



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 2 February 2017

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

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

Ken Gainger
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL

ORDINARY MEETING

BUSINESS OF ORDINARY MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (S450A LOCAL GOVERNMENT ACT 1993)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 6.1 Ordinary Meeting held on 15 December 2016
- 6.2 Byron Shire Reserve Trust Committee held on 15 December 2016

7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
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- 10.1 Objection to "Designer Collective Markets & Food Truck Street Party"5

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

PETITIONS

Petition No. 10.1 **Objection to "Designer Collective Markets & Food Truck Street Party"**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
File No: I2016/1376
Theme: Ecology
 Development and Approvals


At Council's Ordinary meeting held on 15 December 2016 the Mayor tabled a petition containing 11 signatures which states:

"On the 26 November, it is proposed that an event "the Designed Collective Markets and Food Trucks Street Party" take place in Brunswick Heads at Banner Park. This designer Collective Markets and Food Trucks Street Party is bringing food trucks and stalls from interstate."

RECOMMENDATION:

1. That the petition regarding objection to "Designer Collective Markets and Food Truck Street Party" be noted.
2. That the petition be referred to the Director Sustainable Environment and Economy

Attachments:

- 1 Excerpt of E2016 110060 Petition against "Designer Collective Markets and Food Trucks Street Party" Brunswick Heads, E2016/110064 

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 Council Investments 24 November to 31st December 2016

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

File No: I2017/1

Theme: Corporate Management
Financial Services

Summary:

This report includes a list of investments and identifies Council's overall cash position for the period of 24 November to 31 December 2016 for Council's information.

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

RECOMMENDATION:

That the report listing Council's investments and overall cash position as at 31 December 2016 be noted.

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.1

Report

- 5 In relation to the investment portfolio for the period 24 November to 31 December 2016, Council has continued to maintain a diversified portfolio of investments. The average 90 day bank bill rate (BBSW) for the month of December was 1.78%. Council's performance to 31 December is 2.74%. Councils' performance is again higher than the benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits
- 10 The table below identifies the investments held by Council as at 31 December 2016:

Schedule of Investments held as at 31 December 2016

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
20/06/12	500,000	HERITAGE BANK LTD BONDS	N	BBB+	20/06/17	B	7.25%	520,000.00
03/06/16	1,000,000	WESTPAC CLIMATE BOND	N	AA-	03/06/21	FRN	2.89%	1,003,730.00
28/10/16	650,000	TEACHERS MUTUAL BANK	N	BBB+	28/10/19	FRN	3.23%	650,000.00
07/10/16	2,000,000	NAB	P	AA-	06/01/17	TD	2.71%	2,000,000.00
04/10/16	2,000,000	NAB	N	AA-	03/02/17	TD	2.68%	2,000,000.00
04/11/16	2,000,000	NAB	N	AA-	03/03/17	TD	2.73%	2,000,000.00
05/12/16	2,000,000	BANKWEST	P	A1+	06/03/17	TD	2.60%	2,000,000.00
12/09/16	2,000,000	NAB	N	AA-	12/01/17	TD	2.64%	2,000,000.00
23/11/16	2,000,000	NAB	N	AA-	22/02/17	TD	2.72%	2,000,000.00
02/12/16	2,000,000	NAB	N	AA-	07/04/17	TD	2.71%	2,000,000.00
04/10/16	1,000,000	NAB	N	AA-	04/01/17	TD	2.67%	1,000,000.00
07/11/16	1,000,000	NAB	N	AA-	06/03/17	TD	2.74%	1,000,000.00
05/12/16	2,000,000	NAB	N	AA-	03/04/17	TD	2.71%	2,000,000.00
04/10/16	3,000,000	ME BANK	P	BBB	04/01/17	TD	2.65%	3,000,000.00
05/12/16	2,000,000	NAB	N	AA-	06/03/17	TD	2.70%	2,000,000.00
17/11/16	2,000,000	NAB	N	AA-	29/03/17	TD	2.74%	2,000,000.00
24/11/16	2,000,000	NAB	N	AA-	22/02/17	TD	2.74%	2,000,000.00
28/11/16	2,000,000	AMP BANK	P	A	29/05/17	TD	2.70%	2,000,000.00
01/12/16	2,000,000	NAB	N	AA-	02/03/17	TD	2.70%	2,000,000.00
04/07/16	2,000,000	NAB	N	AA-	03/01/17	TD	2.97%	2,000,000.00
07/07/16	2,000,000	BANK OF QUEENSLAND	P	A2	05/01/17	TD	2.95%	2,000,000.00
01/08/16	2,000,000	POLICE CREDIT UNION	P	NR	01/02/17	TD	2.85%	2,000,000.00
05/12/16	2,000,000	ME BANK	N	BBB	05/04/17	TD	2.75%	2,000,000.00
01/12/16	2,000,000	BEYOND BANK	P	A2	01/06/17	TD	2.85%	2,000,000.00
03/11/16	2,000,000	BEYOND BANK	N	A2	01/02/17	TD	2.65%	2,000,000.00
07/12/16	2,000,000	ME BANK	N	BBB	07/04/17	TD	2.75%	2,000,000.00
08/12/16	2,000,000	ME BANK	N	BBB	08/03/17	TD	2.65%	2,000,000.00
09/11/16	2,000,000	ME BANK	N	BBB	09/02/17	TD	2.65%	2,000,000.00

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13.1

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
14/11/16	2,000,000	ME BANK	N	BBB	22/03/17	TD	2.65%	2,000,000.00
29/11/16	2,000,000	BEYOND BANK	N	A2	28/02/17	TD	2.65%	2,000,000.00
04/07/16	3,000,000	BANK OF QUEENSLAND	N	A2	04/01/17	TD	2.95%	3,000,000.00
04/07/16	1,000,000	BANANACOAST CU	P	NR	04/01/17	TD	2.95%	1,000,000.00
08/12/16	2,000,000	NAB	N	AA-	08/03/17	TD	2.67%	2,000,000.00
18/08/16	2,000,000	AMP BANK	N	A	16/03/17	TD	2.95%	2,000,000.00
02/12/16	2,000,000	NAB	N	AA-	10/03/17	TD	2.70%	2,000,000.00
29/09/16	2,000,000	ME BANK	N	BBB	27/01/17	TD	2.65%	2,000,000.00
04/10/16	1,000,000	BANK OF QUEENSLAND	N	A2	04/04/17	TD	2.65%	1,000,000.00
04/10/16	2,000,000	BEYOND BANK	N	A2	04/01/17	TD	2.65%	2,000,000.00
04/10/16	1,000,000	BANANACOAST CU	N	NR	03/02/17	TD	2.75%	1,000,000.00
16/12/16	1,500,000	AUSWIDE BANK LTD	P	A2	28/06/17	TD	2.80%	1,500,000.00
12/12/16	1,000,000	AUSWIDE BANK LTD	N	A2	13/06/17	TD	2.80%	1,000,000.00
17/11/16	1,500,000	ME BANK	N	BBB	22/03/17	TD	2.75%	1,500,000.00
16/12/16	1,000,000	POLICE CREDIT UNION	N	NR	05/07/17	TD	2.87%	1,000,000.00
N/A	2,042,304	CBA BUSINESS ONLINE SAVER	N	A	N/A	CALL	1.40%	2,042,304.08
Total	78,192,304					AVG	2.74%	78,216,034.08

Note 1. CP = Capital protection on maturity
N = No Capital Protection
Y = Fully covered by Government Guarantee
P = Partial Government Guarantee of \$250,000 (Financial Claims Scheme)

Note 2.

Type	Description	
FRN	Floating Rate Note	Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.
TD	Term Deposit	Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.
CALL	Call Account	Principal varies due to cash flow demands from deposits/withdrawals, interest is payable on the daily balance.

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

For the period 24 November to 31 December 2016, as indicated in the table below, there is a dissection of the investment portfolio by investment type. It illustrates the current fair value of investments has increased since November 2016, and is demonstrating a cumulative unrealised gain of \$23,730.

Dissection of Council Investment Portfolio as at 31 December 2016

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
74,000,000.00	Term Deposits	74,000,000.00	0.00
1,650,000.00	Floating Rate Note	1,653,730.00	3,730.00
2,042,304.08	Business On-Line Saver (At Call)	2,042,304.08	0.00
500,000.00	Bonds	520,000.00	20,000.00
78,192,304.08		78,216,034.08	23,730.00

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

- 10 The table below provides a reconciliation of investment purchases and maturities for the 24 November 2016 to 31 December 2016 on a current market value basis.

Movement in Investment Portfolio – 24 November 2016 to 31 December 2016

Item	Current Market Value (at end of month) \$
Opening Balance at 24 November 2016	81,907,493.72
Add: New Investments Purchased	31,500,000.00
Add: Call Account Additions	1,500,000.00
Add: Interest from Call Account	4,890.36
Less: Investments Matured	35,500,000.00
Less: Call Account Redemption	1,200,000.00
Add: Fair Value Movement for period	3,650.00
Closing Balance at 31 December 2016	78,216,034.08

- 15 **Investments Maturities and Returns – 24 November 2016 to 31 December 2016**

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	NAB	TD	24/11/16	91	2.63%	13,113.97
2,000,000.00	AMP Bank	TD	28/11/16	91	2.75%	13,712.33
2,000,000.00	Beyond Bank Australia	TD	29/11/16	90	2.70%	13,315.07
1,000,000.00	AMP Bank	TD	30/11/16	90	2.75%	6,780.82
2,000,000.00	NAB	TD	01/12/16	91	2.63%	13,113.98
2,000,000.00	Beyond Bank	TD	01/12/16	91	2.70%	13,463.01
2,000,000.00	NAB	TD	02/12/16	91	2.62%	13,064.11
2,000,000.00	NAB	TD	02/12/16	91	2.62%	13,064.11
2,000,000.00	Bankwest	TD	05/12/16	91	2.50%	12,465.75

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Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	NAB	TD	05/12/16	91	2.62%	13,064.11
2,000,000.00	NAB	TD	05/12/16	91	2.62%	13,064.11
2,000,000.00	ME Bank	TD	05/12/16	90	2.65%	13,068.50
2,000,000.00	ME Bank	TD	07/12/16	91	2.65%	13,213.70
2,000,000.00	ME Bank	TD	08/12/16	122	2.65%	17,715.07
2,000,000.00	NAB	TD	08/12/16	120	2.79%	18,345.21
1,000,000.00	Auswide Bank Ltd	TD	12/12/16	33	2.10%	1,898.63
1,500,000.00	Auswide Bank Ltd	TD	16/12/16	42	2.15%	3,710.96
2,000,000.00	NAB	TD	21/12/16	47	2.17%	5,588.50
2,000,000.00	NAB	TD	29/12/16	90	2.67%	13,167.12
35,500,000.00						224,929.06

The overall 'cash position' of Council is not only measured by what funds Council has invested but also by what funds Council has retained in its consolidated fund or bank account as well for operational purposes. In this regard, for the period 24 November to 31 December 2016 the table below identifies the overall cash position of Council as follows:

Dissection of Council Cash Position as at 31 December 2016

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	74,000,000.00	74,000,000.00	0.00
Floating Rate Note	1,650,000.00	1,653,730.00	3,730.00
Business On-Line Saver (At Call)	2,042,304.08	2,042,304.08	0.00
Bonds	500,000.00	520,000.00	20,000.00
Total Investment Portfolio	78,192,304.08	78,216,034.08	23,730.00
Cash at Bank			
Consolidated Fund	3,778,797.81	3,778,797.81	0.00
Total Cash at Bank	3,778,797.81	3,778,797.81	0.00
Total Cash Position	81,971,101.89	81,994,831.89	23,730.00

Financial Implications

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

Statutory and Policy Compliance Implications

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

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

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

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

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

Report No. 13.2 **2017/2018 Special Rate Variation Application**
Directorate: Corporate and Community Services
Report Author: Jessica Orr, Corporate Governance and Risk Management Officer
 James Brickley, Manager Finance
 Mark Arnold, Director Corporate and Community Services
File No: I2017/45
Theme: Corporate Management
 Governance Services

Summary:

This Report is presented to Council to consider the community feedback following public exhibition of Council's Integrated Planning and Reporting (IP&R) documents including options for a Special Rate Variation (SRV). Furthermore it is recommending a specific SRV option for Council to consider as a basis of an application to the Independent Pricing and Regulatory Tribunal (IPART) should it wish to proceed with the making of a SRV application. Due to the complexity of the SRV proposal the subject of this Report, the report is in two parts and it is necessary for Councillors to consider Part 1 before considering Part 2.

Part 1 of this Report relates to the completion of Phase 4 of the Special Rate Variation Community Engagement process, providing Councillors with the feedback and a copy of the submissions received during the public exhibition of the Councils revised Integrated Planning and Reporting documents.

Part 2 of this Report outlines the significant work undertaken by Council towards making an application for a Special Rate Variation and provides information to Council to help it make a decision as to what percentage increase, if any, to apply for.


RECOMMENDATION:

1. That Council receive and note the submissions and feedback received from the community during 'Phase 4 – Public exhibition of the IP&R documents' during the Special Rate Variation Consultation & Engagement process, conducted over the period from 17 December 2016 to 18 January 2017.
2. That Council notes that an application for a Special Rate Variation is a key strategy from its "Fit for the Future" Council Improvement Plan (CIP) adopted in June 2015.
3. That Council adopts 'Option 2 – Maintain' being a 10% compounding annual rate increase per year over a four year period commencing July 2017 to June 2021 as its preferred option for a Special Rate Variation (SRV).
4. That, subject to determination and incorporation of an SRV option as recommended in part 3 of the recommendation, Council adopt the revised Integrated Planning and Reporting documents as presented to Council on 15 December 2016 (#E2016/103981), (#E2016/100839) and (#E2016/103686).
5. That Council lodge a Section 508A permanent Special Rate Variation application to the Independent Pricing and Regulatory Tribunal, for increases to the ordinary rate income (general revenue) of 10% (including rate peg) in 2017/18, 10% (including rate peg) in 2018/19, 10% (including rate peg) in 2019/2020 and 10% (including rate peg) in 2020/21, representing a total cumulative increase of 46.4% over the four year period.
6. That Council note that a review of the Strategic Business Plans for Water and

Sewer Services has been conducted and discussed with the Water, Waste and Sewer Advisory Committee and that as a consequence there is some prospect that should the revised plans be adopted by the Council that there is potential to provide a reduction in fixed Water and Sewer Charges from the 2017/18 financial year.

- 7. That Council continue to actively campaign for the state government to legislate to enable the Council to levy a bed tax and thus provide a source of revenue for infrastructure renewal funded by the growing number of tourists to the area.**
- 8. That Council continue to lobby the Office of Local Government and the NSW Grants Commission for a revision of the Financial Assistance Grants (FAGs) funding distribution formula so that the impact of tourists upon Council and its ratepayers is adequately recognised and compensated for as a disability factor.**
- 9. That Council continue to closely monitor the IPART review of NSW council rating systems and advocate for an expansion of rating categories that would facilitate Holiday Let establishments being rated as or similar to Business.**

Attachments:

- | | |
|---|---|
| 1 | Phase 4: IP&R Public Exhibition Community Consultation Report, E2017/3468  |
| 5 | 2 Confidential - IP&R Submissions Report - Ordinary Meeting 2 February 2017, E2017/3817 |

PART 1

Background

- 5 The image below provides a visual summary of the steps Council has taken so far to get to this point in preparing to apply for a special rate variation and what are considered as the next steps toward the lodging of an application in February 2017 should Council determine to proceed with an application.



At its Ordinary Meeting of 15 December 2016, Council resolved to place its amended Integrated Planning and Reporting documents on public exhibition and to lodge a Notice of Intent to apply for a Special Rate Variation (SRV) with the Independent Pricing and Regulatory Tribunal (IPART).

The Notice of Intent was lodged with the following content detailing the nature of Councils application for an SRV:

Council is intending to apply for an SRV to provide additional funds for the specific purpose of funding additional asset maintenance and renewal programs to reduce Councils significant infrastructure backlog.

Councils SRV discussions have been based upon a range of 7.5% to 12.5% increase per annum, inclusive of rate peg over a four year period and Council anticipates that its application will fall within that range. Based on the proposed options over a four year period, an increase of 7.5% would reflect a 33.5% total cumulative increase, an increase of 10% would reflect a 46.4% total cumulative increase and an increase of 12.5% would reflect a 60.2% total cumulative increase.

Report

Council Improvement Program & 'Fit for the Future'

5 As detailed in the previous SRV report to Council on 15 December 2016, in 2015, Council was required, as part of the NSW State Government *Fit for the Future* program to develop a Council Improvement Program (CIP) demonstrating what actions would be required to improve Council's financial sustainability and help it to meet seven mandatory performance benchmarks. Council's CIP, adopted in June 2015 contained 5 Key Strategies. The 5 Key Strategies were complimentary to each other and designed to be implemented together as a package to build Council's financially sustainability. None of the 5 Key Strategies were new to Council's planning and reporting framework, including a forecasted Special Rate Variation, being already part of Council's Financial Sustainability strategies, Delivery Program and Operational Plans.

A summary of the 5 key strategies in Council's adopted CIP are:

- 15 1. Implementation of Paid Parking in Byron Bay – Already actioned.
2. Asset Realisation (Sale and Development of Land) – Largely already actioned.
3. Increase in rates up to 10% (including any rate peg increase and the streamlined 3% rate increase referred to in Key Strategy 5).
- 20 4. Efficiencies and Strategic Procurement Savings – Already being actioned and achieved – ongoing.
5. Accessing the streamlined 3% above rate peg rate increase (available for FFF councils) as proposed by the Independent Local Government Review Panel – cannot now occur as the government did not honour this commitment.

25 In addition to the key Improvement Strategies in the CIP, the remaining strategies in the Financial Sustainability Plan (FSP) and other improvement initiatives also continue to be achieved. These other improvements collectively make a positive contribution to Council's long term financial sustainability and also to the services that Council delivers to its community, they include:

- 30 • Review of revenue generating opportunities across a range of Council assets.
- Review of activities on Crown Lands and equitable recoupment of costs to Council.
- Visitor revenue opportunities other than paid parking, for example continuing to lobby for an accommodation levy (bed tax).
- Continuing to lobby for a review of the Financial Assistance Grants distribution formula so as to recognise the impact of Byron's visitor economy
- 35 • Major re-structuring of Council's operations and reducing senior staff numbers
- Conducting reviews of council operations with resultant cost efficiencies
- Developing community and business partnerships so as to spread the financial burden

40 Phase 3: Complete – 'Funding our Future' Community Consultation and Engagement on proposed SRV

At its Ordinary meeting on 6 October 2016, Council resolved to proceed to the Community Consultation and Awareness process, a pre-requisite for the proposed special rate variation process.

45 At its Ordinary meeting on 15 December 2016, Council was presented with the SRV Engagement and Consultation Report (Phase 3). Council consulted with the community during the period from

26 October 2016 to 28 November 2016 on the proposed SRV through an array of different platforms including a telephone survey, online survey, a telephone hotline, receiving written and verbal submissions, reply paid cards that was sent out in the mail to every ratepayer and over 54 hours spent on Community Information Stands and Market Stalls between 31 October 2016 and 19 November 2016. Overall, Council received feedback (via these various mechanisms) from over 2,500 community members demonstrating a significant level of awareness about the proposed SRV.

Resulting from this, Council resolved (**resolution 16-657**) to enter into Phase 4 of the project and place its Integrated Planning and Reporting (IP&R) documents on public exhibition, including amendments relating to a SRV scenario, for the required period. Following from its Ordinary meeting on 15 December 2016, the relevant amended documents were placed on public exhibition for a period of 28 days between 17 December 2016 and 18 January 2017.

The IP&R documents that Council placed on public exhibition included:

- Revised Delivery Program 2014-2017.
- Revised Long Term Financial Plan 2016-2026
- Revised Strategic Asset Management Plan

These documents can be accessed via the following link:

<http://www.byron.nsw.gov.au/funding-our-future>

Phase 4: Complete – ‘Funding our Future’ Public exhibition of amended IP&R Documents

At each interval of the project Council has received background information on what the next phase of the SRV project would entail. The table below was included in a previous report and is a high level representation of where Council is now at in the process.

Action	Timeframe
Finalisation of Integrated Planning and Reporting framework documents.	November 2016.
Finalisation of outcomes from SRV survey and community consultation.	November – December 2016.
<i>Decision to Council as to whether to adopt and place draft IP & R documents, including SRV information on Public Exhibition.</i>	<i>December 2016 Council meeting.</i>
Public Exhibition of draft I P & R documents. Supported by an engagement campaign aimed at public awareness and include a summary of the Integrated Planning and Reporting. Plus media releases, advertising (radio, newspaper and Facebook), online forum and community information stands.	Mid December 2016 – mid January 2017.
Finalisation of outcomes and information collected from public exhibition process.	January 2017.
<i>Decision to Council as to whether to make an application to IPART for a Special Rate Variation.</i>	<i>February 2017 Council meeting.</i>

The Guidelines for the Preparation of an Application for a special variation to general income for 2017/2018 specify that the Council's IP&R documents need to incorporate any proposed SRV scenario/s, and that this is a key requirement supporting any application to the (IPART) for a SRV. Specifically, the Councils IP&R documents need to demonstrate that any special rate variation applied for is consistent with the priorities and objectives of the Councils Community Strategic Plan, corresponding strategic documents, and provide a rationale for its application.

The Community Consultation and Engagement Report which was presented to Council at the 15 December 2016 Ordinary Meeting details each of the methods used by Council to engage and

consult with the community during Phases 1, 2, 3 and 4. The Report highlights the overall results obtained from community feedback during all phases of the project. This document has been recently updated to reflect the submissions and community consultation received from Phase 4, the public exhibition of the IP&R documents and is included at Attachment 2.

Council received 98 submissions from the public on the IP&R and SRV issues during the exhibition period, which commenced 19 December 2016 and concluded at 4pm 18 January 2017. Council received a further 6 submissions after the 4pm deadline on 18 January, which are included in the report as late submissions. These 104 submissions have been compiled for Council's review and consideration at confidential Attachment 1.

The majority of submissions Council received during Phase 4: Public exhibition of the IP&R documents, are not supportive of a rate rise and support the base case option of rate peg only. Some of the themes contained in submissions include the significant impact on the community from tourism, that the current rates are already high, the need for pay parking throughout the Shire and the need for assistance from State government.

PART 2:

Based on feedback collected from the community, considered in conjunction with Council's planning and analysis of its significant asset and infrastructure funding gap, and the information contained in Councils IP&R documents, it is recommended that Council from the three SRV options, resolve to apply for a Special Rate Variation based on Option 2 - Maintain: 10% per year over four years, totalling a cumulative rate increase of 46.4% (including rate peg) over that period.

Exploring Option 2: 10% 'Maintain'

This option would generate an estimated additional \$16.47 million over four years. Council would also propose to borrow an additional \$6 million (currently nominated at \$2 million each year for three years), increasing the total investment on infrastructure to \$22.28 million over the four years. The additional funds would go towards funding essential maintenance and some renewal of high risk assets. This means that the average condition of Councils roads, bridges, rural and urban drainage, buildings, public toilets, footpaths and park facilities (including playgrounds) would be stabilised and maintained.

Such additional funds would allow Council to accelerate the works program and do more to address the assets categorised as high risk. An example of this is that over the four years, Council could complete an additional:

- 6.6 km of road reconstructions;
- 83.1km of road reseals;
- Accelerated replacement of load limited old bridges in the Shire such as O'Meara's, James, Parkers, Scarrabelottis and Booyong;
- Increased road maintenance including drainage (urban and rural), heavy patching, road shoulder grading and unsealed road resheeting;
- Renew or replace poor condition box culverts and causeways;
- Replace poor condition bus shelters with Disability Access compliant shelters; and
- Increased renewal or replacement of our old poor condition public amenities.

In summary the additional funding from a 10% rate increase could be allocated to the different infrastructure asset classes on the following basis (subject to Council approval annually through the adoption of annual Operational Plans and budgets):

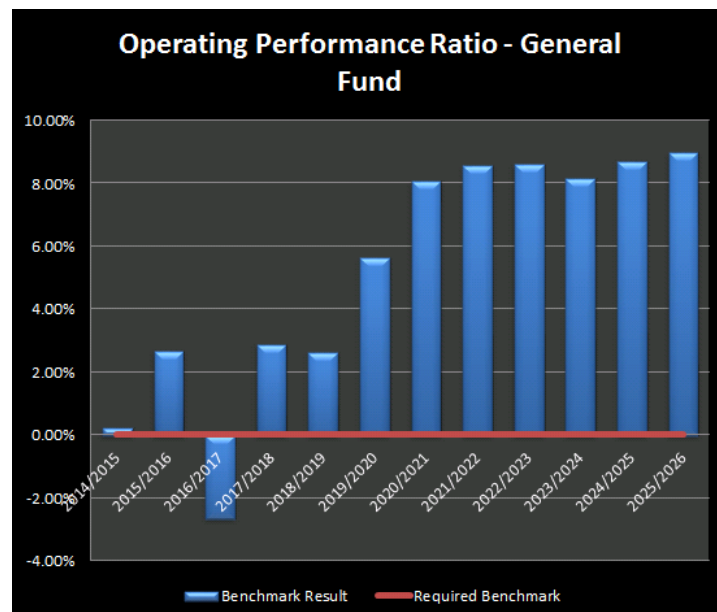
- \$16,918,000 on roads, road drainage, footpaths and bridges
- \$719,000 on urban stormwater

- \$507,000 on rural drainage, causeways and culverts
- \$3,300,000 on buildings and public amenities
- \$836,000 on parks and open spaces

5 Rationale for Option 2: 10%

The rationale for Councils preferred option for an SRV is as follows:

- An application for a special rate variation of 10% per year over four years was highlighted in the past as one of Councils key strategies in order to remain financially sustainable. Council was deemed *Fit for the Future* based on implementing five key strategies, one of these strategies being a special rate variation. The proposed application for a 10% rate increase per year over four years is consistent with Councils Improvement Plan strategy as adopted in June 2015.
- The Long Term Financial Plan (LTFP) that incorporates the proposed 10% rate increase option indicates that Council will be able to achieve estimated operational surpluses over the next ten financial years. This is due to that ordinary rate income being recognised as operating income whereas a significant portion of the proposed funding from the rate increase will be spent on asset renewal which is a capital expense. This results in a higher operating performance ratio. The Independent Pricing and Regulatory Tribunal (IPART) consider an annual operating performance ratio in excess of 10% excessive. The indicated Operating Performance Ratio outcomes for the period 1 July 2017 to 30 June 2026 are identified in the graph below:



Note: The Operating Performance Ratio (OPR) in 2016/2017 is estimated to be -2.65% based off the original 2016/2017 budget estimates. With comparison to the 2015/2016 financial year, listed below are the main reasons causing the OPR reduction:-

- Recognition of roads to recovery grant as operating revenue even though Council expends it for capital purposes. In 2015/2016, Council recognised \$1.554million and in 2016/2017 it is estimating \$730,000. Here there is a reduction of \$824,000
- Election expenses of \$210,000 did not occur in 2015/2016 but are in 2016/2017 due to the Council election in September 2016.
- Interest on investments has been conservatively estimated at \$1.5million for 2016/2017 given the expected reduction in cash due to the capital works budget and

declining interest rates. Interest earned in 2015/2016 was \$2.3million so there is a reduction of \$800,000.

- Paid parking revenues are conservative as per the CIP but given experience of paid parking since commencement revenues may be higher but this also needs to be balanced off against fine income where the budget in 2016/2017 is likely to be higher than actual fine revenues.

The actual outcome of the OPR for 2016/2017 will be reviewed as part of the Quarterly Budget Review process and completion of the 2016/2017 annual financial statements.

- Based on the detail contained in Councils Strategic Asset Management Plan (SAMP), under this 10% SRV option Council is able to maintain its assets and infrastructure by accelerating its current works program and addressing high risk assets. It is acknowledged that it will not be possible for Council to improve infrastructure assets which was only available under the 12.5% special rate variation option.
- Taking into account the community consultation feedback and consideration of the communities capacity to afford a rate increase and issues of affordability, this is the most appropriate option in balancing the need for additional funds towards asset and infrastructure maintenance and renewal against the community's capacity to afford such an increase in rates.

Feedback from the community during Phase 3 of the project taken from the random telephone survey indicated that 61% of residents surveyed supported some form of special rate variation when combining their first and second preference. Similarly, for the online opt-in survey, 66% of residents surveyed supported some form of special rate variation when combining their first and second preference.

Evaluation of 7.5% and 12.5% SRV increase options:

While a 10% SRV option is favoured by staff there are sound reasons for neither a 7.5% nor 12.5% SRV being recommended. Principal reasons are:

7.5% SRV option:

- A 7.5% option means that the state of Council's failing infrastructure would continue to deteriorate;
- 7.5% is a smaller rate increase than that committed to in Council's CIP (an increase of "at least 10%" was committed to);
- An SRV of 7.5% would mean that Council would fail to meet the critical and mandatory infrastructure back-log benchmark established by the Office of Local Government.

12.5% SRV option:

- 12.5% is a greater rate increase than that included in Council's IP&R documents including the Long Term Financial Plan (10%) and on this basis alone would almost certainly be rejected by the IPART;
- The IPART hasn't historically supported any SRV application which has a cumulative impact above 50% - this is borne out by a review of IPART SRV decisions over the past 6 years;
- In discussions with IPART economists council staff were advised that the IPART wouldn't support a SRV increase which raised revenue that would push Council's Operating Performance Ratio beyond 10% - it is likely that a 12.5% SRV would increase this ratio beyond the 10% benchmark.

Measures to address affordability

Council is acutely aware that the proposed special rate variation option proposed in this report will have implications for some in the community in terms of affordability. In recognition of this, Council has undertaken a review of its Rates and Charges Financial Hardship Assistance Policy and Rates and Charges Pensioner Concession Policy. Both of these policies were considered by Council at the Ordinary Meeting held on 15 December 2016 and adopted for the purposes of public exhibition. The public exhibition period of these policies at the time of writing this report is continuing and concludes on 1 February 2017.

Review of Water and Sewerage Annual Charges:

Quite separately from the SRV proposal, Strategic Business Plans for both Water and Sewerage Services have been under review for some time and have been the subject of discussion at meetings of the Water, Waste and Sewer Advisory Committee. This review has considered the future operational, debt and capital works (30 years) requirements of both the Water and Sewerage Funds based on guidelines issued by the NSW Office of Water. The outcome of the Business Plan review is that, subject to the Council's concurrence, cost effective changes to operations and proposed strategic upgrades of Water and Sewer infrastructure can be delivered at a substantial cost saving creating the opportunity for Council to consider reducing the typical residential bill for both water and sewerage by \$100 overall from 2017/2018. **Note – Council's current Sewer Charges are 23% higher than other North Coast councils.** If this reduction is considered, it would be best applied to the fixed charges for water and sewerage to ensure those properties serviced by water and sewerage receive the full reduction and to continue Council's policy of shifting the emphasis to a user charge approach where those that use the most water pay the most based upon consumption. While this proposal would ordinarily not be flagged so early in the budget cycle, because it potentially has a positive impact on the annual basket of rates and charges billed to each rateable property (i.e. the 75% of residential properties/rate assessments serviced by water and sewer) which is the bottom-line figure that most ratepayers focus on, it becomes potentially relevant when considering affordability.

The table below has been included as a **general guide only** to demonstrate the potential impact that a reduction in fixed Water and Sewer charges by \$100 per residential rate assessment for 2017/2018 only could have to the ordinary rate cumulatively over four years (**based on the 2015-2016 land values**). The data below assumes the property is connected to both water and sewerage and assumes other charges disclosed on the rate notice remain constant.

Land Value \$	2016/2017 Ordinary Rate \$	2020/2021 Ordinary Rate \$ after SRV	Change \$	Cumulative SRV Change %	Change if \$100 water/sewer reduction applied \$	Net % Change If reduction in W&S charges
300,000	695	1,017	322	46.3%	222	31.9%
400,000	921	1,337	417	45.2%	317	34.4%
500,000	1,151	1,672	521	45.2%	421	36.6%
600,000	1,381	2,006	625	45.2%	525	38.0%
1,000,000	2,302	3,343	1,041	45.2%	941	40.9%
6,000,000	13,812	20,061	6,249	45.2%	6,149	44.5%

It is acknowledged for those residential ratepayers with very high land values that the proposed reduction will not make a significant difference to the amount of rates payable.

Water and Sewer charges will be touched on at the Strategic Planning Workshop on 24th January 2017 with some background given by staff, however a more detailed workshop presentation on the strategic review will be given to councillors at the following SPW on 9th February 2017 (i.e. before

the SRV application deadline of 13th February 2017) with a report to Council on 23rd February 2017.

Financial Implications

Council has consulted with and surveyed the community on three options for a proposed special rate variation to be attributed to the renewal and maintenance of the Councils assets and infrastructure, and the long term financial sustainability of the Council.

The outcomes of the proposed special rate variation if approved are documented earlier in this report in terms of the additional funding it will generate for Council

If a decision is made to not proceed with a special rate variation proposal, meaning that no application would be made to IPART, Council will need to reassess:

- The continual decline in the condition of its infrastructure assets and consequential increase in the infrastructure backlog.
- Delivering on the outcomes adopted in its Council Improvement Plan (CIP) to which the Office of Local Government has recently reminded Councils about through Circular 16-49 issued on 21 December 2016.
- The possibility it will not remain Fit for the Future.

Council will of course need to reassess these matters if it decides to lodge a special rate variation application with IPART and IPART does not approve the application.

Statutory and Policy Compliance Implications

Section 406 of the Local Government Act 1993 outlines the requirement for Council to comply with the Integrated Planning and Reporting Guidelines issued from time to time by the Office of Local Government. Any amendment to a Council's Delivery Program requires a public exhibition period of at least 28 days with Council needing to consider any submissions received before adoption as required by Section 404(4) of the Local Government Act 1993.

If Council determines to apply for a Special Rate Variation, it must make application to the Independent Pricing and Regulatory Tribunal (IPART) whom will determine the application. Such an application must be based on guidelines issued annually by the Office of Local Government. The 2017-2018 guidelines can be found at the following link:

<http://www.olg.nsw.gov.au/sites/default/files/Guidelines%20for%20the%20Preparation%20of%20an%20Application%20for%20a%20Special%20Variation%20to%20General%20Income%20for%202017-2018.pdf>

The Local Government Act 1993 provides for two types of special rate variations being:

- a single year percentage increase, under section 508 (2), and
- successive annual percentage increases over a period of between two and seven years, under section 508A.

The option subject of this report would require an application under section 508A.

Report No. 13.3 **Code of Conduct Annual Report 1 September 2015 - 31 August 2016**
Directorate: Corporate and Community Services
Report Author: Ralph James, Legal Services Coordinator
File No: I2017/46
5 **Theme:** Corporate Management
 Governance Services

Summary:

10 Clause 12.1 of Council's Policy 13/004 "Procedures for the Administration of Council's Code of
 Conduct" requires specified statistics to be reported to Council within three months of the end of
 September each year. The Office of Local Government fixes the reporting period as 1 September
15 to 31 August. This report covers the same period. It was not reported earlier due to the length of
 the agenda of the December 2016 Ordinary Council meeting.

RECOMMENDATION:

**That the Code of Conduct Annual Report for the period 1 September 2015 to 31 August 2016
be received and noted by Council.**

Report

Council's adopted Policy, "Procedures for the Administration of Council's Code of Conduct" (Procedures) provides, in relation to reporting, as follows:

12.1 The Complaints Coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:

- a) the total number of code of conduct complaints made about Councillors and the General Manager under the Code of Conduct in the year to September;
- b) the number of code of conduct complaints referred to a conduct reviewer;
- c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints;
- d) the number of code of conduct complaints investigated by a conduct reviewer;
- e) the number of code of conduct complaints investigated by a conduct review committee;
- f) without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures;
- g) the number of matter reviewed by the Division and, without identifying particular matters, the outcome of the reviews; and
- h) The total cost of dealing with code of conduct complaints made about Councillors and the General Manager in the year to September, including staff costs.

12.2 The Council is to provide the Division with a report containing the statistics referred to in clause 12.1 within 3 months of the end of September of each year.

Council's report to the Office of Local Government was submitted within the required timeframe.

Breakdown of the statistics reported to the Division

- a) the total number of code of conduct complaints made about Councillors and the General Manager under the Code of Conduct – Councillors **16** General Manager **0**
- b) the number of code of conduct complaints referred to a conduct reviewer - **1**
- c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints - **0**
- d) the number of code of conduct complaints investigated by a conduct reviewer – **1**
- e) the number of code of conduct complaints investigated by a conduct review committee – **0**
- f) without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures – **1 confirmed breach, subsequently referred to the Division.**
- g) (i) the number of matters reviewed by the Division - **1**
 (ii) without identifying particular matters, the outcome of the reviews- **outcome pending**
- h) the total cost of dealing with code of conduct complaints made about Councillors and the General Manager in the year to September, including staff costs. **\$6,728**

Code of Conduct complaints against Councillors dealt with by the General Manager.

Of the 16 complaints received in the period, 3 matters were pending an outcome at the time of reporting and 13 Code of Conduct complaints against Councillors were dealt with and finalised by the General Manager.

The outcomes of the 13 finalised complaints were as follows:

- 12 complaints were not established.
- 1 complaint was established and was dealt with by way of counselling and further Code of Conduct education.

Nature of complaints

Councillors

Non-pecuniary conflict of interest- 2
Misconduct - 10
Disorder- 4

Financial Implications

Fees of \$6728 incurred from external reviewer in one matter.

Statutory and Policy Compliance Implications

All complaints were dealt with in accordance with the Procedures and in accordance with the timeframes required.

Mandatory reporting requirements have been met.

Report No. 13.4 Section 355 Committee - Resignation and Appointment of new members

Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Project Officer
File No: I2017/48
Theme: Society and Culture
Community Development

Summary:

Since Council appointed community members to the newly established Section 355 Committees and Boards at the Ordinary Meeting of Council held on 21 November 2016 (Resolution: **16-569**), a number of resignations have been received and requests for new membership as outlined in this report.

RECOMMENDATION:

1. **That the resignations received from Vicky King and Brett Brewer from Ocean Shores Community Centre Management Committee and Robyn Quinn from South Golden Beach Community Centre be noted.**
2. **That Council appoint the following new community members to committees:**
 - **Sam Fell to the Mullumbimby Civic Memorial Hall Board of Management;**
 - **Dianne Pymble-Ward and Robyn Bolden to the Ocean Shores Community Centre Management Committee; and**
 - **Nancy English and Alice Jarvis to the Senior Citizen's Hall Byron Bay Management Committee; and**
 - **Peter Mortimore, Adrienne Lester, Damon Lewis and John Hudson be appointed to the Bangalow A&I Hall Board of Management.**

Attachments:

- 1 Confidential - Confidential annexure to report appointment of additional community representatives to Section 355 committees and Boards January 2017, E2017/1990

Report

Since Council appointed community members to the newly established Section 355 Committees and Boards at the Ordinary Meeting of Council held on 21 November 2016 (Resolution: **16-569**), a number of resignations have been received and requests for new membership as outlined below.

Bangalow A&I Hall Board of Management

Four additional nominations have been received from community members who missed the deadline in late 2016 to submit a nomination to be a member of the Bangalow A&I Hall Board of Management.

Current members on this Board of Management are:

Councillors

Cr Cate Coorey

Community Representatives:

Tony Heeson (Chair)

Peta Heeson (Treasurer)

Roland Dickson (Vice Chair)

Peter Wynn-Moylan

Don Osborne (Secretary)

Expressions of interest have been received from Peter Mortimore, Adrienne Lester, Damon Lewis and John Hudson. Details of nominees can be found in the confidential attachment.

Management Recommendation: Recommend that Peter Mortimore, Adrienne Lester, Damon Lewis and John Hudson be appointed to the Bangalow A&I Hall Board of Management.

Mullumbimby Civic Memorial Hall Board of Management

An additional nomination has been received from a previous member of the Mullumbimby Civic Hall Board of Management.

Current members on this Board of Management are:

Councillors

Cr Basil Cameron

Cr Jeannette Martin (alternate)

Community Representatives:

Judy MacDonald

Glenn Wright (Acting Chair)

Anthony Reardon

Maureen Lightfoot (Treasurer)

An expressions of interest has been received from Sam Fell, a previous community member of the Board. Details of nominees can be found in the confidential attachment.

Management Recommendation: Due to the small number of people on the current Board of Management, it has been recommended that Sam Fell be appointed to the Mullumbimby Civic Hall Board of Management.

Ocean Shores Community Centre Management Committee

Following the letters of appointment being distributed, two members appointed to this committee withdrew their nominations (resigned) – Vicky King and Brett Brewer.

Two nominations have been received from Dianne Pymble-Ward and Robyn Bolden. Details of nominees can be found in the confidential attachment.

Current members on this Management Committee are:

Councillors

Cr Jeannette Martin
Cr Cate Coorey (alternate)

Community Representatives:

Leigh Rees (Secretary)
Leah Kapral (Assistant Bookings)
Gail Fuller (Chair/ Treasurer)
Helen Graveson (Bookings)

Management Recommendation: Due to the small number of people on the current Management Committee, it has been recommended that both Dianne Pymble-Ward and Robyn Bolden be appointed to the Ocean Shores Community Centre Management Committee.

Senior Citizen's Hall Byron Bay Management Committee

Two nominations have been received from Nancy English and Alice Jarvis. Details of nominees can be found in the confidential attachment.

As this is a newly established Section 355 Management Committee that needs to establish all the systems and paperwork for managing a hall, and with only a small number of members, the committee have requested further advertising for new members.

Current members on this Management Committee are:

Councillors

Cr Sarah Ndiaye
Cr Cate Coorey (alternate)

Community Representatives:

Margaret Robertson (Bookings/ Temp Treasurer)
Jay Pearse (Vice Chair)
Caroline Lloyd
Jim Beatson (Chair)

Management Recommendation: Due to the small number of people on the current Management Committee, it has been recommended that Nancy English and Alice Jarvis be appointed to the Senior Citizen's Hall Management Committee.

South Golden Beach Community Centre Management Committee

Following the letters of appointment being distributed, a member appointed to this committee withdrew their nomination (resigned) – Robyn Quinn.

5

Current members on this Management Committee are:

Councillors

- 10 Cr Basil Cameron
 Cr Sarah Ndiaye (alternate)

Community Representatives:

- 15 Lotte Boer
 Michelle Clark (Vice Chair)
 Richard Willan (Bookings)
 Zerina Millard (Chair)
 Jennifer Parenteau
 Gabrielle Ranaldi (Secretary)
 Maureen Lightfoot (Treasurer)

20

Management Recommendation: No further action is required.

Financial Implications

- 25 Community Members of Section 355 Management Committees are volunteer positions unless otherwise resolved by Council.

Statutory and Policy Compliance Implications

- 30 Management Committees and Boards of Management operate under Guidelines which states:

3.2 Committee Membership

- 35 *Committee membership will number not less than four and not more than nine and each committee will state the actual number in their Terms of Reference unless otherwise decided by Council. The exception will be the Bangalow Parks (Showground) committee which numbers twelve. Council reserves the right to appoint up to two Councillors to each Committee. The total number of members includes office bearer committee members and Councillor members which are appointed by Council.*

- 40 *Whilst no particular qualifications are necessary (not withstanding 3.1.a), a commitment to the activities of the Committee and a willingness to be actively involved in Committee issues is essential. Committees work best when the workload is shared amongst committee members and there is evident goodwill and cooperation amongst members.*

- 45 Further information on the operations and meeting minutes for these Committees and Boards can be found on Council's web site at <http://www.byron.nsw.gov.au/section-355-committees>.

Report No. 13.5
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2017/81
Theme: Corporate Management
Financial Services

Summary:

Council at its Ordinary Meeting held on 15 December 2016 resolved Resolution: **16-658, part 4 and 5** to receive a report and provide information to the community on Rating and Revenue Options.

This report is provided to Council and the Community to address the Council resolution.

RECOMMENDATION:

1. That the report on Rating and Revenue Options be received and noted.
2. That Council review its rating structure including the redistribution of the rating burden between the Residential, Business and Farmland rating categories and sub-categories, and that this review be undertaken as part of developing 2017-2018 Revenue Policy and supported by further modelling of rating structure scenarios and further consultation with impacted ratepayers.
3. Council not increase the hourly pay parking fee for the 2017/18 financial year but reconsider this option in the development of Council's Revenue Policy for 2018/19.

Report

Council at its Ordinary Meeting held on 15 December 2016 considered Report 13.2 'Proposed Special Rate Variation – Update on Community Consultation and presentation of Amended Integrated Planning and Reporting Documents for exhibition'. Following consideration of the report, Council resolved Resolution **16-658 part 4 and 5**:

“4. That to ensure an equitable distribution of any rate increase, the following information be provided to Council and the community before the next Ordinary meeting:

- i. The effect on the different rating categories and on people living in different areas of the Shire, of adjusting the percentage distribution amongst the categories under each of the three options.*
- ii. Options for distributing a higher proportion of the rate burden to those businesses which benefit from tourism.*
- iii. An assessment of Holiday let properties within a business category.*

5. That this report also include revenue raising options external to a special rate variation including:

- ii. Implications and particulars of a Tourism Levy, Tariff or something similar and its relationship to a Special Rate Variation.*
- iii. Estimates of increased revenue forthcoming from an increase of paid parking hourly charges from \$3 to \$4.”*

Parts 1, 2, and 3 of the resolution related to Council receiving and noting the feedback from the community during Phase 3 of the Special Rate Variation Engagement Process, adoption of the amended Integrated Planning and Reporting documents for exhibition and lodging a Notice of Intent with the Independent Pricing and Regulatory Tribunal (IPART) of its intention to apply for a Special Rate Variation with the action on those parts of the Resolution now complete.

This report is provided to Council and the community to address parts 4 and 5 of the Resolution as outlined above. To do this, it is proposed to outline information under a sub-heading for each item under part 4 and 5 of Resolution **16-658**.

Part 4(i) – The effect on the different rating categories and on people living in different areas of the Shire, of adjusting the percentage distribution amongst the categories under each of the three options.

For Council to consider this comparison, it is important to understand the current rating structure and yield applied by Council for the 2016/2017 financial year. This is summarised in the table below:

Rating Category (\$514-518)	Name of sub-category	Number of Assess-ments	Ad Valorem Rate	Minimum \$	Number on Minimum	Land Value as at 1/7/16	Land Value of Land on Minimum	2016/17 Notional Income Yield	Average Rate	% of Income	% of Assessments	% of Land Value	% on Minimum	AdValorem Rate as % of Residential
Residential		13,113	0.2302	695.00	4,298	6,115,400,812	930,174,311	14,923,528	1,138	75.98%	86.6%	80.7%	32.8%	100.0%
Residential	Flood	28	0.2302	382.00	21	2,299,570	1,120,570	10,736	383	0.05%	0.2%	0.0%	75.0%	100.0%
Business		1,099	0.3453	695.00	424	620,779,765	47,473,158	2,274,308	2,069	11.58%	7.3%	8.2%	38.6%	150.0%
Business	Byron Bay CBD	352	0.4604	695.00	108	331,865,804	8,922,618	1,561,890	4,437	7.95%	2.3%	4.4%	30.7%	200.0%
Farmland		543	0.1697	695.00	10	511,528,508	2,074,900	871,493	1,605	4.44%	3.6%	6.7%	1.8%	73.7%
TOTAL		15,135			4,861	7,581,874,459	989,765,557	19,641,955	1,298	100.00%	100.0%	100.0%	32.1%	0.0%

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.5

For the purposes of modelling and demonstrating the potential impacts, it is proposed to demonstrate the effect based on the following parameters:

- The 'maintain' Special Rate Variation option representing the 10% increase each year for four years commencing in 2017/2018 which is subject to another report to this Ordinary Council Meeting. The 7.50% option and the 12.50% option will either be less or more than the modelled option but this option is in between.
- Modelling for residential ratepayers only by major localities given they represent 86.8% of all ratepayers.
- Utilising existing land valuations for rating purposes instead of new land valuations for 2017/2018 which have only recently been received from the Valuer General but not yet loaded to the Rating Book.

The table below indicates the overall impact for the residential rating category based on different land value increments by comparing 2016/2017 ordinary rates to 2017/2018 and then projecting to the last year of the proposed rate increase.

Residential										
(LV turning point for Min.)		\$301,911	\$304,140							
Land Value (\$)	Number of properties	2016/17	2017/18	Change from Base Year (\$)	Change from Base Year (%)	2018/19	2019/20	2020/21	Change from Base Year (\$)	Change from Base Year (%)
100,000	370	695	764	69	9.9%	840	924	1,017	322	46.3%
200,000	1,084	695	764	69	9.9%	840	924	1,017	322	46.3%
300,000	2,745	695	764	69	9.9%	840	924	1,017	322	46.3%
400,000	3,061	921	1,005	84	9.1%	1,105	1,216	1,337	417	45.2%
500,000	2,307	1,151	1,256	105	9.1%	1,382	1,520	1,672	521	45.2%
600,000	1,234	1,381	1,507	126	9.1%	1,658	1,824	2,006	625	45.2%
700,000	689	1,611	1,758	147	9.1%	1,934	2,128	2,340	729	45.2%
800,000	468	1,842	2,010	168	9.1%	2,211	2,432	2,675	833	45.2%
900,000	297	2,072	2,261	189	9.1%	2,487	2,736	3,009	937	45.2%
1,000,000	184	2,302	2,512	210	9.1%	2,763	3,040	3,343	1,041	45.2%
1,250,000	282	2,878	3,140	263	9.1%	3,454	3,799	4,179	1,302	45.2%
1,500,000	130	3,453	3,768	315	9.1%	4,145	4,559	5,015	1,562	45.2%
1,750,000	105	4,029	4,396	367	9.1%	4,836	5,319	5,851	1,823	45.2%
2,000,000	35	4,604	5,024	420	9.1%	5,526	6,079	6,687	2,083	45.2%
2,250,000	42	5,180	5,652	473	9.1%	6,217	6,839	7,523	2,343	45.2%
2,500,000	23	5,755	6,280	525	9.1%	6,908	7,599	8,359	2,604	45.2%
2,750,000	26	6,331	6,908	578	9.1%	7,599	8,359	9,195	2,864	45.2%
3,000,000	23	6,906	7,536	630	9.1%	8,290	9,119	10,030	3,124	45.2%
3,250,000	12	7,482	8,164	682	9.1%	8,980	9,878	10,866	3,385	45.2%
3,500,000	10	8,057	8,792	735	9.1%	9,671	10,638	11,702	3,645	45.2%
3,750,000	11	8,633	9,420	787	9.1%	10,362	11,398	12,538	3,906	45.2%
4,000,000	3	9,208	10,048	840	9.1%	11,053	12,158	13,374	4,166	45.2%
4,250,000	2	9,784	10,676	893	9.1%	11,744	12,918	14,210	4,426	45.2%
4,500,000	2	10,359	11,304	945	9.1%	12,434	13,678	15,046	4,687	45.2%
4,750,000	2	10,935	11,932	998	9.1%	13,125	14,438	15,881	4,947	45.2%
5,000,000	3	11,510	12,560	1,050	9.1%	13,816	15,198	16,717	5,207	45.2%
6,000,000	10	13,812	15,072	1,260	9.1%	16,579	18,237	20,061	6,249	45.2%
7,000,000	3	16,114	17,584	1,470	9.1%	19,342	21,277	23,404	7,290	45.2%
8,000,000	2	18,416	20,096	1,680	9.1%	22,106	24,316	26,748	8,332	45.2%
10,000,000	1	23,020	25,120	2,100	9.1%	27,632	30,395	33,435	10,415	45.2%

Average Land Value 2016/2017 = \$416,927

Highest Land Value = \$3,530,000

Minimum rate 2016/2017 = \$695.00

Average rate 2016/2017 = \$991.91

5 Highest rate 2016/2017 = \$8,126.06

Estimated average rate 2017/2018 = \$1,083.20

Estimated average rate 2018/2019 = \$1,191.52

Estimated average rate 2019/2020 = \$1,310.68

10 Estimated average rate 2020/2021 = \$1,441.74

Billinudgel

Number of ratepayers = 201

15 Number of ratepayers on minimum rate = 42 (20.9%)

Average Land Value 2016/2017 = \$528,111

Highest Land Value = \$2,150,000

Minimum rate 2016/2017 = \$695.00

Average rate 2016/2017 = \$1,273.95

20 Highest rate 2016/2017 = \$4,949.30

Estimated average rate 2017/2018 = \$1,391.32

Estimated average rate 2018/2019 = \$1,530.46

Estimated average rate 2019/2020 = \$1,683.50

25 Estimated average rate 2020/2021 = \$1,851.85

Brunswick Heads

Number of ratepayers = 689

30 Number of ratepayers on minimum rate = 142 (20.6%)

Average Land Value 2016/2017 = \$497,324

Highest Land Value = \$9,000,000

Minimum rate 2016/2017 = \$695.00

Average rate 2016/2017 = \$1,196.75

35 Highest rate 2016/2017 = \$20,718.00

Estimated average rate 2017/2018 = \$1,307.08

Estimated average rate 2018/2019 = \$1,437.79

Estimated average rate 2019/2020 = \$1,581.57

40 Estimated average rate 2020/2021 = \$1,739.72

Byron Bay

Number of ratepayers = 2,731

45 Number of ratepayers on minimum rate = 742 (27.2%)

Average Land Value 2016/2017 = \$670,434

Highest Land Value = \$9,470,000

Minimum rate 2016/2017 = \$695.00

Average rate 2016/2017 = \$1,620.42

50 Highest rate 2016/2017 = \$21,799.94

Estimated average rate 2017/2018 = \$1,769.76

Estimated average rate 2018/2019 = \$1,946.74

Estimated average rate 2019/2020 = \$2,141.41

55 Estimated average rate 2020/2021 = \$2,355.55

Ewingsdale

Number of ratepayers = 272
 Number of ratepayers on minimum rate = 2 (0.7%)
 5 Average Land Value 2016/2017 = \$
 Highest Land Value = \$4,840,000
 Minimum rate 2016/2017 = \$695.00
 Average rate 2016/2017 = \$1,455.70
 Highest rate 2016/2017 = \$11,141.68

10 Estimated average rate 2017/2018 = \$1,588.54
 Estimated average rate 2018/2019 = \$1,747.39
 Estimated average rate 2019/2020 = \$1,922.13
 Estimated average rate 2020/2021 = \$2,114.35

Federal

Number of ratepayers = 179
 Number of ratepayers on minimum rate = 24 (13.4%)
 20 Average Land Value 2016/2017 = \$454,480
 Highest Land Value = \$1,700,000
 Minimum rate 2016/2017 = \$695.00
 Average rate 2016/2017 = \$1,051.80
 Highest rate 2016/2017 = \$3,913.40

25 Estimated average rate 2017/2018 = \$1,148.44
 Estimated average rate 2018/2019 = \$1,263.28
 Estimated average rate 2019/2020 = \$1,389.61
 Estimated average rate 2020/2021 = \$1,528.74

Mullumbimby

Number of ratepayers = 1,393
 Number of ratepayers on minimum rate = 671 (48.2%)
 35 Average Land Value 2016/2017 = \$332,724
 Highest Land Value = \$8,259,000
 Minimum rate 2016/2017 = \$695.00
 Average rate 2016/2017 = \$822.28
 Highest rate 2016/2017 = \$19,012.22

40 Estimated average rate 2017/2018 = \$899.97
 Estimated average rate 2018/2019 = \$989.97
 Estimated average rate 2019/2020 = \$1,088.96
 Estimated average rate 2020/2021 = \$1,197.86

Myocum

Number of ratepayers = 256
 Number of ratepayers on minimum rate = 8 (3.1%)
 50 Average Land Value 2016/2017 = \$532,046
 Highest Land Value = \$2,400,000
 Minimum rate 2016/2017 = \$695.00
 Average rate 2016/2017 = \$1,234.40
 Highest rate 2016/2017 = \$5,524.80

55 Estimated average rate 2017/2018 = \$1,347.18

Estimated average rate 2018/2019 = \$1,481.90

Estimated average rate 2019/2020 = \$1,630.09

Estimated average rate 2020/2021 = \$1,793.10

5 New Brighton

Number of ratepayers = 207

Number of ratepayers on minimum rate = 28 (13.5%)

Average Land Value 2016/2017 = \$530,383

10 Highest Land Value = \$1,880,000

Minimum rate 2016/2017 = \$695.00

Average rate 2016/2017 = \$1,240.55

Highest rate 2016/2017 = \$4,327.76

15 Estimated average rate 2017/2018 = \$1,354.48

Estimated average rate 2018/2019 = \$1,489.93

Estimated average rate 2019/2020 = \$1,638.92

Estimated average rate 2020/2021 = \$1,802.81

20 Ocean Shores

Number of ratepayers = 2,362

Number of ratepayers on minimum rate = 1,743 (73.8%)

Average Land Value 2016/2017 = \$269,173

25 Highest Land Value = \$3,670,000

Minimum rate 2016/2017 = \$695.00

Average rate 2016/2017 = \$756.83

Highest rate 2016/2017 = \$12,672.51

30 Estimated average rate 2017/2018 = \$830.81

Estimated average rate 2018/2019 = \$913.89

Estimated average rate 2019/2020 = \$1,005.28

Estimated average rate 2020/2021 = \$1,105.81

35 South Golden Beach

Number of ratepayers = 388

Number of ratepayers on minimum rate = 150 (38.7%)

Average Land Value 2016/2017 = \$323,361

40 Highest Land Value = \$769,000

Minimum rate 2016/2017 = \$695.00

Average rate 2016/2017 = \$787.71

Highest rate 2016/2017 = \$1,770.24

45 Estimated average rate 2017/2018 = \$861.73

Estimated average rate 2018/2019 = \$947.90

Estimated average rate 2019/2020 = \$1,042.69

Estimated average rate 2020/2021 = \$1,146.96

50 Suffolk Park

Number of ratepayers = 1,481

Number of ratepayers on minimum rate = 271 (18.3%)

Average Land Value 2016/2017 = \$481,183

55 Highest Land Value = \$5,100,000

Minimum rate 2016/2017 = \$695.00

Average rate 2016/2017 = \$1,654.52
Highest rate 2016/2017 = \$13,812.00

Estimated average rate 2017/2018 = \$1,272.87
Estimated average rate 2018/2019 = \$1,400.16
Estimated average rate 2019/2020 = \$1,540.17
Estimated average rate 2020/2021 = \$1,694.19

Wilsons Creek

Number of ratepayers = 165
Number of ratepayers on minimum rate = 29 (17.6%)
Average Land Value 2016/2017 = \$430,011
Highest Land Value = \$1,030,000
Minimum rate 2016/2017 = \$695.00
Average rate 2016/2017 = \$986.25
Highest rate 2016/2017 = \$2,371.06

Estimated average rate 2017/2018 = \$1,084.75
Estimated average rate 2018/2019 = \$1,193.23
Estimated average rate 2019/2020 = \$1,312.55
Estimated average rate 2020/2021 = \$1,443.80

Part 4(ii) Options for distributing a higher proportion of the rate burden to those businesses which benefit from tourism.

For Council to consider applying a higher proportion of the rate burden on those businesses which benefit from tourism, it will first need to establish criteria on what basis it believes a particular business benefits from tourism. Once that is established it would then need to identify individually who all those businesses are.

The issue Council then faces is the restriction of the Local Government Act 1993, specifically Section 529(d). Council would need to create a subcategory under the business rate to consider this option but the option for creating a separate category under the business rate is based on a centre of activity ie a business centre, industrial estate or concentration of like activities. Sub-categorisation of business rating therefore is based on location ie as Council has established the Business – Byron Bay CBD category but it cannot be based on the type of business and from what activity they may derive their income from.

If Council wishes to redistribute a higher proportion of the rating burden from one rating category to another, ie reduce residential but increase business, the only option is to apply to all ratepayers within that category.

Currently Council has 1,434 business ratepayers and 13,166 residential ratepayers. The current rating yield for 2016/2017 is \$3,836,198 from the business rate and \$14,923,528 from the residential rate. Business currently pays 19.53% of Council's rate yield but is 9.6% of the ratepayer population. Residential currently pays 76.03% of Council overall rate yield but is 86.8% of the ratepayer population.

Using the latest comparative data issued by the Office of Local Government, an assessment has been undertaken including fourteen Councils which are either in the same grouping as Byron or they are a coastal Council, to compare the proportion of rate yield from the business rate to overall rates. The analysis revealed that none of the Council collected more than 20% of their overall rate income from the business rate and Byron Shire Council is currently close to this level before consideration of any further distribution.

The other issue for Council is given the smaller grouping of business ratepayers, if it chose to reduce the residential rate by a small amount this will have a significant impact on business ratepayers as indicated in the scenario below:

5 Scenario

If Council removed the current rating differentials in its rating structure where it requires the business other rating category ad valorem rate to be 150% and the Byron Bay CBD business rating category ad valorem rate to be 200% of the residential ad valorem rate respectively, it could then determine to set a defined percentage yield requirement for each rating category. Currently business overall in Byron Shire Council contributes 19.53% of the rate yield. If say Council set its rating structure to have business in the Byron Bay CBD pay an additional 1.5%, and business other an additional 2 %, with no change to the farmland yield and residential yield contribution be reduced by the % equivalent to reduce the overall rate yield, so Council does not exceed the rate cap including the proposed 10% Special Rate Variation (SRV).

The estimated rating yield in 2017/2018 including the 10% SRV is \$21,606,151. Business Byron Bay CBD is estimated to contribute \$1,718,079 and business other \$2,501,738. Adding 2% to the rate yield of business other category requires the addition of \$432,123. Adding 1.5% to the Business Byron CBD category requires the addition of \$324,092. This then requires a total \$756,215 to be added to the business rating category overall with a corresponding reduction of \$756,215 to the yield for the residential category. In making this change, this presents the following rating structure:

Rating Category (\$14-\$18)	Name of sub-category	Number of Assessments	Ad Valorem Rate	Minimum \$	Number on Minimum	Land Value as at 1/7/16	Land Value of Land on Minimum	2017/18 Notional Income Yield	Average Rate	% of Income	% of Assessments	% of Land Value	% on Minimum	AdValorem Rate as % of Residential
Residential		13,113	0.2364	764.00	5,069	6,115,400,812	1,163,616,257	15,670,941	1,195	72.53%	86.6%	80.7%	38.7%	100.0%
Residential	Flood	28	0.0000	420.00	0	2,299,570	0	0	0	0.00%	0.2%	0.0%	0.0%	0.0%
Business		1,099	0.4657	764.00	370	620,779,765	37,714,288	2,934,115	2,670	13.5800%	7.3%	8.2%	33.7%	197.0%
Business	Byron Bay CBD	352	0.6090	764.00	105	331,865,804	8,539,818	2,041,781	5,801	9.45%	2.3%	4.4%	29.8%	257.6%
Farmland		543	0.1960	764.00	12	511,528,508	2,807,900	959,313	1,767	4.44%	3.6%	6.7%	2.2%	82.9%
TOTAL		15,135			5,556	7,581,874,459	1,212,678,263	21,606,151	1,428	100.00%	100.0%	100.0%	36.7%	0.0%

The impact of this scenario does the following:

- Increases the average rate in the business other category to \$2,670 from \$2,069 – an increase of \$601 or 22.50% in 2017/2018.
- Increases the average rate in the business Byron Bay CBD to \$5,801 from \$4,437 – an increase of \$1,364 or 30.75% in 2017/2018.
- Increases the average rate in residential to \$1,195 from \$1,138 – an increase of \$57 or 5.00% in 2017/2018. The original modelling for residential showed an increase of \$112 for 2017/2018 so residential would see a reduction on average of \$55.

The above scenario shows substantial increases to business and an increase still to residential albeit it is half of the proposed SRV percentage.

What the scenario demonstrates as a hypothetical example is that if Council is wanting to apportion more of the rating burden to the business rating categories then it needs to do modelling of different options and consider the impacts coupled with consultation with business ratepayers. Council can undertake this process via the development of the 2017/2018 Revenue Policy and its required consultation before formal adoption in June 2017. This can be done independent of the current consideration of a Special Rate Variation (SRV) application.

Part 4(iii) An assessment of holiday let properties within a business category

Section 516 of the Local Government Act 1993 defines what land is to be categorised as residential for the purposes of rating. Section 518 of the Local Government Act 1993 provides that if land can not be categorised as residential, farmland or mining, the default categorisation is then business.

Council was provided advice from the Co-Ordinator Legal Services on 16 November 2016 (#E2016/100210) that clearly indicated that whilst a home may be available for accommodation of paying tourists or visitors is not in itself sufficient to establish that the actual present use of the property is mainly or principally for the accommodation of paying tourists or visitors. In categorisation of any property for rating, the onus is on Council to prove the current use of the property.

Section 516 of the Local Government itself recognises residential accommodation could include places where tourists and visitors stay overnight for short periods of time all year round provided such accommodation does not take any of the following forms:

- hotel
- motel
- guest-house
- backpacker hostel
- nursing home
- caravan park or
- manufactured home estate.

To undertake an assessment of the extent of holiday let properties that could be reclassified to business for the purpose of rating, Council would need to:

1. Identify all holiday let properties.
2. Assess each property as to whether the dominant use of the property is not for residential purposes based on present use.
3. Declare the rating category in accordance with Section 520 of the Local Government Act 1993 including advising the owner they have a right to apply to Council for review of the categorisation and that the owner has the right to appeal to the Land and Environment Court if dissatisfied with Council's review.

Part 5(i) Implications and particulars of a Tourism Levy, Tariff or something similar and its relationship to a Special Rate Variation

There is certainly an argument that the infrastructure of Council is impacted by the extent of tourists visiting Byron and yet there is no direct contribution from tourists towards the maintenance and renewal of infrastructure. The introduction of an expanded paid parking scheme by Council has in some way been able to extract some form of contribution.

Currently there is no legislative authority for Council to impose any form of Tourism Levy or Tariff. This would require the NSW State Government to introduce and approve legislation to enable the generation of revenue from such a levy/tariff but such a proposition is currently not supported by the state government.

Council has been advocating for many years regarding the introduction of a 'bed tax' that would be applied by accommodation providers, and should continue to do so. With respect to the tourist visitations to Byron, it is estimated that 37% of these are day visitors which a potential bed tax would not capture. None the less such a tax/levy would inject valuable revenue albeit comparatively modest sums by comparison to the proposed rate revenue generated by a SRV.

If, once legally authorised by statute, Council was to raise or impose a Tourism Levy or a Tariff it would be unlikely to be in the form of an ordinary rate as this is based on land value which does not correlate to the use of the property. It would most likely be a fee or a charge if this was possible to reflect the notion of 'pay for use'.

In terms of a relationship to a Special Rate Variation (SRV), there is no relationship except to say that a revenue increase by rating is a guaranteed, predictable and recurrent source of revenue as opposed to a tourism levy or tariff that would be variable and less predictable. Furthermore, much of Council's degraded roads infrastructure is in hinterland areas where the influence of visitors is not significant. While a tourism levy would have a clear nexus with the renewal of degraded infrastructure in Byron Bay, Bangalow and Brunswick Heads, this would be far less so for the hinterland areas and townships less impacted by tourism.

Part 5(ii) Estimates of increased revenue forthcoming from an increase of paid parking hourly charges from \$3 to \$4.

For Council to consider increasing the hourly rate for paid parking from \$3 to \$4, Council should consider the following:

- The extent of the increase to \$4 in terms of differential fees between premium locations versus general on street/off street.
- Exemption fees for residential/workers remaining the same or whether they should be modified.
- Any change to the hourly fee will require advertising and a 28 day consultation period inviting submissions prior to any formal adoption.
- The current scheme has a capped fee for 4 hours of \$10 so should this be increased proportionally?
- If the hourly fee is to increase then a date of commencement will need to be determined.

For the period 1 July 2016 to 31 December 2016, Council had realised \$1,362,053 in revenue through paid parking meter income. This does not include revenue from parking exemption permits. This revenue amount also includes the expansion of the paid parking scheme at Wategos albeit it commenced just before Christmas in December 2016.

It is estimated based on a revenue trend for the period December 2015 to December 2016, the 33% increase of the paid parking hourly rate may generate an additional \$1.1million revenue (net of costs) per annum. This estimate though is based on:

- No consideration for impacts on exemptions.
- Change in behaviour of scheme users.
- No consideration of modifying the flat 4 hour fee from the current \$10.00.

There is also consideration owed to the notion of increasing these fees so soon (only 13 months) after introducing the scheme. Council has also undertaken to spend the bulk of pay parking revenue raised in Byron Bay in Byron Bay – much of this revenue would be spent building new infrastructure that has been promised through the adoption of the BBTC Master Plan so additional revenue generated by increasing parking fees would not address the CIP infrastructure backlog (and hence the mandatory OLG performance benchmarks) which relates to renewal of existing infrastructure.

Financial Implications

The information provided in this report informs the community and Council around Rating and Revenue Options. The financial implications for the community are in terms of distribution of the rating burden if that changes and the impact of a special rate variation option if Council determines

to proceed with an application for a Special Rate Variation. Additionally any increase in paid parking or other revenue options will impact the community and visitors to the Shire.

5 For Council, the outcome is additional revenue to provide the ability to prevent any further deterioration in the backlog of its infrastructure assets. Options canvassed in this report, especially the Special Rates Variation (SRV) was a strategy/action included by Council in its adopted Council Improvement Plan (June 2015) to ensure it was able to demonstrate it was 'Fit for the Future' to the NSW Government.

10 Council has been recently reminded by the NSW Office of Local Government on 21 December 2016 via Circular 16-49 of the following:

- *As Councils undertake the next cycle of Integrated Planning and Reporting, it is important that the strategies and actions identified in the Improvement Plans are reflected in the new Delivery Program and Resourcing Strategy.*
- 15 • *Councils are reminded that the Office of Local Government will monitor Councils' performance against the Fit for the Future benchmarks over time.*

In consideration of Rating and Revenue Options and their impacts, Council also needs to consider its commitments adopted in its Council Improvement Plan lodged with the NSW Government and continuing to meet the benchmarks outlined.

20

Statutory and Policy Compliance Implications

25 The legislative framework for Council is governed by Chapter 15 of the Local Government Act from Section 491 to 625 in terms of rating and revenue raising. Council's designated revenue sources are outlined in Section 491 of the Local Government Act 1993 being:

- Rates and Charges (Section 492 to 607)
- Fees (Section 607A to 611)
- Grants (Section 613 to 620)
- 30 • Borrowings (Section 621 to 624)
- Investments (Section 625)

35 Aside from Chapter 15 of the Local Government Act 1993, there is no other authority for Council to raise revenue. Within the revenue sources identified in Chapter 15 there are further restrictions in terms of the types of rates, charges and fees Council can impose depending upon the services Council provides as identified within the sections of the Act in Chapter 15.

40 Council is required specifically either by Section 405 or 610F of the Local Government Act 1993 to publicly advertise, invite submissions from the public and consider any public submissions received prior to the adoption of and imposition of any rate, charge or fee.

Report No. 13.6 **Proposed NBN Fixed Wireless Tower - 308 Coorabell Road**
Directorate: Corporate and Community Services
Report Author: Ralph James, Legal Services Coordinator
File No: I2017/84
5 **Theme:** Corporate Management
 Governance Services

Summary:

Resolution 16-656 and 16-657 required correspondence to be sent to NBN, Visionstream and a Federal Minister concerning a fixed wireless tower at 308 Coorabell Road Coorabell.





That correspondence was forwarded on 23 December 2016. A response was received from NBN on 10 January 2017.

This report updates the status of resolution 16-656 and 16-657 following the issuing of correspondence and the response thereto.

RECOMMENDATION:

1. **That Council note compliance with parts 1, 2 and 3 of Resolution 16-656 and with resolution 16-657.**
2. **That Council note that part 4 of resolution 16-656 cannot be given effect.**

Attachments:

- 1 Letter to NBN, E2016/110524 ➡ 
- 2 Letter to Visionstream, E2016/110591 ➡ 
- 3 Letter to the Federal Minister for Communications, E2016/110504 ➡ 
- 4 Response from NBN dated 10 January 2017, E2017/3474 ➡ 

Nota bene

This report and the recommendations made relate to compliance with parts 1, 2 and 3 of Resolution 16-656 of 15 December 2016 and to how part 4 of that resolution cannot be given effect.

This report does not deal with the issues surrounding whether the construction of the fixed wireless tower requires development consent or is capable of being complying development. Those issues did not fall within the scope of resolution 16-656, especially part 4.

Neither does this report canvass whether, if development consent was required, the failure to obtain it grounds proceedings for injunctive relief or, if such grounds exist, whether such proceedings ought be initiated.

Those issues have been, and will be, the subject of separate advice to councillors.

Report

On 15 December 2016 Council resolved (16-656) that Council write to NBN Co., Visionstream, and the Federal Minister for Communications, Mitch Fifield:

1. Formally requesting that no site preparation or construction on the proposed tower at Coorabell Road commence until:
 - a) It is proven with certainty that NBN has fully complied with all applicable provisions of INDUSTRY CODE C564: 2011 MOBILE PHONE BASE STATION DEPLOYMENT.
 - b) Meetings have been held with neighbours visually impacted by the tower and locations to minimise visual impact within the property explored.
2. Requesting a review of the process that determined wireless over the more efficient option of fibre optic cable that provides a far superior service, will not outdate quickly and does not present any potential health risks.
3. Requesting consideration for access and utilisation of an optic fibre located at Coorabell Primary School for the delivery of NBN services to neighbouring properties.
4. That if a response outlining cessation of works is not received regarding matters from 1a and 1b is not received within 7 days Council commence proceedings in the Land Environment Court for injunctive relief.

On 15 December 2016 Council also resolved (16-657) that Council write to NBN Co., Visionstream, and the Federal Minister for Communications, Mitch Fifield and request that the optical fibre networks currently in place in rural areas of Byron Shire be utilised for the delivery of NBN services to residents.

On 23 December 2016 Council wrote to each of NBN and Visionstream and the Federal Minister in accordance with Council's resolutions. (Refer Attachments 1, 2 and 3)

Council requested a response by 10 January 2017.

By letter dated 10 January 2017 NBN responded. (Refer Attachment 4)

Statutory and Policy Compliance Implications

5 In the context of NBN's Coorabell tower, the only way Land and Environment Court proceedings can be lawfully commenced by Council, or by a Coorabell resident, is if NBN has breached the *Environmental Planning and Assessment Act 1979* (EP&A Act) in constructing the tower.

10 The court has no jurisdiction to decide whether or not NBN has complied with the relevant telecommunications industry codes (although it is noted NBN says it is not bound by the code referred to in resolution 16-656). Code compliance is not part of the *EP&A Act*. Compliance with the relevant codes is ultimately a matter for the Australian Communications and Media Authority (ACMA).

15 Similarly, the court does not have jurisdiction to hear a complaint about whether or not NBN has spent enough time meeting with Coorabell residents visually impacted by the tower. This is because it is arguable that the tower does not need development consent, and so the rules for public exhibition of development applications do not apply to the tower. If the public exhibition rules do not apply, NBN has not breached the *EP&A Act*.

20 Because neither the matters at 1(a) or 1(b) of the resolution constitute a breach of the *EP&A Act*, neither matter provide grounds for Council, or any member of the public, to approach the Land and Environment Court for a remedy.

As a result, part 4 of resolution 16-656 cannot be given effect.

25 As a model litigant Council is obliged not to institute proceedings unless it is of the view that those proceedings have a reasonable prospect of success. Council cannot form that view.

Financial Implications

30 Proceedings for injunctive relief in the Land and Environment Court fall within Class 4.

The usual practice for proceedings in Class 4 of the Court's jurisdiction is that the successful party is entitled to have their costs of the proceedings paid by the unsuccessful party.

35 Should Council take proceedings for injunctive relief its likely costs would be in the order of \$20,000-\$30,000. If Council was unsuccessful in such proceedings and adverse costs were awarded Council's overall costs could be as high as \$60,000.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.7 **Report of the Planning Review Committee Meeting held on 1 December, 2016**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Major Projects Planner

File No: I2016/1285

Theme: Ecology
Development and Approvals

Summary:

This report provides the outcome of the Planning Review Committee Meeting held on 1 December, 2016.

RECOMMENDATION:

That the report be noted.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

Report:

The meeting commenced at 1.10pm and concluded at 2.10pm.

- 5 Present: Crs Martin, Hackett, Hunter, Cameron, Richardson,
Staff: Chris Larkin (Major Projects Planner).
Apologies: Crs Ndiaye

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

10

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2016.625.1	Chris Lonergan & Assoc	35-37 Burringbar St Mullumbimby	Alterations and Additions to Existing Commercial Building to Create a Cafe and Day Spa	Level 2 6/10/16-19/10/16 3 submission	Under Delegated Authority
10.2016.681.1	Ardill Payne & Partners	9 Byron St Mullumbimby	Multi Dwelling Housing Comprising of Three (3) New Dwellings and Retention of Existing Dwelling and Strata Subdivision	Level 2 3/11/16 – 16/11/16 3 submissions	The perceived public significance of the application The validity of the matters raised in the public submissions Council
10.2016.754.1	Unison Projects Pty Ltd	14-31 Hayters Drive Suffolk Park	Tree Removal: Forty Nine (49) Trees	Level 0	The perceived public significance of the application Council

Council determined the following original development applications. The Section 96 application to modify these development consents are referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority.

15

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

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2015.353.4	Planners North	Bayshore Drive Byron Bay	S96 to Amend Land Use Definition in Condition 79 and Hours of Operation in Condition 80	Level 2 10/11/16-23/11/16 No submissions	Under Delegated Authority
10.2015.353.5	Planners North	Bayshore Drive Byron Bay	S96 Modification of the Live Work Units	Level 2 10/11/16-23/11/16 No submissions	Under Delegated Authority

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

10.2011.474.5	Geolink Consulting Pty Ltd	Ballina Rd Bangalow	S96 to Amend Stage 3 of Development Consent	Level 1 1/12/16 to 14/12/16	Under Delegated Authority
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Report No. 13.8 **BSC & Anor ats Arnott-10.2016.716.1 Three storey dwelling with basement at 27 Marine Parade, Wategoes**

Directorate: Corporate and Community Services

Report Author: Ralph James, Legal Services Coordinator

Shannon Burt, Director Sustainable Environment and Economy

File No: I2017/47

Theme: Ecology

Development and Approvals

Summary:

On 29 August 2016 Class 4 proceedings were instituted in the Land and Environment Court by Angelica Arnott seeking a declaration that development consent number 10.2015.491.1 dated 1 June 2016 and issued by Council for development described as “construction of a three storey dwelling house” on Lot 2 DP 250068 at 27 Marine Parade Byron Bay is void and of no effect.

On 28 October 2016 the First Respondent (Wallace) indicated an intention to lodge a new development application. The new development application (10.2016.716.1) was lodged on 31 October 2016.

On 15 December 2016, Council Resolved (16-001):




1. That this item be deferred until the first Ordinary Meeting in 2017 to enable Council to receive further information regarding the development application and the legal issues, and ensure adequate public consultation.
2. That this information is to include the leasing of road reserves, and legal advice concerning the height.
3. That Council reiterates to the landowner its obligation to ensure the health of the EEC.

The LEC proceedings were adjourned to 17 February 2017 to receive an update on Council's assessment of the new development application.

RECOMMENDATION:

1. That Council note the information provided in response to Resolution 16-001; and
2. That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2016.716.1 for a three storey dwelling house with basement garage and swimming pool, be granted consent subject to the conditions listed in Attachment 3.

Attachments:

- 1 Determination of Application 51.2015.1017.1 27 Marine Parade Byron Bay (P Wallace), E2017/1778  [⇒](#)
- 2 Lease over road reserve adjoining 27 Marine Parade, Byron Bay (Scott Stewart), E2017/1775 [⇒](#) 
- 3 Draft Conditions of Consent, E2017/3501 [⇒](#) 

Report

On 29 August 2016 Class 4 proceedings were instituted in the Land and Environment Court by Angelica Arnott. In those proceedings Council is the Second Respondent.

5 The Applicant seeks declarations with respect to land owned by the First Respondent, Philip Wallace, at 27 Marine Parade Byron Bay as follows:

- 10 1. That development consent number 10.2015.491.1 dated 1 June 2016 and issued by Council for development described as "construction of a three storey dwelling house" on Lot 2 DP 250068 at 27 Marine Parade Byron Bay is void and of no effect.
- 15 2. An order restraining the First Respondent (Wallace) and its servants, agents and contractors from acting on or otherwise implementing the development permitted by the development consent.
3. An order that the Respondents indemnify the applicant for their costs and disbursements
4. Any further or other order that the court thinks fit.

20 The proceedings were mentioned on 30 September 2016 and again on 28 October 2016.

On 28 October 2016 the First Respondent (Wallace) indicated an intention to lodge a new development application.

25 The court made an order adjourning the proceedings to allow the First Respondent (Wallace) to submit the development application and for the Second Respondent (Council) to assess the development application.

30 The proceedings were adjourned to 16 December 2016 to receive an update on Council's assessment of the development application. The proceedings were further adjourned to 17 February 2017 to receive an update on Council's assessment of the new development application

On 15 December 2016, Council Resolved (16-002):

- 35 1. That this item be deferred until the first Ordinary Meeting in 2017 to enable Council to receive further information regarding the development application and the legal issues, and ensure adequate public consultation.
- 40 2. That this information is to include the leasing of road reserves, and legal advice concerning the height.
3. That Council reiterates to the landowner its obligation to ensure the health of the EEC.

45 The new development application was lodged on 31 October 2016. It was exhibited on 17 November 2016 until 7 December 2016. The time for submissions closed on 7 December 2016.

Lease over road reserve adjoining 27 Marine Parade Byron Bay.

50 On 9 August 2015 a five (5) year Lease was granted to Mr Scott Stewart over the road reserve adjoining his property at 27 Marine Parade Byron Bay in accordance with s153 of the *Roads Act* 1993 (NSW) and commenced 10 April 2015.

55 The granting of the Lease was in accordance with condition 3 of development consent 51.2015.1017.1.

In accordance with s154 (1) and (2) of the *Roads Act* council publically advertised the proposal to let the lease from 8 October to 6 November 2015 and individually notified all neighbouring residents.

- 5 Council received no submissions in response to the public notification.

Before granting the lease Council undertook an in-house survey of the road encroachment. The survey showed the total encroachment area of 118.9sqm. A current market valuation by Valuers Australia determined an annual lease rental value of \$1,150 pa exclusive of GST.

10

Clause 10 of the lease requires Mr Stewart to obtain and provide evidence of Public Liability Insurance (minimum of AUD\$20mil, noting Byron Shire Council as an interested party).

Mr Stewart has still not obtained the required insurance.

15

The lease has been uninsured since 10 April 2015. The implications of a lack of insurance are that if someone is injured on the site, Council's insurers would not offer cover as Mr Stewart has exclusive possession of the area.

- 20 If a successful claim was made against Council it is likely Council would have to pay the damages out of its own pocket, as it did not ensure that insurance was in place during the lease.

25 Marine Parade, Byron Bay- Encroachment Advice

- 25 It is unclear if the Arnott's deck encroaches into or over the road reserve. A survey of the road boundary is required, and if it encroaches potential solutions include orders for the deck to be removed from the road reserve, or lease arrangements for use of the Council road reserve. Should the deck encroach into the road reserve, having regards to the age of the dwelling, the time elapsed since it was constructed, and other structures along Marine Parade encroaching into the
- 30 road reserve, a limited lease is a preferred method of resolving this encroachment in the interim.

Endangered Ecological Community

- 35 Littoral rainforest vegetation is located on the site at the top of the existing cut face. The applicant advised that loose material has been removed from the cut face to protect the lower work site from falling material. This has left the cut face open to the elements.

Construction of the dwelling, if approved, will include retaining works that will ensure the stability of this cut face. It will, in effect, be stabilised by the rear wall of the dwelling as it is constructed.

40

In the interim, however, it is suggested that the land owner institute measures to protect the cut face and prevent it from eroding, which would impact the littoral rainforest vegetation at the top of the cut. This could be by way of temporary cover for the exposed face, using plastic sheeting, geofabric or the like, which would need to be secured at both the top of the cut and at the base.

- 45 Council may consider alternative measures, providing it can be demonstrated that they will provide adequate protection to address the risk of slope failure.

Further, to address the issue relating to the EEC, one of the conditions that was recommended in the previous report to Council has now been updated to require appropriate measures to be put in place to offset impacts on the littoral rainforest vegetation on the site should they occur as a result of the development.

50

Building Height Advice

The advice concerning building height has been sought from Marsdens Lawyers. As at the deadline for this report it has not been received.

5

Financial Implications

To date Council has incurred costs of approximately \$6543 and costs expenditure is expected to be in the order of \$ 20,000 should council remain involved in the proceedings.

10

Statutory and Policy Compliance Implications

N/A

Report No. 13.9 Byron Bay Town Centre Local Environmental Plan and Development Control Plan controls review**Directorate:** Sustainable Environment and Economy**Report Author:** Shannon Burt, Director Sustainable Environment and Economy**File No:** I2017/80**Theme:** Ecology
Planning Policy and Natural Environment**Summary:**

The Byron Bay Town Centre Masterplan was adopted 9 June 2016.

The Master Plan includes an 'implementation plan' based on the outcomes of the project process including first steps required to fulfil the place principles, town centre strategies and key projects identified by the Council and community during the development of the Master Plan.

The 5 key planning priorities in the implementation plan of the Master Plan include:

1. Establishment of a Byron Bay Leadership Team
2. Preparation of a Byron Bay Development Control Plan
3. Amendments to the Local Environmental Plan to reflect the Master Plan
4. Preparation of a detailed Access and Movement Study and Strategy
5. Development of a Byron Bay Facilities Asset Management Plan

The above planning priorities are currently being considered and progressed as part of this year's and the forward Budgets and Operational Plan, together with existing planning and infrastructure management commitments.

Of note is that a Byron Bay Town Centre Master Plan Leadership Team has now been established and has already met. A further meeting of this team is scheduled for early February.

As per the above, the development of a Byron Bay DCP and amendments to the Byron LEP are now to commence being resourced in house with a dedicated planner to progress this work.

The purpose of this report is to advise Councillor's of this work to commence.

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

Report

It was identified during the Master Plan process that Byron Bay's Town Centre Planning controls need to be updated to reflect the outcomes of the Master Plan to respond to the unique characteristics and location of the Town Centre. The scope of the review to include:

Review of Local Environmental Plan controls

- Land Use zoning – to review the current land use zones and on ground development and make recommendations for changes where there are anomalies or opportunities to better achieve Master Plan recommendations.
- Height of Buildings – review and amend the current height controls in the Town Centre to reflect the recommendations of the Master Plan. This includes potential for heights up to 11.5m and three storeys across the whole of the Town Centre.
- Floor Space Ratio – review and amend or remove altogether the need for a FSR control to support the built form aspirations for the Town Centre as contained in the Master Plan recommendations. This includes an identification of alternate controls to a FSR i.e. site coverage, landscaping, building variation controls.

Review of Development Control Plan controls

Documentation and controls to be prepared to support the Local Environmental Plan including:

- A Best Practice Built Form Guidelines for the Town Centre which outline appropriate architecture and built form controls based on design excellence and sustainability principles. These Guidelines to ensure that new development provides for fine grain design and a sub tropical built form to reflect the coastal village character of Byron Bay.
- A review of car parking arrangements and controls in the Town Centre to deliver on the agreed strategy for the town centre of 'parking out and people in' and to enable a greater flexibility of built form on site to reflect the Best Practice Guidelines to be developed.

Review of Other plans and policies

- Detailed structure plans for each of the masterplan precincts and projects. This has already commenced for the Butler Street and Railway Square interchange and Rail Corridor precinct and will continue for other precincts as part of the Master Plan implementation process.
- A streetscape and public domain guide for the Town Centre to be developed after and to support the Access and Movement Study. Not likely until 17/18.

As stated above, the development of a Byron Bay DCP and amendments to the Byron LEP is now to commence being resourced in house with a dedicated planner to progress this work as a priority.

The following steps (not limited to) have been identified for this work. This program of work is likely to take up to 12 months to complete.

<ul style="list-style-type: none"> • Prepare discussion papers on LEP control review and draft DCP controls • Prepare a consultation and engagement plan to support the review.
<ul style="list-style-type: none"> • Liaise with Leadership Team (working group) • Workshop with Councillors
<ul style="list-style-type: none"> • Report to Council to endorse exhibition of discussion papers and options for proposed new LEP and DCP controls and the consultation and engagement plan.
<ul style="list-style-type: none"> • Exhibition and review of submissions to inform final draft LEP and DCP controls

<ul style="list-style-type: none"> • Liaise with Leadership Team (working group) • Workshop with Councillors
<ul style="list-style-type: none"> • Report to Council seek support for a planning proposal for LEP amendments and draft DCP for Byron Bay Town Centre
<ul style="list-style-type: none"> • Progress as per legislation and endorsed consultation and engagement plan

Staff may also as part of the review process look to pilot control changes on certain catalyst sites within the Town Centre. This may occur in consultation and or collaboration with land owners where appropriate, and or random sites, it will involve a 3D modelling presentation. This pilot process is considered important as it will enable a better visual understanding of the overall impact/s that changes to planning controls will have on a site, precinct and or the Town Centre as a whole and whether these are consistent with the Master Plan recommendations.

Figure 1 below indicates the 'Planning Control Review area'. It takes into account the Master Plan area and also the areas immediately adjacent to the current Town Centre that also are in need of a planning control review.



Figure 1 Planning Control Review Area – Byron Town Centre

Financial Implications

Existing and forward operational budget allocations for the Town Centre Master Plan implementation are available.

Statutory and Policy Compliance Implications

Implementation of the Byron Bay Town Centre Masterplan will require amendments to key Council policies and strategic plans. Programing of these together with existing strategic planning projects will be a matter for the Council.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.10 Council Road Reserve Closure and Transfer - Arakwal & Morgan - Bangalow Road, Byron Bay

Directorate: Infrastructure Services
Report Author: Deanna Savage, Administration Officer Infrastructure Services
File No: I2016/263
Theme: Community Infrastructure
 Roads and Maritime Services

Summary:










This report addresses the request to close a portion of Council road reserve adjacent to Broken Head Road, Byron Bay. It is noted that the applicant for the road closure and its subsequent acquisition and main beneficiary is the Arakwal Aboriginal Corporation, the reason being to achieve a consolidated allotment and gain a building entitlement. Mr John Morgan owner of Lot 320 DP 755695 will also benefit from the closure and be offered a section of road reserve that fronts his property, subject to the closure being finalised. His legal right of access is currently along the road reserve.

In 2012 Council passed a resolution to go ahead with the closure, however due to process changes with Crown the proposal had to go through a submission process and any objections needed to be addressed and an updated Council resolution passed. A submission from Department of Primary Industries Land objecting to the closure has been addressed and a compromise has been found between all parties.

RECOMMENDATION:

1. **That Council endorse the finalisation of the closure of the road reserve between Lot 320 DP 755695 and Lot 438 DP 729107 as per Resolution 12-820 and move forward by submitting the application with Crown.**
2. **That Council authorise the General Manager and the Mayor to sign and seal all relevant documents to affect the road closure and transfer of lands to the adjoining land holders.**

Attachments:

- 1 Minutes 24/06/10 Ordinary Meeting, DM976100 
- 2 Minutes 25/08/11 Ordinary Meeting, DM1130373 
- 3 Minutes 25/10/12 Ordinary Meeting, E2012/13405 
- 4 Letter from Lands, Dept of Primary Industries - Response to letter form Council - Objection to Council's proposed public road closure, S2016/246 
- 5 PDF map of new proposal for Arakwal Lot 438 DP 729107 and Morgan Lot 320 DP 755695, E2016/105113 
- 6 PDF of E2016/74974 Email trail Derek van Leest DPI to DSavage Re: FW: Your Ref 15/00123 - Proposed Road Closure Bordering Lot 438 DP 729107, Lot 443 DP 820680 and Lot 320 DP 755695 attached is new access point to Crown Land, E2016/105123 
- 7 PDF version of DM199073 fax re proposed road closure Lot 438 DP 729107 part reserve 67021 currently subject to claim Native title ASSES 1102090, E2016/105097 
- 8 Emailed Signed Copy of approval By Judy Kay Arakwal on behalf of Byron Bay Aboriginal Corp - 24th September 2016 re: Council road reserve closure and transfer Lot 438 DP 729107 with new driveway going right through road reserve., E2016/102115 
- 9 Signed Part Road Reserve Closure adjoining Lot 438 DP 729107, Lot 320 DP 755695 and Lot 443 DP 820680 from Mr J & Mrs D E Morgan - Refer E2016/80299, S2016/15446 

Report

Council Resolution History

The Biannual LEP Amendments report to Council on 24 June 2010 cited the fact that the “Arakwal Aboriginal Corporation is currently undergoing negotiations with Department of Lands to acquire Lot 438 DP729107 and through this process they are also likely to acquire the road reserve (marked in blue on Figure 3.1) or part thereof that adjoins the western boundary of Lot 438 DP729107.”

The report, Item 11.25 on page 132 “Biannual LEP Amendments” can be viewed in Attachment 1.

Council Resolved:

10-492 Resolved:

“That a Planning Proposal, funded by the applicant, be prepared to amend the Byron 1988 LEP to provide for a dwelling entitlement under Schedule 7 for Lot 438 DP 729107 including the road reserve to the west.” (Staples/Barham)

In the acquisition of this land (Lot 438) and in consideration of the Arakwal Aboriginal Corporation also acquiring the road reserve along its western boundary, negotiations had to take place with the owner of the adjacent land (Lot 320) to ensure legal access remained in place.

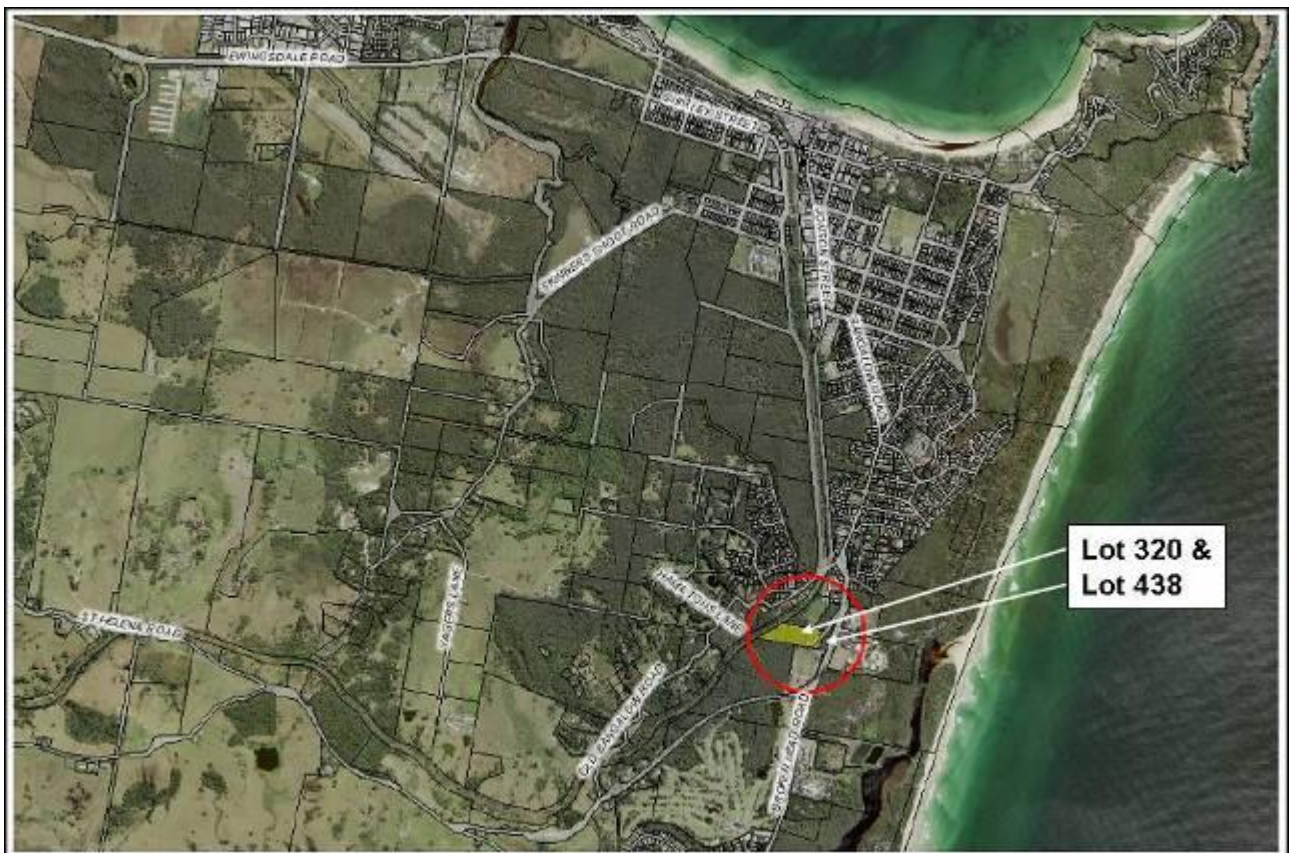


Figure 1 above shows the general locality of the land in question.

Figure 2 below shows the detail of the land matters in question.



Following the report above, Council then considered a further report on 25 August 2011 (item 11.22 page 122) Attachment 2.

Council resolved:

11-699 Resolved:

1. That Council forward the planning proposal contained in Annexure 8 (#1076432) to the Department of Planning for drafting of the LEP amendment and finalisation.
2. That access to the adjoining Lot 320 and the issue of the road reserve be resolved as a matter of urgency prior to the lodgement of a development application for a dwelling on Lot 438, DP 729107, Bangalow Road, Byron Bay.
3. That the draft Shire-wide LEP mapping for this site be amended to suit the future location of a dwelling and to remove any zoning anomalies. (Tucker/Woods)

In order for the process to continue at this point, Council needed further direction and resolution of Council before the application for Road Closure could be lodged with Crown. This then led to the report on 25 October 2012 (item 12.5 on page 13), which can be viewed in full in Attachment 3.

Council resolved:

12-820 Resolved:

1. That Council endorse the closure of the road reserve between Lot 320 DP755695 and Lot 438 DP729107 and its extension to the north adjoining the western alignment of Broken Head Road.
- 5 2. That Council require the applicants of the road closure to pay the fee as published in Council's Fees and Charges 2012- 2013 for a road closure, in the sum of \$495.00.
- 10 3. That all costs, including but not necessarily limited to, legal services, fees for Crown Lands, fees for plan registrations, survey, valuations etc be met by all three parties equally, being Council, Arakwal Corporation and Mr John Morgan, for the road closure and that Council's costs come from the Roads Maintenance Budget.
- 15 4. That Council receive a peppercorn compensation of \$1 upon sale of land for closure of road.
- 5 5. That any service relocations and works associated with affecting the access arrangements for Lot 320 not be at any cost to Council and be solely a matter between the owners of Lot 320 and Lot 438 and any relevant service authority.
- 20 6. That Council authorise the General Manager and the Mayor to sign and seal all relevant documents to affect the road closure and transfer of lands to the adjoining land holders. (Wanchap/Ibrahim)

25 Scott Thompson from Canty's Surveyors was retained to draw up the plans to accompany the application for Road Closure to Crown. This took quite a long time to come through and was finalised in November 2015.

30 The Road Closure was advertised in the Byron Shire News on the 5 November 2015 and all adjoining landholders and authorities were notified of the proposal. This allowed for a 28 day submission process. Both Rous water and Telstra requested for further easements to be put on the plan which will be altered before the application is lodged with Crown.

35 Council received a submission of objection from The Department of Primary Industries – Lands objecting on the grounds that practical access would be lost to Crown Land Lot 443 DP 820680 indicated by the arrow on image below, due to obstruction by drainage infrastructure at the location. (Attachment 4 S2016/246)



Further discussions were had with The Department of Primary Industries – Lands and an interim agreement was made, with an additional 10m frontage onto Bangalow Road, allowing for a total 21.465m frontage and access to Lot 443 DP 820680. (Attachment 5 E2016/105113)

A meeting was held on 30 August with Phillip Holloway – Director Infrastructure Services, Deanna Savage – Administration Officer Infrastructure Services, John Morgan – owner of Lot 320 DP 755695 and Gavin Brown – Bunjalung of Byron Bay Aboriginal Corp (Arakwal) to discuss the new proposal from The Department of Primary Industries – Lands.

As per Figure 3 below Council proposed the following:

Section 1 (shaded in blue Figure 3) to be allocated to Mr John Morgan Lot 320 DP 755695

Section 2 (shaded in red Figure 3) to be allocated to Bunjalung of Byron Bay Aboriginal Corp (Arakwal) Lot 438 DP 729107

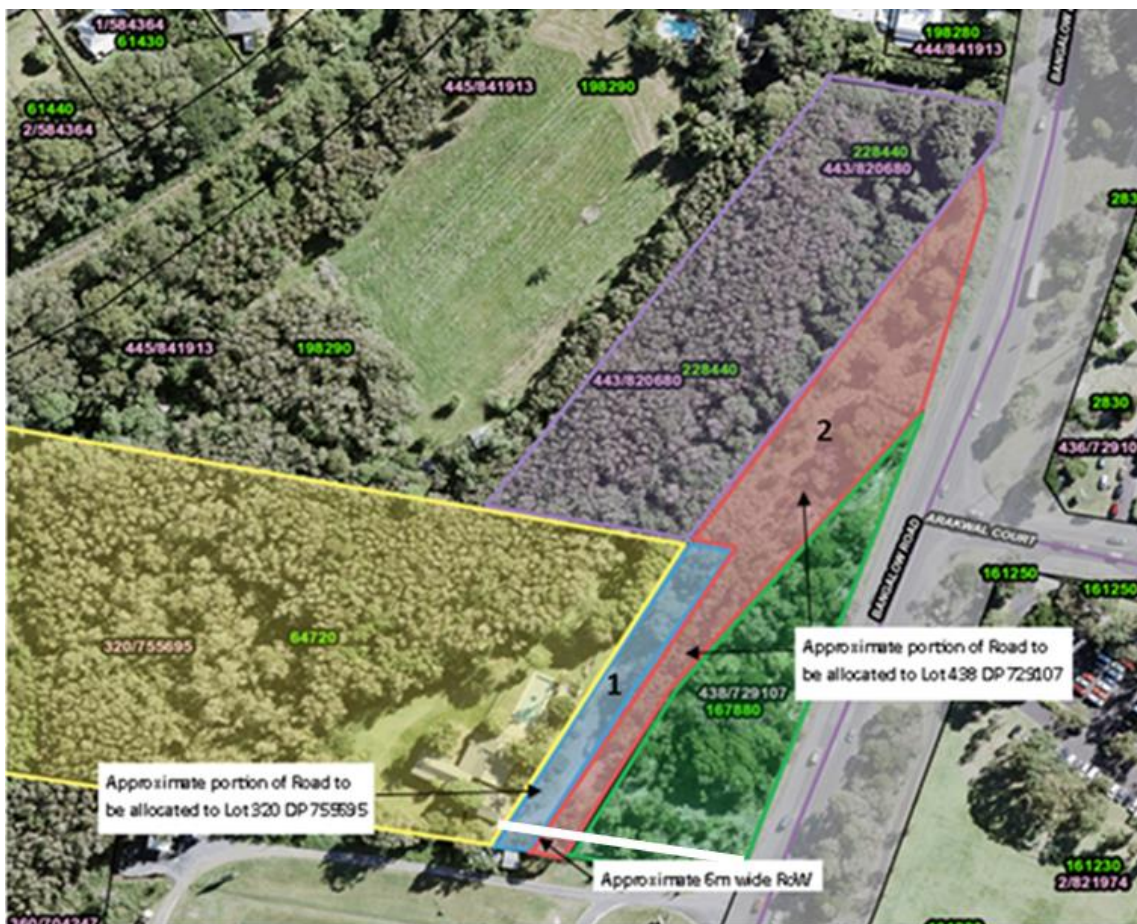


Figure 3

An agreement was drawn up for both Mr Morgan and Bunjalung with the new proposal which has been signed (Attachments 8 & 9) by both parties.

Council is now able to move forward with the Application to Crown for the road closure and subsequent transfer to the adjoining land properties.

Financial Implications

As per resolution **12-820**

That Council require the applicants of the road closure to pay the fee as published in Council's Fees and Charges 2012- 2013 for a road closure, in the sum of \$495.00.

5 That all costs, including but not necessarily limited to, legal services, fees for Crown Lands, fees for plan registrations, survey, valuations etc be met by all three parties equally, being Council, Arakwal Corporation and Mr John Morgan, for the road closure and that Council's costs come from the Roads Maintenance Budget.

10 That Council receive a peppercorn compensation of \$1 upon sale of land for closure of road.

That any service relocations and works associated with affecting the access arrangements for Lot 320 not be at any cost to Council and be solely a matter between the owners of Lot 320 and Lot 438 and any relevant service authority.

15

Statutory and Policy Compliance Implications

The Roads Act 1993 can be viewed in full at:

http://www.austlii.edu.au/au/legis/nsw/consol_act/ra199373/

20

'Part 4 Closing of Public Roads' is the relevant part to the subject of this report.

Section 38 explains how the closed road would remain vested in Council:

25

38 Effect of notice of closure

(1) On publication of the notice closing the public road concerned:

- (a) the road ceases to be a public road, and
- (b) the rights of passage and access that previously existed in relation to the road are extinguished.

30

(2) The land comprising a former road:

- (a) in the case of a freeway, remains vested in RMS, and
- (b) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place), remains vested in the council, and
- (c) in any other case, becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

40

Section 43 explains how the funds from the sale of a closed public road must be spent on roads:

43 Disposal of land comprising former public road owned by council

45

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

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

50

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

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

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES**Report No. 14.1 Report of the Finance Advisory Committee Meeting held on 10 November 2016**

Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2017/49
Theme: Corporate Management
Financial Services

Summary:

This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 10 November 2016 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Finance Advisory Committee Meeting held on 10 November 2016.
2. That Council adopt the following Committee Recommendation:

Report No. 4.1 Monthly Financial Reporting
File No: I2016/1114

Committee Recommendation 4.1.1

That the Finance Advisory Committee recommend to Council:

1. That the Report on monthly financial reporting to Councillors be noted.
 2. That the monthly financial report distributed to Councillors be continued in the format as indicated in Attachment 1 (#E2016/93806).
3. That Council adopt the following Committee Recommendation:

Report No. 4.2 Unrestricted Cash and Reserves at 30 June 2016
File No: I2016/1118

Committee Recommendation 4.2.1

That the Finance Advisory Committee recommend to Council:

1. That the Reserve balances as outlined in Attachment 1 (#E2016/94067) at 30 June 2016 be noted by the Finance Advisory Committee.
2. That the Unrestricted Cash Balance of \$1,145,200 as at 30 June 2016 be noted by the Finance Advisory Committee.
3. That for the 2016/17 Financial Year that the Accumulated Surplus (Working Funds) not be used as an indicator of Council's liquidity position for the General, Water and Sewerage Funds and that for the General Fund that the Accumulated Surplus (Working Funds) be replaced with the Unrestricted Cash Balance indicator.

4. That Council adopt the following Committee Recommendation:

Report No. 4.3 Council Budget Review - 1 July 2016 to 30 September 2016

File No: I2016/1120

Committee Recommendation 4.3.1

That the Finance Advisory Committee recommend to Council:

1. That Council authorise the itemised budget variations as shown in Attachment 2 (#E2016/94992) which includes the following results in the 30 September 2016 Quarterly Review of the 2016/2017 Budget:
 - a) General Fund – No change in the Estimated Unrestricted Cash Result
 - b) General Fund - \$1,831,800 decrease in reserves
 - c) Water Fund - \$1,216,300 increase in reserves
 - d) Sewerage Fund - \$2,152,300 increase in reserves
2. That Council adopt the revised General Fund Estimated Unrestricted Cash Result of \$1,182,800 for the 2016/2017 financial year as at 30 September 2016.

5. That Council adopt the following Committee Recommendation:

Report No. 4.4 Financial Sustainability Plan 2016/2017


File No: I2016/1121

Committee Recommendation 4.4.1

That the Finance Advisory Committee recommend to Council that Council adopt the Draft Financial Sustainability Plan 2016/2017 (#E2016/26998).

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Attachments:

- 1 Minutes of the Finance Advisory Committee meeting held on 10 November 2016, I2016/1169 ➡ 

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Report

5 The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 10 November 2016 for determination by Council. The agenda for this meeting can be located on Council's website at:

http://byron.infocouncil.biz/Open/2016/11/FAC_10112016_AGN_521_AT.PDF

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

15 Councillors were advised via Memorandum (#E2016/99563, dated 14 November 2016) of the Committee's Recommendation in relation to Report 4.3 – Council Budget Review – 1 July 2016 to 30 September 2016. The Budget Review for the period 1 July 2016 to 30 September 2016 was also the subject of Report 13.2 to the Ordinary meeting held on 17 November 2016 (refer resolution 16-567).

Financial Implications

20 As per the Reports listed within the Finance Advisory Committee Meeting of 10 November 2016.

Statutory and Policy Compliance Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 10 November 2016.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.2 Report of the Transport and Infrastructure Advisory Committee
Meeting held on 1 December 2016**

Directorate: Infrastructure Services
Report Author: Helen Waldron, EA Infrastructure Services
File No: I2017/24
Theme: Community Infrastructure
 Local Roads and Drainage

Summary:

The attachment to this report provides the minutes of the Transport and Infrastructure Advisory Committee Meeting of 1 December 2016 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Transport and Infrastructure Advisory Committee Meeting held on 1 December 2016.**

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

Report No. 4.1 Status Report for the 2016/17 Local Roads Capital Works Program
 File No: I2016/1207

Committee Recommendation 4.1.1

That Council notes the actions taken to implement the 2016/17 Local Roads Capital Works Program as presented to the Transport and Infrastructure Advisory Committee.

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

Report No. 4.2 Draft Strategic Asset Management Plan
 File No: I2016/1248

Committee Recommendation 4.2.1

That Council notes the Transport and Infrastructure Advisory Committee supports the proposed public exhibition of the Draft Strategic Asset Management Plan.

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

Report No. 4.3 Asset Management Modelling
 File No: I2016/1253

Committee Recommendation 4.3.1

That the Transport and Infrastructure Advisory Committee notes the presentation regarding the use of asset management modelling software and that future presentations will be provided to the Committee.

Attachments:

1 Minutes Transport and Infrastructure Advisory Committee Meeting 01/12/16, I2016/1272 

Report

5 The attachment to this report provides the minutes of the Transport and Infrastructure Advisory Committee Meeting of 1 December 2016 for determination by Council. The agenda for this meeting can be located on Council's website at:

http://byron.infocouncil.biz/Open/2016/12/TIA_01122016_AGN_597_AT.PDF

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

Financial Implications

15 As per the Reports listed within the Transport and Infrastructure Advisory Committee Meeting of 1 December 2016.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Transport and Infrastructure Advisory Committee Meeting of 1 December 2016.

Report No. 14.3 Report of the Water, Waste and Sewer Advisory Committee Meeting held on 1 December 2016

Directorate: Infrastructure Services
Report Author: Helen Waldron, EA Infrastructure Services
File No: I2017/25
Theme: Community Infrastructure
Waste and Recycling Services

Summary:

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 1 December 2016 for determination by Council.

RECOMMENDATION:

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

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

Report No. 4.1 Strategic Business Plan Water Supply and Sewerage
File No: I2016/1205

Committee Recommendation 4.1.1

That in relation to the Strategic Business Plan Water Supply and Sewerage Council notes:

- a) **that the Water, Waste and Sewer Advisory Committee was provided with an overview of the Plan**
- b) **that the Committee will workshop the Strategic Business Plan Water Supply and Sewerage early in 2017**
- c) **that the Plan will be presented to a Councillor Strategic Planning Workshop prior to the Committee workshopping it**

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

Report No. 4.2 Main Arm Recycled Water Scheme Expansion Possibilities
File No: I2016/1206

Committee Recommendation 4.2.1

That Council notes the Water, Waste and Sewer Advisory Committee discussed the Main Arm Recycled Water Scheme Expansion project.

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


Report No. 4.3 Resource Recovery Current State of Play
File No: I2016/1256

Committee Recommendation 4.3.1

That Council notes the Water, Waste and Sewer Advisory Committee was provided with a presentation on current and recent Resource Recovery projects.

Attachments:

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- 1 Minutes Water, Waste and Sewer Advisory Committee Meeting 01/12/16, I2016/1282 

Report

- 5 The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 1 December 2016 for determination by Council. The agenda for this meeting can be located on Council's website at:

http://byron.infocouncil.biz/Open/2016/12/WSAC_01122016_AGN_552_AT.PDF

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

Financial Implications

- 15 As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 1 December 2016.

Statutory and Policy Compliance Implications

- 20 As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 1 December 2016.

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.1 CONFIDENTIAL - Tender 2016-0033 Construction of Sewerage Pump Station SPS5012

Directorate: Infrastructure Services
Report Author: Dean Baulch, Principal Engineer, Systems Planning
File No: I2016/1286
Theme: Community Infrastructure
 Sewerage Services

Summary:

Council's current 2016 Developer Servicing Plan for Water Supply and Sewerage including the 30 Year Capital Works Plan, adopted by Council Resolution 16-325, identifies elements of the SPS5012 sewerage pump station for renewal.

This Ocean Shores, Terrara Court sewerage pump station required upgrade with the New Brighton Low Pressure Pump Scheme circa. 2003 but was overlooked in the strategy of servicing New Brighton with a sewerage system.

Council staff identified that the pumps in SPS 5012 are currently operating too frequently, even during non-peak flow periods and the existing wet well is too small. It is now an operating risk of causing sewer overflow to the immediate environment.

The purpose of this report is to present to Council the outcome of a public tender for the supply and construction of a sewerage pump station SPS5012 Terrara Court Ocean Shores.

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

RECOMMENDATION:

1. That pursuant to Section 10A(2)(d)i, (d)ii and (d)iii of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report **CONFIDENTIAL - Tender 2016-0033 Construction of Sewerage Pump Station SPS5012.**
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
 - b) information that would, if disclosed, confer a commercial advantage on a competitor of the council
 - c) information that would, if disclosed, reveal a trade secret
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; and (b) disclosure could adversely impact Council's position in the upcoming negotiations.

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

RECOMMENDATION:

- 5 1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, **CONFIDENTIAL - Tender 2016-0033 Construction of Sewerage Pump Station SPS5012** are to be treated as confidential as they relate to matters specified in s10A(2)(d)i, s10A(2)(d)ii and s10A(2)(d)iii of the Local Government Act 1993.
- 10 2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 15 1 Confidential - 24.2012.7.1 SPS5012 Upgrade Confidential TENDER EVALUATION REPORT Contract 2016-0033, E2016/101141

Report No. 16.2 **CONFIDENTIAL - Council Tender for the Construction of Concrete Roundabout and Road Reconstruction at the Intersection of Sunrise Boulevard and Ewingsdale Road, Byron Bay**

Directorate: Infrastructure Services
Report Author: Joshua Winter, Civil Engineer
File No: I2017/82
Theme: Community Infrastructure
 Local Roads and Drainage

Summary:

The General Manager approved the preparation and advertisement of tenders for the construction of a concrete roundabout and road reconstruction at the intersection of Sunrise Boulevard and Ewingsdale Road, Byron Bay. (E2016/95225)

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulation 2005 and this report seeks council acceptance to award the contract to the recommended tenderer.

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Council Tender for the Construction of Concrete Roundabout and Road Reconstruction at the Intersection of Sunrise Boulevard and Ewingsdale Road, Byron Bay.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
 - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

Disclosure would reveal commercial information supplied by potential contractors which could prejudice Council entering into a contract.

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

RECOMMENDATION:

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Council Tender for the Construction of Concrete Roundabout and Road Reconstruction at the Intersection of Sunrise Boulevard and Ewingsdale Road, Byron Bay are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d)i of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 1 Confidential - 24.2016.57.1 - Sunrise RAB - 2016-0037 - Tender Evaluation Report Signed, E2017/3768