approach to upgrading the road with funding from Council and financial contributions from the property owners.
E2016/41450	Upgrade and maintenance of bus stops for the Coorabell public school bus routes	Not funded in Draft 2016/17 Budget documents.
E2016/41468	Work at Wategos Beach	Funding of \$241,300 provided in 2015/16. Any unspent funds, currently about \$172,000 will be recommended to be carried forward to 2016/17. \$250,000 is currently proposed in Draft 2016/17 Budget documents for this project will allow for detailed design and documentation to be completed so that construction work can follow.
E2016/41005	Fee Increases – Suffolk Beachfront Holiday Park	Whilst not strictly a submission, this letter is partly a complaint about fee increases at Suffolk Beachfront Holiday Park. The increase proposed is \$4 per week for the long term residents and the complaint is this increase is in excess of the CPI according to the complainant. The fees for the long term residents are not disclosed in Council fees and charges due to the private nature of the fee. It is suggested the fee increase proposed not be changed.

Management Comments

- 2016/2017 Budget

5 Refer the Financial Implications Section below.

- 2016/2017 Fees and Charges

10 There were no submissions received on the draft 2016/17 Fees and Charges. However, the following items have been identified and recommended for inclusion in the 2016/17 Fees and Charges.

Senior Citizen's Hall, Byron Bay:

15 Council resolved (16-192) at the Ordinary Meeting on 28 April 2016 to form a Section 355 Committee to manage the operation and maintenance of the Senior Citizen's Hall in Byron Bay.

Below are the proposed fees and charges for hiring of the Senior Citizen's Hall Byron Bay for the 2016/17 financial year. The proposed fees are based on 2015/16 hire fee schedule.

Senior Citizen's Hall	\$
Regular hire fee per hour	15.00
Casual hire fee per hour	20.00

20

Recommendation:

That Council place the proposed fees and charges for the hire of the Senior Citizen’s Hall in Byron Bay on public exhibition.

5

Cavanbah Centre:

Council’s current Fees and Charges include a fee for users of the Main Auditorium at the Cavanbah Centre for casual bookings on an hourly or monthly basis. It is proposed to introduce a new yearly fee as a more supportive and realistic option for those who use the facility every day.

10 The fees are as follows.

Casual User Yearly Pass (Junior) - \$330.00

Casual User Yearly Pass (Senior) - \$420.00

15 Recommendation

That Council place the proposed fees and charges for yearly passes at the Cavanbah Centre on public exhibition for 28 days.

20 • 2016/2017 Operational Plan

During the public exhibition period some minor refinement to the Operational Plan Actions for the Planning Policy and Natural Environment Program section have been identified. These are set out in Table 2 below.

25

Table 2 – Operational Plan Action Changes

No.	Operational Plan Action	Delivery Program Links	Target	Measure	Reason for amendment (Change / New / Remove)	Type of amendment (Submissions / Fix Minor Errors / Improve Wording / Improve Measures & Targets)
62	Update vegetation mapping in line with legislative requirements	42, 43	Vegetation Mapping	Reported to Council	Change	Improve wording
64	Finalise the Residential Strategy and commence implementation of priority actions	22, 25, 38	Plan Actions	Complete Commenced	Change	Improve Measures & Targets
65	Review Byron DCP 2014 to a performance outcome focused plan (Resolutions 14-315 & 15-604)	22, 38	DCP Review	Commenced	Change	Improve Measures & Targets
67	Continue staged review of Biodiversity Conservation Strategy	42, 43	Project Plan	Milestones, Met	Change	Improve wording

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68	Finalise the Mullumbimby Flying Fox Plan and commence implementation of priority actions	42, 43	Plan Actions	Complete Commenced	Remove	Plan finalised and implementation already substantially commenced
70	Prepare a project plan and apply for funding grant to deliver priority Estuary CZMP actions.	44	Project Plan Funding grant application	Developed Submitted	Remove	Done as a matter of course when grants become available
71	Progress the Bangalow Place Activation Masterplan and commence implementation of priority actions	22, 25, 38	Plan Actions	Complete Commenced	Change	Improve wording
72	Progress the Mullumbimby Place Activation Masterplan and commence implementation of priority actions	22, 25, 38	Plan Actions	Complete Commenced	Change	Improve wording
73	Progress the Byron Bay Town Centre Masterplan implementation of priority actions	22, 25, 38	Actions	Commenced	Change	Improve wording
75	Deliver natural resource, sustainability, coastal and estuary and strategic land planning projects	44	Project milestones Grant funding application	Met Submitted	Remove	Not a specific action
76	Monitor, report, communicate and implement changes relating to Environmental and Economic Planning	22, 25, 38	Report and communicate	annually	Remove	Done as a matter of course as changes arise
77	Provide assistance, information and advice to staff, developers and residents about	46	Number of sustainability initiatives Number of sustainability	2 3	Remove	Services already provided

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	sustainability initiatives, programs and projects		seminars Sustainability Newsletters issued	3		
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Recommendation:

5 That Council adopt the amended Operational Plan changes set out in Table 2 above given they are minor in nature and have been incorporated into the final draft document contained at Attachment 2.

Financial Implications

10 The Draft 2016/17 Statement of Revenue Policy placed on public exhibition in accordance with resolution **16-221** is based on the 2015/2016 budget reviewed at 31 December 2015 with various changes to reflect the increased price of service delivery across all programs developed from the input received from each Council Directorate. The budget document is also based further on the revised Organisation Structure as it has been implemented.

15 The Draft of 2016/2017 Budget Result placed on public exhibition on a Consolidated (All Funds) basis forecast a balanced result with the details of that result being included below at Table 3.

Table 3 – Forecast Budget Result 2016/2017 Consolidated (All Funds)

Item	Amount \$
Operating Result	
Operating Revenue	72,719,600
Less: Operating Expenditure	72,468,000
Operating Result – Surplus/(Deficit)	251,600
Funding Result	
Operating Result – Surplus/ (Deficit)	251,600
Add: Non cash expenses – Depreciation	12,515,100
Add: Capital Grants and Contributions	18,528,000
Add: Loan Funds Used	0
Add: Asset Sales	760,000
Less: Capital Works	(41,669,800)
Less: Loan Principal Repayments	(2,664,300)
Funding Result – Surplus/(Deficit) (Cash Movement)	(12,279,400)
Reserves Movement – Increase/(Decrease)	(12,279,400)
Overall Budget Result – Surplus/(Deficit) (Operating + Funding)	0

25 Table 3 indicates a forecasted balanced budget result and this relates to the General Fund. The forecast General Fund Accumulated Surplus (Working Funds) position based on the draft budget included at Table 3 is outlined in Table 4 below:

Table 4 – Revised Forecast General Fund Accumulated Surplus (Working Funds)

Item	\$
Forecast accumulated surplus to 30 June 2016 at 31 December 2015 Budget Review	919,100
Add: Estimated initial draft 2016/2017 budget result	0
Forecast accumulated surplus to 30 June 2016	919,100

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During the public exhibition period, the Draft 2016/2017 Statement of Revenue Policy incorporating the Draft 2016/2017 Budget Estimates has been further reviewed. The revised budget position is contained in Attachment 2 but in summary outlined in Table 5 below:

5 Table 5 – Forecast Budget Result 2016/2017 Consolidated (All Funds) revised during public exhibition period

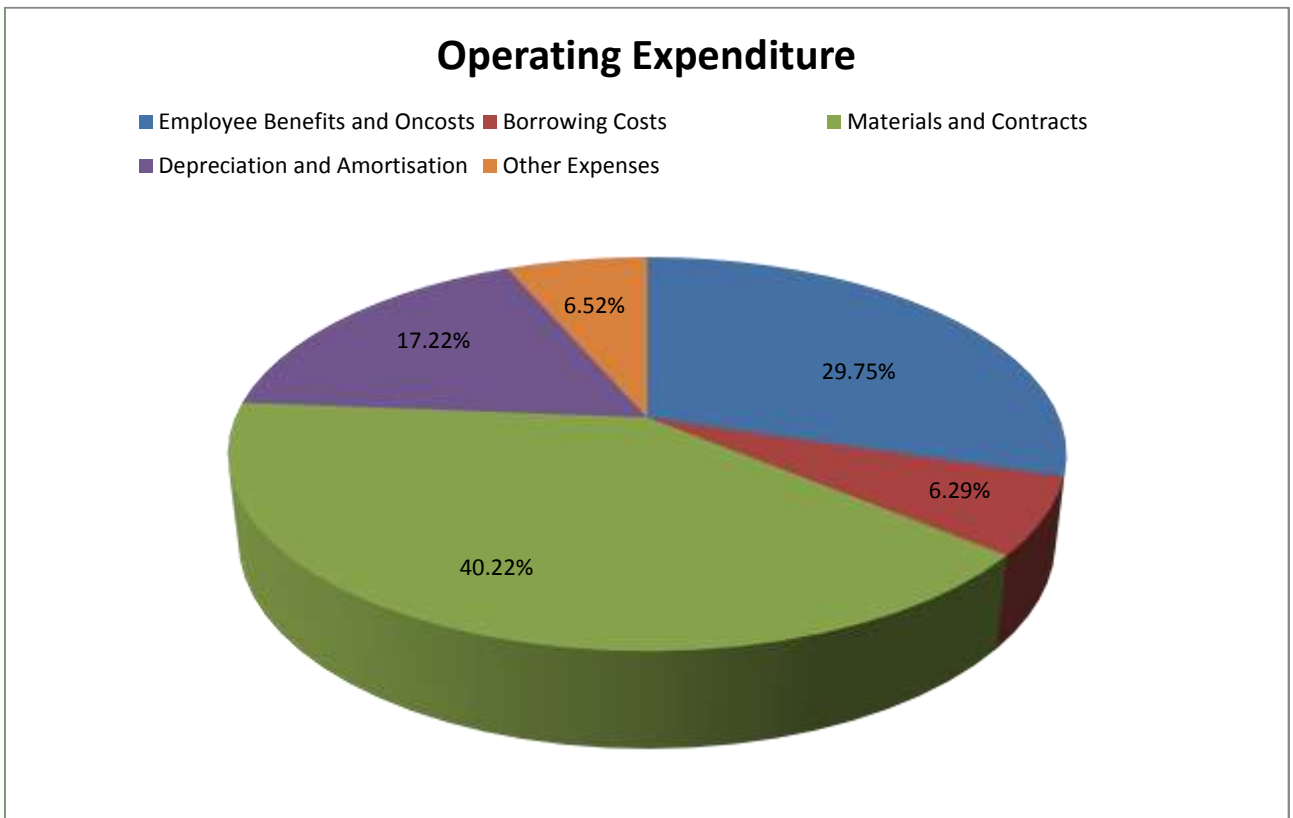
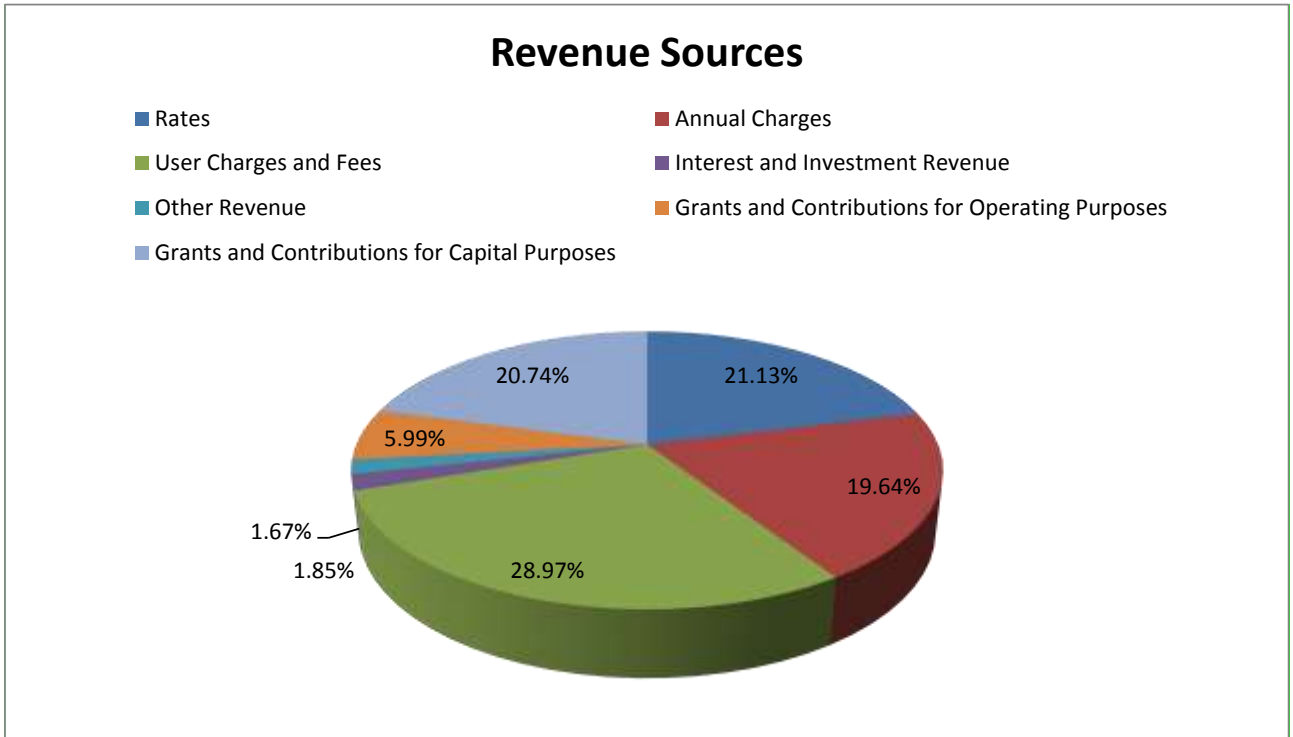
Item	Amount \$
Operating Result	
Operating Revenue	72,763,800
Less: Operating Expenditure	72,672,800
Operating Result – Surplus/(Deficit)	91,000
Funding Result	
Operating Result – Surplus/ (Deficit)	91,000
Add: Non cash expenses – Depreciation	12,515,100
Add: Capital Grants and Contributions	19,043,000
Add: Loan Funds Used	0
Add: Asset Sales	1,673,000
Less: Capital Works	(52,159,600)
Less: Loan Principal Repayments	(2,664,300)
Funding Result – Surplus/(Deficit) (Cash Movement)	(21,501,800)
Reserves Movement – Increase/(Decrease)	(21,539,400)
Overall Budget Result – Surplus/(Deficit) (Operating + Funding)	37,600

10 Table 5 indicates a forecasted surplus budget result and this relates to the General Fund. The forecast General Fund Accumulated Surplus (Working Funds) position based on the draft budget included at Table 5 is outlined in Table 6 below:

Table 6 – Revised Forecast General Fund Accumulated Surplus (Working Funds)

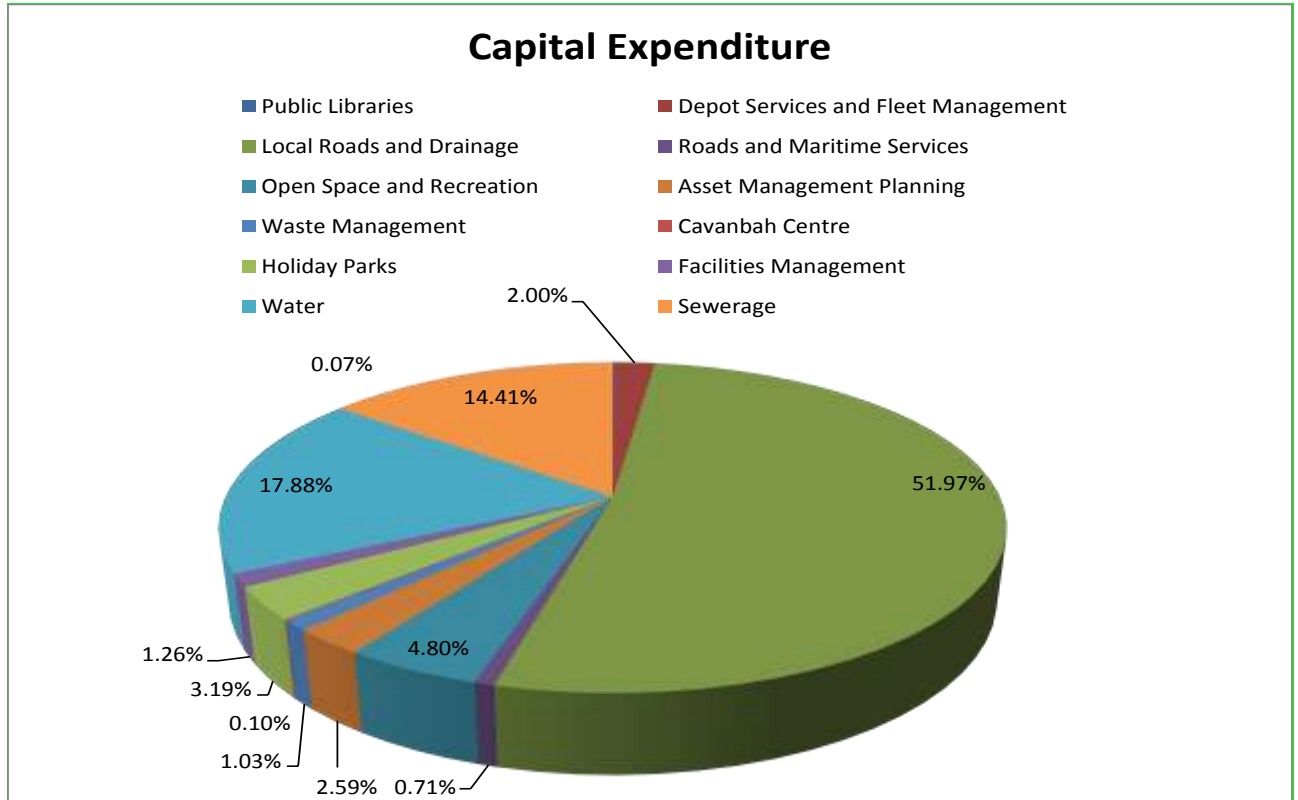
Item	\$
Forecast accumulated surplus to 30 June 2016 at 31 March 2016 Budget Review	919,100
Add: Estimated initial draft 2016/2017 budget result	37,600
Forecast accumulated surplus to 30 June 2016	956,700

15 The revised Draft 2016/2017 Budget Estimates are also suggesting that Council’s overall revenue and operational expenses are expected to be derived from the following sources and allocated respectively as outlined in the graphs below:



5 In addition to the operational aspects of the proposed Draft 2016/2017 Budget Estimates as revised during the public exhibition period, Council is now proposing a capital works program of \$52.159million. This amount includes \$35.319million in the General Fund, \$9.325million in the Water Fund and \$7.516million in the Sewerage Fund. In terms of overall proposed capital works expenditure, the graph below indicates the proportionate allocation by Budget Program:

10



The major changes to the proposed Draft 2016/2017 Budget Estimates have been realised by the following factors:

5

Council Resolutions:

- 10 Council at its Ordinary Meeting held on 28 April 2016 through resolution **16-221** part 3 and 4 requested a briefing on the operations of the Cavanbah Centre. This briefing was provided to the Councillor Strategic Planning Workshop held on 26 May 2016. Following this briefing, the budget for the Cavanbah Centre has been reviewed which has seen the overall budget result for the Cavanbah Centre Budget program reduce from a deficit of \$712,000 to a revised deficit of \$590,100. The deficit improvement of \$121,900 has been returned to the budget result.
- 15 Council at its Ordinary Meeting on 28 April 2016 considered report 13.3 regarding Lone Goat Gallery Strategic Plan. Council through part 3 of resolution **16-215** determined that Council support the appointment and funding of a part-time Gallery Coordinator to implement critical priorities in the Lone Goat Gallery Strategic Plan 2016-2019. At this stage provision of \$54,000 has been included in the Draft 2016/17 Budget Estimates contained at Attachment 1 to fund a part-time Gallery Coordinator. Part 3 of resolution **16-215** suggests the identification of possible funding sources for the position. At this time any potential funding sources have not been included so if funding sources do eventuate during 2016/17, this will represent an improvement to the overall budget result. Actions are taking place in conjunction with the Lone Goat Gallery S355 Committee to establish potential funding opportunities for the implementation of the

20 2016-2019 Strategic Plan and funding the part-time Gallery Coordinator.
- 25 Council at its Ordinary Meeting held on 19 May 2016 considered and adopted through resolution **16-239** the 31 March 2016 Quarter Budget Review of the 2015/16 Budget Estimates. This particular Quarterly Budget Review did a reassessment of the expected level of capital works to be completed during 2015/16 in relation to the extent of works budgeted in the 2015/16 Budget Estimates. Contained within the 31 March 2016 Budget Review were reductions in capital works budgets totalling \$7.220million representing \$3.288million for

30

General Fund, \$1.723million for Water Fund and \$2.210million for Sewerage Fund. The projects and the funding not to be completed in the 2015/2016 financial year have been added to the revised Draft 2016/2017 Budget Estimates and is the principal reason that the overall capital works budget for 2016/17 is now in excess of \$52million.

- 5
- Council at its Ordinary Meeting held on 9 June 2016 considered Report 16.2 concerning Tenders for the construction of water supply reservoirs at Byron Bay and Bangalow. Part 2 of resolution **16-287** increased the funding for this project for the 2016/17 financial year from held Section 64 Developer Contributions in the Water Fund by \$3,369,000 above the original estimates provided in the Draft 2016/17 Budget Estimates placed on public exhibition. This adjustment has been also incorporated into Attachment 1 to this report.
- 10
- Council at its Ordinary Meeting held on 9 June 2016 considered Report 13.11 regarding Infrastructure Works in the North of the Council Area funded from the Roundhouse Development. Council allocated funding to specific projects through resolution **16-298** in the areas of Open Spaces and Road Renewals. The Draft 2016/2017 Budget Estimates included at Attachment 1 now reflect the allocations determined by Council.
- 15

Other Adjustments:

- 20
- Aside from the resolutions of Council outlined above, there are other proposed adjustments to the Draft 2016/17 Budget Estimates that have been included in Attachment 1. These adjustments include:
- 25
- The Draft 2016/17 Budget provides \$176,000 in funding towards the Bangalow Weir. The Draft 2016/17 Budget Estimates placed on public exhibition included \$150,000 of the funding from Council general revenue. During the exhibition period, Council has been notified of a grant for \$100,000 towards this project from the NSW Environmental Trust.
- 30
- There have been further revision to the Financial Services Budget Program and People and Culture Services Budget Program in response to further implementation of the Organisation Restructure regarding the transfer of responsibility for the payroll function of Council. This includes the provision of a further \$15,500 inclusive of oncosts to provide additional seven hours per week to the part-time Payroll Officer position.
- 35
- There has been further revision to the General Managers Budget Program to provide additional resources for Customer Service specifically in relation to two positions of a Customer Service Trainee and additional Telephone Switchboard Operator. The estimated costs of the additional resources is \$100,000.
- 40
- Reassessment of the distribution of Council overheads or support costs allocated incorporating further review of the Organisation restructure and incorporation of the employment costs in the above two immediate dot points that are distributed to other Budget Programs.
- 45
- Proposed further funding provision of \$37,100 to be included for the 2016 New Years Eve event within the Local Roads and Drainage Budget Program, Economic Development Budget Program and Community Development Budget Program. Provision of the additional funding will provide a total budget for the New Years Eve Event to be \$130,000.
- 50
- Proposed provision of a further \$30,000 to the Governance Services Program to assist in the development of the next suite of Council's Integrated Planning and Reporting documents that are due after 30 June 2017 including community consultation and engagement
- 55
- Proposed provision of a further \$30,000 to the Community Development Budget Program to implement the Regional Wellbeing Indicator Project. As part of the adoption of the revised

2015/2016 Budget following the 31 March 2016 Budget Review, Council identified the funding to be allocated to this project for the 2016/17 financial year through the Community Development Reserve.

5 Council in the preparation of its Operational Plan is required to include a number of statements in relation to its Revenue Policy for 2016/2017. This includes a statement containing the draft estimate of Council's Income and Expenditure or Budget for this period. The other statements identified in Clause 201 of the Local Government (General) Regulation 2005 are in the main dependant upon the rate pegging limits approved by the Minister for Local Government (now the Independent Pricing and Regulatory Tribunal (IPART)), any application for a special rate variation and Council's decisions in relation to expenditure, income and the associated fees and charges.

15 The assumptions/parameters used in preparing the Draft 2016/2017 Budget Estimates as presented in this report for Council's consideration include the following:

- Rate peg increase 1.8% as announced by IPART.
- Growth in rateable assessments of 1%.
- Indexation of expenditure limited to 0.8% to assist in deriving a 1% efficiency gain.
- Allowance of the 2.8% pay increase applicable in 2017/2018 under the Local Government (State) Award 2014.
- No new loan borrowings proposed for 2016/2017.
- Interest on investments around 3% plus active management of the investment portfolio to keep it short around three month maturities to take opportunities of market offerings.
- Reflective of the Actions contained in the Draft 2016/2017 Operational Plan.

25 The immediate financial forecast of the General Fund has been discussed in detail in this report, however it is suggested Council needs to look at its longer term financial position, especially in the area of infrastructure maintenance and renewal in comparison to other areas of service provided. This is especially so given the requirements stipulated by the NSW State Government as part of its 'Fit for the Future' reform.

30 The Water and Sewer budgets have been prepared with pricing to generate the required revenue to repay debt (Sewer), to address capital works and ongoing maintenance works in these Funds.

35 Whilst this report is concerned with the oncoming 2016/2017 financial year, Council also needs to consider its longer term financial projections. In that regard, the long term financial projections currently do not include the following:

- Direct linkage to any funding gap yet to be identified in Asset Management Service Plans which could require greater funding than current budget allocations.
- Review current budget projections over the next nine financial years beyond 2016/2017 in order to update the Long Term Financial Plan. Current expenditure predictions on an operational and capital basis are in excess of revenue sources identified.

45 The budget projections realistically still demonstrate the difficulty Council has absorbing additional costs without corresponding revenue. It can only be emphasised that Council must consider carefully the long term implications on its finances, in any consideration to add a new asset/service.

50 **Statutory and Policy Compliance Implications**

55 Chapter 13, Part 2 of the Local Government Act 1993 – How are Councils made accountable for their actions? – Strategic Planning with specific reference to Section 402 to 406 of the Local Government Act 1993.

Division of Local Government Circular 11-29 – Guidelines for the preparation of a special variation application and guidelines for the preparation of an application to exceed the minimum rate statutory limit.

5

The provisions of the Local Government Act that apply in relation to the Council's strategic planning have been reproduced below:

Part 2 Strategic planning

402 Community strategic plan

- 10 (1) *Each local government area must have a community strategic plan that has been developed and endorsed by the council. A community strategic plan is a plan that identifies the main priorities and aspirations for the future of the local government area covering a period of at least 10 years from when the plan is endorsed.*
- 15 (2) *A community strategic plan is to establish strategic objectives together with strategies for achieving those objectives.*
- (3) *The council must ensure that the community strategic plan:*
- 20 (a) *addresses civic leadership, social, environmental and economic issues in an integrated manner, and*
- (b) *is based on social justice principles of equity, access, participation and rights, and*
- (c) *is adequately informed by relevant information relating to civic leadership, social, environmental and economic issues, and*
- 25 (d) *is developed having due regard to the State government's State Plan and other relevant State and regional plans of the State government.*
- (4) *The council must establish and implement a strategy (its **community engagement strategy**), based on social justice principles, for engagement with the local community when developing the community strategic plan.*
- 30 (5) *Following an ordinary election of councillors, the council must review the community strategic plan before 30 June following the election. The council may endorse the existing plan, endorse amendments to the existing plan or develop and endorse a new community strategic plan, as appropriate to ensure that the area has a community strategic plan covering at least the next*
- 35 *10 years.*
- (6) *A draft community strategic plan or amendment of a community strategic plan must be placed on public exhibition for a period of at least 28 days and submissions received by the council must be considered by the council before the plan or amendment is endorsed by the council.*
- 40 (7) *Within 28 days after a community strategic plan is endorsed, the council must post a copy of the plan on the council's website and provide a copy to the Director-General. A copy of a community strategic plan may be provided to the Director-General by notifying the Minister of the appropriate URL link to access the plan on the council's website.*
- 45 **403 Resourcing strategy**
- (1) *A council must have a long-term strategy (called its **resourcing strategy**) for the provision of the resources required to implement the strategies established by the community strategic plan that the council is responsible for.*
- 50 (2) *The resourcing strategy is to include long-term financial planning, workforce management planning and asset management planning.*

404 Delivery program

- 5
- (1) A council must have a program (its **delivery program**) detailing the principal activities to be undertaken by the council to implement the strategies established by the community strategic plan within the resources available under the resourcing strategy.
- (2) The delivery program must include a method of assessment to determine the effectiveness of each principal activity detailed in the delivery program in implementing the strategies and achieving the strategic objectives at which the principal activity is directed.
- 10 (3) The council must establish a new delivery program after each ordinary election of councillors to cover the principal activities of the council for the 4-year period commencing on 1 July following the election.
- 15 (4) A draft delivery program must be placed on public exhibition for a period of at least 28 days and submissions received by the council must be considered by the council before the delivery program is adopted by the council.
- 20 (5) The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every 6 months.

405 Operational plan

- 25 (1) A council must have a plan (its **operational plan**) that is adopted before the beginning of each year and details the activities to be engaged in by the council during the year as part of the delivery program covering that year.
- (2) An operational plan must include a statement of the council's revenue policy for the year covered by the operational plan. The statement of revenue policy must include the statements and particulars required by the regulations.
- 30 (3) A council must prepare a draft operational plan and give public notice of the draft indicating that submissions may be made to the council at any time during the period (not less than 28 days) that the draft is to be on public exhibition. The council must publicly exhibit the draft operational plan in accordance with the notice.
- 35 (4) During the period of public exhibition, the council must have for inspection at its office (and at such other places as it may determine) a map that shows those parts of its area to which each category and sub-category of the ordinary rate and each special rate included in the draft operational plan applies.
- 40 (5) In deciding on the final operational plan to be adopted, a council must consider any submissions that have been made concerning the draft plan.
- (6) The council must post a copy of its operational plan on the council's website within 28 days after the plan is adopted.

406 Integrated planning and reporting guidelines

- 45
- (1) The Director-General is to establish integrated planning and reporting guidelines (referred to in this Chapter as **the guidelines**) for the purposes of this Chapter.
- 50 (2) The guidelines can impose requirements in connection with the preparation, development and review of, and the contents of, the community strategic plan, resourcing strategy, delivery program, operational plan, community engagement strategy, annual report and state of the environment report of a council.

- (3) *In particular (but without limiting subsection (2)), the guidelines can impose requirements in relation to any of the following:*
- (a) *the procedures to be followed in the preparation, development or review of plans, strategies, programs and reports,*
 - (b) *the matters to be addressed or provided for by plans, strategies, programs and reports,*
 - (c) *requirements for consultation in connection with the preparation, development or review of plans, strategies and programs,*
 - (d) *the matters to be taken into account or to which regard is to be had in connection with the preparation, development or review of plans, strategies, programs and reports.*
- (4) *A council must ensure that the requirements of the guidelines are complied with.*
- (5) *The guidelines can include other material for the guidance of councils in connection with the plans, strategies, programs and reports to which this section applies.*
- (6) *The Director-General may review and amend the guidelines from time to time.*
- (7) *The guidelines and any amendment of the guidelines must be posted on the Department's website and notified in writing to each council by the Director-General.*

Section 405(2) of the Local Government Act requires that the Statement of the Council's Revenue Policy that must be included on the Operational Plan. Clause 201 of the Local Government (General) Regulation 2005 details the statements and information that must be included in the Revenue Policy and has been reproduced below:

201 Annual statement of council's revenue policy

(1) *The statement of a council's revenue policy for a year that is required to be included in an operational plan under [section 405](#) of [the Act](#) must include the following statements:*

- (a) *a statement containing a detailed estimate of the council's income and expenditure,*
- (b) *a statement with respect to each ordinary rate and each special rate proposed to be levied,*

Note: *The annual statement of revenue policy may include a note that the estimated yield from ordinary rates is subject to the specification of a percentage variation by the Minister if that variation has not been published in the Gazette when public notice of the annual statement of revenue policy is given.*

(c) *a statement with respect to each charge proposed to be levied,*

(d) *a statement of the types of fees proposed to be charged by the council and, if the fee concerned is a fee to which Division 3 of Part 10 of Chapter 15 of [the Act](#) applies, the amount of each such fee,*

(e) *a statement of the council's proposed pricing methodology for determining the prices of goods and the approved fees under Division 2 of Part 10 of Chapter 15 of [the Act](#) for services provided by it, being an avoidable costs pricing methodology determined by the council in accordance with guidelines issued by the Director-General,*

(f) *a statement of the amounts of any proposed borrowings (other than internal borrowing), the sources from which they are proposed to be borrowed and the means by which they are proposed to be secured.*

(2) *The statement with respect to an ordinary or special rate proposed to be levied must include the following particulars:*

5 (a) *the ad valorem amount (the amount in the dollar) of the rate,*

(b) *whether the rate is to have a base amount and, if so:*

(i) *the amount in dollars of the base amount, and*

10 (ii) *the percentage, in conformity with [section 500 of the Act](#), of the total amount payable by the levying of the rate, or, in the case of the rate, the rate for the category or sub-category concerned of the ordinary rate, that the levying of the base amount will produce,*

15 (c) *the estimated yield of the rate,*

(d) *in the case of a special rate-the purpose for which the rate is to be levied,*

20 (e) *the categories or sub-categories of land in respect of which the council proposes to levy the rate.*

(3) *The statement with respect to each charge proposed to be levied must include the following particulars:*

25 (a) *the amount or rate per unit of the charge,*

(b) *the differing amounts for the charge, if relevant,*

(c) *the minimum amount or amounts of the charge, if relevant,*

30 (d) *the estimated yield of the charge,*

(e) *in relation to an annual charge for the provision by the council of coastal protection services (if any)-a map or list (or both) of the parcels of rateable land that are to be subject to the charge.*

35 (4) *The statement of fees and the statement of the pricing methodology need not include information that could confer a commercial advantage on a competitor of the council.*

In accordance with clause 406 of the Local Government (General) Regulation 2005 the following provision applies in relation to the authorisation of expenditure.

40 **211 Authorisation of expenditure**

(1) *A council, or a person purporting to act on behalf of a council, must not incur a liability for the expenditure of money unless the council at the annual meeting held in accordance with subclause (2) or at a later ordinary meeting:*

45 (a) *has approved the expenditure, and*

(b) *has voted the money necessary to meet the expenditure.*

(2) *A council must each year hold a meeting for the purpose of approving expenditure and voting money.*

50 (3) *All such approvals and votes lapse at the end of a council's financial year. However, this subclause does not apply to approvals and votes relating to:*

(a) *work carried out or started, or contracted to be carried out, for the council, or*

(b) *any service provided, or contracted to be provided, for the council, or*

(c) *goods or materials provided, or contracted to be provided, for the council, or*

(d) *facilities provided or started, or contracted to be provided, for the council, before the end of the year concerned, or to the payment of remuneration to members of the council's staff.*

5 The following provision of the Local Government Act applies in relation to the public notice of fees determined by Council.

610F Public notice of fees

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

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

15 (3) *However, if, after the date on which the operational plan commences:*
(a) *a new service is provided, or the nature or extent of an existing service is changed, or*
(b) *the regulations in accordance with which the fee is determined are amended,*

20 *the council must give public notice (in accordance with section 705) for at least 28 days of the fee proposed for the new or changed service or the fee determined in accordance with the amended regulations.*

25 (4) *This section does not apply to a fee determined by a council for an application made in a filming proposal, if that fee is consistent with a scale or structure of fees set out in an applicable filming protocol.*

Report No. 4.2 **Making of the Rate 2016/2017**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2016/617
5 **Theme:** Corporate Management
 Financial Services

Summary:

10 Council at its Ordinary Meeting held on 28 April 2016 following consideration of *Report No.13.1 Public Exhibition - Draft 2016/17 Operational Plan, including Statement of Revenue Policy* adopted resolution **16-221**, which determined the proposed Rating Structure for the 2016/2017 Financial Year and placed the Draft 2016/2017 Operational Plan including Budget Estimates, Statement of
15 Revenue Policy and Fees and Charges on public exhibition for twenty eight days.

The public exhibition period closed on 14 June 2016 seeking submissions on the draft documents with the details of those submissions being the subject of another report to this Ordinary Council Meeting.

20 Council is required to make the rates and charges under Sections 533, 534, 535 and 566 of the Local Government Act 1993.

25 This report identifies those rates and charges to apply for the 2016/2017 financial year and recommends them for adoption.

RECCOMENDATION:

That in accordance with Sections 533, 534, 535 and 566 of the Local Government Act 1993 (Act), Council makes the following rates and annual charges for 2016/2017:

1. Residential - Ordinary Rate

A Residential Ordinary Rate of 0.2302 cents in the dollar on the land value of all land categorised as residential, with a minimum rate of \$695.00 per rateable assessment. Exception to this will be in respect to vacant land which meets the definition of vacant coastal hazard and flood liable land as per section 548 of the Act. In this case the minimum rate amount shall be \$382.00 per rateable assessment.

2. Business (Other) - Ordinary Rate

A Business (Other) Ordinary Rate of 0.3453 cents in the dollar on the land value of all land categorised as business outside the ‘centre of activity’ known as Byron Bay Business Centre, with a minimum rate of \$695.00 per rateable assessment.

3. Business (Byron Bay Business Centre) - Ordinary Rate

A Business (Byron Bay Business Centre) Ordinary Rate of 0.4604 cents in the dollar on the land value of all land categorised as business within the boundary of the ‘centre of activity’ known as Byron Bay Business Centre, with a minimum rate of \$695.00 per rateable assessment.

4. Farmland - Ordinary Rate

A Farmland Ordinary Rate of 0.1697 cents in the dollar on the land value of all land categorised as farmland, with a minimum rate of \$695.00 per rateable assessment. Exception to this will be in respect to vacant land which meets the definition of vacant coastal hazard and flood liable land as per section 548 of the Act. In this case the minimum amount shall be \$382.00 per rateable assessment.

5. Other Annual Charges Applicable for 2016/2017

(a) Domestic Waste Management Annual Charges

In accordance with Section 496 of the Act, a charge, to be known as the Domestic Waste Management Charge, for the provision of a weekly waste service is to apply to all rateable residential land within the defined collection area. This charge, depending on the number of services and bin capacity, is to be levied for the removal of domestic waste and recyclable materials on and during the normal collection day and hours. This is subject to the right of the Council to seek to vary such charge during the year, if in the opinion of the Council such action is warranted in view of any variation in the cost of rendering the service. The following charges for 2016/2017 will apply:

Urban Domestic Waste Collection - Annual Charges	
Size of Service	Annual Charge
Urban Domestic – Single Dwellings 3 MGB service	
Per service – fortnightly collection of 80 Litre waste MGB, fortnightly collection of 240 litre recycling MGB and weekly collection 240 litre organics MGB	\$123.00
Per service – fortnightly collection of 140 Litre waste MGB, fortnightly collection of 240 litre recycling MGB and weekly collection 240 litre organics MGB (standard service)	\$260.00
Per service – fortnightly collection of 240 Litre waste MGB, fortnightly collection of 240 litre recycling MGB and weekly collection 240 litre organics MGB	\$386.00
Urban Domestic – Multi Unit Dwellings (MUD) 3 MGB service per Unit	
Per service – fortnightly collection of 80 Litre waste MGB, fortnightly collection of 240 litre recycling MGB and weekly collection 240 litre organics MGB	\$123.00
Per service – fortnightly collection of 140 Litre waste MGB, fortnightly collection of 240 litre recycling MGB and weekly collection 240 litre organics MGB (standard service)	\$260.00
Per service – fortnightly collection of 240 Litre waste MGB, fortnightly collection of 240 litre recycling MGB and weekly collection 240 litre organics MGB	\$386.00
Urban Domestic – Multi Unit Dwellings (MUD) 2 MGB service per Unit (exempt Organics service)	
Per service – fortnightly collection of 80 Litre waste MGB and fortnightly collection of 240 litre recycling MGB	\$123.00
Per service – fortnightly collection of 140 Litre waste MGB and fortnightly collection of 240 litre recycling MGB	\$260.00
Per service – fortnightly collection of 240 Litre waste MGB and fortnightly collection of 240 litre recycling MGB	\$386.00
Urban Domestic – Multi Unit Dwellings (MUD) Council approved shared 3 MGB service between two Units	

Per service – fortnightly collection of 240 Litre waste MGB, fortnightly collection of 240 litre recycling MGB and weekly collection of 240 litre organics MGB	\$207.00
Urban Domestic – Multi Unit Dwellings (MUD) Council approved shared 2 MGB service between two Units	
Per service – fortnightly collection of 240 Litre waste MGB and weekly collection of 240 litre recycling MGB	\$207.00
Additional Recycling MGB collected fortnightly per service	\$86.00
Additional Organics MGB collected weekly per service	\$100.00

Note: MGB is defined as mobile garbage bin.

(b) Domestic Waste Management Annual Charge – Vacant Land

In accordance with Section 496 of the Act, a charge of \$25.00, to be known as the Domestic Waste Management Charge – Vacant Land is to apply for 2016/2017 to all vacant residential rateable land contained within the defined collection area.

(c) Rural Domestic Waste Management Annual Charge (Residential Properties)

In accordance with Section 496 of the Act, a charge, to be known as the Rural Domestic Waste Management Charge, for the provision of a fortnightly waste service is to apply for 2016/2017 to all rateable residential land within the rural service collection area. This charge, depending on the number of services, is to be levied for the removal of domestic waste and recyclable materials on and during the normal collection day and hours. This is subject to the right of the Council to seek to vary such charge during the year, if in the opinion of the Council; such action is warranted in view of any variation in the cost of rendering the service.

An annual charge of \$277.00, to be known as the Rural Waste Management Charge will be charged per service to residential properties in the rural service collection area that provides for fortnightly collection of 240 litre waste bin and 240 litre recycling bin.

(d) Rural Waste Availability Charge (Residential Properties)

In accordance with Section 496 of the Act, an annual charge of \$25.00, to be known as the Rural Waste Availability Charge will apply for 2016/2017 to residential properties in the rural service collection area that choose not a have a Council Rural Domestic Waste service but have a dwelling situated on the property. Rural property owners paying the Rural Waste Availability Charge have the option to commence services if their circumstances change.

Properties that are unable to be serviced will not incur this service availability charge.

(e) Rural Waste Management Annual Charge (Non-Residential Properties)

In accordance with Section 501 of the Act, a charge, to be known as the Rural Waste Management Charge, for the provision of a fortnightly waste service is to apply for 2016/2017 to all non-residential land within the rural service collection area. This charge, depending on the number of services chosen, is to be levied for the removal of waste and recyclable materials on and during the normal collection day and hours. This is subject to the right of the Council to seek to vary such charge during the year, if in the opinion of the Council; such action is warranted in view of any variation in the cost of rendering the service.

An annual charge of \$433.00, to be known as the Rural Non-Domestic Waste Management Charge will be charged per service to non-residential properties in the rural service collection area that provides for fortnightly collection of 240 litre waste bin and 240 litre recycling bin.

(f) Commercial Waste Management Annual Charges (Urban Collection Area)

In accordance with Section 501 of the Act, charges to be known as Commercial Waste Management Charges are applied to commercial and non-residential properties for the provision of garbage services to properties within the defined collection area that chose to utilise the service. Charges depending on bin capacity, frequency of service and number of services are to be levied for the removal of waste and nominated recyclable materials on and during the normal collection day and hours.

The following charges for 2016/2017 will apply:

Commercial Waste Management Annual Charges	
Type of Service	Annual Charge
Per Service - Weekly collection of 140 litre mobile garbage bin and 240 litre recycling bin	\$420.00
Per Service - Weekly collection of 240 litre mobile garbage bin and 240 litre recycling bin	\$481.00
Per Service - Weekly collection of 140 litre mobile garbage bin	\$420.00
Per Service - Weekly collection of 240 litre mobile garbage bin	\$481.00
Per Service – Additional Weekly collection of 240 litre recycling bin	\$108.00
Per Service – Weekly collection of 240 litre Organics mobile garbage bin (schools, community centre and not-for-profit organisations subject to availability criteria)	\$100.00

(g) Waste Operations Annual Charge

In accordance with Section 501 of the Act, a charge to be known as the Waste Operations Annual Charge will apply for 2016/2017 to all properties subject to all domestic, rural domestic and commercial collection charges excluding vacant land.

An annual charge of \$70.00 per service is to be levied to assist in funding the on-going operations of Council landfill and transfer station facilities.

(h) Water Fixed Annual Charge

In accordance with Section 501 of the Act, a charge to be known as Water Fixed Charge, will apply for 2016/2017 to all properties to which a water supply is available. The amount of the charge will be dependant on the meter connection size and the number of services existing on the property as detailed below.

20mm	\$179.00
25mm	\$280.00
32mm	\$459.00
40mm	\$716.00
50mm	\$1,119.00
65mm	\$1,891.00
80mm	\$2,864.00
100mm	\$4,475.00

Where water supply is available to Strata Units a charge equivalent to a 20mm Water

Fixed Charge will apply to each unit. This charge is variable by meter size should a water meter be connected.

A minimum charge of \$90.00 will apply to each parcel of rateable land (including vacant land) which does not have a water service connection but to which a water service is available in accordance with the provisions of Section 552(1)(b) of the Local Government Act 1993.

Where a meter connected to a property is being used for Fire Services a charge of \$238.00 will apply regardless of the meter connection size.

(i) Water Usage Charges

In accordance with Section 502 of the Act, all Residential properties in 2016/2017 will be charged a Water Usage Charge for the use of the Water Supply Service on a quarterly basis based as per the usage recorded through the water meter or meters servicing the property. The charge will be based on an inclining block tariff with the first incline up to 450kls per reading year being charged at \$2.47 per kilolitre and any usage above 450kls per reading year being charged at \$3.70 per kilolitre. Non-Residential properties will be charged \$2.65 per kilolitre for all water used as recorded through the water meter or meters servicing the property. Non-complying water supply users will be charged \$5.30 per kilolitre.

(j) Sewerage Fixed Annual Charge

In accordance with Section 501 of the Act, a charge of \$819.00, to be known as Sewerage Service Fixed Charge, will apply to all single dwelling residential properties in 2016/2017.

Where the sewerage service supply is available to Strata Units a charge equivalent to a 20mm Sewerage Service Fixed Charge will apply to each unit. This charge is variable by meter size should a separate water meter be connected.

A minimum charge of \$410.00 will apply to each parcel of rateable land (including vacant land) which does not have a sewerage service connection but to which a sewerage service is available in accordance with the provisions of Section 552(3)(a) of the Local Government Act 1993.

Premises connected to Councils Sewer System through a sewer pod will incur an annual Fixed Charge of \$794.00.

The 2016/2017 Sewerage Service Fixed Charge for Non-Residential properties (including Non-rateable properties) will be proportional to the size of the water supply service connection to the property.

The amount of the charge will be dependant on the meter connection size and the number of services existing on the property as detailed below.

20mm	\$819.00
25mm	\$1,280.00
32mm	\$2,097.00
40mm	\$3,276.00
50mm	\$5,119.00
65mm	\$8,651.00
80mm	\$13,104.00
100mm	\$20,475.00

Where a meter larger than a 20mm water meter is connected to a property, categorised as Residential, which has multiple occupancies (ie not a single dwelling house) the Sewerage Service Fixed Charge will be applied as per the meter connection size and the number of services existing on the property as per the Sewerage Service Fixed charges for Non-Residential properties.

Where the sewerage service supply is available to a Non-Residential Strata Unit a charge equivalent to a 20mm Sewerage Service Fixed Charge will apply to each unit. This charge is variable by meter size should a separate water meter be connected.

A minimum charge of \$410.00 will apply to each parcel of non-residential rateable land which does not have a sewerage service connection but to which a sewerage service is available in accordance with the provisions of Section 552(3) (a) of the Local Government Act 1993.

Non-residential properties connected to Councils Sewer System through a sewer pod will incur an annual Fixed Charge of \$794.00.

(k) Sewer Usage Charges

In accordance with Section 502 of the Act, a Sewer Usage Charge of \$1.85 per kilolitre of water used will be charged for 2016/2017 for Residential properties.

Non-residential properties having differing sewer discharge factors (SDF) will be charged for 2016/2017 by applying the individual SDF to a Non-Residential Sewer Usage Charge of \$2.47 per kilolitre of water (as measured by the water meter connection to the property).

(l) Liquid Trade Waste Fixed Charge

In accordance with Section 501 of the Act, Council will charge a Liquid Trade Waste Fixed Charge against properties connected to Council's sewerage system based on the level of impact dischargers have on the system. The Liquid Trade Waste Annual Charge is charged on properties which discharge liquid trade waste but are not required to apply for Council approval.

Other Liquid Trade Waste Fixed charges are based on the level of impact dischargers have on the sewerage system and the requirement of pre-treatment equipment (such as grease traps) to be installed on the property. The Liquid Trade Waste charges for 2016/2017 are detailed below.

Liquid Trade Waste – Annual Charge	\$ 31.00
Liquid Trade Waste – Category 1	\$153.00
Liquid Trade Waste – Category 2	\$255.00
Liquid Trade Waste – Category 2S	\$255.00
Liquid Trade Waste – Category 3	\$429.00
(Large Industrial & Commercial Premises)	

(m) Liquid Trade Waste User Charges

In accordance with Section 502 of the Act, properties assessed as discharging Liquid Trade Waste to Councils sewer system will be charged a Liquid Trade Waste Usage Charge by applying the individual Liquid Trade Waste Factor (LTWDF) against the liquid trade waste usage charge for 2016/2017 of \$2.24 per kilolitre of water (as

measured by the water meter connection to the property).

*****Properties that are technically non-complying dischargers into Council's sewer system will be levied a trade waste usage charge of \$5.30 per kilolitre of water (as measured by the water meter connection to the property).**

(n) Stormwater Management Charge

In accordance with Section 496A of the Act, Council will charge a 'Stormwater Management Charge' against rateable properties for which the service is available. Council has identified the residential and business properties that are within Council's urban stormwater catchment areas that will be levied this charge for the 2016/2017 financial year.

i. Properties categorised as Residential (Not being Strata Titled)

A flat charge of \$25.00 for a Stormwater Management Service Charge is to be charged against each eligible assessment categorised as Residential within the urban stormwater catchment.

ii. Properties categorised as Residential (Strata Titled)

A flat charge of \$12.50 for a Stormwater Management Service Charge is to be levied against each eligible residential strata unit within the urban stormwater catchment.

iii. Properties categorised as Business (Not being Strata Titled)

A Stormwater Management Service Charge is to be charged against each eligible assessment (not being strata titled) categorised as business within the urban stormwater catchment area based on the total area of the assessment. A charge of \$25.00 for every 350 square metres or part of 350 square metres will apply, with a minimum charge of \$25.00 to apply for those properties with an area of less than 350 square metres.

I. Properties categorised as Business (Strata Units)

A Stormwater Management Service Charge against each eligible business strata unit within the urban stormwater catchment area based on one of the following two scenarios:

Scenario 1 – Business Strata Units Only

If the strata complex contains only business properties (i.e. not mixed development) the charge per strata unit will be calculated by using a charge of \$25.00 per 350m² of the land area occupied by the strata scheme (or part thereof), proportioned by the unit entitlement of each lot in the strata scheme. In the event that this approach results in charge of less than \$5.00 per unit, a minimum charge of \$5.00 will be levied on each strata unit.

Scenario 2 – Business & Residential Strata Units (Mixed Development)

If the strata complex contains mixed development (i.e. properties rated as both business and residential) the dominant category of the strata scheme must be determined and charges will apply for Business strata unit or Residential Strata units as previously adopted. In the event that a mixed development is 50% residential and

50% business, council has the discretion to determine whether to charge the property as a residential or business property.

II. Urban Land Exempt from the Stormwater Management Service Charge

The same exemptions that apply to non-rateable properties for other rates and charges also apply in respect of the stormwater management service charge pursuant to the Local Government Act. In addition, the following properties are also exempted from this charge under the provisions:

- Rateable land owned by the Crown**
 - Rateable land under a lease for private purposes granted under the Housing Act 2001 or the Aboriginal Housing Act 1998**
 - Vacant Land**
- 6. In accordance with section 566 of the Act, that Council adopts the maximum rate of interest as determined by the Division of Local Government in Circular 16-11 dated 22 April 2016 of 8.0% for 2016/2017 on overdue rates and charges.**

Report

Council at its Ordinary Meeting held on 28 April 2016 following consideration of *Report No.13.1 Public Exhibition - Draft 2016/17 Operational Plan, including Statement of Revenue Policy* adopted resolution **16-221**, which determined the proposed Rating Structure for the 2016/2017 Financial Year and placed the Draft 2016/2017 Operational Plan including Budget Estimates, Statement of Revenue Policy and Fees and Charges on public exhibition for twenty eight days.

The public exhibition period closed on 14 June 2016 seeking submissions on the draft documents with the details of those submissions being the subject of another report to this Ordinary Council Meeting.

Council is required to make the rates and charges under Sections 533, 534, 535 and 566 of the Local Government Act 1993.

This report identifies those rates and charges to apply for the 2016/2017 financial year and recommends them for adoption.

Financial Implications

The 2016/2017 budget including proposed works/services to be adopted by Council at this Ordinary Meeting is the subject to another report. The Draft 2016/2017 Budget Estimates has been based on the increase of 1.8% as approved by the Independent Pricing and Regulatory Tribunal (IPART) for the general rate income. Charges proposed for water, sewerage, stormwater and waste services have also been developed on the works/maintenance requirements of those areas and also in conjunction with the legislative requirements of the Local Government Act 1993 to establish such charges.

Statutory and Policy Compliance Implications

Council is required to make the rates and charges under sections 533, 534, 535 and 566 of the Local Government Act 1993. The identified sections of the Local Government Act 1993 are reproduced below:

533 Date by which a rate or charge must be made

A rate or charge must be made before 1 August in the year for which the rate or charge is made or before such later date in that year as the Minister may, if the Minister is of the opinion that there are special circumstances, allow.

534 Rate or charge to be made for a specified year

Each rate or charge is to be made for a specified year, being the year in which the rate or charge is made or the next year.

535 Rate or charge to be made by resolution

A rate or charge is made by resolution of the council.

566 Accrual of interest on overdue rates and charges

(1) *Interest accrues on rates and charges that remain unpaid after they become due and payable.*

(2) *Interest accrues on a daily basis.*

- (3) *The rate of interest is that set by the council but must not exceed the rate specified for the time being by the Minister by notice published in the Gazette.*
- 5 (4) *Accrued interest is, for the purpose of its recovery, taken to be a rate or charge which is due and payable.*
- 10 (5) *Interest continues to accrue on unpaid rates or charges even though judgment for payment of the rates or charges may have been obtained in a court. Interest is not payable on the judgment debt, despite any other Act.*

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 4.3 Draft Coastal Zone Management Plan Byron Bay Embayment - Public Exhibition

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

10 **File No:** I2016/619
Theme: Ecology
 Planning Policy and Natural Environment

Summary:

15 The draft Coastal Zone Management Plan Byron Bay Embayment (draft CZMP) was publicly exhibited under section 55E of the *Coastal Protection Act 1979* from 21 May to 14 June 2016. The public submissions have been considered by staff and summarised in Attachment 1. Staff have also considered feedback from agencies and the draft CZMP Project Reference Group (PRG).

20 The report recommends a number of amendments to the draft CZMP prior to submission to the Minister for certification.

RECOMMENDATION:

1. That Council amend the draft Coastal Zone Management Plan Byron Bay Embayment in accordance with the recommendations listed in Table 1 of this report.
2. That Council submit the draft Coastal Zone Management Plan Byron Bay Embayment, as amended, to the Minister for certification under section 55G of the *Coastal Protection Act 1979*.

Attachments:

- 25 1 Exhibition Submissions Report - Draft CZMP BBE, E2016/50370
 2 Agency Feedback on draft CZMP BBE (55C(2) (b) CP Act), E2016/50235
 3 PRG Feedback on draft CZMP BBE, E2016/50237
 4 PRG feedback on draft Exhibition Submissions Report, E2016/46176

30

Report

Council, at the 12 May 2016 Extra Ordinary Meeting, resolved:

- 35 **Resolution 16-233**
That Council endorse the draft Coastal Zone Management Plan Byron Bay Embayment, at Attachments 1 to 5, for public exhibition and proceed with the public exhibition for a period of not less than 21 days, from 14 May 2016 to 6 June 2016, in accordance with section 55E of the Coastal Protection Act 1979, as per the Exhibition Activities detailed within the report.
- 40 *Prior to exhibition amend Table 1 in reference to the PRG feedback provided to staff, the date to be amended from 10 June to 11 June. Two days to be listed in the Details column.*

45 A motion to rescind resolution 16-233 was lodged and declared lost at the 19 May 2016 Council Ordinary Meeting. As a consequence, the public exhibition dates in resolution 16-233 were adjusted.

The draft Coastal Zone Management Plan Byron Bay Embayment (draft CZMP) was publicly exhibited under section 55E of the *Coastal Protection Act 1979* from 21 May to 14 June 2016. The draft CZMP is available on Council's website:

- 5 • [Part A – General Information](#)
- [Part B – Coastal Hazards and Risk Management](#)
- [Part C – Community Uses](#)
- [Part D – Open Coast Ecosystem Health](#)
- [Part E – Emergency Action Sub Plan \(Byron Shire Coastline\)](#)

10 During the exhibition period the following consultation activities were undertaken:

- Information Stands
- Facilitated Workshops
- [‘Have your say’ web platform](#)
- Media coverage

15 Further information regarding the above consultation activities can be found in the submissions report, **Attachment 1**.

Public Submissions

20 Public submissions have been considered in accordance with section 55F of the *Coastal Protection Act 1979*. Copies of all public submissions received during the exhibition period were provided to Councillors for their consideration during the exhibition period.

25 689 submissions were received. This is considered a strong response, especially when compared with the number of submissions received on the previous draft CZMP (2010), which was 654 (over an 8 week exhibition period). An additional 46 submissions were received outside of the statutory exhibition period (up to 22 June 2016). Copies of the late submissions were provided to Councillors for their consideration also.

30 **Attachment 1** provides further details on the public submissions received during the exhibition period, key issues raised and staff's response.

Feedback from public authorities

35 Section 55C(2)(b) of the *Coastal Protection Act 1979* states:

- (2) A coastal zone management plan must not include the following:
 - 40 (b) proposed actions or activities to be carried out by any public authority or relating to any land or other assets owned or managed by a public authority, unless the public authority has agreed to the inclusion of those proposed actions or activities in the plan.

45 Section 55G (2) of the *Coastal Protection Act 1979* states:

Before submitting the draft coastal zone management plan to the Minister under subsection (1), the council must consult with other public authorities in the manner specified in the Minister's guidelines.

50 During the exhibition period, staff wrote letters to relevant agencies, seeking their advice as per section 55C(2)(b). Staff also met with representatives of Department of Primary Industry, Crown Lands; Department of Planning and Environment; and Office of Environment and Heritage. **Attachment 2** includes the advice received from these public agencies, key issues raised and staff's response.

55

At the time of preparing this report, a number of NSW agency responses had not yet been received:

- Department of Primary Industries Cape Byron Marine Park
- Department of Primary Industries Fisheries
- 5 • Department of Primary Industries Lands
- State Emergency Services

As letters from these agencies are received over coming days, they will be provided to Council as late attachments to this report. Where necessary, staff will also provide recommendations to Council concerning further amendments to the draft CZMP if required in response to these submissions.

Coastal Zone Management Plan Byron Bay Embayment Project Reference Group (PRG)

15 The PRG was formed in August 2015 with the following objectives:

- 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'.*
- 20 b) *Provide feedback, input and support to draft CZMP BBE exhibition consultation and communication activities.*
- c) *Overview submissions provided on the adopted draft CZMP BBE, review and provide feedback to staff on draft CZMP BBE 'exhibition submissions report' prior to tabling at Council meeting, and prior to amended draft CZMP BBE being adopted for 'submission to the Minister'.*
- 25

Additionally, the PRG constitution states:

- 16.3 *If the time frame allocated to complete the objective(s) is 6 months or more the Group is to provide a progress report quarterly to Council on its progress.*
- 30

The following information is provided in response to the above.

As advised in Report No. 4.1 - Public Exhibition of Draft Coastal Zone Management Plan Byron Bay Embayment to the 12 May 2016 meeting:

35 *The most recent PRG feedback on the 7 April 2016 version of the draft CZMP has been received but has not yet been comprehensively considered by staff. This is due to time constraints as a result of resolution 16-028. With permission from the PRG members, this most recent feedback is attached to this report, in its original form, for Council's information. Refer Attachment 8. Noting that feedback from Crown Lands is expected but has not yet been received.*

40

45 *The most recent PRG feedback on the draft CZMP BBE will be considered and the outcomes of this process will be reported to Council at the same time that the 'exhibition submissions report' on the draft CZMP BBE is reported.*

Consideration of the PRG feedback on the 7 April 2016 CZMP BEE version is included in **Attachment 3**

50 The PRG were provided with a copy of the draft Exhibition Submissions Report; feedback received from the PRG is in **Attachment 4**.

Recommendations

5 Table 1 provides a summary of staff recommendations for amending the draft CZMP. These recommendations reflect consideration of public submissions, feedback from public authorities, and feedback from the PRG. It is recommended that the draft CZMP BBE be adopted as amended in accordance with Table 1.

Table 1 Summary of recommendations to the draft CZMP BBE

Ref. Number	CZMP Part	CZMP Ref.	Recommendation	Source of Amendment
1.	All	Where relevant	Correct minor errors and formatting inconsistencies etc, update 'Public Exhibition of draft CZMP' and add 'Executive Summary', other minor updates as required.	Staff minor edit
2.	All	Where relevant	Refer to 'Cape Byron State Conservation Area' not 'Cape Byron Headland Reserve'	Agency Feedback #11, NPWS
3.	Part A	Section A1.7.7	Amend Section A1.7.7, noting that a Plan of Management was adopted 10 November 2009.	Public submissions #32
4.	Part B	Section B3.6	Amend Management Action 1(a) 'Develop funding model (private/public)' - to provide for the maintenance of works. Amend Management Action 1(a) 'Develop funding model (private/public)' and / or 1(d) 'Develop planning and development controls and conditions for 'seawalls with walkway'- to provide for satisfactory arrangements for the mitigation of impacts from works e.g. increased erosion of the beach or adjacent land.	Agency Feedback #5, Office Environment & Heritage
5.	Part B	Section B3.6	Amend Management Action 1(e) to clarify the need to conduct necessary investigations concerning impacts to coastal processes and the environment, as required under the <i>Environmental Planning and Assessment Act 1979</i> .	Agency Feedback #12, NPWS Public Submissions #21 PRG Feedback #38 and #39
6.	Part B	Section B3.6.4	3.6.4 Delete reference to OEH (National Parks) in Support Agency column.	Agency Feedback #14, NPWS
7.	Part B	Watego s	Change timeframe to 'medium' in management action 7.	Public submissions #49
8.	Part B	Section B3.6	Amend Management Action 8 Monitor coastal processes and impacts on North Beach by adding: <i>The identification of appropriate management and mitigation measures by the owner of Elements of Byron and the potential submission of applications to address impacts.</i>	Public Submissions #22 PRG Feedback #36 and #40

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.3

Ref. Number	CZMP Part	CZMP Ref.	Recommendation	Source of Amendment
9.	Part B	Section B3.6	Amend Management Action 1(a) 'Develop funding model (private/public)' and / or 1(d) 'Develop planning and development controls and conditions for 'seawalls with walkway'- to provide for satisfactory arrangements for the mitigation of impacts from works e.g. increased erosion of the beach or adjacent land.	Public Submissions #23 PRG Feedback #36 PRG Feedback #5 PRG Feedback #49
10.	Part B	Section B3.6	Amend Management Action 3 to acknowledge the need to engage with key stakeholders e.g. NSW Crown Holiday Parks Trust and Department of Industry Lands.	Public submissions #47
11.	Part B	Section B3.6	Amend Management Action 1(d) 'Develop planning and development controls and conditions for 'seawalls with walkway' KPIs to include 'if required'.	Agency Feedback #3, Dept. Planning & Environment
12.	Part B	Section B3.6	Amend Management Action 1(f) 'Revise and update coastal hazard land use and development planning controls' - Description of Task to include a new sub action: 'audit development activity against existing and proposed controls'.	Agency Feedback #4, Dept Planning & Environment
13.	Part B	Table 10	Amend Tables 10 and 11 to remove reference to state government funding.	Agency Feedback #7, Office Environment & Heritage
14.	Part B	Appendix 1	Include the assumptions table from the CBA in Part B, Appendix 1.	PRG Feedback #3
15.	Part B, C & D	CZMP Management Actions	Remove OEH as a 'support organisation' from the following CZMP management actions (MA): <ul style="list-style-type: none"> • Part B, Section B3.6: MA 1(a), 1(b), 1(c), 1(d), 1(e), 1(f); MA 2; MA 3; MA 6; MA 7; MA 8 • Part C, Section C7.5: MA 2.1.11; MA 3.1.11 • Part D, Section 01.5, Table 2: MA 1.4.6; 1.5.2; 1.5.6 	Agency Feedback #8, Office Environment & Heritage
16.	Part C	Management Action 1.1.1	Remove OEH from the 'Responsibility' column for Management Action 1.1.1. This action, as included in council's CZMP, is the responsibility of council if they are a 'proponent to an activity'. OEH is able to provide advice to council on this action if requested and in accordance with its core business.	Agency Feedback #9, Office Environment & Heritage

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.3

Ref. Number	CZMP Part	CZMP Ref.	Recommendation	Source of Amendment
17.	Part C	Table 5 - 2.1.15	Remove 'State Government' from the 'Responsibility' column, and list council as being responsible for providing the support (where appropriate).	Agency Feedback #10, Office Environment & Heritage
18.	Part C	Table 5	Delete all references to Cape Byron Trust and refer only to NPWS.	Agency Feedback #15, NPWS
19.	Part C	Table 5 - 2.1.4	Delete action as responsibility cannot be reassigned.	Agency Feedback #16, NPWS
20.	Part C	Table 5 - 2.1.5	Delete reference to NPWS in the Support Agency column.	Agency Feedback #17, NPWS
21.	Part C	Table 5 - 2.1.6	Delete action as responsibility cannot be reassigned.	Agency Feedback #18, NPWS
22.	Part C	Table 5 - 2.1.7	Delete reference to NPWS in Support Agency column.	Agency Feedback #19, NPWS
23.	Part C	Table 5 - 2.1.8	Delete reference to NPWS in Support Agency column.	Agency Feedback #20, NPWS
24.	Part C	Table 5 - 2.1.9	Delete reference to NPWS in Support Agency column.	Agency Feedback #21, NPWS
25.	Part C	Table 5 - 3.1.1	Delete reference to NPWS in Support Agency column	Agency Feedback #22, NPWS
26.	Part C	Table 5 - 3.1.6	Delete reference to NPWS in Support Agency column.	Agency Feedback #23, NPWS
27.	Part C	Table 5 - 3.1.9	Delete reference to NPWS in Support Agency column.	Agency Feedback #24, NPWS
28.	Part C	Table 5 - 3.1.10	Delete reference to NPWS in Responsibility column.	Agency Feedback #25, NPWS
29.	Part C	Section C2	Liaise with indigenous groups e.g. Arakwal to include more information on the ever present risk in the exposing of sites along the coast.	Public submissions #28
30.	Part C	Section C7.5	Include management action to consider establishment of a coastal management group to assist with implementation of relevant actions in the draft CZMP BBE.	Public submission #50
31.	Part D	Table 2	In the table, reference is made to Cape Byron Trust and NPWS. Delete all references to Cape Byron Trust and refer only to NPWS.	Agency Feedback #26, NPWS
32.	Part D	Table 2 - 1.1.2	Delete reference to NPWS in Support Agency column	Agency Feedback #27, NPWS
33.	Part D	Table 2 - 1.1.3	Delete reference to Cape Byron Headland Reserve Plan of Management. Delete reference to NPWS in Support Agency column.	Agency Feedback #28, NPWS
34.	Part D	Table 2 - 1.1.7	Delete reference to NPWS in Support Agency column.	Agency Feedback #29, NPWS
35.	Part D	Table 2 - 1.1.8	Delete reference to NPWS in Support Agency column.	Agency Feedback #30, NPWS

Ref. Number	CZMP Part	CZMP Ref.	Recommendation	Source of Amendment
36.	Part D	Table 2 - 1.1.15	Delete reference to NPWS and ORCA in Responsibility column and change to BSC.	Agency Feedback #31, NPWS
37.	Part D	Table 2 - 1.1.16	Delete action as responsibility cannot be reassigned.	Agency Feedback #32, NPWS
38.	Part D	Table 2 - 1.3.1	Delete action as responsibility cannot be reassigned.	Agency Feedback #33 NPWS
39.	Part D	Table 2 - 1.4.6	Delete reference to NPWS in Responsibility column.	Agency Feedback #34, NPWS
40.	Part D	Section D1.2.1	Where reliable information is readily available, provide more detail concerning the location of the seabird/shorebird nesting site and the species known to utilise the area.	PRG Feedback #47
41.	Part E	Section E3	Table 3.1 - Page 10 - 'NSW Police' - Remove specific reference to SERM Act 1989 and replace with 'Legislation', where this is confirmed by the SES.	Agency Feedback #2, NSW Police
42.	Part E	Section E2	Update all DISPLAN references to EMPLAN and in this context, change terminology to events (i.e. DISPLAN or NON-DISPLAN events as opposed to emergencies), where this is confirmed by the SES.	Agency Feedback #1, NSW Police

Financial Implications

5 The financial implications associated with the draft CZMP BBE, specifically the coastal hazard risk management strategies as per Res 16-169, are detailed at Part B, Section B3 of the draft CZMP BBE.

10 The financial implications have been analysed under the assumption that a 'private-public' funding model (WRL, 2016) will apply to the Belongil Beach 'adaptive seawall with walkway' strategy, and that Crown Lands will not fund the Jetty site works or Main Beach (Jonson Street Protection Works).

15 The assumption that private landowners would pay for works would appear to have some support from Belongil landowners, as per the submissions received. Part B of the draft CZMP BBE, Management Action 1(a), provides a process for negotiating and confirming landowner contributions. Without a 'private-public' funding model for implementing the Belongil Beach 'adaptive seawall with walkway' strategy, it would not be feasible to implement this strategy.

Comments by Manager Finance

20 If reference is made to Table 10 within the draft CZMP BBE, and focus is placed upon the contribution by Council in terms of capital costs for implementing the coastal hazard risk management strategies proposed, the following Table 2 demonstrates the quantum and timing of Council's contribution to the CZMP BBE should it proceed:

Table 2 Coastal Hazard Risk Management Strategies (inc. Main Beach and Belongil) - summary of financial implications (capital estimates) on Council, assuming hypothetical private/public funding model¹

Timing	Timeframe	Budget Years	Capital Costs estimates ² \$
Immediate	1 to 2 years	2016/17 to 2017/18	310,578
Short	2 to 5 years	2017/18 to 2020/21	1,356,000
Medium	6 to 10 years	2021/22 to 2025/26	3,117,070
Long	10 to 15 years	2026/27 to 2030/31	35,000
Total			4,818,648

5 ¹ As per WRL (2016) private/public funding model except Crown Lands do not participate in funding the strategies for Main Beach or Jetty Site (Belongil).

² This figure is less the assumed NSW Government contribution (50 %) (Coastal Management Program).

10 Table 2 demonstrates, assuming all assumptions in the draft CZMP BBE and the level of contributions from landowners plus NSW Government contributions are realised, that Council will need to contribute \$4.818million to the capital costs associated with the implementation of the coastal hazard risk management strategies – including Main Beach and Belongil Beach in the draft CZMP BBE. Of this amount, a total of \$4.784million is potentially payable within the next ten years being the period applicable for the next update to Council’s Long Term Financial Plan up to the
15 financial year ended 2025/2026 and this does not include any one-off or recurrent operating expenditure over and above amounts already allocated.

20 On 20 June 2016, Council received correspondence from the Office of Environment and Heritage (OEH). This correspondence is included in **Attachment 2**. On the second page of the correspondence from OEH, advice is provided under the heading ‘*Funding the implementation of CZMP management actions*’. This advice stipulates that Council cannot assume 50% contribution from the NSW Government. OEH have indicated as they administer the Coastal Management Program, they also cannot commit to funding the management actions as these funds are subject to Treasury allocations on an annual basis. OEH are also suggesting to Council that it cannot
25 nominate OEH as having financial commitment to either a hypothetical or otherwise funding model. Upon the certification of Council’s CZMP, Council would then be able to apply for funding assistance through the Coastal Management Program but such applications would be competitively assessed against state wide priorities at the time of application.

30 Without the assumed funding from the NSW Government via OEH, this then puts a different complexion on the extent of funding Council will need to contribute to the CZMP BBE, changing the funding model to landholder and Council contributions only.

35 If Table 2 above is recalibrated excluding the assumed contribution from the NSW State Government, then the contribution from Council would be as outlined in Table 3.

Table 3 Coastal Hazard Risk Management Strategies (inc. Main Beach and Belongil) - summary of financial implications (capital estimates) on Council, assuming hypothetical private/public funding model¹

Timing	Timeframe	Budget Years	Capital Costs estimates \$
Immediate	1 to 2 years	2016/17 to 2017/18	396,156
Short	2 to 5 years	2017/18 to 2020/21	2,687,000
Medium	6 to 10 years	2021/22 to 2025/26	6,234,140
Long	10 to 15 years	2026/27 to 2030/31	70,000
Total			9,387,296

¹. As per WRL (2016) private/public funding model except Crown Lands do not participate in funding the strategies for Main Beach or Jetty Site (Belongil).

5 The final outcome though to Council in terms of its contribution will be contingent upon whether it is able to obtain any grant funding from OEH via application should the CZMP BBE be certified.

10 Subject to the progression of the draft CZMP BBE under the CP Act, Council would be required to incorporate these costs and formalise a funding strategy for these costs to be met. Council will also be required to consider the Council Improvement Plan (CIP) that was submitted in respect of the Fit for the Future response. This plan which has projected outcomes for Council up to the financial year ended 2019/2020 does not include any financial implications of the CZMP BBE.

15 Council will need to therefore identify additional revenue sources to fund its contribution or will need to reprioritise existing expenditure to this project for its construction and ongoing maintenance over the timeframe identified to which the vast majority is over the next ten financial years. In terms of the 2016/2017 financial year budget estimates to which Council is also to adopt at this Extraordinary Council Meeting, there is no funding currently allocated towards the capital costs of the draft CZMP BBE, as per the 'immediate' timeframe at Table 2 and 3.

20 Additionally, the contribution by Council identified at Table 3 and 4 does not include other costs associated with Part C and D of the draft CZMP BBE, which have not yet been quantified.

Statutory and Policy Compliance Implications

25 Exhibition of draft CZMP BBE

The public exhibition of the draft CZMP BBE was undertaken in accordance with Part 4A of the Coastal Protection Act 1979.

30 **55E Public consultation**

After preparing a draft coastal zone management plan, the council is:

35 *(a) to give public notice in a newspaper circulating in the locality of the place at which, the dates on which (comprising a period of not less than 21 days), and the times during which, the draft coastal zone management plan may be inspected by the public, and*

(b) to publicly exhibit the draft plan at the place, on the dates and during the times set out in the notice.

40 Consideration of Submissions

The submissions on the draft CZMP BBE were considered in accordance with Part 4A of the Coastal Protection Act 1979.

45 **55F Submissions**

(1) During the period of public exhibition of a draft coastal zone management plan, any person may make a submission in writing to the council with respect to its provisions.

(2) The council must consider all submissions so made.

(3) The council may amend the draft coastal zone management plan as a result of the submissions.

50 Draft Coastal Management Bill

The Coastal Management Bill 2016 (CM Bill) was introduced into the NSW Parliament in May 2016. The CM Bill was assented to on the 7 June 2016 (now the Coastal Management Act 2016), with only minor amendments. However, the CM Act 2016 will not commence until proclamation.

55 The proclamation date is unknown.

The following sections of the CM Act are relevant to this report:

5 General saving

5 *Subject to this Schedule and the regulations:*

(a) *anything begun before the repeal date under a provision of the former Act for which there is a corresponding provision in this Act may be continued and completed under the former Act as if this Act had not been enacted, and*

10 (b) *subject to paragraph (a), anything done under a provision of the former Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.*

15 **6 Certification of pending coastal zone management plans**

(1) *If, before the repeal date, a draft coastal zone management plan has been submitted to the Minister for certification under section 55G of the former Act, but has not by that date been certified, the Minister and council may continue to deal with that plan as if Division 1 of Part 4A of that Act had not been repealed.*

20

(2) *Subclause (1) ceases to have effect 6 months after the repeal date.*

(3) *A coastal zone management plan certified and made in accordance with subclause (1) is taken to be a coastal management program prepared and adopted under this Act.*

25

(4) *Subclause (3) ceases to have effect at the end of 31 December 2021.*

30 The draft CZMP BBE has been prepared under the current legislative arrangements, i.e. the *Coastal Protection Act 1979*. The proposed transitional arrangements between the current Act and the CM Act provide a six-month window for a CZMP to be accepted as a coastal management program under the CM Act.

35 However, a CZMP will not become a coastal management program under the CM Act unless it is submitted to the Minister for certification prior to the CM Act's proclamation. Because the CM Act's start date is unknown, it would be prudent to submit the draft CZMP BBE to the Minister for certification as soon as reasonably practicable.

40 **22 Implementation of coastal management program by local councils**

(1) *A local council is to give effect to its coastal management program and, in doing so, is to have regard to the objects of this Act.*

45 (2) *In particular, without limiting subsection (1), a local council is to give effect to its coastal management program in:*

(a) *the preparation, development and review of, and the contents of, the plans, strategies, programs and reports to which Part 2 of Chapter 13 of the Local Government Act 1993 applies, and*

50 (b) *the preparation of planning proposals and development control plans under the Environmental Planning and Assessment Act 1979.*

Report No. 4.4 **PLANNING - 10.2016.34.1 Secondary Dwelling at 7 Tyagarah Street Mullumbimby**

Directorate: Sustainable Environment and Economy

Report Author: Luke Munro , Planner

5 **File No:** I2016/520

Theme: Ecology
Development and Approvals

10 **Proposal:**

Proposal: Secondary Dwelling

Property description: PT: 8 SEC: 5 DP: 758725
7 Tyagarah Street MULLUMBIMBY

Parcel No/s: 95710

Applicant: Joe Davidson Town Planning

Owner: Ms J L & Mr P B Vogel

Zoning: Zone No. R2 Low Density Residential

Date received: 22 January 2016

Integrated Development: No

Public notification or exhibition:

- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 17/2/16 to 1/3/16
- Submissions: For 0 Against: 4

Other approvals (S68/138): Water & Sewer

Planning Review Committee: 31 March 2016

Delegation to determination: Council

Summary:

Development consent is sought for the construction of a Secondary Dwelling at 7 Tyagarah Street, Mullumbimby.

The proposed development is consistent with the provisions of the Byron Local Environmental Plan (LEP) 2014 and Development Control Plan (DCP) 2014 and is not likely to result in significant impacts on the existing residential environment. It is recommended that consent be granted subject to conditions.

15 **NOTE TO COUNCILLORS:**

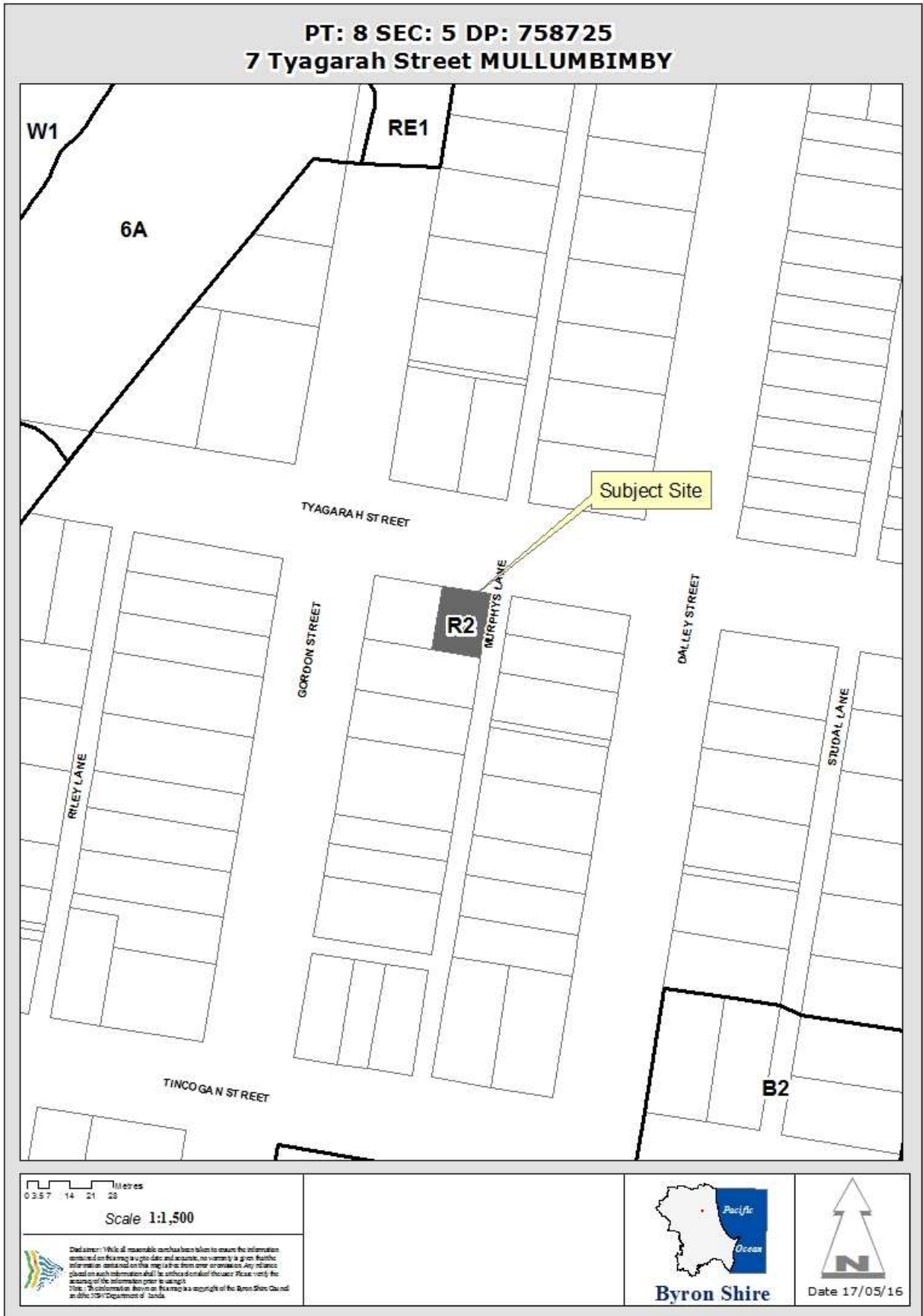
20 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

That Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2016.34.1 for Secondary Dwelling, be granted consent subject to the following conditions listed in Attachment 2 #E2016/32495.

Attachments:

- 1 Proposed Plans 10.2016.34.1, E2016/32483
 - 2 Conditions of consent 10.2016.34.1, E2016/32495
 - 3 Confidential - Submissions 10.2016.34.1, E2016/32497
- 5



1. INTRODUCTION

1.1 History/Background

5

The site has previously been developed as a dwelling house. The existing dwelling is a single storey tin and timber home as shown below.



Figure 1: Existing Dwelling House

10

1.2 Description of the site

15

The subject site is located at 7 Tyagarah Street, Mullumbimby and is further described as PT 8 Sec:5 DP 758725 with an area of 407m². The site is located on the corner of Tyagarah Street (primary frontage) and Murphy's Lane (secondary frontage). The land is zoned R2 Residential and contains an existing dwelling-house with two (2) bedrooms. The dwelling is of tin and timber construction.

20

The site has established landscaping which includes a number of smaller shrubs at the front and rear of the dwelling and will be generally maintained onsite. The proposed secondary dwelling is located at the rear of the existing dwelling fronting onto Murphy's Lane which will ensure the development has minimal impact on the character and amenity of the area.

25

The site has access to both water and sewage systems. Stormwater from the existing dwelling is discharged to grass swales in Murphy's Lane and Tyagarah Street.



Figure 2: Photo of subject site

The rear of the existing dwelling has a number of additions that detract from the character values of the existing dwelling onsite. These additions consist of small dormer roof extension and additional skillion verandah extension which has been partially enclosed.

5



Figure 3: Rear Elevation of existing dwelling

1.3 Description of the proposed development

- 10 The proposed development includes the construction of a Secondary Dwelling over 7 Tyagarah Street, Mullumbimby. The Secondary Dwelling will be located at the rear of the existing dwelling onsite which will incorporate the removal of an existing old timber shed along the western boundary.

5 The proposed secondary dwelling will consist of a single (1) bedroom, combined kitchen and living area and bathroom with a combined area of 41.25m². The secondary dwelling will be constructed of a weatherboard cladding and colourbond roof to match the colour of the existing dwelling onsite. The secondary dwelling will be attached to the rear of the existing dwelling onsite and will incorporate a hipped and gabled roof form.

An additional vehicular access will be provided at the rear of the site to accommodate a new car parking space at the rear of the site.

10 Amended plans were submitted in response to Council's request for further information and these were referred to Council's Heritage Advisor for comment. After reviewing the amended plans Council's Heritage Advisor did not consider that a formal heritage referral report was necessary in this case for the reasons outlined below:

15 *"The addition is complementary to the original and the changes that you have negotiated on roof form and cladding are in accordance with the DCP policy for materials and roof form, consistent with the built form and character of the heritage conservation area."*

In this instance it is considered that the proposed secondary dwelling is compatible with the outcomes sought for the Mullumbimby Conservation Area.

20 **2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS**

	Summary of Issues
Development Engineer	No objection, subject to conditions of consent
Heritage Advisor	No objection, complies with intent of Mullumbimby Conservation Area

There were no external government agency referrals for this application.

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

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

30 **State/Regional Planning Policies and instruments - Issues**

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Requirement	Requirement	Proposed	Complies
State Environmental Planning Policy No. 71 - Coastal Protection	Matters for consideration for development within the coastal zone:		
	– retention of existing public access to the coastal foreshore	– No public access to the coastal foreshore will be impeded or diminished as part of the proposal	Yes
	– impact of effluent disposal on water quality	– No effluent is proposed to be disposed other than to Council's sewerage system.	Yes
	– development must not discharge untreated stormwater into a coastal water body	– Stormwater is to be discharged to the street.	Yes
NSW Coastal Policy 1997	Development within the Coastal Zone must be consistent with the Aims, Objectives and Strategic Actions of the Coastal Policy.	The dwelling house is proposed on an existing urban lot.	Yes
Building Code of Australia	The proposal must be	A condition has been	Yes

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4.4

	capable of compliance with the structural and safety requirements of the Building Code of Australia.	recommended for inclusion in the consent to ensure the BCA requirements are met.	
Demolition	Demolition works involving asbestos must be carried out in accordance with the requirements of Workcover and Australian Standards.	A condition has been recommended to ensure that demolition works are undertaken in accordance with the requirements of Workcover and Australian Standards.	Yes
Disability Access (DDA)	Access for persons with disabilities and integration into surrounding streetscapes without creating barriers. (Council Res.10-1118)	Access to dwelling is provided wholly within the property.	Yes
State Environmental Planning Policy BASIX – Building Sustainability Index	BASIX Certificate Required for: <ul style="list-style-type: none"> • New dwellings • Alterations > \$50,000:00 • Pools > 40,000 kl 	<ul style="list-style-type: none"> – Yes – N/A – N/A 	Yes
State Environmental Planning Policy (Affordable Rental Housing) 2009	Clause 19 secondary dwelling means a self-contained dwelling that: a) is established in conjunction with another dwelling (the principal dwelling), and b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and is located within, or is attached to, or is separate from, the principal dwelling.		Yes Yes Attached
	Clause 20 Secondary Dwellings are permissible in the following zones provided a dwelling house is permissible on the land: <ul style="list-style-type: none"> • Zone R1 General Residential, • Zone R2 Low Density Residential, • Zone R3 Medium Density Residential, • Zone R4 High Density Residential, • Zone R5 Large Lot Residential. 	Yes	
	Clause 22 (3) Development is permissible provided: <ul style="list-style-type: none"> • The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument; and The total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area	Yes	

* Non-complying issues discussed below

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

Zone: R2 Low Density Residential

Definition: Secondary Dwelling

LEP Requirement	Summary of Requirement	Proposed	Complies
Meets R2 Low Density Residential Zone objectives	<ul style="list-style-type: none"> • encourage a range of housing types: and • ensure non residential uses have a domestic scale and character. 	The secondary dwelling will provide a range of housing types in the locality and maintains the existing character of the residential area.	Yes
Permissible use	<p>A building or place used predominantly as a place of residence, and includes any of the following - dwelling house, which means <i>'a building containing only one dwelling'</i>.</p> <p><i>Secondary dwelling - pursuant to SEPP (Affordable Rental Housing) 2009.</i></p>	The development is for a secondary dwelling and is a permitted use in the R2 Low Density Residential Zone under the Affordable Rental Housing SEPP.	Yes
Clause 4.3 Height of Buildings.	Overall height of development must not exceed 9.0m above existing ground level	The proposed secondary dwelling will located at ground level at the rear of the existing dwelling and will not increase the height of the existing dwelling house onsite.	Yes
Clause 4.4 – Floor Space Ratio	Overall floor space ratio of the dwelling house does not exceed 0.5 FSR	The site including the secondary dwelling will result in an overall floor space ratio of 0.43:1 which does not exceed the maximum FSR of 0.5	Yes
Clause 5.5 – Development within the Coastal Zone	to implement the principles in the NSW Coastal Policy, and in particular to (iv) recognise and accommodate coastal processes and climate change	The development is located in the Coastal Zone and is considered consistent with the Aims, Objectives and Strategic Actions of the NSW Coastal Policy.	Yes
Clause 5.10 – Heritage Conservation	<ul style="list-style-type: none"> a) to conserve the environmental heritage of Byron, b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, c) to conserve 	<p>The development will maintain existing vegetation onsite.</p> <p>The secondary dwelling will be located on the rear lane and will not be visible from Tyagarah Street. The proposal has been considered by Council's Heritage Advisor as acceptable (See DCP discussion below).</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p>

LEP Requirement	Summary of Requirement	Proposed	Complies
	archaeological sites, d) to conserve Aboriginal objects and Aboriginal places of heritage significance.	Not identified as a archaeological site. Non- indigenous heritage site	N/A
6.3 Flood Planning	a) to minimise the flood risk to life and property associated with the use of land, b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, c) to avoid significant adverse impacts on flood behaviour and the environment.	The floor level of the secondary dwelling complies with the required Flood Planning Level (5.0m A.H.D).	Yes
6.6: Essential Services	<ul style="list-style-type: none"> • water, • sewer, • electricity • stormwater • vehicle access 	Services are provided to the site.	Yes Yes Yes Yes Yes
6.7: Affordable housing in residential areas	<ul style="list-style-type: none"> • The need for affordable housing. 	The proposal contributes towards housing supply.	Yes

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

5 There are no draft EPI's

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2014

10

Development Control Requirement	Requirement	Applicable/Complies?
Part B Controls Applying Generally to Development Application		
B3 & B4: Services & Vehicle parking	Dwelling = 2 spaces The existing dwelling will retain 2 spaces in two separate single carports at either side of the site.	Yes

B8.3.2 Construction of Buildings or Structures	A Site Waste Minimisation and Management Plan (SWMMP) must be submitted with Development Applications seeking consent for construction of buildings or structures.	Yes
B14: Excavation & Fill	Minor earthworks proposed for footings and services. Proposal is compliant with DCP provisions.	Yes
C – Non Indigenous Heritage		
C1.3.1 - General Streetscape Context	<p><i>To maintain and enhance the heritage character of the streetscape in the vicinity of the heritage item or within the Heritage Conservation Area.</i></p> <p>The proposed secondary dwelling is located along the rear of the existing dwelling house and will be setback approximately 6.5m from the Murphy Lane frontage. Given the dwelling house will maintain a hipped roof form with pitch to match the existing house on the property the development will not detrimentally impact on the heritage streetscape.</p> <p>As the secondary dwelling is located at the rear of the site the development will not impact on the existing Tyagarah heritage streetscape in terms of setbacks, siting, landscape settings, car parking and fencing.</p>	Yes
C1.3.3 Gardens and Landscape	The development will retain the existing landscaping along the site frontages to ensure that the character of the dwelling is retained in the Mullumbimby Heritage Conservation Area.	Yes
C1.4.1 Roof Form and Chimneys	<p>The proposed secondary dwelling roof will be of a consistent pitch, material and colour to match the existing roof of the primary dwelling.</p> <p>The extension will incorporate a hipped and gable roof to minimise the bulk and scale of the proposed secondary dwelling in relation to the existing dwelling onsite and will utilise a non-standard roof line to match with the existing dwelling.</p> <p>The secondary dwelling will present as a separate roof from to the original fabric of the original dwelling – somewhat similar to older character dwellings which incorporated standalone kitchens at the rear.</p> <p>The proposal is considered acceptable</p>	Yes

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4.4

C1.4.2 Verandahs	The secondary dwelling will incorporate a verandah facing towards Murphy Lane and will provide additional detailing to the eastern elevation of the secondary dwelling consistent with the DCP controls.	Yes
C1.4.3 Windows and Doors	<p>Windows and doors on the eastern elevation of the dwelling are to be timber framed and casement type.</p> <p>The windows will not form a dominant part of the secondary dwelling and are located under the deck roof which will provide shadowing to the eastern elevation of the secondary dwelling.</p> <p>Proposal is considered acceptable</p>	Yes
C1.4.4 Building Materials	<p><i>For infill development in a frontage dominated by timber buildings lightweight materials such as timber, compressed sheeting or cement profiled weatherboards may be appropriate. Masonry is acceptable only in a mixed street frontage of timber and masonry buildings where less than half the buildings are of timber construction.</i></p> <p>The secondary dwelling will be constructed from lightweight materials on an elevated flooring system. The proposed materials will consist of weatherboard type cladding and colourbond roof, consistent with the heritage character of the area.</p>	Yes
C1.4.5 - Colours	<p>The existing dwelling onsite is painted in blue weatherboard with red roof which are not heritage colours. The proposed roof colour on the proposal plans indicates that the new secondary dwelling roof will be red to match the existing dwelling house roof.</p> <p>The development will be conditioned to ensure that the secondary dwelling matches the colour scheme of the primary dwelling onsite.</p>	Yes
C1.6.8 – Mullumbimby Conservation Area	The proposed secondary dwelling will maintain a compatible character, height and scale with the existing pattern of development. In addition the development incorporates sympathetic materials and roof form to further reinforce the traditional building character of the area.	Yes
C1.6.9	The development will incorporate materials, roof pitch and colours to match the existing dwelling onsite. The development fully	

	<p>complies with the required setbacks and is well setback from the Murphy's Lane frontage.</p> <p>The development is of a scale that remains subordinate to the original dwelling onsite and provides landscaping areas along the site boundaries to reduce any potential impact on neighbouring properties.</p> <p>For these reasons the proposed secondary dwelling retains the integrity of the conservation area and achieves a sympathetic relationship with the primary dwelling onsite.</p>									
<p align="center">Part D – Chapter D1 Residential Accommodation in Urban, Village & Special Purpose Zones</p>										
<p>D1.2.1 Building Height Plane</p>	<table border="1"> <tr> <td data-bbox="545 777 839 860">Northern boundary</td> <td data-bbox="845 777 1158 860">Below the BHP</td> </tr> <tr> <td data-bbox="545 860 845 943">Eastern boundary</td> <td data-bbox="845 860 1158 943">Below the BHP</td> </tr> <tr> <td data-bbox="545 943 845 1025">Southern boundary</td> <td data-bbox="845 943 1158 1025">Above the BHP</td> </tr> <tr> <td data-bbox="545 1025 845 1402">Western boundary</td> <td data-bbox="845 1025 1158 1402">Above the BHP</td> </tr> </table>	Northern boundary	Below the BHP	Eastern boundary	Below the BHP	Southern boundary	Above the BHP	Western boundary	Above the BHP	<p>Yes – There is a minor intrusion by the eaves of the secondary dwelling into the BHP on the southern and western boundaries. This is considered generally consistent given the dwelling retains a 1.2m side setbacks which are greater than the minimum 0.9m required. The intrusion into the BHP is caused by the height of the FFL of the secondary dwelling to achieve flood immunity.</p>
Northern boundary	Below the BHP									
Eastern boundary	Below the BHP									
Southern boundary	Above the BHP									
Western boundary	Above the BHP									
<p>D1.2.2 Setbacks from Boundaries</p>	<table border="1"> <tr> <td data-bbox="545 1420 845 1503">Front (North) – 4.5m Garage – 5.5m</td> <td data-bbox="845 1420 1158 1503">Not Applicable</td> </tr> <tr> <td data-bbox="545 1503 845 1585">Rear (South)– 0.9m</td> <td data-bbox="845 1503 1158 1585">1.2m</td> </tr> <tr> <td data-bbox="545 1585 845 1668">Side (East) – 0.9m</td> <td data-bbox="845 1585 1158 1668">6.5m</td> </tr> <tr> <td data-bbox="545 1668 845 1715">Side (West) – 0.9m</td> <td data-bbox="845 1668 1158 1715">1.2m</td> </tr> </table>	Front (North) – 4.5m Garage – 5.5m	Not Applicable	Rear (South)– 0.9m	1.2m	Side (East) – 0.9m	6.5m	Side (West) – 0.9m	1.2m	<p>Yes</p>
Front (North) – 4.5m Garage – 5.5m	Not Applicable									
Rear (South)– 0.9m	1.2m									
Side (East) – 0.9m	6.5m									
Side (West) – 0.9m	1.2m									
<p>D1.2.4 Character and Visual Impact</p>	<p>The provision of verandahs, balconies, pergolas and other protective outdoor elements will be encouraged for visual, climatic and energy efficiency reasons.</p> <p>The proposed secondary dwelling will provide usable private outdoor areas with a 11.5m² deck and an outdoor area within the south-eastern corner of the property.</p>	<p>Yes</p>								

<p>D1.3.1 On-Site Car Parking</p>	<p>2 spaces (min) are required.</p> <p>The existing dwelling retains 2 car parking spaces in a tandem arrangement adjacent to the western boundary of the property.</p>	<p>Yes</p>
<p>D1.4 Secondary Dwellings</p>		
<p>D1.4.1 – Private Open Space</p>	<p>Secondary dwellings must have access to an individual courtyard at ground level having a minimum area of 15m² and a minimum length and width each of 2.5 metres, not including any area used exclusively for the circulation or parking of vehicles. The courtyard should be designed to facilitate access to winter sunshine.</p> <p>A private ground level open space area is available for the secondary dwelling directly accessible from the lounge room within the south-eastern corner of the property.</p>	<p>Yes</p>
<p>D1.4.3 – Siting, Design and Character</p>	<p>To ensure that the siting and design of secondary dwellings do not detract from the streetscape and the residential character of urban areas.</p> <p>The secondary dwelling is located at the rear of the primary dwelling and is well setback from the Murphy Lane frontage so as to not dominate the Murphy Laneway frontage. Private recreation areas are provided at ground level and will be screened by future plantings along the site boundaries.</p>	<p>Yes</p>
<p>E2 - Mullumbimby</p>		
<p>Appendix E3.1 Character Precincts - Central Mullumbimby Residential – Precinct 2</p>	<p>The majority of these houses generally belong to an era of 1890-1930 and within this area there are few intrusive buildings. Other features that identify this older area are:</p> <ul style="list-style-type: none"> • Height and scale • Materials • Verandahs • Fences <p>The proposed secondary dwelling addition is considered to be compatible with the form and character of the existing dwelling onsite as it will be constructed from weatherboard cladding and colourbond roof. The roof form will be of a pitch to match the existing and will be a combination of hipped and gabled roof. The gable end facing toward the existing building onsite will tie the secondary dwelling and existing house together by generally matching to the dormer extension over the rear verandah area.</p>	<p>Yes</p>

Development Control Plan 2014 - Issues

C1.4.1 Roof Form and Chimneys

5 The proposed roof form will incorporate a hipped roof leading to a gabled end facing toward the existing dwelling onsite. The rear of the existing dwelling has a number of additions that detract from the character values of the existing dwelling onsite. These additions consist of small dormer roof extension and additional skillion verandah extension which has been partially enclosed.

10



Figure 4: Back of house which links with the proposed secondary dwelling

15 The proposed secondary dwelling will provide a consistent character roof form with materials and pitch to match the existing dwelling onsite. In addition the roof of the secondary dwelling will reduce the visual prominence of the existing incremental additions at the rear of the existing dwelling to improve the overall streetscape appeal of the subject site.

20 In this instance the roof form of the secondary dwelling is considered to comply with the outcomes sought within the Mullumbimby Conservation Area.

Heritage Advisor comments

25 The proposal was considered by Council’s Heritage Advisor in terms of heritage impacts. The following comments have been made:

“The addition is complementary to the original and the changes that you have negotiated on roof form and cladding are in accordance with the DCP policy for materials and roof form, consistent with the built form and character of the heritage conservation area.”

30 In this instance it is considered that the proposed secondary dwelling is compatible with the outcomes sought for the Mullumbimby Conservation Area.

Other Development Control Plan/s

Not Applicable

5 3.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

10 It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

3.5 The suitability of the site for the development

15 The subject site is an existing urban allotment within Zone R2 - (Residential Zone). The site is suitable for the proposed secondary dwelling.

20 Driveway access to the site is satisfactory and complies with the requirements of AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking. Stormwater is proposed to be collected and directed to Murphy's Lane.

3.6 Submissions made in accordance with this Act or the regulations

25 There were **four (4)** submissions made on the development application, issues raised are discussed below:

Issue	Comment
The application documents do not address the Heritage Conservation Area	In assessing the development application a careful assessment of the proposal against the Heritage Conservation Area was undertaken and the applicant was issued with a request for further information on the 18 February 2016. The applicant has since provided amended plans demonstrating compliance with the DCP 2014.
The use of materials that are not sympathetic to the Heritage Conservation Area.	The applicant has provided amended plans demonstrating that the secondary dwelling will incorporate weatherboard cladding and a red colourbond roof to match the materials of the existing dwelling house.
Secondary Dwellings on lots less than 450m ² should not be allowed in the Heritage Conservation Area.	The proposed secondary dwelling is a permissible use within the R2 Zone provided the dwellings are attached. The site including the secondary dwelling will result in an overall floor space ratio of 0.43:1 which does not exceed the maximum FSR of 0.5
Encroachment into the BHP	There is a minor intrusion by the eaves of the secondary dwelling into the BHP on the southern and western boundaries. This is considered generally consistent given the dwelling retains a 1.2m side setbacks which are greater than the minimum 0.9m required. The intrusion into the BHP is caused by the height of the FFL of the secondary dwelling to achieve flood immunity. The minor intrusion into the BHP will not have a detrimental impact on surrounding properties to the south and west from overshadowing or a loss of privacy.
Increased Noise from multiple residents	The proposed secondary dwelling will have a negligible increase in noise from the subject site and will be subject to normal residential occupancy and is not anticipated to increase

Issue	Comment
	noise above a standard residential neighbourhood. In addition the secondary dwelling will have minimal openings to the side boundaries to further reduce the impacts of noise on neighbouring properties.
The development will block views to the west for existing dwellings on the eastern side of Murphy's Lane	The secondary dwelling is a single storey structure with a pitched roof and a maximum height of less than 5m well below the permitted 9m height limit. The secondary dwelling is also located in the south-western corner of the site with a 6.5m setback to Murphys Lane. It is considered the proposal is unlikely to have a detrimental impact on views of the surrounding hinterland.
The number of dwellings onsite	The subject site contains a single dwelling and the current proposal for a secondary dwelling will result in a total of 2 dwellings onsite. A site inspection was carried out which confirmed this.

3.7 Public interest

- 5 It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

4. DEVELOPER CONTRIBUTIONS

- 10 The proposed secondary dwelling does not generate a nexus to levy water and sewer contributions or Section 94 Contributions provided the dwelling is utilised for affordable housing purposes. Conditions to apply preventing the secondary dwelling from being used for holiday letting or tourist and visitor accommodation.

5. CONCLUSION

- 15 Development consent is sought for the construction of a Secondary Dwelling at 7 Tyagarah Street, Mullumbimby. The proposed development is consistent with the provisions of the Byron LEP 2014 and DCP 2014 and is not likely to result in significant impacts on the existing residential environment. It is recommended that consent be granted subject to conditions.

6. RECOMMENDATION

- 25 **It is recommended that Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2016.34.1 for Secondary Dwelling, be granted consent subject to the following conditions listed in Attachment 2 #E2016/32495.**

Council's notification procedures under Byron DCP 2014. Ninety (90) submissions were received objecting to the development on the grounds of heritage, bulk, scale, height, rear lane access and non compliance with Council's planning controls.

5 It is considered the proposal will provide much needed accommodation for singles and couples within close walking distance to the commercial centre of Mullumbimby. Alternatives for the site could include two upmarket dwellings in a dual occupancy arrangement or a large house with a secondary dwelling. Both alternates would likely result in the same or greater development density on site to the proposal, but do little in terms of addressing the overall housing diversity needs of residents of the Shire.

10 The proposed development is recommended for consent subject to conditions.

15 NOTE TO COUNCILLORS:

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

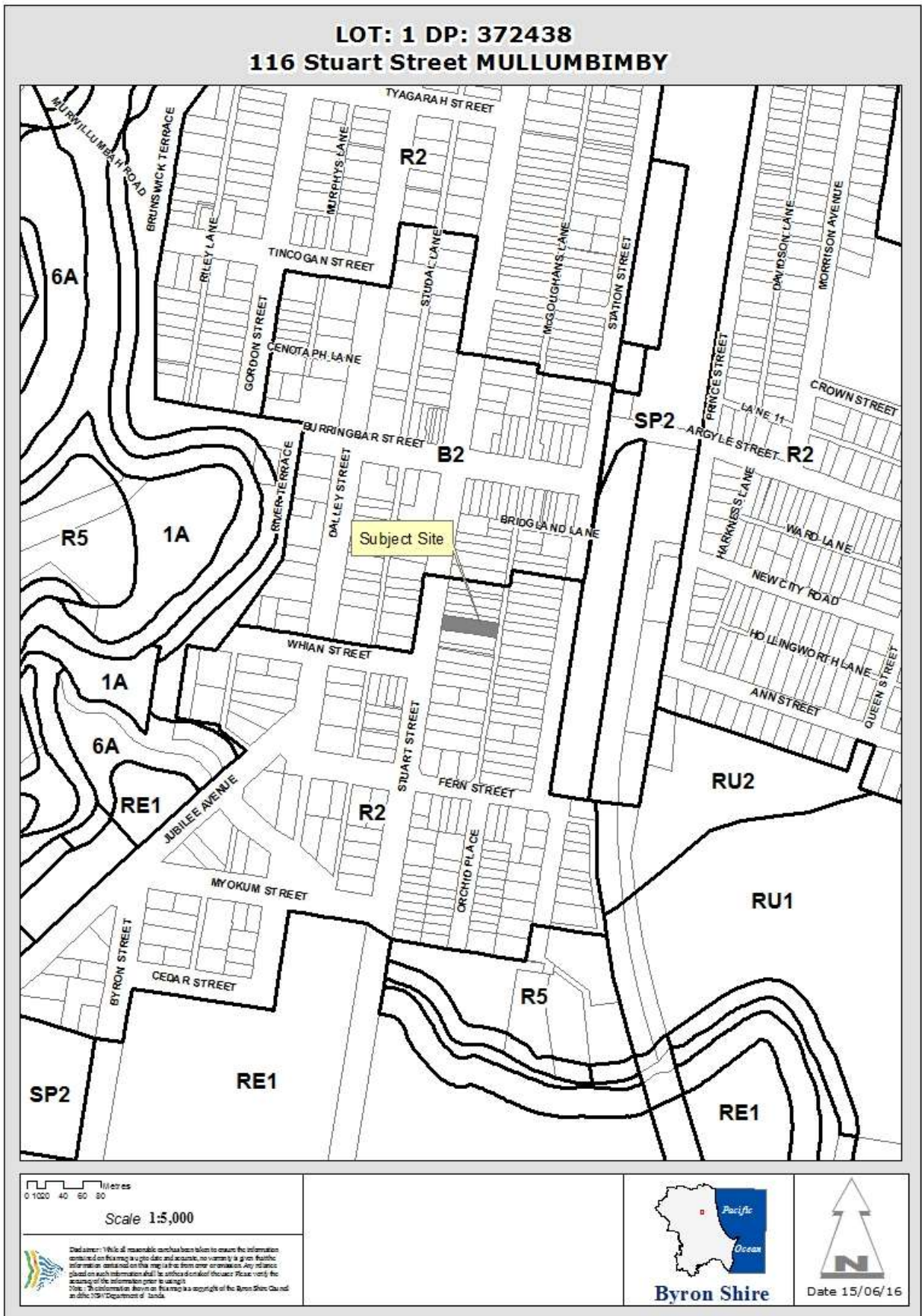
RECOMMENDATION:

That Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2016.189.1 for Multi Dwelling Housing (10 single bedroom Dwellings) and Demolition of existing structures, be granted consent subject to the recommended conditions listed in Attachment 2 #E2016/42093.

Attachments:

- 25 1 Plans prepared by Koho 10.2016.189.1, E2016/42515
2 Proposed conditions of consent 10.2016.189.1, E2016/42093
3 Confidential - submissions 10.2016.189.1, E2016/42661

30



Assessment:

1. INTRODUCTION

1.1 History/Background

The following past applications over the subject site are noted:

- BA 80/2005 Building Application for a fern house approved 30 January 1980.
- BA 44/79 Building Application for a swimming pool approved 16 August 1979.
- BA 77/2041 Building Application for additions to dwelling approved 4 August 1977.

1.2 Description of the site

The subject site is legally described as Lot 1 DP 372438, street address 116 Stuart Street, Mullumbimby. The site is located on the eastern side of Stuart Street and approximately 40 metres south of the Mullumbimby commercial centre (see **Figure 1**).



Figure 1 - Location of subject site shown in yellow. Byron LEP 2014 R2 Low Density Residential Zone in pink and B2 Local Centre Zone in light blue.

The site is rectangular in shape with a frontage of approximately 14.94 metres to Stuart Street and a length of approximately 60 metres. At the rear the site adjoins McGoughans Lane. The total area of the allotment is approximately 897.9m².

The site contains an existing single-storey dwelling house of fibre cement cladding with a fairly low pitched 'clip lock' metal roof.



Figure 2 - Existing dwelling at 116 Stuart Street



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Figure 3 - Existing dwelling as viewed from Stuart Street

1.3 Description of the proposed development

- 10 The application seeks development consent for:
- The demolition of the existing single-storey dwelling house and associated outbuildings; and
 - the erection of a multi dwelling housing development comprising a total of 10 x 1 bedroom dwellings each with access from ground level. The proposal seeks to provide three (3)
- 15 dwellings as Affordable Housing as defined within the State Environmental Planning Policy (Affordable Rental Housing) 2009.

20 In response to issues raised about the development, the applicant submitted amended plans to Council on 17 May 2016. The revised proposal has divided the development into two buildings each containing five dwellings each with a gross floor area of 50m². The first dwelling fronting

Stuart Street incorporates a single level design whilst the remaining nine dwellings have a two level design. See **Figure 4** for the proposed site plan.

5 The proposal provides vehicular access via McGoughans Lane with a total of 5 on-site parking spaces. A bin storage area and bicycle parking area also located to the rear of the allotment, and are proposed to be screened by be plantings within the 3.0 metre wide setback to McGoughans Lane.



STUART STREET VIEW

10



MCGOUGHANS LANE VIEW

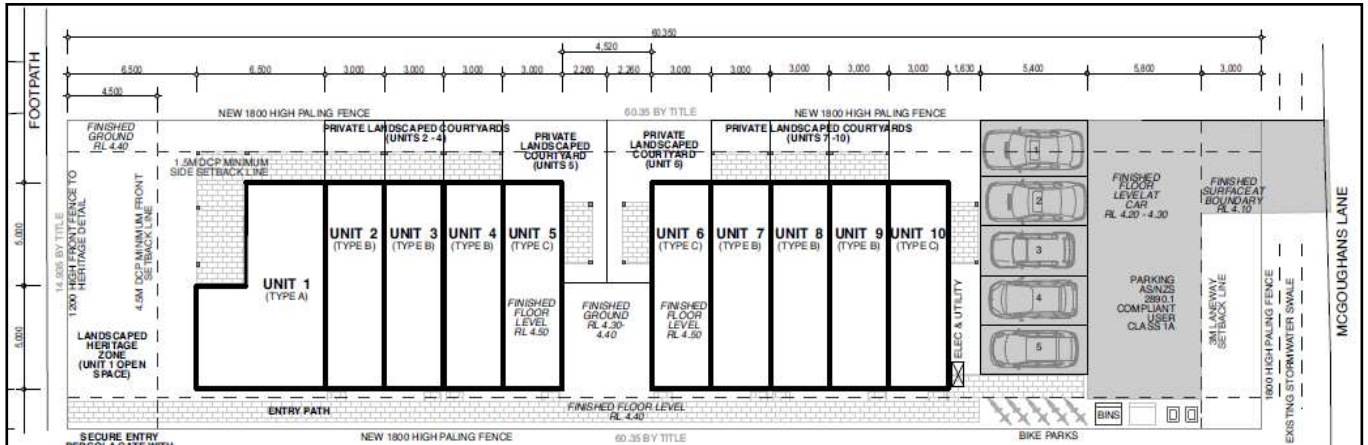
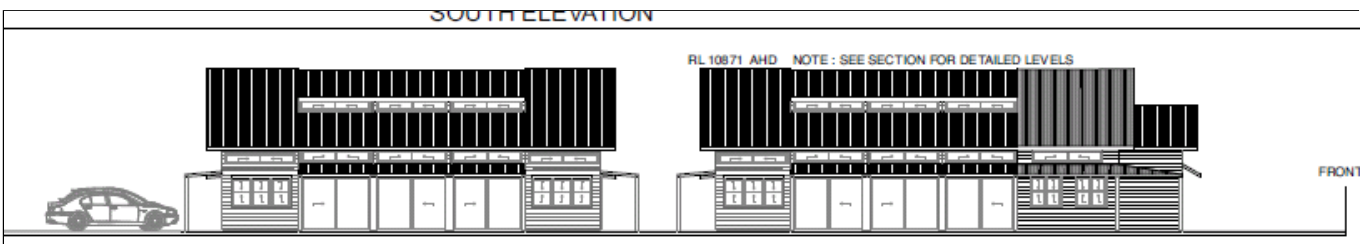


Figure 4 – Proposed Site Plan



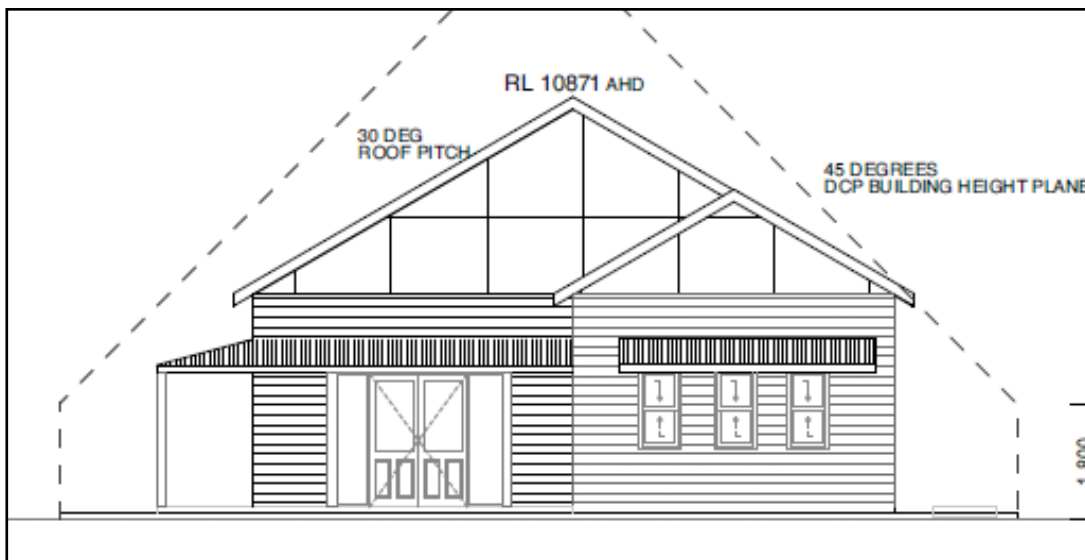
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Figure 5 – Proposed south elevation



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Figure 6 – Proposed north elevation



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Figure 7 – Proposed Stuart Street elevation

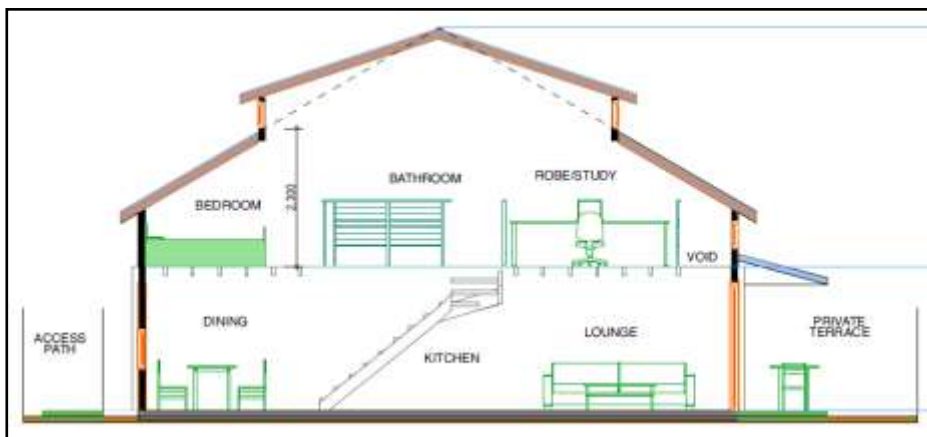


Figure 8 – Proposed typical Section showing roof windows for upper floor level

2. SUMMARY OF REFERRALS

5 The application was considered by Council’s Development Engineer, Environmental Officer, ET Engineer and Section 94 Officer, where necessary conditions of consent have been included as recommended by these officers. Council’s Heritage Advisor also assessed the proposal with comments and recommendations discussed in the body of the report below.

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

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

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Policy requirement/summary	Proposed	Complies
<p>State Environmental Planning Policy (Affordable Rental Housing) 2009</p> <p>8 Relationship with other environmental planning instruments</p> <p>If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.</p>	<p>The proposed development application has been made under the provisions of the AH SEPP and the provisions of this SEPP prevail over any inconsistencies with Byron LEP 2014.</p>	<p>Noted</p>
<p>10 Development to which Division applies</p> <p>(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:</p> <p>(a) the development concerned is permitted with consent under another environmental planning instrument, and</p> <p>(b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the <i>Heritage Act 1977</i>.</p> <p>(3) Despite subclause (1), this Division does not apply to development on land that is not in the</p>	<p>Multi dwelling house is permissible on the subject site under Byron LEP 2014 and the site does not contain a heritage item.</p> <p>The site is approximately 40 metres (walking distance) from the land located within the B2 Local Centre Zone (B2 Zone is located directly opposite the site on Stuart Street).</p> <p>The site is considered suitable for the provision of affordable housing.</p>	<p>Yes</p>

Policy requirement/summary	Proposed	Complies
<p>Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.</p>		
<p>13 Floor space ratios (1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent. (2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus: (a) if the existing maximum floor space ratio is 2.5:1 or less: (i) 0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or (ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where: AH is the percentage of the gross floor area of the development that is used for affordable housing. $Y = AH \div 100$</p>	<p>The proposal seeks to provide three of the ten dwellings (30% floor area) as affordable housing. In accordance with this provision, an increase in the maximum floor space ratio from 0.5:1 to 0.8:1 is permitted. The proposed floor space ratio is calculated to be 0.56:1 which is less than the maximum permitted under Clause 13.</p>	<p align="center">Yes</p>
<p>14 Standards that cannot be used to refuse consent (1) Site and solar access requirements A consent authority must not refuse consent to development to which this Division applies on any of the following grounds: (b) site area if the site area on which it is proposed to carry out the development is at least 450 square metres, (c) landscaped area if: (i) in the case of a development application made by a social housing provider—at least 35 square metres of landscaped area per dwelling is provided, or (ii) in any other case—at least 30 per cent of the site area is to be landscaped, (d) deep soil zones if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed:</p>	<p>Site area The subject allotment has an area exceeding 450m².</p> <p>Landscape area The total landscape area proposed on the subject allotment is 311.99m² which is 34.6% of the total site area. In accordance with Clause 14 landscaped area cannot be used as a ground for refusal of this Development Application.</p> <p>Deep Soil Zones The total Deep Soil Area proposed on the subject allotment is 199.22m² which is 22.1% of the total site area. In accordance with Clause 14</p>	<p align="center">Yes</p> <p align="center">Yes</p> <p align="center">Yes</p>

Policy requirement/summary	Proposed	Complies
<p>(i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the <i>deep soil zone</i>), and</p> <p>(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and</p> <p>(iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,</p> <p>(e) solar access</p> <p>if living rooms and private open spaces for a minimum of 70 per cent of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p> <p>(2) General</p> <p>A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(a) parking if:</p> <p>(i) in the case of a development application made by a social housing provider for development on land in an accessible area—at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms, or</p> <p>(ii) in any other case—at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms,</p> <p>(b) dwelling size</p> <p>if each dwelling has a gross floor area of at least:</p> <p>(i) 35 square metres in the case of a bedsitter or studio, or</p> <p>(ii) 50 square metres in the case of a dwelling having 1 bedroom, or</p> <p>(iii) 70 square metres in the case of a dwelling having 2 bedrooms, or</p> <p>(iv) 95 square metres in the case of a dwelling having 3 or more bedrooms.</p> <p>(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).</p>	<p>Deep Soil Area cannot be used as a ground for refusal of this Development Application. Two-thirds of the Deep Soil Area is located behind the front building line.</p> <p>Solar Access</p> <p>It is considered that the proposed living rooms and private open space of over 70% of the proposed dwellings receive the required solar access, having regards to their orientation to the north.</p> <p>Parking spaces</p> <p>At least 0.5 parking spaces are provided for each dwelling containing 1 bedroom. A total of 5 parking spaces are provided for the proposed 10 single bedroom dwellings.</p> <p>The applicant has submitted floor plan drawings indicating that each of the proposed dwellings has a 'gross floor area' exceeding 50m².</p>	<p>Yes</p> <p>Yes</p>
<p>15 Design requirements</p> <p>(1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the <i>Seniors Living Policy: Urban Design Guidelines for Infill Development</i> published by the Department of Infrastructure, Planning and</p>	<p>The proposed development is considered to be generally consistent with the <i>Seniors Living Policy: Urban Design Guidelines for Infill Development</i> published by the Department of Infrastructure, Planning and</p>	<p>Yes</p>

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.5

Policy requirement/summary	Proposed	Complies
Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.	Natural Resources in March 2004.	
<p>16A Character of local area A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</p>	Council's Heritage Advisor has assessed the proposal in terms of compatibility with the local area and raised no objection to the revised design of the development.	Yes
<p>17 Must be used for affordable housing for 10 years (1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that: (a) for 10 years from the date of the issue of the occupation certificate: (i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and (ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and (b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the <i>Conveyancing Act 1919</i>, that will ensure that the requirements of paragraph (a) are met. (2) Subclause (1) does not apply to development on land owned by the Land and Housing Corporation or to a development application made by, or on behalf of, a public authority.</p>	A condition has been included in the recommendation to require three (3) of the proposed dwellings to be used for the purposes of affordable housing for a period of ten years from the date of issue of an occupation certificate. This affordable housing is also required to be managed by a registered community housing provider.	Yes
<p>18 Subdivision Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.</p>	The subject development application does not seek consent for subdivision at this time.	Noted
<p>State Environmental Planning Policy No 55 - Remediation of Land Where a change of use is proposed the Council must consider a report provided by the applicant specifying the findings of a preliminary investigation (and detailed investigation if necessary) of the land in accordance with the contaminated land planning guidelines.</p>	The proposed development site contains an existing slab foundation. It is considered that this structure may have been treated with termiticides which may be residual in the soil. Elevated lead was detected during an investigation undertaken by ENV Solutions Pty Ltd refer to Preliminary Assessment Contamination Assessment dated March 2016. A condition has been imposed	Yes

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.5

Policy requirement/summary	Proposed	Complies
	requiring a Detailed Contaminated Land Assessment Report be prepared submitted with a Remedial Action Plan (if required).	
<p>State Environmental Planning Policy No. 71 - Coastal Protection Council must have regard for the matters of consideration under Parts 2 and 4 of SEPP No. 71 when assessing development within the coastal zone. These matters include:</p> <ul style="list-style-type: none"> – retention of existing public access to the coastal Foreshore – impact of effluent disposal on water quality – development must not discharge untreated stormwater into a coastal water body 	<p>Public access to the coastal foreshore will not be impeded or diminished. Effluent is not proposed to be disposed other than to Council's sewerage system. The proposed stormwater management plan details the method of treating stormwater runoff and is considered acceptable.</p> <p>The site is not located within a sensitive coastal location, subdivision is not proposed and a master plan is not required.</p>	Yes
<p>State Environmental Planning Policy Building Sustainability Index 2004 (BASIX) Applies to new residential dwellings and alterations and additions with a value greater than \$50,000. Development is to accord with a completed BASIX Certificate.</p>	A BASIX Certificate has been submitted in accordance with the SEPP.	Yes
<p>North Coast Design Guidelines Standards for building design on the North Coast of NSW.</p>	The design is considered to be generally consistent with the guidelines.	Yes
<p>NSW Coastal Policy 1997 The subject site is located within 1km landward of the open coast high water mark and is subject to the provisions of the NSW Coastal Policy.</p>	The proposal is considered to be consistent with the Goals, Objectives and Strategic Actions of the NSW Coastal Policy 1997.	Yes
<p>Building Code of Australia Ability for the proposed development to comply with the requirements of the BCA.</p>	The proposal is considered to be able to satisfy the requirements of the Building Code of Australia.	Yes
<p>Disability Access (DDA) Access for persons with disabilities and integration into surrounding streetscapes without creating barriers. (Council Res.10-1118)</p>	The proposal seeks to provide Dwelling No.1 as an adaptable house capable of being modified to provide an accessible dwelling consistent with Council's DCP 2014.	Yes

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

Zone: R2 Low Density Residential

Definition: Multi dwelling housing (10 dwellings)

LEP Summary of Requirement	Proposed	Complies
<p>Satisfy objectives of the R2 Low Density Residential zone</p> <p>Objectives of zone</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	<p>The proposed multi dwelling housing development is considered to meet the housing needs of the community in a low density residential environment.</p>	<p>Yes</p>
<p>Permissibility (LEP 2014)</p> <p>Multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.</p>	<p>The proposed ten (10) dwellings are to be located on one lot of land and each has access at ground level consistent with the definition of multi dwelling housing. Multi dwelling housing is permissible with the R2 low density residential zone.</p>	<p>Yes</p>
<p>Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings</p> <p>The minimum lot size for multi dwelling housing within the R2 Low Density Residential Zone is 1000m².</p> <p>Multi dwelling housing Zone R2 Low Density Residential 1,000 square metres</p>	<p>The subject allotment has a total area of approximately 897.9m².</p> <p>This is not a ground for refusal pursuant to Clause 14 of AH SEPP which requires a minimum site area of 450m².</p>	<p>Not Applicable AH SEPP prevails</p>
<p>Clause 4.3 - Height of buildings</p> <p>Maximum height limit as shown on the Height of Buildings Map is 9.0 metres.</p>	<p>The maximum height of the proposed building is 6.57metres (RL 10.87m – RL 4.3)</p>	<p>Yes</p>
<p>Clause 4.4 Floor space ratio</p> <p>Maximum floor space ratio for a building on the subject site is not to exceed 0.5:1 as shown on the <u>Floor Space Ratio Map</u>.</p>	<p>The total area of the subject allotment is approximately 897.9m². The proposed gross floor area of the building is approximately 502.45m². Proposed FSR is approximately 0.56:1.</p> <p>This is not a ground for refusing consent pursuant to Clause 13 of AH SEPP which sets the maximum site FSR at of 0.80:1</p>	<p>Not Applicable AH SEPP prevails</p>

<p>Clause 5.10(5) Heritage Conservation The subject site is within the Mullumbimby Heritage Conservation Area and within the setting of the Heritage Item dwelling house at No.87 Station Street (located to the rear of the site on the opposite side of McGoughans Lane). Pursuant to Clause 5.10(5) the consent authority may require a heritage management document to be prepared.</p>	<p>The applicant has submitted a Heritage Impact Assessment.</p> <p>See further discussion below.</p>	<p align="center">Yes</p>
<p>Clause 6.1 Acid Sulfate Soils Class 4 - Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.</p>	<p>The proposed development does not involve the disturbance of acid sulphate soils more than 2.0m below natural ground level.</p>	<p align="center">Yes</p>
<p>Clause 6.3 Flood Planning Level (2) This clause applies to land at or below the flood planning level. (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development: (a) is compatible with the flood hazard of the land, and other matters specified within subclause 3. (4) In determining a development application for development at or below the future flood planning level, the consent authority must, in addition to the matters referred to in subclause (3), also consider other matters in subclause 4.</p>	<p>The Flood Planning Level for the development is 4.45m AHD. The proposed floor level is 4.5m AHD.</p>	<p align="center">Yes</p>
<p>6.7 Affordable housing in residential and business zones (1) The objectives of this clause are as follows: (a) to increase the supply of affordable housing for very low, low and moderate income earning households, (b) to provide accommodation to support a diverse residential population inclusive of all income groups within Byron, (c) to ensure a housing mix and tenure choice including affordable housing, (d) to ensure that affordable housing is identified by the Council as in demand and located close to transport and services appropriate to the intended households. (2) Development consent must not be granted for the purposes of residential accommodation or to the subdivision of any land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone B2 Local Centre or Zone B4 Mixed Use unless the consent authority has considered: (a) the need for providing, maintaining or retaining affordable housing, and (b) the need for imposing conditions relating to providing, maintaining or retaining affordable</p>	<p>All matters raised in Clause 6.7 have been given consideration. A demand for affordable housing within Byron Shire is acknowledged.</p> <p>A condition has been included to require the provision of three dwellings as affordable housing as proposed, and for the housing to be managed by a social/community housing provider (as defined under Part 1 Clause 6 of the AH SEPP).</p>	<p align="center">Yes</p>

<p>housing including, but not limited to, imposing covenants and the registration of restrictions about users. (3) For the purposes of this clause, <i>affordable housing</i> means housing for very low income households, low income households or moderate income households.</p>		
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Byron Local Environmental Plan 2014 - Issues

Mullumbimby Heritage Conservation Area

5 The subject site is located within the Mullumbimby Heritage Conservation Area. A large number of submissions raised concerns that the proposed development was not compatible with the character of the area. A Heritage Impact Assessment was submitted with the application, this was referred to Council’s Heritage Advisor for comment.

10 The applicant submitted amended plans to Council on 17 May 2016 to address the issues raised by Council’s Heritage Advisor. Following a review of the amended plans Council’s Heritage Advisor has concluded as follows:

15 *“The revised development is not likely to adversely impact upon the heritage significance of the Conservation Area for the following reasons:*

- *The subject site and existing building does not demonstrate any individual heritage significance.*
- *The buildings are single storey and would not dominate the Stuart Street streetscape or the laneway.*
- *Their bulk, form, and scale are not excessive in relation to surrounding development.*
- *The overall bulk and scale is equivalent to two modest sized single dwellings.*
- *This is comparative with dual occupancy developments which is a permissible and established form of development occurring within the Conservation Area.*
- *The proposed materials, colours, finishes and detailing are complementary to the context of the Conservation Area.*
- *The proposed Unit 1 addressing Stuart Street frontage is designed to complement the character of the streetscape and retains a traditional landscaped setback. The rear wall of Unit 10 maintains a traditional type of appearance to the laneway.*
- *The rear car park will not dominate the laneway as it is well screened by a 3m depth of landscaped area which can support substantial mature trees.*

Recommendations

1. *That the road reserve informal parking area on Stuart Street is maintained as a grassed verge with additional street tree planting as proposed.*
2. *That an advice is also provided advising the owners of the consent requirements of Clause 5.10 of the LEP. This would highlight the need to apply for any proposed future changes to fabric, finish and appearance. This advice will be useful in controlling any potential adverse impacts from any future changes of colour schemes which may not be sympathetic to the setting of the CA.*

40 *Reason: To ensure that the proposed development will not adversely impact upon the assessed heritage significance and setting of the Mullumbimby Heritage Conservation Area.”*

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

45 A relevant draft Environmental Planning Instrument has not been identified for this proposal.

3.3 DEVELOPMENT CONTROL PLANS

5 The proposed development does not achieve strict compliance with various controls contained within Byron DCP 2014 however in most cases these matters are not able to be used as grounds for refusal pursuant to Clauses 13 and 14 of AH SEPP.

Chapter B3 Services

10 The site is adequately services with all necessary infrastructure including water, sewer, stormwater and access. Conditions of consent to apply.

Chapter B8 - Waste Minimisation and Management

15 The applicant has submitted a Site Waste Minimisation and Management Plan comprising 2 x 1100 litre skip bins for general garbage and recycling along with 2 x 240 litre green waste wheelie bins. An adequate waste storage area has been proposed adjacent to the rear parking area. Green bins are to be collect from the Stuart Street frontage while the skip bins are to be collected from McGoughans Lane. The Proposal is consistent with Chapter 8. .

Chapter B9 - Landscaping

20 Landscaping and open space has been provided in accordance with the AH SEPP and is considered satisfactory. A condition of consent is recommended requiring a detailed landscape plan to be submitted with the construction certificate.

Chapter C1 Non Indigenous Heritage

25 The subject site is located within the Mullumbimby Heritage Conservation Area. The proposed revised plans break the building into two separate smaller parts and maintain a pitched roof design which is considered to be satisfactory in the context of the Heritage Conservation Area. Comments from Council’s Heritage Advisor are included in Byron LEP 2014 section of this report.

Chapter E3 - Mullumbimby

30 The proposal is considered acceptable in terms of the bulk scale and character provisions of the DCP as they relate to infill development. (E3.2, E3.3 and E3.4) In particular, from the street, the proposal will appear similar to other dwellings in Mullumbimby replicating the height, bulk and scale of established dwellings with a front verandah, whilst landscaping of the rear boundary will assist with screening the car parking areas from the public domain.

35

Chapter D1 - Residential Accommodation in Urban, Village and Special Purpose Zones

Control	Assessment
D1.2.1 Building Height Plane	The proposed development is able to comply with the BHP adjacent to each boundary.
D1.2.2 Setbacks from Boundaries	The revised plans have increased the proposed front setback to 6.5 metres. The proposed car park incorporates a 3.0 metre setback to McGoughans Lane. The minimum side boundary setback is 1.935m. The proposal complies with the setback provisions
D1.2.4 Character & Visual Impact	Amended plans have been submitted by the applicant following recommendations from Council’s Heritage Advisor. The revised plans divide the building into two parts separated by a distance of 4.52 metres. The proposed pitched roof design is considered to be compatible with the character of other development within the immediate area.
D1.2.5 Fences	A condition has been included to require boundary fencing along the northern, southern and western boundaries to be of lapped and capped

Control	Assessment
	hardwood timber construction. Front boundary fencing (including side return fencing, that being sides located between the front building line and the front boundary to Stuart Street) is to be a maximum of 1.2 metres in height and incorporate plain heritage style picket fencing.
D1.2.7 Pedestrian and Cycle Access	The proposed development provides connectivity to the local footpath network. The site does not have frontage to the local bicycle network.
D1.6.1 Private Open Space Courtyards D1.6.3 Landscaping	Small courtyard areas are proposed for each dwelling for private open space purposes. Although smaller than the minimum area under the DCP, it is considered the courtyards are adequate for the one bedroom dwellings proposed, having regards to the performance criteria underpinning this design element. A concept landscape plan has been submitted and is considered acceptable, subject to a detailed plan being submitted with the construction certificate.
D1.6.4 On-Site Car Parking	In accordance with the AH SEPP at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom. A total of 5 parking spaces are provided for the proposed 10 single bedroom dwellings.
D1.6.6 Clothes Drying Facilities	An acceptable external clothes drying area is available for each dwelling at ground level.
D1.6.7 Equity of Access and Mobility	The proposed development incorporates one (1) adaptable housing unit (Dwelling No.1) with a single storey design and widened doorways. An accessible parking space has not been proposed.

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

5

It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

10

3.5 The suitability of the site for the development

The proposal will provide much needed accommodation for singles and couples within close walking distance to the centre of Mullumbimby. The site is considered suitable for the proposed affordable housing development.

15

3.6 Submissions made in accordance with this Act or the regulations

The application was notified in accordance with the Level 2 procedure within Council's DCP 2014. Council's received ninety (90) submissions plus an online petition with 1177 signatures objecting the development. Following is a summary of planning matters raised in the submissions.

20

Issue	Comment
The size, bulk, scale and density of the proposed development is considered to be inconsistent with the streetscape and existing development within the immediate area and the Mullumbimby township.	The proposal complies with Council's setback and building height plane controls. The provision of floor space partially within the roof space has acted to reduce the visually apparent bulk of the buildings.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.5

Issue	Comment
The subject site has an area of 897m ² . Council's LEP 2014 specifies the minimum lot size for multi dwelling housing development is 1000m ² the proposal does not comply with the requirement.	The AH SEPP specifies that the minimum lot size is 450m ² for Affordable Housing of this kind.
The proposed development incorporates a long single structure containing 10 dwellings this is not consistent with development in the R2 Low Density Residential Zone. There are too many dwellings for the size of the block.	Amended plans were submitted by the applicant to reduce the floor area of the proposed dwellings and break the building into two smaller parts (whilst maintaining a total 10 dwellings).
The proposed Floor Space Ratio of the development is 0.58 and exceeds the LEP 2014 maximum of 0.5:1. The proposed development should be reduced in size to comply with this requirement. The proposal represents a gross overdevelopment of the site.	The AH SEPP increases the maximum permissible FSR to 0.8:1. The proposed FSR of 0.58 is below this maximum.
The proposal to provide five (5) parking spaces is insufficient parking to service ten (10) dwellings. This will create an overflow of parking on Stuart Street which does not have capacity. There should be at least one parking space per dwelling.	Five parking spaces have been provided compliant with the AH SEPP.
McGoughans Lane is a narrow single lane accessway and will not cope with the additional traffic generated by the proposal. The laneway is in bad condition.	It is acknowledged that McGoughans Lane to the rear of the property is only a gravel pavement. Council's Development Engineer has advised the laneway will require upgrading. The laneway in front of the property is required to be upgraded to bitumen and be extended to the existing bitumen sealed road at either the north or south of the site.
<p>The proposed ten units are located within the Mullumbimby Conservation Area and in proximity of a number of Heritage Items. Concerns the proposed development is not consistent with the heritage character of Mullumbimby and existing town architecture.</p> <p>The proposal does not comply with the aims or requirements of Byron Development Control Plan 2014 Chapter relating to Non-Indigenous Heritage Section C1.6.8 Mullumbimby Conservation Area.</p> <p>Concerns the proposal is also inconsistent with DCP 2014 Chapter E3 Mullumbimby. The Development Application has not demonstrated that:</p> <p><i>the character, bulk, scale and density of proposed development will be compatible with and will enhance the low rise character and scale of Mullumbimby, its built environment and its surrounds,"</i></p>	Council's Heritage Advisor considers the revised development is not likely to adversely impact upon the heritage significance of the Conservation Area. See the Byron LEP 2014 - Issues section of this report for further details.

BYRON SHIRE COUNCIL

Issue	Comment
The existing dwelling house on the site is older than claimed in the Development Application material. Where demolition of a building in a heritage conservation area is approved it will generally conditional upon preparation of an archival recording of the building and site.	Council's Heritage Advisor has assessed the proposed existing dwelling to be 1950's era and advised " <i>Removal of this dwelling is not likely to have any adverse impact upon the significance of the Conservation Area</i> ". In this instance a condition to require archival recording has not been recommended by Council's Heritage Advisor.
DCP 2014 Section C1.6 Special Guidelines – Heritage Conservation Areas. Development in all areas must remain single storey (apart from land zoned B2 in Bangalow Heritage Conservation Area) in height to maintain the visual character and unity of the streetscape.	This provision of DCP 2014 relates to heritage conservation. The proposed development incorporates an attic type level predominantly within the roof space of the building. Council's Heritage Advisor has not raised objection to the proposed design including the level within the roof space. Byron LEP 2014 sets the maximum height limit for the subject site as 9.0 metres, the proposal complies with this requirement.
Concerns the proposed 1.2 metre high fence along the western boundary of the proposed development is not consistent with the heritage character of Mullumbimby.	Council's Heritage Advisor has raised no objection to the proposed front fencing adjacent to Stuart Street.
The proposed development will set an undesirable precedent for future development in Mullumbimby.	Each development application is required to be assessed according to its own individual merits. The proposed development is not considered to be incompatible with existing residential development within the Heritage Conservation Area.
The proposed two-storey dwellings will detract from the privacy of neighbouring properties. Screening the property with vegetation will not mitigate the loss of privacy for the residents at 114 and 118 Stuart Street. Views from upper windows on the northern elevation overlook the south facing bedroom windows of the dwelling at No.116 Stuart	The proposed narrow, roof level, windows are setback inside the Building Height Plane. These windows have a sill height 2.3 metres above the upper floor level which prevents views into neighbouring properties.
The close proximity of the development to neighbouring dwellings will result in noise disturbance from commercial garbage collection, increased vehicle movements, outdoor entertainment/living areas and animal noise.	The proposed residential use of the premises is consistent and compatible with existing residential development. Should any offensive noise emanate from this development this will be treated, as any other residential premises, in accordance with the Protection of the Environment Operations Act 1997.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.5

<p>The proposal has not adequately considered stormwater on the subject site and on Stuart Street and McGoughans Lane. Existing stormwater drains overflow in the laneway and street. Concerns regarding additional flooding of street and rear lane open drain, ponding of water and health issues.</p>	<p>A recommended condition of consent requires stormwater detention to be provided on-site in order to manage stormwater runoff from the development. Suitable engineering details will be required to manage stormwater prior to issue of a construction certificate for the development.</p>
<p>Concerns regarding the 1.8 metre timber paling fence between the subject site and No.114 Stuart Street. Having regard to noise impacts this fence is inadequate in terms of construction material. Lapped and capped hardwood fencing on this boundary is requested.</p> <p>Request for existing brick wall on northern boundary requested to remain and be extended between No.118 and subject site at No.116 Stuart Street.</p>	<p>A condition has been included to require boundary fencing to the northern and southern boundaries (behind the front building line) to be of more solid lapped and capped hardwood construction.</p>
<p>Concerns the proposed dwellings are more likely to contain two bedrooms minus a door to the second upstairs bedroom. The proposed dwellings have an area of approximately 50m².</p> <p>Under SEPP (Affordable Rental Housing) 2009 if the proposal was to be for 2 bedroom dwellings the minimum floor area for those dwelling would be 70m². The proposed development would be 19m² short of comply with SEPP (Affordable rental housing) 2009.</p> <p>The potential for 20-40 people to occupy one block of land.</p>	<p>The proposed upper floor plan specifies that only one Bedroom is proposed. It is acknowledged that the floor plan for the upper level does contain a partially open Study area however consent has not been sought for the use of this area as a separate bedroom.</p> <p>Should any proposed dwelling clearly contain two bedrooms, the minimum floor area required under the AH SEPP is 70m².</p> <p>It is acknowledged that potentially these dwellings could each be occupied by two adults.</p>
<p>Concerns regarding noise from pumps servicing rainwater tanks. Acoustic enclosure to prevent noise impacts requested. The potential for 20-40 people to occupy one block of land.</p>	<p>The proposed plans do not include rainwater tank details. In the event any kind of pump is proposed to be installed the proposal will be required to comply with the noise limitations of the Protection of the Environment Operations Act 1997.</p>
<p>State Environmental Planning Policy (Affordable Rental Housing) 2009 allows for densities designed for inner city living not rural towns.</p>	<p>The AH SEPP is applicable to all of NSW. It is noted that only minor variations in the AH SEPP controls are provided to distinguish between the Sydney Region and other regional areas.</p>
<p>The proposed development is an incompatible type of housing and contrary to the values of the community.</p>	<p>Affordable Housing is encouraged in Byron Shire in accordance within Byron LEP 2014 Clause 6.7.</p>

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.5

<p>Concerns regarding security and potential for increase in crime in the local area.</p>	<p>No evidence has been submitted to suggest the future occupants of the proposed development will cause an increase in crime in the area.</p>
<p>Concerns regarding lighting impacts from 10 dwellings.</p>	<p>Lights for the proposed dwellings have not been shown on the proposed plans. A condition has been included to require all external lighting must be installed in accordance with AS4282-1997: Control of the obtrusive effects of outdoor lighting.</p>
<p>The proposal will result in devaluing of properties.</p>	<p>This is not a matter for consideration under Section 79C of the EPA Act 1979.</p>
<p>The elderly or disabled people are not suited to the proposed dwellings as they are of two-storey design with facilities over two levels. Steep internal stairs are not suitable.</p>	<p>The proposed development includes a single dwelling to be provided as accessible housing in accordance with Council's DCP 2014. It is acknowledged that the proposed nine (9) two-storey dwellings would not be suitable as accessible housing.</p>
<p>Concerns regarding insufficient space for waste collection on Stuart Street with up to 20 bins to be put out each week. The proposal shows 2 x 100 litre and 2 x 240 litre bins located at the rear of the property with the collection point being McGoughans Lane a narrow unsealed laneway.</p>	<p>The proposal bin storage and management of waste is considered acceptable as discussed above.</p>
<p>Loss of light and overshadowing for property to the south of the site. The shadow diagrams submitted by the applicant do not satisfy the SEPP (Affordable Rental Housing) 2009 for mid winter 22nd June.</p>	<p>The proposed development complies with the building height plane control and is well below the maximum height limit. In these circumstances the proposed level of overshadowing for neighbouring properties is considered to be acceptable.</p> <p>Solar access to the living areas and private open spaces of the proposed dwellings is assessed to satisfy AH SEPP requirements.</p>
<p>Support for the development of affordable housing in Byron Shire and the increase in affordable housing stock. The demand for well located, long term affordable housing for singles and couples in Mullumbimby and the greater Byron Shire is well documented, as evidenced in the Byron Shire Council Affordable Housing Options Paper 2009.</p>	<p>Noted.</p>
<p>Byron LEP 2014 states that residential accommodation is prohibited in the R2 Low Density Residential Zone. 10 units must be regarded as residential accommodation.</p>	<p>Byron LEP 2014 specifies that multi dwelling housing is permissible with development consent within the R2 Low Density Residential Zone.</p>

Concerns that only 3 of the 10 proposed dwellings are to be provided as affordable housing.	The AH SEPP provides FSR incentives based on the proportion of overall floor space provided as affordable housing. Council planning controls do not require a specific minimum amount of floor space to be provided as affordable housing.
Concerns regarding the proposed floor to ceiling height for the upper level.	Prior to issue of a construction certificate for the development the proposed floor to ceiling height will be required compliance with the Building Code of Australia.
The proposed development is contrary to the public interest as is evident from the number of people who have supported an on-line petition against the proposal.	The proposal has generated a number of submissions. The provision of affordable housing for singles and couples is unlikely to prejudice or compromise the public interest.

3.7 Public interest

5 It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

4. DEVELOPER CONTRIBUTIONS

10 **4.1 Water & Sewer Levies**

The proposed development will generate a nexus to levy water and sewer headworks charges in accordance with Council's fees and charges, conditions have been included.

15 **4.2 Section 94 Contributions**

20 Council's Section 94 Officer has advised the applicant's statement does not request a waiver or deferral of the S94 Contributions. This proposal will increase the demand for public facilities and amenities and a condition of consent requiring the payment of contributions is required.

5. CONCLUSION

25 The proposed affordable housing development will provide additional housing for singles and couples in the form of one bedroom units. The development is within close walking distance to the town centre of Mullumbimby reducing car dependency for residents. The bulk, scale and height of the proposal is considered to be compatible with the heritage character of the locality, and no adverse environmental impacts are anticipated from the development of the site. The proposed development is recommended for consent subject to conditions.

30

CONFIDENTIAL REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 5.1 **CONFIDENTIAL - Implementation of Part 12 of Resolution 16-028**
Directorate: Corporate and Community Services
5 Report Author: Ralph James, Legal Services Coordinator
File No: I2016/620
Theme: Corporate Management
 Governance Services

10 **Summary:**

On 4 February 2016 Council resolved in part (Resolution **16-028**):

15 “12. *Receives a report at the 4 April Ordinary Meeting explaining the legal barriers; legal avenues; previous relevant advice or rulings on file; and the likely financial implications; of a Planned Retreat policy of forced removal of buildings and coastal protection works at Belongil on:*

20 a) *All properties directly behind existing coastal protection works,*

b) *Nearby properties and businesses approved by Council which may be impacted by removal of the coastal protection CZMP, and on 29 June 2016 to consider and adopt a final draft CZMP for immediate submission to the relevant Minister for certification.”*

25 The report updates the status of efforts to implement part 12 of Resolution 16-028 and recommends an alternative Resolution to replace this part of the Resolution.

RECOMMENDATION:

- 30 1. **That pursuant to Section 10A(2)(g) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Implementation of Resolution 16-028/12.**
- 35 2. **That the reasons for closing the meeting to the public to consider this item be that the report contains:**
- 40 (a) **advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege**
- 45 3. **That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:**
- (a) **the report contains advice concerning current litigation, and/or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,**
- (b) **disclosure of the reports contents could prejudice the Council's position in litigation; and**
- 50 (c) **disclosure of the reports contents could adversely impact Council's position in ongoing negotiations.**

Attachments:

- 1 Confidential - Letter from HWL Ebsworth, E2016/41709

Report No. 5.2 **CONFIDENTIAL - Byron Shire Council ats Ralf Lauren 57 Pty Ltd**
Directorate: Corporate and Community Services
Report Author: Ralph James, Legal Services Coordinator
File No: I2016/677
5 **Theme:** Corporate Management
 Governance Services

Summary:

10 Ralf Lauren 57 Pty Ltd and 15 other Belongil landowners have taken proceedings against Council and the Reserve Trust for Reserve 82000 claiming to have suffered "significant financial loss and diminution in value of their properties as a result of Councils historical acts, decisions and omissions relating to the works in front of the Johnson Street car park and generally in relation to coastal matters".

15 The proceedings against Byron Shire Council are on foot in the Common Law Division of the Supreme Court of NSW and are listed for hearing for a period of 4 weeks from 10 October 2016. The proceedings have been ongoing since late 2010 (six years).

20 Council's solicitors, Council's Legal Services team and staff have been considering a settlement proposal put by the Plaintiffs.

25 Council's solicitors will appraise Councillors of the present state of the settlement proposal in a confidential presentation to Councillors.

RECOMMENDATION:

- 30 1. That pursuant to Section 10A(2)(g) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Byron Shire Council ats Ralf Lauren 57 Pty Ltd.
- 35 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
- 40 (a) advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
- 45 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:
- (a) disclosure could prejudice the Council's position in litigation.

Attachments:

- 1 Aerial showing location of the plaintiffs' properties, E2016/42772

LATE REPORTS

Report No. 6.1 **Developer Servicing Rates**
Directorate: Infrastructure Services
 5 **Report Author:** Peter Rees, Manager Utilities
File No: I2016/691
Theme: Community Infrastructure
 Asset Management

10 **Summary:**

Council resolution 15-262 resolved in part:-

- 15 1. *That the General Manager initiate a review of the Local Water Utilities*
 a) *Strategic Business Plan; and*
 b) *Total Asset Management Plan; and*
 c) *Financial Plan; and*
 d) *Development Servicing Plans (DSPs)*
- 20 2. *That the review have consideration for:*
 a) *NSW Best Practice Management of Water Supply and Sewerage Framework; and*
 b) *the relevant 'Developer Charges Guidelines for Water Supply, Sewerage and Stormwater'*
 as determined by the NSW Office of Water; and
 25 c) *the quantum of the charges set by the DSPs be benchmarked against adjoining Council*
 areas and if the charges are significantly higher than the adjoining Councils' charges, that the
 options of cross subsidisation be considered for inclusion in the DSPs.

30 This report presents the Developer Servicing Plan (DSP) calculations and recommendation for newly calculated DSP charges.

The recommendation is to apply the same charge across all supply areas as previously adopted by Council.

35 The new charges are 29% less for Water and 24% less for Sewerage, than the previous charges and are comparable to other Developer charges in the region.

The recommended combined water and sewerage charges compared to the existing charges are

TOTAL	Bangalow	Brunswick Heads	Byron Bay	Mullumbimby	Ocean Shores
Current (2016/17) Charge	\$24,932	\$24,932	\$24,932	\$25,992*	\$24,932
Recommended Charge to commence 1/1/17 (2015/16\$)	\$19,005	\$19,005	\$19,005	\$19,005	\$19,005

40 * Mullumbimby charge is higher as Rous Water's charge to commence 1 July 2016 has reduced since the previous Rous Water DSP was adopted.

RECOMMENDATION:

1. That the revised draft Development Servicing Plans for Water Supply and Sewerage be placed on public exhibition for 30 working days and undertake consultation in accordance with the Developer Charges Guidelines for Water Supply, Sewerage and Stormwater (2012).
2. That a report be prepared for Council addressing any comments received during the exhibition period and presenting the draft Development Servicing Plans for adoption by Council or, in the event that no submissions are received, adopt the documents as exhibited.

Attachments:

- 1 Byron Developer Servicing Plan Water Supply and Sewerage Rev 0, E2016/50783
- 2 Byron DSP Background Document Rev 0, E2016/50781

5

Report

Council resolution 15-262 resolved in part

- 5 1. *That the General Manager initiate a review of the Local Water Utilities*
- a) *Strategic Business Plan; and*
- b) *Total Asset Management Plan; and*
- c) *Financial Plan; and*
- d) *Development Servicing Plans (DSPs)*
- 10 2. *That the review have consideration for:*
- a) *NSW Best Practice Management of Water Supply and Sewerage Framework; and*
- b) *the relevant 'Developer Charges Guidelines for Water Supply, Sewerage and Stormwater' as determined by the NSW Office of Water; and*
- 15 c) *the quantum of the charges set by the DSPs be benchmarked against adjoining Council areas and if the charges are significantly higher than the adjoining Councils' charges, that the options of cross subsidisation be considered for inclusion in the DSPs.*

20 This report presents the Developer Servicing Plan (DSP) calculations and recommendation for newly calculated DSP charges.

The recommendation is to have the same charge across all supply areas as previously adopted by Council. The new charges are 29% less for Water and 24% less for Sewerage, than the previous charges and are comparable to other Developer charges in the region.

25

Draft Development Servicing Plans for Water Supply and Sewerage

30 Section 64 of the *Local Government Act 1993* enables a local water utility to levy developer charges for water supply and sewerage works. The developer charges are determined with reference to Council's equivalent tenement (ET) policy and are defined as the developer charge per ET.

35 Developer charges are up-front charges levied to recover part of the infrastructure costs incurred in servicing new developments or additions/changes to existing developments. Developer charges serve two related functions:

- They provide a source of funding for infrastructure required for new urban development; and
- They provide signals regarding the cost of urban development and thus encourage less costly forms and areas of development.

40

A Development Servicing Plan (DSP) is a document which details the developer charges to be levied on development areas utilising a local water utility's infrastructure.

45 The preparation and implementation of Development Servicing Plans is a requirement of the State Government's best practice guidelines for water supply and sewerage.

50 Council's current DSPs for water supply and sewerage were prepared in accordance with the previous *Developer Charges Guidelines for Water Supply, Sewerage and Stormwater* (December 2002). DSPs are required to be in place for a minimum period of 5 – 6 years. The period of 5 – 6 years was adopted by the State Government to provide for a degree of certainty for the development industry with regard to future developer charges.

The current developer charges applicable in Byron Shire are:

2015/16 Developer Charges (\$ per ET)	Water	Sewer	Bulk Water (Rous Water)*	TOTAL
Byron Bay	\$3,529	\$13,147	\$9,246	\$25,922
Mullumbimby	\$12,775	\$13,147	N/A	\$25,922
Brunswick Heads	\$3,529	\$13,147	\$9,246	\$25,922
Bangalow	\$3,529	\$13,147	\$9,246	\$25,922
Ocean Shores	\$3,529	\$13,147	\$9,246	\$25,922

5 The revised DSPs have been prepared in accordance with the 2012 *Developer Charges Guidelines for Water Supply, Sewerage and Stormwater* (Consultation Draft) issued by the Minister for Primary Industries, pursuant to section 306 (3) of the *Water Management Act, 2000*. These revised draft guidelines supersede the 2002 Guidelines in accordance with a 2007 IPART review of the Water Supply, Sewerage and Stormwater Developer Charges Guidelines.

10 **Developer Charges Process**

15 The Developer Charges calculation is based on the net present value (NPV) approach adopted by the Independent Pricing and Regulatory Tribunal (IPART) for the metropolitan water utilities. The fundamental principle of the NPV approach is that the investment in assets for serving a development area is fully recovered from the development. The investment is recovered through up-front charges (i.e. developer charges) and the present value (PV) of that part of annual bills received from the development in excess of operation, maintenance and administration (OMA) costs.

$$\text{Developer Charge} = \text{Capital Charge (cost of providing the assets) minus Reduction Amount (cost recovered through annual bills).}$$

20 The capital charge is initially calculated for each service area. Service areas are:

- An area served by a separate STP or water supply distribution system;
- Separate small towns or villages; or
- A new development area of over 500 lots.

25 The service areas for the Sewerage DSP are:

- Brunswick Valley – including Mullumbimby, Brunswick Heads, Ocean Shores, New Brighton, South Golden Beach and Billinudgel;
- Bangalow; and
- 30 • Byron Bay – including Byron Bay, Suffolk Park and Ewingsdale.

The service areas for the Water Supply DSP are:

- Mullumbimby;
- Brunswick Heads;
- 35 • Bangalow;
- Ocean Shores – including Ocean Shores, New Brighton, South Golden Beach and Billinudgel; and
- Byron Bay – including Byron Bay and Suffolk Park.

Council can agglomerate the capital charges to minimise the number of service areas and improve community understanding of the process. Charges for each service area are agglomerated if they are within 30%.

5 The reduction amount represents the portion of the efficient cost of assets used to service a development area that Council expects to recover through its annual bills to the new residents (water or sewerage bills). The reduction amount can also be defined as the net present value (NPV) of the future net income expected from providing water-related services to the new residents in the DSP area.

10 The developer charges process is interrelated with Council's ongoing financial planning and determination of annual water supply and sewerage service charges. The calculated developer charges are the maximum that may be levied. Council should consider financial, social and environmental factors to determine a level of developer charges that is balanced, fair and
15 equitable. The underlying principle is that the new development should meet the full cost of assets serving the development, but consideration should be given to DSP areas where the calculated developer charges are unacceptably high. Best practice management involves the application of developer charges in a commercial manner, whereby the cost distribution is equitable. However,
20 the adopted developer charges should not involve a high level of cross-subsidy from existing customers (payable through annual water supply and sewerage bills and represented by the Typical Residential Bill, TRB).

Council may elect to levy less than the calculated maximum developer charges, where substantial
25 benefits accrue to the whole community by serving an area and/or existing assets are at risk of being stranded if development does not proceed. Any resulting cross-subsidies must be disclosed in the relevant DSP, in Council's Annual Report and Annual Operational Plan, in communication materials for stakeholder consultation and on Council's website. In addition, Special Schedule Nos
30 3 and 5 of the annual financial statements will need to disclose the total cross-subsidy provided in developer charges each financial year. These disclosures are required to make any cross-subsidies transparent and to comply with the 1994 Council of Australian Governments' (COAG) Strategic Framework for Water Reform and the 1996 IPART Pricing Principles for Local Water Authorities.

35 The Guidelines require Council to place the draft DSPs on public exhibition for at least working 30 days and consult with representatives of the development industry and housing industry and any current development approval applicants.

Calculated New/Future Developer Charges

40 In accordance with the Guidelines, new developer charges have been calculated for the various water supply and sewerage service areas as shown below. Note that all figures are expressed in 2015/2016 dollars (when the calculations were undertaken).

Water Supply

DSP Area	Capital Charge (\$ per ET)	Reduction Amount (\$ per ET)	Calculated Developer Charge (\$ per ET)
Mullumbimby	\$12,389	\$1,261	\$11,128
Brunswick Heads	\$4,806		\$3,545
Bangalow	\$3,148		\$1,887
Ocean Shores*	\$2,117		\$761
Byron Bay*	\$2,008		

* The water supply capital charges for Ocean Shores and Byron Bay have been agglomerated into one DSP area as they are within 30%.

5

Sewerage

DSP Area	Capital Charge (\$ per ET)	Reduction Amount (\$ per ET)	Calculated Developer Charge (\$ per ET)
Brunswick Valley*	\$14,238	\$1,470	\$9,988
Bangalow*	\$11,775		
Byron Bay*	\$10,448		

* The sewerage capital charges have been agglomerated into one DSP area as they are within 30%.

10 The calculated developer charges have decreased since the current DSP primarily due to the different calculation methodologies included in the 2002 and 2012 draft guidelines. In particular:

- The previous capital charge calculation included the total value of the assets serving a development and the current guidelines allow inclusion of only that portion of the assets servicing the new development;
- The previous capital charge calculation included 30 years of eligible future capital works and the current guidelines allow inclusion of only 10 years of eligible future capital works; and
- The reduction amount for water supply has also increased due to the increase in water bills relative to the annual operating cost.

20

Other local water utilities (e.g. Rous Water and Lismore) have also calculated reduced developer charges when applying the draft 2012 guidelines.

25 The calculated developer charges are the maximum charges that Council can apply. However, there are a number of charging options that Council can adopt. Potential options are listed below:

Water Supply:

- Option 1: Charge as calculated (as per above).
- Option 2: Adopt the same charge for all areas.
- Option 3: Charge the same for all Rous Water bulk supply areas with Mullumbimby water supply charge lower than calculated and to be equal to those in the Rous water supply area.
- Option 4: The charge for Mullumbimby is no higher than the maximum charge in the Rous Water bulk supply area (including the Rous Water bulk charge).

35

Option 5: The charge for the Rous Water bulk supply areas is the same (equivalent to the minimum charge in the Rous water supply area) and the charge for Mullumbimby is equivalent to this charge plus the Rous Water bulk charge.

5 Sewerage:

Option 1: Charge as calculated (as per above) – the same charge for all areas.

Option 2: Charge 75% of the calculated charge

10

Option 3: Charge 50% of the calculated charge.

15

It is recommended Council adopt Option 5 for Water and Option 1 for Sewerage. This is consistent with a previous Council resolution to adopt a uniform rate across the Shire. Having the same charges across all catchments removes any disincentives from businesses to establish in one town over another and achieves equity and consistency across the Shire.

20

Water Supply Option 5: The charge for the Rous Water bulk supply areas is the same (equivalent to the minimum charge in the Rous water supply area) and the charge for Mullumbimby is equivalent to this charge plus the Rous Water bulk charge).

25

With Option 5 the charge payable in the Rous Water supply areas is equivalent to the lowest of these charges (Byron Bay and Ocean Shores) and the charge for Mullumbimby DSP area is the same (including the Rous water supply charge). This option requires a cross-subsidy to developers of \$720 per ET which results in an increase in TRB of \$14 per residential assessment per year.

30

This option complies with the draft 2012 Guidelines as the charges for all DSP areas are equivalent to or lower than the maximum calculated.

Water Supply DSP Area	Current BSC Developer Charge	Calculated Developer Charge	Option 5 Developer Charge
Mullumbimby	\$12,775	\$11,128	\$9,017*
Byron Bay	\$3,529	\$761	\$761**
Brunswick Heads	\$3,529	\$3,545	
Bangalow	\$3,529	\$1,887	
Ocean Shores	\$3,529	\$761	

* Mullumbimby figure is equivalent to the Rous Bulk Water Developer Charge plus the weighted average charge for the Rous Water supply area.

** The charges for the Rous Water bulk supply areas are the same as the minimum calculated charge for this area.

35

Sewerage Option 1: Charge as calculated

40

Option 1 provides a signal for the full cost of developing in a particular area, and also passes on to developers some of the risk associated with the cost of infrastructure provision. This is the “best-practice” approach and will result in no cross-subsidy payable through annual sewerage by existing residents.

This option complies with the draft 2012 Guidelines as the charges for all DSP areas are equivalent to the maximum calculated.

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Sewerage DSP Area	Current BSC Developer Charge	Option 1 BSC Developer Charge
Bangalow, Brunswick Valley and Byron Bay	\$13,147	\$9,988

The recommended charges are comparable to other developer charges in the region. Developer charges applicable in 2015/16 for other Council areas are shown in the following table (2015/16\$).

LGA	Water Supply Developer Charge (\$ per ET)	Sewerage Developer Charge (\$ per ET)	Comments
Current Byron (2015/16)	\$12,775 (all areas)*	\$13,147	2012 DSPs based on 2002 guidelines
Future Byron (recommended for 2016/17)	\$9,017 (Mullumbimby) \$9,017 (all Rous Water areas from 2017)*	\$9,988 (all areas)	2016 DSPs (in preparation) based on 2012 draft guidelines
Lismore (2015/16)	\$3,000 (Nimbin) \$12,246 (Dunoon)* \$10,646 (South and East Lismore)* \$16,646 (North Lismore Plateau and Tullera)*	\$11,100 (Nimbin, North Lismore Plateau, East Lismore) \$11,000 (North Woodburn)** \$6,500 (South Lismore)	2016 DSPs commenced March 2016 based on 2012 draft guidelines
Ballina (2015/16)	\$9,861 (Cumbalum and Ballina Heights)* \$11,263 (Wollongbar Urban Expansion Area)* \$12,170 (Wardell) \$12,405 (other areas)*	\$3,078 (Cumbalum and Ballina Heights) \$13,383 (Wollongbar Urban Expansion Area) \$4,834 (other areas)	2015 DSPs based on 2002 guidelines
Richmond Valley (2015/16)	\$8,500 (Casino) \$11,228 (other areas)*	\$8,000 (all areas)	2013 Sewer DSP and 2010 Water Supply DSP based on 2002 guidelines
Tweed (2015/16)	\$13,128 (all areas)	\$6,307 (all areas)	2007 DSPs based on 2002 guidelines. Review in progress.

5 * Including applicable Rous Water bulk water developer charges.

** Including applicable Richmond Valley Council charges

Financial Implications

- 10 Adoption of the new Developer Servicing Plans and the associated collection of developer charges based on these plans will provide a sound foundation for the long term financial sustainability of Council's water supply and sewer funds.

The Draft DSP figures will need to be indexed at the time of implementation as they were calculated in the current financial year.

Statutory and Policy Compliance Implications

- 5 Adoption of the new DSPs and ET Policy will allow Council to levy appropriate developer charges for water supply and sewerage services based on the latest analysis of system modelling, infrastructure planning and asset valuations.
- 10 The power of Council to levy these charges derives from section 64 of the *Local Government Act 1993* and sections 305 to 307 of the *Water Management Act 2000*.
- 15 Adopting the new DSPs for Water Supply and Sewerage Services will also assist Council to comply with the NSW Best Practice Management Guidelines for Water Supply and Sewerage.