



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 20 April 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.

Mark Arnold
Acting 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

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BYRON SHIRE COUNCIL

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Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate 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.

MAYORAL MINUTE

Mayoral Minute No. 8.1

Review of Natural Disaster Response Protocols

File No:

I2017/448

5

I move that a Natural Disaster report be brought to Council prior to the Winter that:

1. Reviews and reports on Council extreme weather and disaster communication protocols, including:
 - a) Investigation on the use of SMS messaging to update, inform and alert residents at times of extreme weather events
 - b) Liaising with other high subscriber media outlets to provide as broad coverage as possible
 - c) Providing updates at least four times daily that include
 - i) status updates on council controlled assets (including sporting centres, libraries and pools)
 - ii) infrastructure (including roads, bridges, causeways, parks and cycleways)
 - iii) updates provided by external organisations and essential and emergency service providers
 - d) Contracting extra temporarily communication staff to support the work of permanent communication staff
2. Reviews and reports on any successes, failings or inefficiencies of Council operated or maintained infrastructure during the recent natural disaster, including:
 - a) Causeways, bridges, sewerage treatment plants and flood pump stations
 - b) Flexibility of increasing opening hours at the Myocum Resource and Recovery Centre within Environment Protection Agency operation licence
 - c) Optimising sub contractors and external specialists or support workers in order to undertake and conclude clean up and green waste clearing as soon as possible and the resultant financial implications
 - d) Establishing protocols for utilising or providing regional support
3. Reviews and reports on Council community support protocols, including:
 - a) Acknowledging the benefit of a volunteer Byron Shire 'Mud Army' and instigating the creation of a database of residents to establish a coordinated volunteer response to assist with the clean up and support for disaster affected residents.
 - b) Establishing procedures to be established to ensure the Byron Shire Mud Army is activated effectively and as soon as practicable to support formal clean up and resident support organisations
 - c) Council's role in liaising with emergency and social services in gathering data and information and facilitating donations, relief and fund raising and for submitting grant or disaster relief support funding applications

10

Signed: Cr Simon Richardson

15

NOTICES OF MOTION

Notice of Motion No. 9.1 Mayor's Discretionary Allowance
File No: I2017/414

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I move:

1. That Council confirm the following donations from the Mayor's Discretionary Allowance 2016/17:
 - a) \$500 - 2017 Northern Rivers Science and Engineering Challenge & Discovery Day
 - b) \$600 – International Council for Local Environmental Initiatives
2. That Council advertise the donations in accordance with Section 356 of the Local Government Act 1993.

10 **Councillor's Background Notes:**

a. **2017 Northern Rivers Science and Engineering Challenge & Discovery Day - \$500 – Bronze Sponsorship**

15 Donation of Bronze Sponsorship for this event is \$500 and will be used towards the Northern Rivers Science and Engineering Challenge and Discovery Days. This event in its 11th Year will be held at Southern Cross University in June 2017.

20 It is a nationwide outreach program led by the University of Newcastle in conjunction with various partners and sponsors.

The Challenge involves up to 768 students, usually Years 9 and 10, taking part in activities designed to demonstrate the varied and practical elements of science and engineering.

25 A Discovery Day involves up to 768 primary school students and is designed for Years 5-6 (NSW Stage 3).

b. **International Council for Local Environmental Initiatives - \$600**

30 Donation is Byron Shire Council's annual membership of the International Council for Local Environmental Initiatives (ICLEI).

ICLEI – Local Governments for Sustainability is the leading global network of more than 1,500 cities, towns and regions committed to building a sustainable future.

35 It is the world's leading association of cities and local governments dedicated to sustainable development. ICLEI members benefit from access to programs, frameworks and tools and the sharing of experiences through ICLEI's regional and worldwide networks.

40 Further information can be found at <http://oceania.iclei.org/>

Recommended priority relative to other Delivery Plan tasks:

Minimal Impact.

45

Definition of the project/task:

That Council note and advertise the donations from the Mayor's Discretionary Allowance for 2016/17.

Source of Funds (if applicable):

Mayor's Discretionary Allowance (2153.13)

Signed: Cr Simon Richardson

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

Clarification of project/task:

Confirm and advertise the making of donations from the Mayor's Discretionary Allowance for 2016/17 being:

- a. \$500 - 2017 Northern Rivers Science and Engineering Challenge & Discovery Day
- b. \$600 – International Council for Local Environmental Initiatives

Director responsible for task implementation:

Director Corporate and Community Services

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

This will have minimal impact on other projects/tasks.

Financial and Resource Implications:

The 2016/17 Budget adopted by Council included an allocation of \$1,950.00 for budget item Mayor – Discretionary Allowance. The balance remaining in the unallocated amount of the Mayor's Discretionary Allowance is \$1,950.00. Sufficient funds are available for making the nominated donations totalling \$1,100.00.

Legal and Policy Implications:

In relation to the making of Section 356 Donations from the Mayor – Discretionary Allowance, Council at its Ordinary meeting held on 14 May 2009 resolved as follows: -

“09-349 Resolved that Council confirm that all s356 donations, to be made from the budget allocation “Mayor – Discretionary Allowance”, must be the subject of a resolution of the Council at Ordinary or Extraordinary meeting.”

This Notice of Motion is to confirm the making of the listed Section 356 Donation.

The Section 356 Donation will be advertised and public notice of financial assistance provided in accordance with Section 356 of the Local Government Act 1993.

Notice of Motion No. 9.2 **All Abilities Beach Access Report**
File No: I2017/424

I move that Council:

1. **Provide a report on:**
 - a) **The different options for providing beach access to all Byron Shire beaches, including temporary options such as Mobility Matting**
 - b) **Costs of providing all ability beach access on all Byron Shire's beaches**
 - c) **A preferred priority list of locations to ensure at least all ability access point at each beach**
 - d) **Possible funding sources**
2. **Liaise with relevant stakeholders, including Marine Parks Authority, the Arakwal Corporation, Access Consultative Working Group (ACWG), NPWS and Disabled Surfers Association, Far North Coast to provide information on matters arising from point 1.**
3. **Ensure this report informs Councils current Disability Inclusion Action Planning (DIAP) which is required by the NSW Disability Inclusion Act 2014 (The Act).**
4. **Write to local State and Federal Members and relevant Ministers seeking support in providing this essential infrastructure**

5

Signed: Cr Simon Richardson

Councillor's supporting information:

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Currently many of our community cannot access our wonderful and therapeutic beaches- something most of us take for granted. Many adults with mobility impairments, families with children with disabilities, elderly residents and visitors with unstable walking functionality cannot reach and enjoy our beautiful coastline.

15

Currently, two Sandcruiser Beach Wheelchairs are available to use in Byron Shire. One of the wheelchairs is located at the Pacific Apartments opposite Clarkes Beach in Byron Bay and the other is located at the Brunswick Valley Community Centre opposite the Brunswick Heads Surf Life Saving Club. The Sandcruiser Beach Wheelchairs are available for free public use, ensuring access to the beach for everyone. These wheelchairs have been gratefully received by wheelchair user groups and it is terrific they are made available.

20

However, what all of us want more than anything, regardless of our age or physical abilities, is independence-of thought, of action, of mobility. The best outcome would be for everyone to be able to reach our beaches without requesting special assistance and providing all ability access to our beaches would provide this.

25

Staff comments by Deb Stafford, Community Project Officer, Corporate and Community Services:

30

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

In relation to item 1, 2 and 3: As part of the Disability Inclusion Action Planning (DIAP), Council has engaged with the Access Consultative Working Group and with community members who experience disability. The aspirational identified goal was universal beach access within the Shire.

In acknowledgement of financial constraints, it has been proposed that beach access be implemented in light of both relative usage and geographical equity.

5 Further operational costing would be useful to determine where Council resources could be best distributed to maximise access for the greatest number of people in the community.

10 The DIAP process highlighted the opportunity for Council to develop partnerships in order to achieve access outcomes. This was strongly supported by the local community, as evidenced in the external engagement findings. Such partnerships would maximise the effectiveness of identified access strategies and the efficiency of Council's resource use. Partnerships could include funding, procurement and other operational considerations.

15 As a result of Council's DIAP process, the issue of beach access has been considered already and falls within three key areas of the draft Delivery Program 2017-2021 and Operational Plan 2017-2018:

- CI3.4.1 Council's public spaces will be accessible and inclusive for all; and
- SC1.2.1 Increase accessibility of all facilities; and
- CM3.1.2 Develop an inclusive organisational partnership strategy.

20 In relation to item 4: This will be undertaken as part of existing organisational operations.

Staff comments by Michael Matthews, (Manager Open Space and Resource Recovery), (Infrastructure Services):

25 Water Safety for the community is of paramount importance. Our Shire beaches consist of reaches of dynamically high-energy systems to dynamically low-energy systems that present variable risks to water users under variable conditions.

30 Council has contracted Australian Lifeguard Service (ALS) to provide surf life saving services for high public use beaches at set times and periods. ALS employs highly skilled and appropriately trained staff that can advise on the particular hazards that our patrolled beaches present under general and deteriorating conditions.

35 It should be noted that people with a disability, people that are unfamiliar with a particular location and people with lower than average skills, perception or judgment, can be exposed to elevated risks in these environments.

40 Where additional engineered structures are placed within dynamic dune systems, design and maintenance ability will need additional consideration.

Financial/Resource/Legal Implications:

45 The preparation of the report to Council would be undertaken within existing allocated resources. The costs and financial implication of any works or ongoing maintenance programs will be included as part of the report to Council.

Recommended priority relative to other Delivery Plan tasks:

50 Community Strategic Plan Strategies:

CM1.2 - Ensure Council decision making supports the fair allocation of resources, services and facilities
CM1.4- Comply with NSW State government legislation for local government integrated planning and reporting

55

CM3.1- Implement collaborative partnerships that support efficient use of resources

SC1.1 Advocate and lobby State and Federal Government for the needs of all members of the Byron Shire community to have access to required services, infrastructure and facilities

SC1.2 Provide accessible facilities that support leisure, learning and recreation for people of all ages

SC2.1 Provide a range of recreational, cultural and community opportunities

SC2.3 Facilitate positive family and community influences on child development

EN1.3 Manage coastal processes, hazards and development so that diversity, amenity and accessibility of the Shire's coastline is maintained

CI3.4 Ensure all public parks and open spaces are accessible, maintained and managed to meet the recreational needs of current and future residents

Definition of the project/task:

Investigation into the provision of all ability beach access across the Shire.

Notice of Motion No. 9.3 **Brunswick Heads Caravan Parks**
File No: I2017/426

I move that Council direct NSWCHPT to amend POMs and concept drawings and adopt the following operational boundaries for the Brunswick Heads Holiday Parks:

1. TERRACE HOLIDAY:

- a) **Foreshore Boundary**
A foreshore boundary along Simpson's Creek to be setback 7m from the top of the riverbank in Terrace Park. A 3m setback from the foreshore boundary is required for any dwelling or camp site as per the **Local Government (Manufactured Homes Estates, Caravan Parks & Camping Grounds) Act 2005**.
- b) **Western Boundary**
Part 1 (a) (i) of Resolution 12-995 remains unchanged. This is shown on the attached map.
- c) The **northern boundary** is parallel to Fingal Street and 3.0m south of the centre of the footbridge where its timber ends at Fingal Street and does not include the shared car park. (See attached map)
- d) The **southern boundary** of the Terrace Holiday Park lies north of WW1 Memorial Coastal Cypress Pines and immediately south of the building alignment of the existing amenities block then across to the foreshore so to exclude any of the January 2015 ground truthed Coastal Cypress Pines as shown on the attached map

OPTIONS FOR CONDITION OF USE FOR SOUTHERN TERRACE AREA

- a) Resolution passed at the public meeting held by Brunswick Heads Progress Association on 6.3.17 reads: Terrace Caravan Park -WW1 MEMORIAL PINE PARK IN THE SOUTHERN AREA OF THE TERRACE RESERVE:

We request Council to reaffirm the operational boundaries of the Terrace caravan park and consider returning the WW1 Memorial Pine Park area to its intended use as a reflective public space with the opportunity then to have the park rehabilitated and restored with replacement of plantings.

- No camping permitted in the Southern area of Terrace Park

- b) The Southern area remains outside operational area, with conditional use at specific times for 'soft/primitive camping' only at peak holiday periods i.e Christmas, Easter and School Holidays only. Primitive camp sites are unpowered sites for tents and or camper trailers (to be limited by weight).
- c) Request that NSW Holiday Parks Trust incorporate the following in the draft plans of management -- a tree management strategy that prohibits:
 - use of any land within a 5m radius of a Coastal Cypress Pine to prohibit compaction of soil
 - no discharge of untreated water over the critical root system
 - removal of exotic grasses and introduction of native grasses within the area of the critical
 - root system
 - progressive on site replacement of each memorial pine

2. MASSEY GREENE HOLIDAY PARK

- a) **Northern Foreshore Boundary**
The northern foreshore boundary along the Brunswick River to be setback 7m from the top of the riverbank in Massy Greene. A 3m setback from the foreshore boundary is required for any dwelling or camp site as per the **Local Government (Manufactured Homes Estates, Caravan Parks & Camping Grounds) Act 2005**.
- b) **Western Boundary - Part Lot 7005**
The operational boundary of the caravan park to be aligned with the existing picket fence on the western side of Massy Greene adjoining Site 88 through to foreshore Site 101 and the high water mark as identified in the attached map.
- c) **Eastern Boundary**
The eastern boundary alignment (between Lot 409 and Lot 20) to remain in current location along revetment wall and Tweed St extending to Old Pacific Highway as previously determined (identified in the attached map).
- d) **Southern Boundary**
Inclusion of part old Pacific Hwy road reserve along new fence alignment on the southern edge of Lot 20 – as identified in the attached map

3. FERRY RESERVE





The following lands are excluded from the operational area:

- Part Lot 2 (Lot 102 DP851964) the foreshore area/boat ramp (part Lot 11 DP 1169547) which is to be retained for public use (noting that public includes Park patrons). This is the land between the mean high water mark and the former public road reserve LOT 10 DP 116954
- Lot 10 DP 1169547 - Riverside Crescent - 3,124sqm retained for shared use and emergency use.


The following lands are to be included within the operational area:

- part Lot 11 in DP 1169547 being part of the Old Pacific Highway, Brunswick Heads but excluding that part of Lot 11 being the boat ramp area as approximated on the map is excluded.
- The area shown on government gazettal notice dated 4 May 2012 and described under Schedule 3 "as Crown Land shown by black outline and hatching on the diagram hereunder Area 1.645 hectares File No 10/15243, being part of Old Pacific Highway Brunswick Heads of
- Lot 40 DP 1134059 of 1277sqm
- Part Lot 102 2 DP 851964 being the southern part of the lot adjoining the former road reserve Lot 10 DP 116954
- Lot 101 DP 851964

Attachments:

- 1 Overlays of boundary maps for people after 9.3.17 presentation by NSWCHPT, E2017/22679 
- 5 2 Terrace map with the southern boundary relocated and northern boundary marked as per Council's resolution, E2017/22312 
- 3 Lot 11 - the boat ramp area at Ferry Reserve, E2017/22308 
- 4 Resolution 12-995 20 December 2012, E2017/22309 

5 SEPP 14 map which clearly shows the land location of the SEPP as well as the adjoining mangroves,

E2017/22311 

5 **Signed: Cr Cate Coorey**

Councillor's supporting information:

1. **TERRACE HOLIDAY:**

a) **Foreshore Boundary**

A foreshore boundary along Simpson's Creek to be setback 7m from the top of the riverbank in Terrace Park. A 3m setback from the foreshore boundary is required for any dwelling or camp site as per the **Local Government (Manufactured Homes Estates, Caravan Parks & Camping Grounds) Act 2005**.

NOTE: Since 2000 BSC has consistently reiterated resolutions about the 10m setback to all built structures, and a clearly defined foreshore/operational boundary is urgently required to protect the public walkway. It also facilitates the relocation of long term tenants off the foreshore)

b) **Western Boundary**

Part 1 (a) (i) of Resolution 12-995 remains unchanged. This is shown on the attached map.

c) The **northern boundary** is parallel to Fingal Street and 3.0m south of the centre of the footbridge where its timber ends at Fingal Street and does not include the shared car park. (See attached map)

NOTE: the above (b) and (c) is taken from resolution 12-995 of 20 December

d) The **southern boundary** of the Terrace Holiday Park lies north of WW1 Memorial Coastal Cypress Pines and immediately south of the building alignment of the existing amenities block then across to the foreshore so to exclude any of the January 2015 ground truthed Coastal Cypress Pines as shown on the attached map

NOTE: This moves the boundary north of the resolution of 12-995 of 20 December 2012 when the pines weren't ground truthed and brings it in line with the notion of what type of use would be permissible as per resolution 15-651 of 10 December 2015 as stated in (b) below

OPTIONS FOR CONDITION OF USE FOR SOUTHERN TERRACE AREA

a) Resolution passed at the public meeting held by Brunswick Heads Progress Association on 6.3.17 reads: Terrace Caravan Park -WW1 MEMORIAL PINE PARK IN THE SOUTHERN AREA OF THE TERRACE RESERVE

We request Council to reaffirm the operational boundaries of the Terrace caravan park and consider returning the WW1 Memorial Pine Park area to its intended use as a reflective public space with the opportunity then to have the park rehabilitated and restored with replacement of plantings.

- No camping permitted in the Southern area of Terrace Park

NOTE: This would return the southern area of the Terrace Reserve to parkland and has broad community support

- b) The Southern area remains outside operational area, with conditional use at specific times for 'soft/primitive camping' only at peak holiday periods i.e Christmas, Easter and School Holidays only. Primitive camp sites are unpowered sites for tents and or camper trailers (to be limited by weight).

NOTE: This reflects Condition 31 in previous license agreements and endorsed in RESOLUTION 15-651 Part 3 OF 10 DECEMBER 2015

“Overflow” boundary for primitive camping:

LGA requires sites to be no more than 100m from ablution block at Nana St. which was the traditional “overflow” boundary. A new temporary ablution was installed in 2007, to allow expansion into SEPP 14 area. Prior to this, the SEPP 14 had restricted any overflow use of the area.

Temporary ablution block needs to be removed from the Southern/SEPP 14 area

There is a major problem defining trailers to be limited by weight. These new camper trailers are weighing in a 1.2tonne and then there is the weight of the vehicle pulling it! Any arborist knows that weight on the critical root system is thwart with destruction of a tree.

- c) Request that NSW Holiday Parks Trust incorporate the following in the draft plans of management -- a tree management strategy that prohibits
- use of any land within a 5m radius of a Coastal Cypress Pine to prohibit compaction of soil
 - no discharge of untreated water over the critical root system
 - removal of exotic grasses and introduction of native grasses within the area of the critical root system
 - progressive on site replacement of each memorial pine

NOTE: This condition/request comes from resolution 16-464 part (c) of 25 August 2016

2. MASSEY GREENE HOLIDAY PARK

a) Northern Foreshore Boundary

The northern foreshore boundary along the Brunswick River to be setback 7m from the top of the riverbank in Massy Greene. A 3m setback from the foreshore boundary is required for any dwelling or camp site as per the **Local Government (Manufactured Homes Estates, Caravan Parks & Camping Grounds) Act 2005**.

NOTE: Since 2000 BSC has consistently reiterated resolutions about the 10m setback to all built structures, and a clearly defined foreshore/operational boundary is urgently required to protect the public walkway.

b) Western Boundary - Part Lot 7005

The operational boundary of the caravan park to be aligned with the existing picket fence on the western side of Massy Greene adjoining Site 88 through to foreshore Site 101 and the high water mark as identified in the attached map.

NOTE: This comes from Resolution 12-947 part (d) of 6 December 2012 but clarifies the boundary through sites 142 and 101 on the foreshore. The purpose of this boundary is to make long term sites 88, 87 and 86 together with the amenities block compliant.)

c) Eastern Boundary

The eastern boundary alignment (between Lot 409 and Lot 20) to remain in current location along revetment wall and Tweed St extending to Old Pacific Highway as previously determined (identified in the attached map).

d) **Southern Boundary**

- 5 Inclusion of part old Pacific Hwy road reserve along new fence alignment on the southern edge of Lot 20 – as identified in the attached map

NOTE: (c) and (d) come from Resolution 12-995 (b) of 20 December 2012)

- 10 *In Massy Greene the community has conceded lands along the Old Pacific Highway and part Lot 7005 plus in the eastern area to advantage NSWCHPT and at the same time bring long term sites and the amenities block into compliance.*

3. FERRY RESERVE

15 **The following lands are excluded from the operational area:**

- a) Part Lot 2 (Lot 102 DP851964) the foreshore area/boat ramp (part Lot 11 DP 1169547) which is to be retained for public use (noting that public includes Park patrons). This is the land between the mean high water mark and the former public road reserve LOT 10 DP 116954
- 20 b) Lot 10 DP 1169547 - Riverside Crescent - 3,124sqm retained for shared use and emergency use.

The following lands are to be included within the operational area:

- 25 (i) part Lot 11 in DP 1169547 being part of the Old Pacific Highway, Brunswick Heads but excluding that part of Lot 11 being the boat ramp area as approximated on the map is excluded.
- (ii) The area shown on government gazettal notice dated 4 May 2012 and described under Schedule 3 "as Crown Land shown by black outline and hatching on the diagram hereunder Area 1.645 hectares File No 10/15243, being part of Old Pacific Highway Brunswick Heads of
- 30 (iii) Lot 40 DP 1134059 of 1277sqm
- (iv) Part Lot 102 2 DP 851964 being the southern part of the lot adjoining the former road reserve Lot 10 DP 116954
- 35 (v) Lot 101 DP 851964

NOTE: This has come from Resolution 12-627 of 9 August 2012 and Council's preference to include the compulsorily acquired lands (i), (ii) and (iii) above into the caravan park..... The compulsorily acquired land has never been formally added to the caravan park.

40 **Staff comments by Shannon Burt, Director Sustainable Environment and Economy:**

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

- 45 A comprehensive review of the Crown Lands Plans of Management for Ferry Reserve, The Terrace Reserve and Massey Green Holiday Parks including the operational areas and site boundaries is currently being undertaken by NSW Crown Holiday Park Trust. This review has included to date extensive community and Council consultation, site inspections and meetings.

- 50 This review was initiated by the NSW Crown Holiday Park Trust to address the concerns of the community about the park operations and boundaries that has been ongoing since the adoption of the Plans of Management; and also to ensure that the Holiday Parks can achieve compliance and submit new Approvals to Operate for each of the Holiday Parks under the Local Government Act and Regulation. Previously they have relied on savings provisions and Ordinance 70 for this. None of the Parks have current Approvals to Operate.

The above recommendations do not accord with the most recent consultation and or proposals put forward by NSW Crown Holiday Park Trust, and are contrary to legal and planning advice that has been received by the Trust with respect to their 'continuing use rights' under the Environmental Planning and Assessment Act, and Local Government Act and Regulation.

5

The recommendations refer to a myriad of previous Council resolutions, all of which have been taken into consideration by the NSW Crown Holiday Park Trust in this review process. While not all of the above recommendations have been fully included in the review this is because in some instances these recommendations would be retrograde to the current proposals and or not legally required. The key elements included are – provision of more foreshore open space, removal of encroachments or potential encroachments from foreshore open space areas, improved layout and design for park occupants, and Cypress Pine protection.

10

Financial/Resource/Legal Implications:

15

Potential costs associated with legal action should the NSW Crown Holiday Park Trust need a Court resolution of the above matters, to progress the Plan of Management and Applications for Approval to Operate the Brunswick Heads Crown Holiday Parks.

20

Is the proposal consistent with any Delivery Program tasks?

N/A

Notice of Motion No. 9.4 Withdrawal of Draft Coastal Zone Management Plan 2016
File No: I2017/441

I move that Council write to the new Minister for the Environment, the Hon. Gabrielle Upton, requesting the withdrawal of the draft Coastal Zone Management Plan for the Byron Bay Embayment 2016 (CZMP BBE), which was hurriedly submitted in an incomplete state to the then Minister for Planning, the Hon. Rob Stokes, mid-2016.

Signed: Cr Jan Hackett

Councillor's supporting information:

An incomplete draft CZMP BBE was forwarded hurriedly at the close of the last Council to satisfy the 'final date for submission of plans' for the old coastal zone management act (now defunct).

Advice from the OEH and the Coastal Panel to the then Minister for Planning, the Hon Rob Stokes, recommended non certification of that draft until certain legal requirements were met due to the many inadequacies of the rushed draft.

On 11 November 2016, Council representatives met with the Hon Rob Stokes to discuss the draft. The Minister made it clear that he did not favour certification of the draft CZMP as it stood.

We now have a new Minister in charge of coastal matters and a new Act for coastal management.

Under these circumstances it would surely benefit all concerned to expedite the withdrawal of such a flawed and communally unsupported draft CZMP.

The sooner our New Council can begin work on a new coastal management plan which brings the community with us and which satisfies the new legislation the better.

I am confident many aspects of the former draft together with the scientific reports that informed it can be used in any new plan. This should not necessitate starting all over from square one, but could result in a more considered and comprehensive approach to future coastal care and planning in the Shire.

Staff comments by Shannon Burt, Director Sustainable Environment and Economy & Ralph James, Legal Service Coordinator:

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

Background

This matter was previously discussed by Council at the meeting on 6 October 2016 – see link below to Mayoral Minute

Mayoral Minute No. 8.1 Withdrawal of Draft Coastal Zone Management Plan 2016

http://byron.infocouncil.biz/Open/2016/10/OC_06102016_AGN_533.PDF

Mayoral Minute No. 8.1 Withdrawal of Draft Coastal Zone Management Plan 2016

File No: I2016/1014

16-518 Resolved that Council write to the NSW Minister for Planning, the Hon. Rob Stokes to request:

1. That the meeting requested to discuss the submitted CZMP be expedited.
2. That the Minister defer determination on the draft CZMP BBE until after the meeting.
(Richardson/Lyon)

5 The motion was put to the vote and declared carried.

10 A meeting subsequently occurred at the 2016 Coastal Conference between the then Minister Stokes, Minister for Planning, Mayor Richardson, Councillor Hackett, Director Sustainable Environment and Economy and Manager Environmental and Economic Planning, with the undertaking that a decision on the draft CZMP BBE would be forthcoming. No decision or formal advice has been received to date. A decision and or formal advice is necessary for Council and staff to progress a final pathway for this plan process to be complete.

15 On 30 March 2017, The Mayor wrote to the new Minister for Environment, The Hon Gabrielle Upton urgently seeking advice and support to progress finalisation of the draft Plan stressing the time delay to date.

20 Staff have also made contact with the Minister's office seeking a meeting about the same. At the time of writing this report no response had been received.

Current Notice of Motion

25 The Notice of Motion proposes Council resolve to write to the new Minister for the Environment requesting the withdrawal of the CZMP which Council resolved to adopt and then sent to the Minister for review and certification under the Coastal Protection Act (CP Act), on 30 June 2016.

The resolution of 29 June 2016 and dispatch of the CZMP approved at that Council meeting, did not discharge both Council's statutory obligations and its power.

30 The statutory function is to be exercised pursuant to the Ministerial direction under s55B(1) which provides: "a Council whose area, or part of whose area, is included within the coastal zone may, and must, if directed to do so by the Minister, make a coastal zone management plan in accordance with this Part".

35 Council's statutory obligation is to make a CZMP in accordance with Part 4A of the CP Act. That function or power is not yet discharged. Currently the CZMP is with the Minister pursuant to s. 55G. The Minister's function is to review the CZMP and certify (or not) that it has been prepared in accordance with the CP Act (s. 55G(4)(a)). If so certified, the Council is obliged to make the plan and publish it in the Gazette. The Minister can seek advice from the Coastal Panel, which can
40 recommend changes.

45 The making of the CZMP is only part way through the process. It is not "made" until it is certified by the Minister to be prepared in accordance with the Act (s. 55G(4)), resolved to be adopted by the Council and published in the gazette (see s. 55H).

50 By the terms of the above section, it is the *making of the plan* (that is, the plan being given legal effect; which is authorised by section 55H) that is the relevant power Council is required to mandatorily exercise if directed to do so. This means the administrative step of submitting the CZMP to the Minister, as part of the process for making the plan, is not the ultimate exercise of power. As a result, it is possible there is more flexibility for Council to remake an administrative step on the journey to exercising an ultimate function, compared with exercising the ultimate function itself.

55 Council cannot now stop the Minister from performing *their* functions under the Act regarding the draft CZMP (that is, their power to certify the draft CZMP and direct that it be made).

This is because, assuming Council has completed a CZMP that is within power, the Act confers no express power on Council to arbitrarily withdraw the draft CZMP from the Minister's consideration. Council would need to rely on an implied power to do this. Given there are ways for plans to be amended or repealed once Gazetted (section 55I), it is difficult to find any such implied, arbitrary power.

Even if Council could establish that the draft CZMP was unlawfully compiled, it appears difficult to argue Council could arbitrarily withdraw the draft CZMP from consideration. If the draft CZMP is unlawful, the Minister's decision making would also be infected and subject to judicial review. In the context of this oversight, there would appear to be little need to confer on Council the power to recall a draft CZMP without the Minister's consent.

However as stated, there appears to be little stopping Council from asking the Minister to stop considering whether or not the CZMP should be certified. It has done this previously and the Minister agreed.

There is no statutory proscription against Council writing to request the Minister return the plan or asking him to refuse to certify the plan and it is not beyond power to do so. However, there is nothing in the Act which expressly provides for "formal" withdrawal of the plan and the Council could not compel the Minister in the exercise of his functions.

It is a matter for the Minister in her discretion to certify, refuse to certify or return the CZMP to Council directing it to amend and resubmit the Plan with recommended changes if required.

Financial/Resource/Legal Implications:

N/A

Is the proposal consistent with any Delivery Program tasks?

N/A

Notice of Motion No. 9.5 Online Road Register
File No: I2017/442

I move that council prepare and maintain a list or list/s on the council web site of roads that are currently underway or in the schedule of works that is:

- a) Prepared monthly on a rolling 4-year cycle of works including anticipated start date of repairs/upgrades to each road**
- b) Shows the current status of each road with respect to any funding contingencies**
- c) Links with the budget for roads**
- d) Enables feedback from residents with respect to any road on the list or any road that it is felt should be on the list that isn't**

5

Signed: Cr Michael Lyon

10 **Councillor's supporting information:**

With IPART set to determine our rate rise and residents understandably keen to know that their extra dollars are spent wisely, it is important that we can show how this extra money will be spent. The state of the roads has been an ongoing issue and one of the main drivers for the community in accepting the rate rise. By giving residents real-time information we can hopefully build trust around the increase rate burden and the need for it. It also gives people who are on some of the worst roads in the shire the hope and expectation that they are not forgotten about or at the least gives them a chance to be heard in a forum specifically designed for this type of feedback.

20 **Staff comments by Phillip Holloway, Director Infrastructure Services:**

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

Staff are supportive of improving available information on road works across the shire and this motion if successful will support the current renewal of Council Web page and online presence.

25 Council will adopt its 2017/18 budget in June 2017 and in preparation of this staff has developed ongoing works programs for future years to coincide and inform the Long Term Financial Plan.

30 As part of the consideration of the proposed Special Rate Variation, Council considered the need to improve transparency and accountability of expenditure allocation and improved web information will improve this. A more integrated web page with improved information and access will improve community awareness and feedback into planned works.

Examples of Council current road works web pages can be found at

35

<http://www.byron.nsw.gov.au/roads-capital-works-2016-17>

<http://www.byron.nsw.gov.au/repairing-roads>

40 <http://www.byron.nsw.gov.au/road-works>

<http://www.byron.nsw.gov.au/weather-event-road-closures>

<http://www.byron.nsw.gov.au/bridges>

45 In terms of the web page the key component is the currency of the information and it will require updates as budget reviews arise from time to time and where priorities change.

The new information could be made available within the capital works page <http://www.byron.nsw.gov.au/roads-capital-works-2016-17> and would require the inclusion of a web form to capture feedback.

- 5 As the new website is developed, staff will also seek to include the functionality of road work maps and improved integration with MyRoadInfo.

Financial/Resource/Legal Implications:

- 10 Approved 2017/18 Capital Works program

Is the proposal consistent with any Delivery Program tasks?

- 15 CM2.1 - Use a range of effective communication tools to engage the community to support transparent and accountable Council decision making.

Notice of Motion No. 9.6 Review of Tyagarah Airstrip Planning Proposal
File No: I2017/443

I move:

1. That Council note the inconsistency between the wording of the 'Intent' and 'Objectives' of the Tyagarah Airstrip Planning Proposal as endorsed by Council in Resolution 15-659 in December 2015 compared with the version of the Tyagarah Airstrip Planning Proposal that was put on public exhibition in May 2016 and forwarded through the Gateway process of the Department of Planning.
2. That Council note the difference between 'heliport' and 'helipad' as defined in the Byron Shire LEP (2014):

helipad means a place not open to the public used for the taking off and landing of helicopters

heliport means a place open to the public that is used for the taking off and landing of helicopters, whether or not it includes: (a) a terminal building, or (b) facilities for the parking, storage or repair of helicopters.
3. That Council not progress the Tyagarah Airstrip Planning Proposal until clarity of meaning is agreed upon by resolution of Council and the following have been completed:
 - a) Council commissions a Social Impact Assessment (SIA) associated with any expansion and intensification of commercial uses at the Tyagarah Airfield;
 - b) An assessment of noise impacts associated with any expansion and intensification of commercial uses at the Tyagarah Airfield
 - c) Council provides a full income and expenditure and profit and loss statement for the Tyagarah Airfield since 2010 including council staff time and resources and all consultancies, legal opinions and contracts tendered;
 - d) Council adopts the recommendation of the Office of Environmental and Heritage (OEH) and prepares a strategic floodplain risk management plan for the future management of the Simpsons Creek floodplain, and
4. That Council reassesses its support for Tyagarah Airfield subject to a report on the cumulative ecological impacts of all tree clearing required for the airfield.
5. That Council not clear any more vegetation from the site or any other works until the actions described in 1. are completed.
6. That a detailed financial projection of any future proposal be provided to Council.
7. That Councillors hold a workshop to consider other uses for the site that do not involve increased aircraft activity.
8. That any future use of the site involves genuine community consultation to include all affected stakeholders.

Attachments:

- 1 Tyagarah Airfield - The Airport Group Draft Future Aviations Options presentation, E2017/23472 [⇒](#)



- 5 2 OEH Response Tyagarah Airfield Additional Information - Signed DY 201703..., E2017/23473 [⇒](#)



Signed: Cr Cate Coorey

10 Councillor's supporting information:

- The Tyagarah Airstrip Planning Proposal was developed and adopted by the previous Council. The Proposal as it was advertised and sent to the Department of Planning for a Gateway determination to amend Byron Local Environmental Plan (LEP) 2014 to facilitate the future inclusion of a heliport at the airstrip, allow the subdivision of the land to rectify lots that were previously created for lease purposes but not registered, formalise the existing internal roadway, and create additional lots to utilise operational Council land.
- The LEP amendment as proposed and publicly exhibited in April 2016 is notably different from the Planning Proposal that Council moved be sent to the Minister for Gateway approval on the 10th December 2015. There was no resolution of Council to publicly exhibit the Planning Proposal as it currently exists and the altered Planning Proposal was never brought back before Council for endorsement.
- Council motion 15-659 and the associated agenda attachment – the draft Tyagarah Airstrip Planning Proposal – from 10th December 2015 make no mention that the primary purpose of the change to the Byron LEP is to include a heliport as a permitted use. The Intent and Objective as outlined in the Planning Proposal refer to a helipad but that has a different meaning under the definitions of the Byron LEP 2014:

helipad means a place not open to the public used for the taking off and landing of helicopters

heliport means a place open to the public that is used for the taking off and landing of helicopters, whether or not it includes:

- (a) a terminal building, or
- (b) facilities for the parking, storage or repair of helicopters.

Note. Heliports are a type of air transport facility—see the definition of that term in this Dictionary

- The public exhibition of the Proposal did not meet community expectations of clear and transparent decision making. A heliport at Tyagarah is not a minor planning amendment for the surrounding community. All residents within 5km (or possibly further depending on an impact assessment) of Tyagarah Airstrip should have received written notification from the Council regarding the Planning Proposal to allow them to make comment.. Given that Council notices were published in the Byron Shire News, which is not delivered to Tyagarah or Myocum, it is likely no residents even knew about it.
- The Planning Proposal is based on the 'Future Aviation Options Report' prepared by the Airport Group and considers increasing commercial aviation activity at Tyagarah and particularly increased helicopter usage, I believe the degree of community consultation should have been much wider.

- It is unlikely that any proposed joy flights (6-8 per day, according to the Options Report) would only hover above the airfield; they would be flying over a large part of the Shire. It is unlikely that this would have broad community support. The stakeholders therefore are greater than those consulted for the Options Report who were only the current lessees at the airstrip. This is very poor stakeholder consultation and should have been challenged by Council at the time.
- The ecological impacts of the Tyagarah 'upgrade' are concerning with a several hundred trees being cleared yet the clearing is being done in stages so it is difficult to get a whole picture as to what the cumulative effects of this staged work will be particularly with regard to the koala habitat identified on the site and its connection to adjacent habitat areas.
- Additional consideration must be given to the input provided by the Office of Environment and Heritage who wrote to council on the 8th of March 2017 and raised concerns relating to flood impacts in the Simpsons Creek Catchment. OEH recommended Council prepare a strategic floodplain risk management plan for the future management of the Simpsons Creek floodplain before approving more "ad hoc" development in the catchment.
- Several key reports and studies that would properly consider impacts –social, noise, traffic, financial, ecological, pollution – should have been undertaken before the forwarding of this Proposal to the Department of Planning for Gateway determination.
- This Council needs to do better than the last one and look at this again -- in detail.

Staff comments by Shannon Burt, Director Sustainable Environment and Economy & Michael Matthews, Manager Open Space and Resource Recovery:

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

The staff response to this Notice of Motion is provided in 3 separate parts below:

Planning

Key timeline points are:

- Resolution of Council to prepare a Planning Proposal meeting 10 December 2015

http://byron.infocouncil.biz/Open/2015/12/OC_10122015_AGN_389.PDF

Report No. 13.19 PLANNING - Tyagarah Airstrip Planning Proposal

File No: I2015/1435

15-659 Resolved:

1. That Part 1 Objectives and Intended Outcomes in the Planning Proposal be amended in paragraph 2 as follows:

a) After "(joy flights...)" insert the words "as well as commercial uses".

2. That Council proceed with the planning proposal in Attachment 1 as amended in point 1 above, and send it to the Department of Planning and Environment for a Gateway determination.

3. That Council request the Department of Planning and Environment to delegate to Council the preparation and making of the LEP Amendment.

- Following resolution 15-659, updated Planning Proposal went to Department of Planning, including the change made by the resolution and requesting a Gateway Determination (sent 18 Dec 2015)

- In March 2016, Department of Planning advised staff by email that the majority of additional uses sought by the Planning Proposal are permissible with consent under Clause 23 of State Environmental Planning Policy (Infrastructure) 2007 (SEPP); therefore the Planning Proposal did not need to include “premises for retail, business, recreational, residential or industrial uses” (this includes tourist uses, which fall under ‘recreational’; it does not, however, include a heliport).

23 Development permitted with consent

Development for any of the following purposes may be carried out with consent on land within the boundaries of an existing air transport facility, if the development is ancillary to the air transport facility:

- (a) passenger terminals,
- (b) facilities for the receipt, forwarding or storage of freight,
- (c) hangars for aircraft storage, maintenance and repair,
- (d) premises for retail, business, recreational, residential or industrial uses.

- Staff’s original position was that clause 23 of the SEPP applied to “air transport facilities”, and there was some conjecture that the Tyagarah Airfield did not fall within this definition. The Department however were firm in their view that the Tyagarah Airfield did meet that definition; thereby allowing a broader range of uses as outlined in Cl. 23 of the SEPP to be permissible with consent in their own right.
- The Planning Proposal was therefore amended as requested by the Department to remove reference to those superfluous land use items. A gateway determination was granted to enable consultation.
- The amended version of the Planning Proposal was exhibited in accordance with the Gateway determination and the Act.
- In summary - The planning proposal was placed on public exhibition for a period of 28 days, from 5 May 2016 to 2 June 2016. Seven public submissions were received during the exhibition period, in addition to submissions from the Australian Department of Infrastructure and Regional Development, NSW Rural Fire Service and NSW Office of Environment and Heritage. One further late public submission was received in February 2017, with a supplementary submission provided shortly after.
- Of the eight public submissions received (includes the late submission):
 - one was in objection, suggesting that the use of the land as an airfield should be discontinued and the site used instead for “high technology industry”, and raising a number of other issues that are addressed in the body of this report;
 - three submissions expressed support for the proposal; and
 - four submissions were not directly relevant to the planning proposal, instead including:
 - suggested improvements to existing facilities at the site;
 - a desire by existing tenants to remain on-site;
 - suggested opportunities to increase revenue; and
 - concerns from the Cape Byron Pistol Club regarding potential impacts on their site (located outside of the planning proposal area) associated with ecological offset proposals.
- In relation to “heliport”, the original Planning Proposal, which was reported to Council in December 2015, included “heliport” as a permissible use; noting “It is envisaged that helicopter use would be similar to current aeroplane use, being for a combination of private aviation and tourism/ recreational activities (joy flights etc.).
- A link to the Department LEP tracking web site is here and provides all their relevant documents.

<http://leptracking.planning.nsw.gov.au/PublicDetails.aspx?Id=2462>

- A report on the Planning Proposal status and exhibition is part of the Agenda 20 April 2017 Ordinary Meeting.

Environmental

The majority of tree treatment work consists of pruning or lopping trees and shrubs that has encroached the Obstacle limitation Surface of the airfield.

Ecological Assessments (Review of Environmental Factors) have been separately prepared by independent environmental and ecologist professionals and for both Stage 1 and Stage 2 works, which have concluded that no significant adverse effect is likely for flora or fauna.

The cumulative effects of vegetation works for Stage 1 and Stage 2 were considered in an Ecological Assessment for Stage 2 works, and in the development of a Compensatory Planting Plan.

Habitat connectivity for Koalas on the Tyagarah Airfield is not affected by the proposed works.

The extent of impact of the Stage 2 works on Koala habitat is limited to the pruning of two Swamp Mahoganies to ~50% of their present height. It is expected that these trees will re-sprout, however, if these trees were removed, impacts for Koalas would still be minimal. The main threat to Koalas in the Tyagarah Airfield area is not the lack of food trees, but the ongoing risk of road kill.

Operations

Tyagarah Airfield is an unlicensed unregistered airfield for the purposes of CASA regulations. Aircraft with a maximum take off weight (MTOW) in excess of 5,700kg, or having a main landing gear tyre pressure in excess of 450 kilopascals (65 psi), or any jet powered aircraft are not permitted to land at Tyagarah Airfield.

Landing and parking fees for permitted aircraft are as adopted under Councils Fees and Charges.

As a non-certified and non-registered aerodrome, the facility does not support air transport operations for more than 9 passenger seats greater than once a week or more however the airfield does support recreational aircraft use.

Vegetation Encroachment of the OLS.

Although Under Civil Aviation Regulation 92(1) (d), it is the pilots legal responsibility to ensure a place is safe to land or take off, it is the operators responsibility to apply due diligence in providing information to aircraft users of any known encroachment of the Obstacle Limitation Surface (Safe landing and take off envelope). This information is provided on Councils website for the Tyagarah Airfield.

The Obstacle Limitation Surface extends over Crown Land Special Aerodrome (65% of the facilities land tenure), Council Owned Operational Land (35% of the facilities land tenure) and Private land outside the facility. A diligent approach to removing vegetation that has encroached the OLS safety envelope whilst providing consideration and minimising the impacts on flora and fauna under professional ecologist guidance via the REF process is being undertaken. Continual removal of encroachments in consideration of possible environmental impacts is considered to be a Due Diligent approach.

Financial/Resource/Legal Implications:

Landing and Take off from the Airfield

5 Under Civil Aviation Regulation 92(1) (d), it is an offence for a person to land or take off from a place which is not "suitable for use as an aerodrome for the purposes of landing and taking off of aircraft; having regard to all the circumstances of the proposed land or take off (including prevailing weather conditions), the aircraft can land at or take off from the place of safety. A pilot in command of an aircraft must establish where he/she intends landing or taking off can be done, in the aircraft which he/she is operating, in safety and in accordance with all the applicable data and regulations.

10

In a recent decision of the Supreme Court of NSW, (albeit on a different topic) a roads authority was found liable in negligence when a local resident, walking his dogs at night on a poorly lit roadside verge in a suburban area, fell over the obscured edge of an unfenced culvert and into the rocky drain three metres below. The plaintiff and the dogs sustained serious injuries as a result of the fall.

15

This case is an example of when a Council's failure to take action to address a risk of harm of which it had actual knowledge, could expose it to damages.

20 The evidence established that there were multiple people in the Council who had "*actual knowledge*" of the particular risk posed

Council should take heed of this decision and be proactive about managing the specific risks of harm of which they have actual knowledge. A failure to manage these risks may give rise to potential future liability in negligence.

25

Is the proposal consistent with any Delivery Program tasks?

Yes – CM1: Effective governance, business, project and financial management.

SUBMISSIONS AND GRANTS**Report No. 11.1 Byron Shire Council Current Grant Applications as at 29 March 2017****Directorate:** Corporate and Community Services**Report Author:** Jodi Frawley, Grants Co-ordinator**File No:** I2017/410**Theme:** Corporate Management
Governance Services**Summary:**

This report provides an update to Councillors on grant submissions since the previous Council meeting.

RECOMMENDATION:**That Councillors note the report.****Attachments:**

1 Byron Shire Council Current Grant Applications as at 29 March 2017, E2017/17105 ➡



Report

This report provides an update to Councillors on grant submissions since the previous Council meeting.

5

Funding Applications Submitted

- NSW DPI- Fisheries, Recreational Fishing Trust
- NSW Industry, Elsa Dixon Aboriginal Employment Fund
- 10 • Australian Government, Infrastructure and Regional Development, Community Development Programme
- Australian Government, Infrastructure and Regional Development, community Investments Stream (2 applications)

15

Funding Applications Successful

- NSW Office of Environment and Heritage, Flying-Foxes Camp Management
- NSW Office of Premier and Cabinet, Tourism Demand Driver Infrastructure Funding

20

Funding Opportunities Identified For Consideration By Staff

- NSW Veterans Affairs, Community War Memorials Fund
- NSW Office of Environment and Heritage, Heritage Near Me, Heritage Activation Grant
- 25 • NSW Office of Environment and Heritage, Heritage Near Me, Local Heritage Strategic Projects
- NSW Office of Environment and Heritage, Environment Trust – Education
- NSW Office of Environment and Heritage, Environment Trust – Council Roadside Reserves
- NSW Office of Environment and Heritage, Floodplain Management Program
- Australian Government, Bridges Renewal Programme (2 projects)
- 30 • Australian Government, Office of Prime Minister and Cabinet, Smart Cities and Suburbs – Round 1

Funding Submissions Awaiting Notification

- 35 • NSW, Justice, Crime Prevention Grants
- NSW, Justice, NSW Community Safety Fund
- Australian Government, Infrastructure and Regional Development, Building Better Regions Fund, Infrastructure Stream

40 It should also be noted that staff are actively working to prepare major project submission for the following funding rounds as soon as they are announced:

- NSW Government, 'Poles and Wires' funding (NSW Government)
- Australian Government, Regional Jobs and Industry for North Coast NSW
- 45 • Australian Government, Building Better Regions Fund, Round 2

Additional information on the Grant Submissions made and or pending is provided in Attachment 1 – Grants report as at 29 March 2017

50

Financial Implications

N/A

Statutory and Policy Compliance Implications

N/A

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves - Commercial Sub-Licence Fees

Directorate: Corporate and Community Services
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2017/223
Theme: Corporate Management
 Governance Services

Summary:

Current sub-licences permitting commercial activities on crown land under Crown Licence RI 406617 expires on 31 August 2017. Council is now required to call a new tender for the letting of new sub-licences under a new Crown Licence RI 564194 to commence 1 September 2017. Before Council may call the open tender, Council must first set a standard fee, for each type of Class 2 commercial activity in accordance with resolution 12-872.

Draft Policy 5.52 - Commercial Activities on Coastal and Riparian Crown Reserves defines a Class 2 Activities as a commercial activities including surf schools, personalised surf schools, stand up paddle boarding schools, sea kayaks, mobile kiosk and mobile beach security locker hire.

Council's Draft 2017/2018 fees and charges lists some fees for Class 2 commercial activities sub-licences including.

- Commercial surf schools \$8,989 pa increase by CPI annually;
- Personalised surf schools \$2,909 pa increase by CPI annually; and
- Sea kayak \$41,160 pa increase by CPI annually.

A survey of other Councils revealed a substantial difference between licence fees for commercial activities on crown lands, with Byron Shire having the highest fee structure.

Submissions received from current Class 2 sub-licensees indicated the set Class 2 activity sub-licences fees were unsustainably high because fees were based on an unrealistic scale from a 2012 tender, the need to bring fees in line with Ballina Shire, conditions attached to sub-licences and dependency on weather conditions restricted sub-licensees ability to generate income.

The following guidance provided by Item 13.5 of the Draft Policy 5.52 - Commercial Activities on Coastal and Riparian Crown Reserves ('the Policy'), Council recommends changes to its 2017/2018 fees and charges to set the following sub-licence fees for Class 2 commercial activities:

- Commercial surf schools \$5,000 pa increase by CPI annually;
- Personalised surf schools \$2,270 pa increase by CPI annually;
- Stand up Paddle Board schools \$960 pa increase by CPI annually; and
- Sea kayaks \$25,000 pa increase by CPI annually.

Financial implications from the proposed changes in fees and charges for Class 2 activities will result in a 39% decrease in income. The decrease can be justified by bring in line Councils sub-licence fees for commercial activities on Crown lands with other surveyed councils.

RECOMMENDATION:

- 1. That the 2017/2018 fees and charges be set for the following sub-licence fees for Class 2 commercial activities as follows:**

- **Commercial surf schools \$5,000 pa increase by CPI annually;**
 - **Personalised surf schools \$2,270 pa increase by CPI annually;**
 - **Stand up Paddle Board schools \$960 pa increase by CPI annually; and**
 - **Sea kayaks \$25,000 pa increase by CPI annually.**
- 2. That Council adopts the 2017/2018 fees and charges for Class 2 commercial activities, and places the draft fees and charges on public exhibition for a period of 28 days; and**
- a) should no submission be received, then adopt the fees and charges for the 2017/2018 financial year; or**
 - b) should any submissions be received that the submission be reported to Council.**

Report

In 2012, Council called an open tender to let commercial sub-licences, for the purpose of surf schools, personalised surf schools and sea kayaks tours. Sub-licences were let under authority of Crown Licence RI 406617, for a period of five (5) years terminating on 31 August 2017. Council is now required to call a new tender for the letting of new sub-licences under new Crown Licence RI 564194 to commence 1 September 2017.

Before calling an open tender, Council is required to amend Policy 5.52 - Commercial Activities on Coastal and Riparian Crown Reserves, ('Policy'). The Policy guides Council's decision-making by determining the number and type of sub-licences that may be offered in a new tender process. Two working parties were convened, in accordance with Reserve Trust resolution 17-047 to inform Policy changes. The resulting, Draft Policy, is tabled at the Reserve Trust meeting of 20 April 2017 for approval to be placed on twenty eight days public exhibition before adoption.

Class 2 Commercial Activities

Draft Policy 5.52 - Commercial Activities on Coastal and Riparian Crown Reserves, provides for the following commercial activities, known as Class 2 Activities that may be sub-licensed by Council under authority of Crown Licence RI 564194:

- a) Surf schools, four sub-licences only;
- b) Personalised surf schools, two sub-licences only;
- c) Stand up Paddle Board Schools, three sub-licences only;
- d) Sea kayak tours, two sub-licences only;
- e) Mobile Kiosk, one sub-licence only;
- f) Mobile Beach Security Lockers, one-sub-licence only; and

Before Council may call the open tender, Council must first set a standard fee, for each type of Class 2 commercial activity in accordance with resolution **12-872**.

Standard fees for Class 2 commercial activities

In the 2012 open tender, Council called for tenderers to submit a sub-licence fee, as a reflection of the current market value of the sub-licences. A subsequent independent probity report, on the 2012 open tender process, recommended that Council determine a standard sub-licence fee, prior to re-tendering for new sub-licences.

Council resolved in Resolution 12-872, to set a standard fee for each type of Class 2 commercial activity based on a commercial value assessment. The commercial value assessment methodology applied, was the average fee submitted in the 2012 open tender for each class of commercial activities, and increased annually thereafter by CPI.

Applying this methodology the following sub-licence fees for Class 2 commercial activities for 2017/2018 are:

| Class 2 Commercial Activity type | 2017/2018 standard fee (inc GST) |
|----------------------------------|----------------------------------|
| • Surf School | \$8,989 |
| • Personalised Surf School | \$2,909 |
| • Sea Kayaks | \$41,160 |

Review of standard fees for Class 2 commercial activities

5 On 29 November 2016, Council held a meeting with current Class 2 sub-licensees, to inform amendments to Policy 5.52. Following the meeting each Class 2 sub-licensees provided written a submission to Council.

Submissions identified a review of the standard fees to the following:

| Class 2 Commercial Activity type | Submissions on standard fee |
|----------------------------------|-------------------------------|
| • Surf School | \$5,000 or less |
| • Personalised Surf School | \$2,000 or less |
| • Sea Kayaks | Between \$15,000 and \$20,000 |

- 10 Submissions requested a reduction in the standard fees because:
- a) the standard fee is too high being based on an unrealistic scale from the previous tender and therefore not reflective of the current market value and unsustainably high;
 - b) of a need to bring Byron surf schools sub-licences terms and conditions in line with Ballina Shire to reduce the unfair advantage to current sub-licensee who operate additionally out of Ballina;
 - 15 c) the ability to operate commercially is wholly dependent on weather conditions;
 - d) restrictions on the client – instructor ratio, means an additional instructor is required to supervise two clients under surf school sub-licences;
 - e) the restrictions on the number of classes per day, limits the ability to generate revenue; and
 - 20 f) without changes to sub-licence conditions to increase, either the number of permitted classes per day and/or the client – instructor ratio, the current standard fee is set too high and is unsustainable.

Comparison of fees with other Council's

25 The below table lists a comparison with other Council's fees for commercial activities on coastal and Crown reserves:

| Licence fee | Licence Fee | Notes |
|--|-------------|---|
| Ballina Council | \$1,790 | Annual licence. Surf schools, fitness groups, stand up paddle boarding. |
| Coffs Harbour Council • 2 licensed areas | \$4,400 | Annual licence. Standard fee for commercial activities on Crown reserves. |
| Gold Coast City Council | \$204 | Annual licence. |
| Kempsey Council | \$1,155 | Annual licence. Surf schools only. |
| Newcastle City Council • 2 licenced areas | \$700 | Annual licence fee. Surf schools, stand up paddle boards. |
| Northern Beaches Council | \$320 | Per week licence. Surf school, sea kayaks only summer months. |
| Tweed Shire Council | \$3,224 | Annual licence. Surf schools. |
| Wollongong City Council | \$942 | Annual licence. Surf schools only. |
| NSW Crown Holiday Parks | \$148 | Annual licence. Stand up Paddle Boards. |

Setting of new standard fees for Class 2 commercial activities

In determining standard fees for Class 2 commercial activities, Item 13.5 of the Draft Policy 5.52 - Commercial Activities on Coastal and Riparian Crown Reserves ('the Policy') gives guidance. In setting the standard fee for Class 2 activities the following must be considered;

- a) The nature of the activity;
- b) Scale of its operation;
- c) Use and impact on the coastal Crown reserves; and
- d) Impact on the community both beneficial and detrimental.

For each Class 2 activity the following is considered:

1. Commercial surf school sub-licences:

- o Nature of the activity is limited to 4 surf school sub-licenses;
- o Scale of operations is limited to 2 classes per day, maximum 10 students with 2 instructors, conditional on suitable surf conditions;
- o Use of crown reserves is limited to ten licenced locations with schools operating at least 100m apart;
- o Benefit to the community is local employment. A detriment to employment is to set surf school sub-licences too high.

The standard fee is \$8,989 pa. The fee is considerably higher than other councils. The restriction of two schools pre day, limited to ten in students in total, restricts surf schools ability to generate income and employment. Surf schools submitted a fee of \$5,000 pa which is comparable with Coffs Harbour and Tweed, but significantly less than Ballina and the Gold Coast. Note surveyed councils only offer annual licences.

Council recommends the annual fee for commercial surf school sub-licences is set at \$5,000 pa, increased annually by CPI as reflective of the current market value for the sub-licence.

2. Commercial personalised surf schools sub-licences:

- o Nature of the activity is limited to 2 surf school sub-licenses;
- o Scale of operations is limited to 2 classes per day, maximum 2 students to one instructor, conditional on suitable surf conditions;
- o Use of crown reserves is limited to ten licenced locations with schools operating at least 100m apart;
- o Benefit to the community is local employment. A detriment to employment is to set surf school sub-licences too high.

Personalised surf schools are a sub-set of a commercial surf school. The current standard fee is \$2,909 pa. No comparative Council fees were available. Applying the same percentage reduction as commercial surf schools, a fee of \$2,270 pa is provided as a more reflective market value for five year sub-licences.

Council recommends the annual fee for commercial personalised sub-licences is set at \$2,270 pa increased annually by CPI as reflective of the current market value for the sub-licence.

3. Commercial Sea kayak tour sub-licences:

- o Nature of the activity is limited to 2 sea kayak sub-licenses;
- o Scale of operations is limited to 2 classes per day, maximum 18 kayaks and is conditional on ocean conditions;
- o Use of crown reserves is limited to 2 locations including the Brunswick River.

- Benefit to the community is local employment. A detriment to employment is to set surf school sub-licences too high.

The standard fee is currently \$41,160 pa. The value of sea kayak sub-licences is reduced by limitations on class numbers and sizes, restrictions in locations and ocean conditions. The restrictions affect operator's ability to generate income and employment. Sea Kayak operators submitted a fee between \$15,000 and \$20,000 as more reflective market value.

Council recommends the annual fee for commercial sea kayak sub-licences is set at \$25,000 pa, increased annually by CPI as reflective of the current market value for the sub-licence.

4. Commercial Stand Up Paddle sub-licences

- Nature of the activity is limited to 3 stand up paddle board sub-licenses;
- Scale of operations is limited to 2 classes per day, maximum 8 student to one instructor restricted to flat waters in the Brunswick River;
- Use of crown reserves is limited to 3 locations in the Brunswick River.
- Benefit to the community is local employment. A detriment to employment is to set surf school sub-licences too high.

No standard fee is currently set for stand up paddle board sub-licences. NSW Crown Holiday Parks Trust set a fee of \$148 pa. Sub-licence restrictions of two classes per day, limited to eight students only in the Brunswick River, restricts the sub- licensee's ability to generate income and employment. Comparable Council fees range from \$1,790 pa to \$148 pa.

Council recommends the annual fee for commercial stand up paddle board sub-licences is set at \$960 pa, increased annually by CPI as reflective of the current market value for the sub-licence.

Deferred setting of other Class 2 activities

Council recommends the setting of sub-licence fees for Class 2 activities being mobile kiosk and mobile security locker is deferred to a future meeting to enable Council to fully work through the terms and conditions attached to these sub-licence types.

Financial Implications

Reduction of fees and charges for Class 2 activities on coastal and riparian will impact funds available to be returned to maintain crown reserves under Council control and management.

An estimate of the Income generated under 2016/2017 fees and charges for Class 2 activities includes \$35,428 from four surf schools sub-licences, \$5,732 from two personalised surf school sub-licences and \$81,104 from two sea kayak sub-licences totalling \$122,264 pa.

If Council continues with the same fee structure then fees and charges in 2017/2018 for Class 2 activities would increase to \$125,701 pa.

The current Class 2 sub-licence fees paid by the Operators holding a sub-licence were determined by the last tender process. The total fees payable by the current Operators holding a Class 2 sub-licence (including the fifth surf school) for the 2016/17 Financial Year is \$127,036.32.

The proposed changes to Class 2 licences fees structure would reduce income by 39% to the value of \$77,420 on the current set fees and charges. The reduction is justified in bringing Byron Class 2 sub-licences fees more in line with other surveyed councils.

Statutory and Policy Compliance Implications

Nil.

Report No. 13.2 Section 355 Committee - Resignations and Appointment of new members

Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Project Officer
File No: I2017/329
Theme: Society and Culture
Community Development

Summary:

This report provides an update on Section 355 committee member resignations and recommends new appointments where appropriate.

RECOMMENDATION:

1. That the Cook Pioneer Centre Mullumbimby continue to receive assistance to find new members for the Management Committee.
2. That Anthony Reardon be thanked for his work with the Cook Pioneer Centre Mullumbimby Committee and the Mullumbimby Civic Hall Board of Management.
3. That Shelagh Pepper, Noel Hart and Jay Pearse be thanked for their work with the Lone Goat Gallery Board of Management.
4. That Dianne Pymble-Ward and Helen Graveson be thanked for their work with the Ocean Shores Community Centre Management Committee.
5. That Christine Willmott be appointed to the Senior Citizens Hall Byron Bay Management Committee.
6. That Michelle Clark be thanked for her work on the South Golden Beach Community Centre Management Committee over a number of years and that Tony Horrigan be appointed to the South Golden Beach Community Centre Management Committee.
7. That Council note that work is continuing with the Heritage House Bangalow Management Committee previous members to reactivate this committee or find alternative management solutions.

Attachments:

- 1 Confidential - Confidential annexure to report appointment of additional community representatives to Section 355 committees March 2017, E2017/17473

Report

This report provides an update on Section 355 committee member resignations and recommends some new appointments.

A number of resignations and requests for new membership have been received as outlined below.

Cook Pioneer Centre Mullumbimby Committee

A resignation has been received from Anthony Reardon on both the Cook Pioneer Hall Management Committee and the Mullumbimby Civic Hall Board of Management. The Cook Pioneer Hall Mullumbimby committee have asked for more members to assist with committee work.

Council advertised in Council Notices during January and February 2017 for new members of both the Cook Pioneer Hall Mullumbimby and the Senior Citizen's Hall Byron Bay. No expressions of interest were received for the Cook Pioneer Hall.

Management Recommendation:

That the Cook Pioneer Centre Mullumbimby continue to receive assistance to find new members for the Management Committee.

That Anthony Reardon be thanked for his work with the Cook Pioneer Centre Mullumbimby Committee and the Mullumbimby Civic Hall Board of Management.

Lone Goat Gallery Board of Management

Resignations have been received from Shelagh Pepper, Noel Hart and Jay Pearse.

Current members on this Board of Management are:

Councillors

Cr Jan Hackett
Cr Sarah Ndiaye (alternate)

Community Representatives:

Maureen Lightfoot (Treasurer)
Howard Sedgmen
Denise Napier
Faye Dorczak
Margaret White

Management Recommendation:

That Shelagh Pepper, Noel Hart and Jay Pearse be thanked for their work with the Lone Goat Gallery Board of Management.

Ocean Shores Community Centre Management Committee

Resignations have been received from Dianne Pymble-Ward and Helen Graveson.

Current members on this Management Committee are:

Councillors

Cr Jeannette Martin
Cr Cate Coorey (alternate)

Community Representatives:

Leigh Rees (Secretary)
Leah Kapral (Bookings)
Gail Fuller (Chair/ Treasurer)
Robyn Bolden

Management Recommendation:

That Dianne Pymble-Ward and Helen Graveson be thanked for their work with the Ocean Shores Community Centre Management Committee.

Senior Citizens Hall Byron Bay Management Committee

A nomination has been received from Christine Willmott. Details of nominee can be found in the confidential attachment.

Current members on this Management Committee are:

Councillors

Cr Sarah Ndiaye
Cr Cate Coorey (alternate)

Community Representatives:

Jim Beatson (Chair)
Jay Pearse (Vice Chair)
Nancy English (Secretary)
Alice Jervis (Treasurer)
Margaret Robertson (Bookings)
Cas Lloyd

Management Recommendation:

Due to this being a new committee, it is recommended that Christine Willmott be appointed to the Senior Citizens Hall Byron Bay Management Committee.

South Golden Beach Community Centre Management Committee

A resignation has been received from Michelle Clark and a nomination from Tony Horrigan. The committee would like more members to assist with committee work as another member of the committee has been called overseas on a family matter indefinitely.

Current members on this Management Committee are:

Councillors

Cr Basil Cameron
Cr Sarah Ndiaye (alternate)

Community Representatives:

Lotte Boer
Richard Willan (Bookings)
Zerina Millard (Chair)
Jennifer Parenteau
Gabrielle Ranaldi (Secretary)
Maureen Lightfoot (Treasurer)

Management Recommendation:

That Michelle Clark be thanked for her work on this committee over a number of years and that Tony Horrigan be appointed to the Committee.

Heritage House Bangalow Management Committee

- 5 Council is asked to note that staff are continuing to work with the Heritage House Bangalow Management Committee previous members to reactivate this committee or find other alternative management solutions.

Management Recommendation:

- 10 That Council note that work is continuing with the Heritage House Bangalow Management Committee previous members to reactivate this committee or find alternative management solutions.

Financial Implications

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

Statutory and Policy Compliance Implications

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

3.2 Committee Membership

- 25 *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.*

- 30 *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.*

- 35 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. 13.3 **National General Assembly of Local Government 2017**
Directorate: Corporate and Community Services
Report Author: David Royston-Jennings, Corporate Governance and Strategic Planning Officer
5 **File No:** I2017/409
Theme: Corporate Management
 Councillor Services

Summary:

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

The National General Assembly of Local Government will be held from 18 to 21 June 2017 in Canberra. The Call for Motions Discussion Paper requires that motions from Councillors are to be lodged with ALGA no later than 11.59pm on Friday 21 April 2017.




RECOMMENDATION:

1. That Council authorise the following Councillors to attend the 2017 National General Assembly of Local Government to be held at the National Convention Centre in Canberra from 18 to 21 June 2017:

Cr _____ and Cr _____

2. That Cr _____ will be the voting delegate.

Attachments:

- 1 Letter from the Australian Local Government Association Invitation to the mayor to attend the National General Assembly of Local Government , S2017/5394 
- 2 Letter from the Australian Local Government Association with 2017 National General Assembly Of Local Government - Call for Motions, S2017/2743 
- 3 Memo to Councillors - Call for motions for 2017 National General Assembly of Local Government, E2017/12238 

Report

Council has received the program and registration details for the National General Assembly of Local Government (NGA) to be held in Canberra from 18 to 21 June 2017 (attachment 2).

At its Ordinary Meeting on 23 March 2017, Council resolved as follows:

Council Resolution 17-064:

1. *That Council authorise two Councillors to attend the 2017 National General Assembly of Local Government to be held at the National Convention Centre in Canberra from 18 to 21 June 2017.*

2. *That the voting delegate be determined at the next Council Meeting.*

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

Submission A: That the ALGA invest in raising awareness of and appreciation for the extensive services provided by local government, including but not limited, producing audio and video productions for webcasting and other advertising and building a dedicated web platform with resources for community and local government, referring to Life, Well Run, an initiative, of the International City/County Management Association as a guide (see <http://lifewellrun.org/>).

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

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

Conference Motions

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

As motions to the NGA are to be received by ALGA no later than 11.59pm on Friday 21 April 2017 and must first be endorsed by Council prior to submission, a memo was provided to Councillors (Attachment 3) advising of the due dates for Notices of Motion to be submitted in time for this Agenda and for discussion at this meeting.

See Call for Motions below regarding information that must be included in a motion. Staff will submit any adopted motions to ALGA on behalf of a Councillor/s following the meeting of 20 April 2017.

Call for Motions

This year's theme is "Building Tomorrow's Communities". To be eligible for inclusion in the NGA Business Papers, and subsequent debate on the floor of the NGA, motions must meet the following criteria:

1. be relevant to the work of local government nationally
2. be consistent with the themes of the NGA
3. complement or build on the policy objectives of your state and territory local government association

4. be from a council which is a financial member of their state or territory local government association
5. propose a clear action and outcome
6. not be advanced on behalf of external third parties that may seek to use the NGA to apply pressure to Board members or to gain national political exposure for positions that are not directly relevant to the work of, or in the national interests of, local government.

To assist Councils in preparing motions, a Discussion Paper has been prepared and can be seen at Attachment 2 to this report.

Motions should be lodged electronically using the online form available on the NGA website at: www.alga.asn.au. All motions require, among other things, a contact officer, a clear national objective, a summary of the key arguments in support of the motion, and endorsement of your council. Motions should be received by ALGA no later than 11:59pm on Friday 21 April 2017, electronically in the prescribed format.

Conference Details

Where: National Convention Centre, Canberra, ACT
 Dates: Sunday 18 June to Wednesday 21 June 2017

| | | |
|----------------|--|-------------------|
| Costs: | | |
| (per delegate) | Registration Fee (early bird received by 5 May 2017) | \$929.00 |
| | Accommodation (approx) (4 nights) | \$1,000.00 |
| | Travel (approx.) | \$800.00 |
| | Total: | \$2,729.00 |

Financial Implications

Council has an allocation for conferences of \$19,300 within the 2016/17 budget (2145.004). There has been \$9,380 expended and committed as at 28 March 2017.

Statutory and Policy Compliance Implications

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

Report No. 13.4 **Council Investments March 2017**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2017/413
5 **Theme:** Corporate Management
 Financial Services

Summary:

10 This report includes a list of investments and identifies Council's overall cash position for the month of March 2017 for Council's information.

15 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 March 2017 be noted.

Report

In relation to the investment portfolio for the month of March 2017, Council has continued to maintain a diversified portfolio of investments. The average 90 day bank bill rate (BBSW) for the month of March 2017 was 1.80%. Council's performance to 31 March 2017 is 2.63%. Council's 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.

The table below identifies the investments held by Council as at 31 March 2017:

Schedule of Investments held as at 31 March 2017

| 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 |
| 24/03/17 | 1,000,000 | NAB SOCIAL BOND (GENDER EQUALITY) | N | AA- | 24/03/22 | B | 3.44% | 1,000,000.00 |
| 03/06/16 | 1,000,000 | WESTPAC CLIMATE BOND | N | AA- | 03/06/21 | FRN | 2.94% | 1,014,420.00 |
| 28/10/16 | 650,000 | TEACHERS MUTUAL BANK | N | BBB+ | 28/10/19 | FRN | 3.17% | 650,000.00 |
| 06/01/17 | 2,000,000 | NAB | P | AA- | 18/04/17 | TD | 2.63% | 2,000,000.00 |
| 12/01/17 | 2,000,000 | NAB | N | AA- | 12/04/17 | TD | 2.61% | 2,000,000.00 |
| 22/02/17 | 2,000,000 | NAB | N | AA- | 12/07/17 | TD | 2.56% | 2,000,000.00 |
| 02/12/16 | 2,000,000 | NAB | N | AA- | 07/04/17 | TD | 2.71% | 2,000,000.00 |
| 04/01/17 | 1,000,000 | NAB | N | AA- | 04/04/17 | TD | 2.64% | 1,000,000.00 |
| 05/12/16 | 2,000,000 | NAB | N | AA- | 03/04/17 | TD | 2.71% | 2,000,000.00 |
| 04/01/17 | 3,000,000 | ME BANK | P | BBB | 04/05/17 | TD | 2.75% | 3,000,000.00 |
| 06/03/17 | 2,000,000 | NAB | N | AA- | 30/08/17 | TD | 2.58% | 2,000,000.00 |
| 22/02/17 | 2,000,000 | NAB | N | AA- | 12/07/17 | TD | 2.57% | 2,000,000.00 |
| 28/11/16 | 2,000,000 | AMP BANK | P | A | 29/05/17 | TD | 2.70% | 2,000,000.00 |
| 03/01/17 | 2,000,000 | NAB | N | AA- | 03/04/17 | TD | 2.65% | 2,000,000.00 |
| 06/01/17 | 2,000,000 | BANK OF QUEENSLAND | P | A2 | 06/04/17 | TD | 2.50% | 2,000,000.00 |
| 01/02/17 | 2,000,000 | POLICE CREDIT UNION | P | NR | 02/08/17 | TD | 2.70% | 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 |
| 01/02/17 | 2,000,000 | BEYOND BANK | N | A2 | 10/05/17 | 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 |
| 08/03/17 | 2,000,000 | ME BANK | N | BBB | 08/08/17 | TD | 2.55% | 2,000,000.00 |
| 28/02/17 | 2,000,000 | BEYOND BANK | N | A2 | 21/06/17 | TD | 2.65% | 2,000,000.00 |
| 04/01/17 | 3,000,000 | BANK OF QUEENSLAND | N | A2 | 04/07/17 | TD | 2.75% | 3,000,000.00 |
| 04/01/17 | 1,000,000 | BANANACOST CU | P | NR | 04/07/17 | TD | 2.75% | 1,000,000.00 |
| 08/03/17 | 2,000,000 | NAB | N | AA- | 07/07/17 | TD | 2.56% | 2,000,000.00 |
| 16/03/17 | 2,000,000 | AMP BANK | N | A | 18/09/17 | TD | 2.75% | 2,000,000.00 |

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.4

| Purch Date | Principal (\$) | Description | CP* | Rating | Maturity Date | Type | Interest Rate Per Annum | Current Value |
|--------------|-------------------|---------------------------|-----|--------|---------------|------------|-------------------------|----------------------|
| 10/03/17 | 2,000,000 | NAB | N | AA- | 09/06/17 | TD | 2.52% | 2,000,000.00 |
| 27/01/17 | 2,000,000 | ME BANK | N | BBB | 27/04/17 | 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 |
| 04/01/17 | 2,000,000 | BEYOND BANK | N | A2 | 04/07/17 | TD | 2.75% | 2,000,000.00 |
| 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 |
| 16/12/16 | 1,000,000 | POLICE CREDIT UNION | N | NR | 05/07/17 | TD | 2.87% | 1,000,000.00 |
| 20/01/17 | 1,000,000 | AMP BANK | N | A | 19/7/17 | TD | 2.80% | 1,000,000.00 |
| 20/01/17 | 1,000,000 | BANK OF QUEENSLAND | N | A2 | 26/7/17 | TD | 2.80% | 1,000,000.00 |
| 03/02/17 | 1,000,000 | MYSTATE BANK | N | NR | 09/08/17 | TD | 2.75% | 1,000,000.00 |
| 14/02/17 | 2,000,000 | ME BANK | N | BBB | 17/05/17 | TD | 2.60% | 2,000,000.00 |
| 16/02/17 | 1,000,000 | BANK OF QUEENSLAND | N | A | 15/08/17 | TD | 2.70% | 1,000,000.00 |
| 21/02/17 | 1,000,000 | BEYOND BANK | N | A2 | 24/05/17 | TD | 2.65% | 1,000,000.00 |
| 01/03/17 | 1,000,000 | BANANACOST CU | N | NR | 06/09/17 | TD | 2.75% | 1,000,000.00 |
| 03/03/17 | 1,000,000 | BANANACOST CU | N | NR | 06/09/17 | TD | 2.75% | 1,000,000.00 |
| 03/03/17 | 2,000,000 | HOLIDAY COAST CU | N | NR | 13/06/17 | TD | 2.70% | 2,000,000.00 |
| 06/03/17 | 1,000,000 | THE CAPICORNIAN CU | P | NR | 23/08/17 | TD | 2.70% | 1,000,000.00 |
| 07/03/17 | 2,000,000 | BEYOND BANK | N | A2 | 19/07/17 | TD | 2.65% | 2,000,000.00 |
| 07/03/17 | 1,000,000 | REGIONAL AUSTRALIA BANK | P | NR | 28/06/17 | TD | 2.70% | 1,000,000.00 |
| 23/03/17 | 1,000,000 | POLICE CREDIT UNION | N | NR | 27/09/17 | TD | 2.80% | 1,000,000.00 |
| N/A | 651,081 | CBA BUSINESS ONLINE SAVER | N | A | N/A | CALL | 1.40% | 651,081.29 |
| Total | 76,301,081 | | | | | AVG | 2.63% | 76,335,501.29 |

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 | |
|------|--------------------|---|
| B | Bonds | Principal can vary based on valuation, interest payable via a fixed interest, payable each quarter. |
| 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.

Environmental and Socially Responsible Investing

During March 2017, Council purchased a \$1,000,000 Social Bond based on Gender Equality issued by the National Australia Bank. This investment has been classified as a "Gender Equality" Social Bond as it allows Council's investment to support the financing or re-financing of loans to organisations that are cited by the Workplace Gender Equality Agency (WGEA) as Employers of Choice for Gender Equality. In addition the ability of organisations to access the loan financing/refinancing are prohibited if their business activities are linked to alcohol, gambling, tobacco, military weapons, predatory lending, fossil fuels, palm oil, transport of live cattle and whaling. This is a fixed rate Bond which means the interest rate will remain constant for the life of this 5 year investment. This investment aligns with Council resolution **15-515**, and was purchased due to the purpose of the investment and its favourable rate of return.

For the month of March 2017, 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 improved by \$10,690 since February 2017, and is demonstrating a cumulative unrealised gain of \$34,420.

Dissection of Council Investment Portfolio as at 31 March 2017

| Principal Value (\$) | Investment Linked to:- | Current Market Value (\$) | Cumulative Unrealised Gain/(Loss) (\$) |
|----------------------|----------------------------------|---------------------------|--|
| 72,500,000.00 | Term Deposits | 72,500,000.00 | 0.00 |
| 1,650,000.00 | Floating Rate Note | 1,664,420.00 | 14,420.00 |
| 651,081.29 | Business On-Line Saver (At Call) | 651,081.29 | 0.00 |
| 1,500,000.00 | Bonds | 1,520,000.00 | 20,000.00 |
| 76,301,081.29 | | 76,335,501.29 | 34,420.00 |

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

The table below provides a reconciliation of investment purchases and maturities for the month of March 2017 on a current market value basis.

Movement in Investment Portfolio – 1 to 31 March 2017

| Item | Current Market Value (at end of month) \$ |
|--|---|
| Opening Balance at 28 February 2017 | 79,823,039.47 |
| Add: New Investments Purchased | 20,000,000.00 |
| Add: Call Account Additions | 0.00 |
| Add: Interest from Call Account | 1,771.82 |
| Less: Investments Matured | 22,500,000.00 |
| Less: Call Account Redemption | 1,000,000.00 |
| Add: Fair Value Movement for period | 10,690.00 |
| Closing Balance at 31 March 2017 | 76,335,501.29 |

Investments Maturities and Returns – 1 to 31 March 2017

| Principal Value (\$) | Description | Type | Maturity Date | Number of Days Invested | Interest Rate Per Annum | Interest Paid on Maturity \$ |
|-----------------------------|--------------------|-------------|----------------------|--------------------------------|--------------------------------|-------------------------------------|
| 2,000,000.00 | NAB | TD | 02/03/17 | 91 | 2.70% | 13,463.02 |
| 2,000,000.00 | NAB | TD | 03/03/17 | 119 | 2.73% | 17,801.10 |
| 2,000,000.00 | Bankwest | TD | 06/03/17 | 91 | 2.60% | 12,964.38 |
| 1,000,000.00 | NAB | TD | 06/03/17 | 119 | 2.74% | 8,933.16 |
| 2,000,000.00 | NAB | TD | 06/03/17 | 91 | 2.70% | 13,463.02 |
| 2,000,000.00 | ME Bank | TD | 08/03/17 | 90 | 2.65% | 13,068.49 |
| 2,000,000.00 | NAB | TD | 08/03/17 | 90 | 2.67% | 13,167.13 |
| 2,000,000.00 | NAB | TD | 10/03/17 | 98 | 2.70% | 14,498.64 |
| 2,000,000.00 | AMP Bank | TD | 16/03/17 | 210 | 2.95% | 33,945.21 |
| 2,000,000.00 | ME Bank | TD | 22/03/17 | 128 | 2.65% | 18,586.30 |
| 1,500,000.00 | ME Bank | TD | 22/03/17 | 125 | 2.75% | 14,126.71 |
| 2,000,000.00 | NAB | TD | 29/03/17 | 132 | 2.74% | 19,818.08 |
| 22,500,000.00 | | | | | | 193,835.24 |

- 5 The overall 'cash position' of Council is not only measured by what funds Council has invested but also by what funds Council has retained in its consolidated fund or bank account as well for operational purposes. In this regard, for the month of March 2017 the table below identifies the overall cash position of Council as follows:

10 **Dissection of Council Cash Position as at 31 March 2017**

| Item | Principal Value (\$) | Current Market Value (\$) | Cumulative Unrealised Gain/(Loss) (\$) |
|-----------------------------------|-----------------------------|----------------------------------|---|
| Investments Portfolio | | | |
| Term Deposits | 72,500,000.00 | 72,500,000.00 | 0.00 |
| Floating Rate Note | 1,650,000.00 | 1,664,420.00 | 14,420.00 |
| Business On-Line Saver (At Call) | 651,081.29 | 651,081.29 | 0.00 |
| Bonds | 1,500,000.00 | 1,520,000.00 | 20,000.00 |
| Total Investment Portfolio | 76,301,081.29 | 76,335,501.29 | 34,420.00 |
| | | | |
| Cash at Bank | | | |
| Consolidated Fund | 4,120,802.34 | 4,120,802.34 | 0.00 |
| Total Cash at Bank | 4,120,802.34 | 4,120,802.34 | 0.00 |
| | | | |
| Total Cash Position | 80,421,883.63 | 80,456,303.63 | 34,420.00 |

Financial Implications

- 15 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.

- 25 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. 13.5 **Landowners consent to Coastal Panel development applications for repair to existing rock protection at Belongil.**

Directorate: Corporate and Community Services

Report Author: Ralph James, Legal Services Coordinator

File No: I2017/435

Theme: Corporate Management
Governance Services

Summary:

Councillors have been provided with a previous staff report and have had the benefit of two workshops in relation to the granting of landowners consent to the lodgement of Development Applications for the repair of rock protection at Belongil.

The grant of land owners consent requires consideration against the background of the resolution of the long-running proceedings against Council brought by a number of Belongil landowners, some of whom are the applicant's for consent to repair existing rock protection.

The giving of owner's consent to a development application does not impinge upon Council's statutory obligation to assess the application under the provisions of the Environmental Planning and Assessment Act 1979. The giving of its consent as owner of the land only has one purpose which is to enable it to lawfully determine and dispose of the development application in accordance with the provisions of the EPA Act.

Council does not have the power of a private land holder arbitrarily to withhold consent. If Council does nothing, or refuses to grant consent, the Court may exercise all the powers of Council on appeal including the power to consent to the lodgement of the application.

RECOMMENDATION:

1. That Council note that:

- a) **the giving of land owner's consent to a development application does not impinge upon a consent authority's statutory obligation to assess the application under the provisions of applicable legislation.**
- b) **the giving of landowner consent has one purpose which is to enable the consent authority to lawfully determine and dispose of the development application in accordance with the provisions of applicable legislation.**

2. That Council give landowners consent to lodge Development Applications to the Coastal Panel for repair of existing coastal protection works at, on or adjacent (as the case may be) to the properties:

**28 and 28A Childe Street Byron Bay
44 Childe Street Byron Bay
48 Childe Street Byron Bay
Unit 1, 1 Don Street Byron Bay
Unit 2, 1 Don Street Byron Bay
1A Don Street Byron Bay
6B Childe Street Byron Bay**

Report

Councillors have been provided with a staff report and have had the benefit of a workshop in relation to the granting of landowners consent to the lodgement of Development Applications for the repair of rock protection at Belongil.

On 23 February 2017 Council resolved:

1. *That Council defer consideration of granting owners consent to lodge Development Applications for repair of existing coastal protection works at, on or adjacent to the properties:*

- 28 and 28A Childe Street Byron Bay
- 44 Childe Street Byron Bay
- 48 Childe Street Byron Bay
- Unit 1, 1 Don Street Byron Bay
- Unit 2, 1 Don Street Byron Bay
- 1A Don Street Byron Bay
- 6B Childe Street Byron Bay

until such time as Council has had the opportunity to consider each Development Application in order to appreciate the precise location, extent and nature of the proposed repair works.

2. *That Council's consideration of granting owners consent to lodge Development Applications for repair of existing coastal protection works occur within 1 month of copies of the Development Applications relating to all of the above properties having been received by Council.*
3. *That the applications for owners consent to lodge Development Applications for repair of existing coastal protection works be reported to Council at its first ordinary meeting after the expiry of the period in 2 above.*

At the workshop held on 9 March 2017 Councillors were advised that staff had contacted the Coastal Panel seeking an extension of time to enable Council to make a submission and that the Coastal Panel had indicated that an extension would be granted after it (the Coastal Panel) had received additional information it had requested from the applicants.

On 20 March 2017 the Coastal Panel advised as follows:

The purpose of this letter is to inform you that the additional information as requested by the Coastal Panel in relation to each of the applications has now been received.....

The Coastal Panel is now seeking a response from Council concerning matters as outlined in our letter dated 17 February 2017. This includes confirmation (or otherwise) of landowner consent; comment in relation to any of the development applications; and a separate response addressing integrated development at Nos 28 and 28A Childe Street (CP17-004). This response is respectfully requested by 7 April 2017.

Following discussion at the workshop on 6 April 2017 staff wrote to the Coastal Panel seeking an extension in respect of the question of land owner consent to 21 April 2017.

Both the giving of land owners consent and matters to be included in any Council submission as to the individual applications require consideration against the background of the resolution of the

long-running proceedings against Council brought by a number of Belongil landowners, some of whom are the applicant's for consent to repair existing rock protection.

Order 1 of 12 August 2016

5 This Order provides an injunction preventing Council from taking steps to remove the current protective works as they currently exist. This order essentially preserves the status quo. That is, the existing protective works relevant to each landowner, which are defined by reference to an annotated aerial photo, are allowed to stay in place. These works are defined in the orders as the
10 "Current Protection".

The settlement did not give the Plaintiffs any permission to build any new works, or to repair or replace the Current Protection. If the Current Protection is damaged or destroyed, or washed away, the Plaintiffs must follow the usual process to seek approval from the relevant consent
15 authority, and the applicable landowner, for permission to rebuild, repair or replace the works. Council did not give any promises in this regard (but in relation to Council's role as landowner, see comments in relation to order 2).

The settlement contemplated that the Plaintiffs may wish to apply for planning permission to carry out repairs. This opportunity was available to the Plaintiffs regardless of the proceedings and no dispensations were granted to the Plaintiffs in this regard. If the Plaintiffs obtain the necessary approval to repair the current protection and commence those repairs within a specified period of time (12 months after obtaining all necessary consents, which consents must be applied for within
20 12 months of the settlement orders), then the repaired works are also covered by agreement that
25 Council cannot require them to be removed.

The properties relevant to the development application is before the Coastal Panel are:

11 and 12: Unit 1, 1 Don Street, Byron Bay

The Eleventh and Twelfth Plaintiffs (Simon and Lisa Clowes) - Lot 2 of Strata Plan 65430.

30 **3: 1A Don Street, Byron Bay**

The Third Plaintiff (Ralph Lauren Pty Ltd) – Lot 2 in Section 2 of Deposited Plan 1623.

1 and 2: Unit 2, 1 Don Street, Byron Bay

The First Plaintiff (Ralph Lauren 57 Pty Ltd) and the Second Plaintiff (PJ George Investments Pty Ltd) - Lot 1 in Strata Plan 65430.

35 **4: 48 Childe Street and 44 Childe Street Byron Bay**

The Fourth Plaintiff (Robert Watson) - Lots 18, 19, 20, 59, 60 and 61 in Section 2 of Deposited Plan 1623, and Lots 21, 22, 23, and 57 in Section 2 of Deposited Plan 1623.

5: Childe Street, Byron Bay

40 The Fifth Plaintiff (Immer Pty Ltd) - Lots 32 – 36 Section 2 of Deposited Plan 1623.

9: 6B Childe Street, Byron Bay

The Ninth Plaintiff (Stewartville Pty Limited) - Lots 32 and 33 in Section 3 of Deposited Plan 1623.

Order 2 of 12 August 2016

5 The Court NOTES that should landowners consent and access be required from the First Defendant for works under Paragraph 1(b), that consent and access will not be unreasonably withheld.

10 This is not a promise to approve any substantive application – it merely relates to landowner's consent to the making of an application, which is a requirement of the EP&A Act. The withholding of owners' consent by Council is something that the Land and Environment Court can, and regularly does, overturn, pursuant to power conferred by s39(2) of the *Land and Environment Court Act*.

15 The order also notes that Council will not unreasonably withhold access to its land for the purposes of the Claimants carrying out any approved works. Council may still withhold access if it has a reasonable basis to do so – for example, if the carrying out of the proposed works would unreasonably interfere with public access or give rise to safety concerns.

20 The concept of access not being unreasonably refused is based upon provisions in the *Coastal Protection Act* which provide that a public authority must not unreasonably refuse a person access to public land to enable the person to lawfully place temporary coastal protection works on the land.

25 The cases of *Sydney CC v IPHO* 149 LGERA 329 and *Sydney City Council v Claude Neon Ltd* 67 LGRA 187 are relevant in the following respects.

30 The giving of landowner's consent to the lodgement of a development application by a Council does not impinge upon or affect the statutory obligation imposed on the Council to assess the merits of the development application under the provisions of the *Environmental Planning and Assessment Act 1979*. The giving of owner's consent to the lodgement of an application is not the same as giving development consent to the application. Whether a person can lawfully carry out development on land depends upon both (1) considerations associated with title to the land and (2) considerations associated with questions of environmental planning (per Hodges JA in *Sydney CC v IPOH* [2006] NSWCA 300 at 2).

35 When the owner of land is the consent authority itself, the giving or withholding of consent to the making of an application is not something that determines the applicant's right, as a matter of title, to carry out the development. All the giving of consent does is to permit the application to go forwards so that the consent authority can assess it on the criteria set out in s 79C of the Act
40 (*Sydney CC v IPHO* at 6).

45 However, the case of *Sydney CC v IPOH* confirms that where the land the subject of the application is owned by the Council from whose decision the appeal is brought, its function in giving consent to the making of the application is an aspect of the power to grant or refuse development consent to the application. In other words, the giving of its consent as owner of the land only has one purpose which is to enable it to lawfully determine and dispose of the development application in accordance with the provisions of the EPA Act (per Tobias JA at 34). It is also open to the Council to give its consent to the making of a development application by giving development consent to the application (at 48).

50 In the case of *Sydney City Council v Claude Neon Ltd* the Court of Appeal held that where a development application was made to Council for consent to the erection of a structure which projected over a public road, the council as the owner of the road was empowered to give its consent to the making of the application. If it did not do so and the Applicant for consent appealed
55 to the Land and Environment Court against the refusal of its development application then the

court was empowered to give consent to the making of the application. *Sydney City Council v IPOH* confirmed that the principles in *Claude Neon* extended not only to public roads but also to other public land owned by Council.

In the case of *Shellharbour Municipal Council v Rovili Pty Ltd* (1989) 16 NSWLR 104, (referred to in *Sydney v IPOH*) Clarke JA said as follows (in relation to the submission that the Council's power to give consent to the making of a development application was not a function conferred or imposed by a planning and environmental law and the right to give or decline such consent was, it was argued, incidental to the council's ownership of the land comprising the road and as to be treated no differently that the right of an owner of private land to withhold consent):

"If the appellant was a private person then that submission would undoubtedly be correct. It is hard to conceive a situation in which a court could require an adjoining landowner to give consent under s 77(1)(b). But that is not this case.

*As Hope JA pointed out in Claude Neon, the council does not have the power of a private land holder arbitrarily to withhold consent. **Nor would it be a proper exercise of its power to decline consent simply "because it wished to frustrate the right of the adjoining owner to obtain approval for the erection of the structure".*** (emphasis added)

The council is placed in a special situation where an application is made to it for development approval for the erection of a structure partly on its road. The fact that it has not given its consent to the making of the application does not, as Claude Neon established, debar its consideration of the merits of the application.

Furthermore, if it simply does nothing the applicant may appeal to the court which has all the powers of the council including the power to consent to the lodgement of the application.

If this be correct then the power to grant the consent to the making of the application should be seen as an incident of the power to grant or refuse the application and the exercise of that power should be understood as falling within s 20(2)(b) of the Court Act."

Having regard to the decisions, and applying them to present circumstances:

1. the giving of landowner consent has one purpose which is to enable the consent authority to lawfully determine and dispose of the development application in accordance with the provisions of applicable legislation.
2. the giving of land owner's consent to a development application does not impinge upon a consent authority's statutory obligation to assess the application under the provisions of applicable legislation.
3. Council does not have the power of a private land holder arbitrarily to withhold consent. If the Council does nothing, the Court may exercise all the powers of the Council on appeal including the power to consent to the lodgement of the application.

The applicants have also sought landowners consent from the Department of Industry-Lands.

Financial Implications

Council could be exposed to its own legal costs and adverse legal costs in any proceedings in the Land and Environment Court or the Supreme Court should Council be found to have unreasonably refused landowners consent.

Statutory and Policy Compliance Implications

Unreasonable refusal of landowners consent could result in appeal proceedings to the Land and Environment Court or the relisting of proceedings in the Supreme Court.

5

Report No. 13.6 **Integrated Planning and Reporting - Public Exhibition 2017**
Directorate: Corporate and Community Services
Report Author: Mila Jones, Corporate Governance Coordinator
File No: I2017/436
Theme: Corporate Management
 Governance Services

Summary:

At its Ordinary Meeting on 27 October 2016, Council confirmed its endorsement of the Community Strategic Plan (CSP) and a review of the Delivery Program for 2017-2021 and Operational Plan for 2017-2018. Council has subsequently developed a draft Delivery Program 2017-2021 and Operational Plan 2017-2018. Minor revisions to the CSP have also been necessary to allow for an update of its links to the latest State and regional plans as well as inserts relating to disability inclusion action planning which is in accordance with the NSW Disability Inclusion Act 2014.

In accordance with the Local Government Act, the Draft Delivery Program and Operational Plan must be exhibited for 28 days. Prior to the adoption of Draft Delivery Program and Operational Plan, Council must consider any submissions received during the exhibition period.

This report has been prepared to allow Council to amend or alter the Activities contained in the Operational Plan 2017-2018 section, prior to the document being placed on public exhibition, and to provide Councillors with the proposed public exhibition activities.




The Operational Plan must include a statement of the Council's Revenue Policy for the 2017-2018 financial period. The Revenue Policy which includes the draft 2017/2018 Budget, Rates and Charges and Fees and Charges is the subject of a separate report to this meeting.

Council's Resourcing Strategy has not been included in this report and is not required to be placed on public exhibition. Council reviewed and adopted the current Strategic Asset Management Plan and Long Term Financial Plans during the Special Rate Variation process in February 2017.

RECOMMENDATION:

1. **That the following draft Integrated Planning and Reporting documents be placed on public exhibition for a period of 28 days:**
 - a) **Community Strategic Plan 2017-2027**
 - b) **Delivery Program 2017-2021 and Operational Plan 2017-2018**
2. **That, should there be no submissions received, the documents be adopted, however if submissions are received, a further report will be brought to Council on 22 June 2017 reporting on the submissions and a revised set of documents where necessary.**

Attachments:

- 1 DRAFT Community Strategic Plan 2027, E2017/24915 
- 2 Draft Delivery Program 2017-2021 and Operational Plan 2017-2018, E2017/24954 
- 3 Community Strategic Plan Internal Consultation - Consultant Report 2017, E2017/23607 

Report

In accordance with the Local Government Act 1993, Council is required to review its Integrated Planning and Reporting (IP&R) documentation within nine months of a council election (ie by 30 June 2017). Council is also required by the NSW Disability Inclusion Act 2014 to undertake disability inclusion action planning by 1 July 2017. Council has identified that it will include the disability inclusion action planning process through the IP&R framework as opposed to developing a stand-alone Disability Inclusion Action Plan (DIAP).

At its Ordinary Meeting on 27 October 2016, Council resolved (**16-550**):

1. *That Council:*

- a) *re-adopt the existing CSP 2022 with no changes, allowing for the endorsement of a review to take place in the next financial year 2017-2018 which will include the Disability Inclusion Act requirements per b) below; and*
- b) *update the Delivery Program for the new term of Council by 30 June 2017 and include Disability Inclusion Act requirements.*

2. *That Council endorse the existing themes based on social, environmental, economic and civic leadership issues as prescribed by the IP&R Framework Guidelines.*

Although it was resolved at point 1 to re-adopt the existing CSP, minor revisions have been required to update its links to the latest State and regional plans. Minor inserts relating to disability inclusion action planning were also required in order to comply with the Disability Inclusion Act 2014 by 1 July 2017. The CSP with minor amendments is attached to this Report at Attachment 1.

A full review of our CSP will be undertaken in the new financial year, and the process will include a comprehensive engagement strategy.

A spreadsheet containing draft Delivery Program Actions (and Operational Plan Activities) was distributed on 14 March 2017 to Councillors for comment and two workshops were held on 21 March and 6 April to receive any further input into the Delivery Program Actions. This report has been prepared to allow Council to review and to make any amendments, additions and/or deletions to the Operational Plan Activities prior to the draft Delivery Program 2017-2021 and Operational Plan 2017-2018 being placed on public exhibition.

Any amendment, addition and/or deletion of an Activity in the draft Operational Plan is likely to have an impact on the draft 2017-2018 Budget, and therefore, potentially on the financial position of Council.

The draft Delivery Program Actions and Operational Plan Activities are included in the draft Delivery Program 2017-2021 and Operational Plan 2017-2018 attached to this Report at Attachment 2.

At the workshop on 6 April with Councillors, some amendments to Delivery Program Actions were identified. The bulk of the amendments have been included in the draft document. The following amendments were not able to be added in time for the production of this Agenda however will be investigated for inclusion prior to public exhibition:

1. Society and Culture Action SC3.2.1 Support Aboriginal cultural vibrancy within the Shire – Consider alternate wording for “vibrancy”.
2. Environment Action EN2.1.2 Establish planning for and provision of inclusive and accessible housing that can meet the needs of our community – Consider alternate wording “Implement

innovative mechanisms for planning and provision of housing that meets the needs of our community.” The terms “inclusive” and “accessible” to be carried through to Activities

- 5 3. Environment Strategy EN3.1 – Include “Develop and implement a framework to support achieving zero net emissions”
4. Environment Action EN3.1.2 Support inclusive community environmental and sustainability projects - Check supporting community projects
- 10 5. Community Infrastructure Action CI2.2.1 Provide waste and resource recovery services – Add public private partnerships to total waste stream. Refer to partnerships and collaboration for efficiency for what we don’t currently provide
- 15 6. Community Infrastructure Action CI2.4.1 Provide and facilitate local emergency management – This Action to be separated into two actions (1 Disaster Plan and 2 Business and Operational); add wording to the Activities “Develop robust systems to develop ...”, “Enhance communication to community during Natural Disasters”; strong communication protocol; strong facilitation to liaise with community groups; sub-contractors and staff levels
- 20 7. Community Infrastructure Action CI2.5.1 Participate in regional waste management programs and initiatives – Consider moving this Action to the procurement Action within the Corporate Management theme

25 The Revenue Policy, which is to be included in the Operational Plan 2017-2018 includes details of the proposed Rates and Charges for 2017/18, the draft 2017/18 Fees and Charges and draft 2017/18 Budget. This information is currently included in the report to this Council Meeting titled Public Exhibition – Draft 2017/2018 Statement of Revenue Policy. It will be incorporated into the Delivery Program and Operational Plan once resolved by Council.

30 It is proposed that all these documents will be placed on public exhibition in April to enable submissions to be received, and for these submissions to be considered and reported back to Council, prior to 30 June 2017 deadline for the adoption of these documents by Council.

Disability Inclusion Action Planning

35 Council’s Disability Inclusion Action Planning (DIAP), required by the *Disability Inclusion Act (2014)*, has been incorporated into the Community Strategic Plan, Delivery Program and Operational Plan. Our consultants undertook extensive consultation with the DIAP Internal Steering Group (a cross section of Council staff), Council’s Access Consultative Working Group and community (including individual community members with lived experience of disability) to identify and prioritise actions and activities. The DIAP process also included internal mapping of Council’s current documentation and processes and risk analysis to prioritise implementation.

45 The following table provides a checklist of the mandatory requirements under DIA legislation for councils.

Legislative requirements

Have people with disability been consulted in the disability inclusion action planning process?

Are there strategies and actions to provide access to buildings, events and facilities?

Are there strategies and actions to provide access to information?

Are there strategies and actions to support employment of people with disability?

Legislative requirements

Are there strategies and actions to encourage and create opportunities for people with disability to access the full range of services and activities available in the community?

Have you provided a report on your disability inclusion action planning consultation with people with disability to the Disability Council NSW?

Do actions and strategies support the goals of the NSW Disability Inclusion Act?

Has a copy of the disability inclusion action planning documentation been given to the Disability Council NSW?

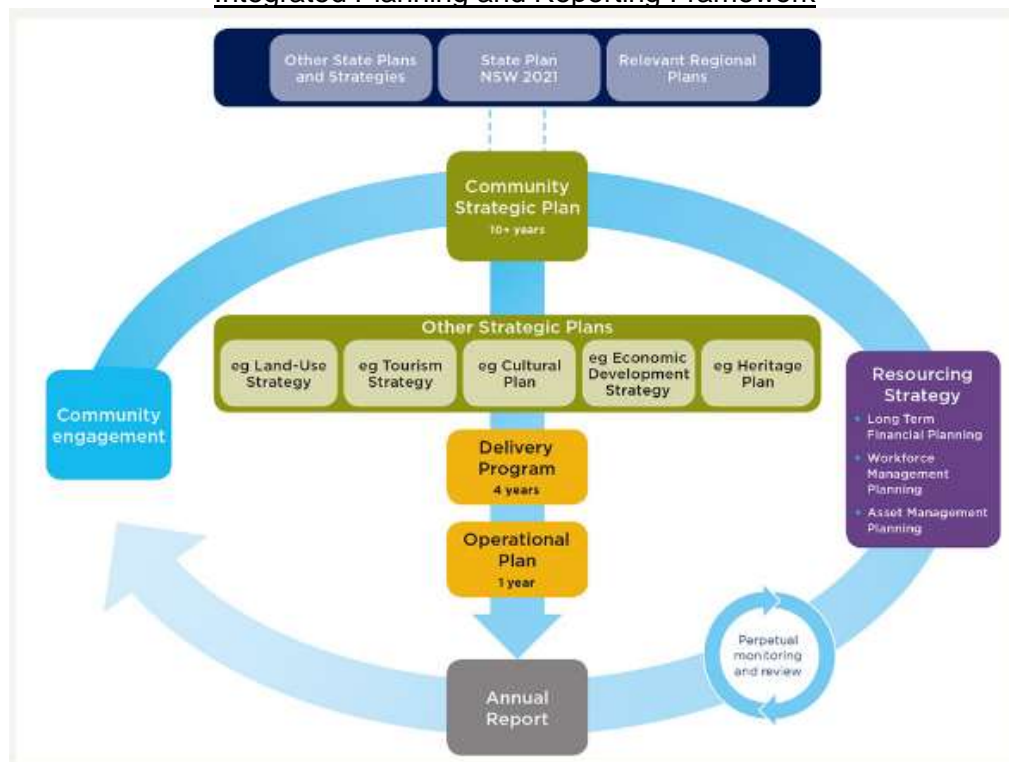
Is the disability inclusion action planning documentation publicly available?

Integrated Planning and Reporting Requirements

The draft Delivery Program 2017-2021 and Operational Plan 2017-2018:

- 5 1. Comprises the statutorily required 4 year Delivery Program ie the actions that Council proposes to progress over the next 4 years intended to meet the 10 year strategies of the Community Strategic Plan.
- 10 2. Includes the statutorily required annual Operational Plan ie the activities that Council proposes to progress in the next year intended to deliver the actions of the Delivery Program.
- 15 3. Is a combined document as this is permitted, it reduces the number of documents, provides better line of sight between our long, medium and short term goals, and it is also a format which has already been commonly used by many other councils (and accepted by the Office of Local Government).
- 20 4. Has been prepared bringing forward items from the current Delivery Program, adopted Plans and Strategies and resolutions where they are consistent with the draft budget and available funding.
5. Has been prepared based on the draft budget (and should changes be made to the draft budget in turn could affect the funding sources for Actions).
- 25 The Actions in the Delivery Program flow from the Community Strategic Plan and in turn, the Operational Plan Activities must flow from the Actions in the Delivery Program. Further, it is a requirement that the Actions and Activities must be able to be traced sideways through the Resourcing Strategy (ie Long Term Financial Plan, Asset Management Plan and Workforce Strategy) and the annual Budget. That is, the whole suite of documents are required to be, and
- 30 are, integrally linked and changes to one, eg the budget, will most likely result in a need for changes to be made to the others.

Integrated Planning and Reporting Framework



OLG Integrated Planning and Reporting Manual for local government in NSW: Example of cascading levels of details



Key Milestones

- 5 The following key milestones have been completed or are due for completion in the near future:

| Key Milestones | Action Owner | Completion |
|---|---|----------------------|
| Phase 1 - Commencement | | |
| 1. Report to ET on CSP Review options for reporting to Councillors | Executive Team | 12 Oct 2016 |
| 2. Present the proposed review process to Councillors at a Strategic Planning Workshop | Corporate Governance | 20 Oct 2016 |
| 3. Report to Council to endorse or amend the CSP themes and the option for the review of CSP | Corporate Governance Community Development | 27 Oct 2016 |
| Phase 2 – Exhibition and Consultation | | |
| 4. DIAP consultation and engagement including community members with disability, Access Consultative Working Group, and disability service providers | Consultants Community Development | Dec 2016 to Feb 2017 |
| 5. Complete internal consultation sessions with internal steering group, directors, managers and coordinators with focus on both disability inclusion and CSP | Consultants Community Development, Corporate Governance | Dec 2016 to Mar 2017 |
| 6. Identify with relevant staff, the key findings from DIAP community consultation, for inclusion in the Delivery | Community Development, Corporate Governance | Mar 2017 |

| | | |
|---------------------------------|---|---|
| Program and CSP where necessary | | |
| 7. | Report to ET to review draft Delivery Program Actions and Operational Plan Activities | Corporate Governance Community Development Mar 2017 |
| 8. | Workshops held with Councillors for input into Delivery Program Actions | Consultant, Community Development, Corporate Governance 21 Mar and 6 Apr 2017 |
| 9. | Report to Council the Draft CSP (with minor changes based on DIAP legislation and updated state and regional plans), Delivery Program and Operational Plan for endorsement to publicly exhibit. | Corporate Governance 20 Apr 2017 |
| 10. | Publicly exhibit the Draft CSP, Delivery Program and Operational Plan and refer to regional and state agencies | Corporate Governance 21 Apr – 18 May 2017 |
| Phase 3 – Evaluation | | |
| 11. | Review of feedback from public exhibition | Corporate Governance Community Development End May 2017 |
| 12. | Report to Council on submissions and subsequent revisions of the CSP, Delivery Program and Operational Plan | Corporate Governance 22 Jun |

Engagement

Already held:

- 5 Section 12 of the Disability Inclusion Act 2014 requires that people with disability must be consulted as part of the disability inclusion action planning (DIAP) process. This engagement was undertaken by Council's consultants, Tim Childs Consulting and Training. Key documents were developed to enable consistent messaging with any external DIAP consultation. A cohort of
- 10 people with disability was also consulted to gather input from their experience and develop ideas for possible inclusion solutions. This built upon consultation with the Access Consultative Working Group and local disability service providers as well as DIAP survey results that were gathered earlier in 2016. Further details on DIAP engagement can be seen at Attachment 3.
- 15 DIAP consultation also included Council's Internal Steering Group which had representatives from each area of Council. The group included two Directors as process champions. The goal of this group was to develop access and inclusion strategies across the breadth of the organisation.

Further consultation (other than DIAP specific) to-date has included:

- 20
- Executive Team meetings
 - Councillors' workshops on 21 March and 6 April 2017 for Councillors to provide input in the Delivery Program Actions for 2017-2021
 - Two all staff workshops for input into Council's future CSP
- 25
- Engagement processes in the recent past, eg Council has recently engaged with a community satisfaction survey, asset management survey, Coastal Zone Management and Safer Community Compact, asset survey, SRV survey and information stands.

To be held:

- 30
- During the public exhibition phase the draft CSP, draft Delivery Program 2017-2021 and Operational Plan 2017-2018 (including Revenue Policy, budget, and fees and charges) will be placed on exhibition from 21 April to 18 May 2017. Any submissions received by Council will be reported to the Ordinary Meeting on 22 June 2017 to consider the submissions prior to adoption of
- 35 the documents.

The exhibited documents will be supported by a summary document that includes key activities that Council will undertake in the 2017-2018 period. Promotional tasks, such as advertisements and information stands will be used to raise awareness and encourage submissions on the public exhibition of the Draft Delivery Program and Operational Plan.

Key highlights from the Operational Plan 2017-2018

The following projects are key highlights from the Operational Plan 2017-2018 and listed under the themes of the CSP:

Corporate Management:

- Develop an inclusive Customer Service Strategy with Action Plan
- Facilitate annual Community Donations Program
- Implement the Sustainable Procurement Plan, including social procurement objectives
- Develop and implement risk management framework
- Develop and implement Business Continuity Plan/Disaster Recovery Plan
- Undertake community wellbeing project
- Review the Community Strategic Plan for currency and to identify gaps
- Develop and launch new website with increased residential and ratepayer opportunities to conduct business and engage

Economy:

- Continue to strengthen partnerships between Council and the business community
- Implement Social Innovation Action Plan
- Develop, initiate and pilot Youth Innovation Strategy
- Continue to implement Byron Shire Tourism Management Plan

Society and Culture:

- Implement identified access and inclusion strategies from Byron Shire Recreational Needs Assessment
- Develop and manage service level agreement with Richmond Tweed Regional Library
- Support the Safe Summer in the Bay initiative
- Continue to monitor, inspect, enforce and investigate complaints in relation to community safety and the environment
- Continue to monitor, inspect, enforce and investigate complaints in relation to public and environmental health
- Continue to implement Byron Bay Town Centre Masterplan
- Implement public art program
- Develop Mullumbimby Place Activation Masterplan
- Develop Bangalow Place Activation Masterplan
- Develop Cultural and linguistically diverse (CALD) network and activity directory
- Implement efficiency programs in Child Services
- Initiate and develop service mapping in the Shire
- Deliver outcomes from the Arakwal Memorandum of Understanding
- Support cultural restoration processes in the Bundjalung community
- Provide accessible training, inclusive support and capacity building to Council volunteer Committees (s355)

Environment:

- Prepare a Shire Wide Integrated Weed Management Strategy
- Prepare a Shire wide Plan/Strategy to improve the resilience of koala population
- 5 • Finalise Residential Lands Strategy
- Finalise Rural Land Use Strategy
- Scope and implement a comprehensive Employment Lands Strategy
- Finalise and implement Coastal Zone Management Plan Byron Bay Embayment
- Scope and prepare a comprehensive Development Control Plan (DCP) review
- 10 • Scope and prepare Byron Town Centre Local Environmental Plan (LEP) and Development Control Plan (DCP) review
- Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock

15 Community Infrastructure:

- Plan and deliver prioritized Pedestrian and Access Mobility (PAMP) facilities
- Prepare an Integrated Transport and Movement Plan (ITMP)
- Update key road traffic plans to manage future traffic demands.
- 20 • Finalise report on review intermodal use of the Byron Rail Corridor
- Implement Parking Management Strategies for Bangalow, Belongil, Mullumbimby and Brunswick Heads, incorporating accessible parking requirements based on community need (which may exceed legislative requirements).
- Investigate use of Byron Arts and Industry Park stormwater infrastructure to deliver improved social, environmental and integrated water management opportunities
- 25 • Implementation of approved and funded capital asset renewal projects including Special Rate Variation projects
- Implement replacement of high priority road bridges across the Shire
- Ocean Shore Community Centre Upgrade - Scope of Works confirmed and draft project plan completed
- 30 • Commence construction of the Byron Bay Bypass works
- Finalise Construction of the Sunrise/Ewingsdale Road Roundabout
- Finalise construction of the Bayshore Drive/Ewingsdale Road Roundabout
- Byron Rail Corridor activation project commenced

35

Financial Implications

- The draft Delivery Program 2017-2021 and Operational Plan 2017-2018 has been developed in house within existing resources. Consultant fees for the purpose of DIAP activities have been
- 40 budgeted for in the 2016-2017 budget. There will be costs of about \$3,100 associated with exhibition of these documents.

Statutory and Policy Compliance Implications

- 45 Councils are required to prepare a Community Strategic Plan and associated documents under the Integrated Planning and Reporting Framework. This is regulated by the Local Government Act 1993 and in compliance with the Integrated Planning and Reporting Guidelines.

Under the Disability Inclusion Act 2014, Council must have disability inclusion action planning in place by 1 July 2017. This planning must align with our IP&R framework and will be embedded directly into our documents.

Report No. 13.7 **Public Exhibition - Draft 2017/2018 Statement of Revenue Policy**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2017/459
Theme: Corporate Management
 Financial Services

Summary:

The preparation of Council's annual Operational Plan, including Statement of Revenue Policy (comprised of Budget Estimates, Rates and Charges, Borrowings and Fees and Charges) is regulated under the Integrated Planning and Reporting Framework requirements legislated by the Local Government Act 1993 (Sections 402 to 406). Management, in consultation with the elected Council, have developed the 2017/2018 Statement of Revenue Policy comprised of Budget Estimates, Rates and Charges, Borrowings and Fees and Charges.









The information in this report is directly linked to and supports the report also included in the agenda to this Ordinary Meeting of Council concerning the Integrated Planning and Reporting documents relating to the review of the Community Strategic Plan 2017-2027, Delivery Plan 2017-2021 and Operational Plan 2017-2018.

This report recommends placing these documents, subject to any amendments, on public exhibition for not less than 28 days.

RECOMMENDATION:

1. **That Council adopt for exhibition the Draft 2017/2018 Statement of Revenue Policy, comprising Budget Estimates, Rates and Charges, Borrowings and Fees and Charges.**
2. **That the Draft 2017/2018 Statement of Revenue Policy, comprising of the Budget Estimates, Rates and Charges, Borrowings and Fees and Charges be placed on public exhibition for a period of 28 Days.**

Attachments:

- 1 Draft 2017-2018 Budget Estimates (Detailed), E2017/22841  
- 2 Draft 2017-2018 Budget Summary Statements and Reserves, E2017/22852  
- 3 Draft 2017-2018 Revenue Policy, E2017/23434  
- 4 Draft 2017-2018 Fees and Charges, E2017/24210  

Report

The preparation of Council's annual Operational Plan, including the Statement of Revenue Policy (comprised of Budget Estimates, Rates and Charges, Borrowings and Fees and Charges) is regulated under the Integrated Planning and Reporting Framework requirements legislated by the Local Government Act 1993 (Sections 402 to 406). Management, in consultation with the elected Council, have developed the 2017/2018 Statement of Revenue Policy comprised of Budget Estimates, Rates and Charges, Borrowings and Fees and Charges.

The information in this report is directly linked to and supports the report also included in the agenda to this Ordinary Meeting of Council concerning the Integrated Planning and Reporting documents relating to the review of the Community Strategic Plan 2017-2027, Delivery Plan 2017-2021 and Operational Plan 2017-2018.

This report recommends placing these documents, subject to any amendments, on public exhibition for not less than 28 days.

Draft 2017-2018 Budget Estimates

The Draft 2017/2018 Budget Estimates are based on the 2016/2017 budget reviewed at 31 December 2016 with various changes to reflect the updated cost of service delivery across all programs developed from the input received from each Council Directorate.

The Draft 2017/2018 Budget Result on a Consolidated (All Funds) basis forecast a surplus budget result with the details of that result being included below at Table 1.

Table 1 – Forecast Budget Result 2017/2018 Consolidated (All Funds)

| Item | Amount \$ |
|--|--------------------|
| Operating Result | |
| Operating Revenue | 75,503,500 |
| Less: Operating Expenditure | 74,873,600 |
| Operating Result – Surplus/(Deficit) | 629,900 |
| Funding Result | |
| Operating Result – Surplus/ (Deficit) | 629,900 |
| Add: Non cash expenses – Depreciation | 13,175,500 |
| Add: Capital Grants and Contributions | 24,867,700 |
| Add: Loan Funds Used | 2,160,000 |
| Add: Asset Sales | 0 |
| Less: Capital Works | (44,685,100) |
| Less: Loan Principal Repayments | (2,639,800) |
| Funding Result – Surplus/(Deficit) (Cash Movement) | (6,491,800) |
| Reserves Movement – Increase/(Decrease) | (6,541,800) |
| Overall Budget Result – Surplus/(Deficit) (Operating + Funding) | 50,000 |

The above budget result in Table 1 is assuming the Council's application for a Special Rate Variation(SRV) of 7.50% including rate pegging of 1.50% is approved by the Independent Pricing and Regulatory Tribunal (IPART). If Council's SRV is not approved, the Draft 2017/2018 Budget Result on a Consolidated (All Funds) basis still forecasts a surplus budget result with the details of that result being included below at Table 2.

Table 2 – Forecast Budget Result 2017/2018 Consolidated (All Funds)

| Item | Amount \$ |
|--|--------------------|
| Operating Result | |
| Operating Revenue | 74,318,500 |
| Less: Operating Expenditure | 74,770,100 |
| Operating Result – Surplus/(Deficit) | (451,600) |
| Funding Result | |
| Operating Result – Surplus/ (Deficit) | (451,600) |
| Add: Non cash expenses – Depreciation | 13,175,500 |
| Add: Capital Grants and Contributions | 24,867,700 |
| Add: Loan Funds Used | 2,160,000 |
| Add: Asset Sales | 0 |
| Less: Capital Works | (43,822,700) |
| Less: Loan Principal Repayments | (2,639,800) |
| Funding Result – Surplus/(Deficit) (Cash Movement) | (6,710,900) |
| Reserves Movement – Increase/(Decrease) | (6,760,900) |
| Overall Budget Result – Surplus/(Deficit) (Operating + Funding) | 50,000 |

- 5 The impact of the SRV in gross terms if not approved alters the Draft 2017/2018 Budget Estimates on a Consolidated (All Funds) basis as outlined in Table 3:

Table 3 – Forecast SRV Impact on Budget Result 2017/2018 Consolidated (All Funds)

| Item | Amount \$ |
|--|--------------------|
| Operating Result | |
| Operating Revenue | (1,185,000) |
| Less: Operating Expenditure | (103,500) |
| Operating Result – Surplus/(Deficit) | (1,081,500) |
| Funding Result | |
| Operating Result – Surplus/ (Deficit) | (1,081,500) |
| Add: Non cash expenses – Depreciation | 0 |
| Add: Capital Grants and Contributions | 0 |
| Add: Loan Funds Used | 0 |
| Add: Asset Sales | 0 |
| Less: Capital Works | (862,400) |
| Less: Loan Principal Repayments | 0 |
| Funding Result – Surplus/(Deficit) (Cash Movement) | (219,100) |
| Reserves Movement – Increase/(Decrease) | (219,100) |
| Overall Budget Result – Surplus/(Deficit) (Operating + Funding) | 0 |

- 10 As Table 3 indicates the additional revenue from the SRV if approved is estimated to be \$1,185,000 which equates to 6.00% of the 7.50% overall SRV increase. As the 7.50% includes the announced 1.50% rate peg, if the SRV is not approved, it will be the 6.0% component or the estimated \$1,185,000 in 2017/2018 that Council will not be able to raise.
- 15 The detailed Draft 2017/2018 Budget Estimates prepared on the assumption the SRV is approved are detailed at Attachment 1. The amount of SRV revenue is currently allocated to the following budget items listed in Table 4 below:

Table 4- Proposed SRV Allocation 2017/2018

| Item | Total Budget \$ | SRV Funding \$ | Other Funding \$ |
|---|----------------------------|---------------------------|-----------------------------|
| Operating Expenditure | | | |
| Rural Drainage Maintenance | 146,500 | 36,900 | 109,600 |
| North – Urban Drainage Maintenance | 136,400 | 21,100 | 115,300 |
| South – Urban Drainage Maintenance | 155,200 | 21,100 | 134,100 |
| Byron Bay Pool Maintenance | 40,900 | 12,200 | 28,700 |
| Mullumbimby Pool Maintenance | 40,800 | 12,200 | 28,600 |
| Total Operating Expenditure | 519,800 | 103,500 | 416,300 |
| | | | |
| Item | Total Budget \$ | SRV Funding \$ | Other Funding \$ |
| Capital Expenditure | | | |
| Broken Head Road | 1,191,600 | 300,000 | 891,600 |
| Station Street Bangalow | 46,600 | 46,600 | 0 |
| Pine Avenue Mullumbimby | 610,000 | 75,500 | 534,500 |
| The Terrace Brunswick Heads | 379,400 | 379,400 | 0 |
| Byron Bay Town Centre – Landscape/Precinct Plan | 88,400 | 60,900 | 27,500 |
| Total Capital Expenditure | 2,316,000 | 862,400 | 1,453,600 |
| | | | |
| Transfer to Reserve | | | |
| Byron Bay Pool – Renewals to be determined | 219,100 | 219,100 | 0 |
| Total Transfer to Reserve | 219,100 | 219,100 | 0 |
| | | | |
| Total SRV | 3,054,900 | 1,185,000 | 1,869,900 |

- 5 Should the SRV not be approved, then the budget items in Table 4 above will not proceed or will need the extent of works proposed revised to accommodate available funding.

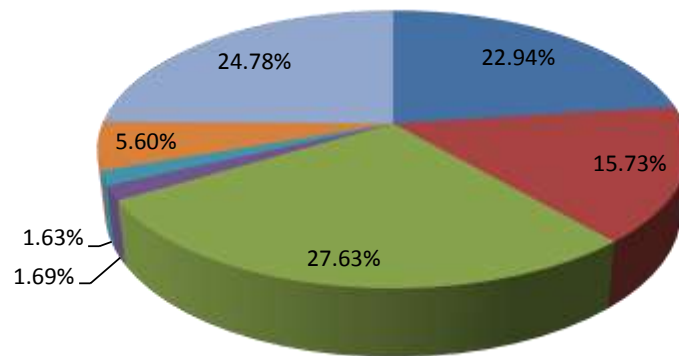
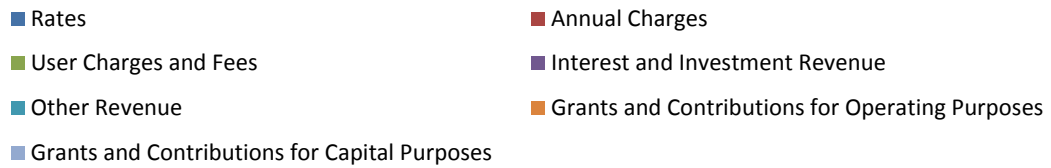
- 10 Table 1 (with SRV) and Table 2 (without SRV) indicates a forecasted budget surplus result of \$50,000 and this relates to the General Fund. The forecast General Fund Unrestricted Cash Balance position based on the draft budget included at Table 1 and 2 is outlined in Table 5 below:

Table 5 – Forecast General Fund Unrestricted Cash Balance

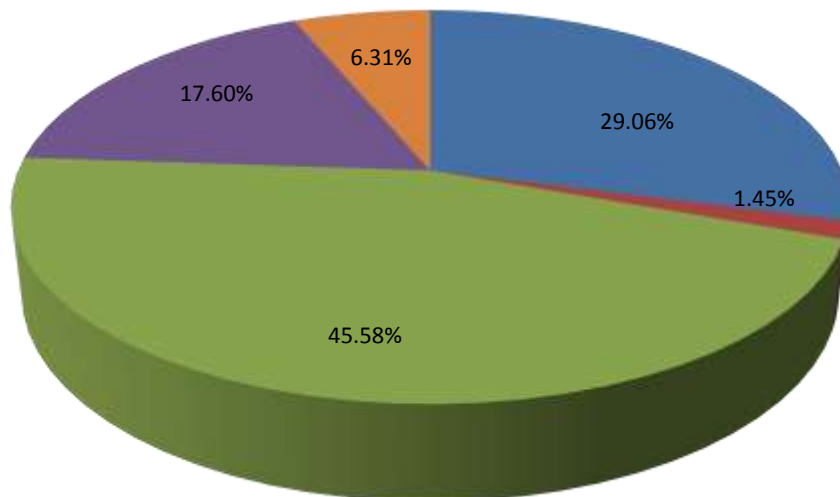
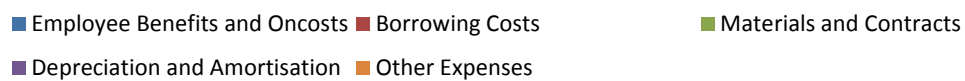
| Item | \$ |
|--|------------------|
| Forecast unrestricted cash balance to 30 June 2017 at 31 December 2016 Budget Review | 1,146,500 |
| Add: Estimated initial draft 2017/2018 budget result | 50,000 |
| Forecast unrestricted cash balance at 30 June 2018 | 1,196,500 |

- 15 In addition to Tables 1 and 5 above, budgeted financial statements incorporating a Operating Statement and Cash Flow Statement have been produced. These financial statements replicating the format of Council's Annual Financial Statements are included in Attachment 2 along with a one page summary of all Council budget program outcomes and the estimated balance of Council reserves as at 30 June 2018.
- 20 To arrive at the Draft Budget Results outlined in Table 1 (SRV option) for the 2017/2018 financial year, Council's revenue and operational expenses are expected to be derived from the following sources and allocated respectively as outlined in the graphs below:

Revenue Sources



Operating Expenditure



5 In addition to the operational aspects of the proposed Draft 2017/2018 Budget Estimates, Council is proposing a capital works program of \$44.685million (SRV option). By Fund, the projected capital works are:

- 10
- General Fund \$38.436million
 - Water Fund \$1.890million
 - Sewerage Fund \$4.358million

Specific capital works projects have been detailed in Attachment 1, which for 2017/2018 has been presented in a different format for the General Fund, to improve the disclosure of funding sources for specific projects including:

- Section 94 funding to describe the specific part of the Section 94 Plan and catchment that is providing the funding for a project.
- Where reserve funds are funding a project, identification of the reserve being utilised.
- Separation of funding provided by Special Rate Variations (SRVs) including previously granted SRVs prior to 2008/2009 (Council's last approved SRV) and the proposed SRV for 2017/2018.

Of the \$38.436million for capital works related to the General Fund, \$34.777million is allocated towards Roads and Drainage projects including \$19.812million allocated to the Byron Bay Bypass.

The Draft 2017/2018 Budget Estimates also propose new loan borrowings of \$2.160million of a \$6.000million borrowing program over the next three financial years to fund a bridge replacement program. These are the first new loan borrowings for Council in at least the last five years as Council has been concentrating of debt reduction. Whilst only \$2.160million is required for 2017/2018, should Council approve the loan borrowings, it may be worth testing the market to consider the merits of borrowing the entire \$6 million loan program up front, investing what is not required but considering interest rates on offer at the time borrowings may be sought.

Draft 2017-2018 Revenue Policy

The Draft 2017/2018 Revenue Policy has been prepared to support the funding requirements of the Draft 2017/2018 Budget Estimates.

The major components of the Draft 2017/2018 Revenue Policy are discussed in this report including:

- Draft General Land Rates and Charges
- Draft Fees and Charges
- Implementation of the Fire and Emergency Services Levy (FESL)

Draft General Land Rates and Charges

The Draft 2017/2018 Revenue Policy includes two rating structure tables with the only difference being the rating yields derived. As Council has applied for a Special Rates Variation (SRV), it must show a rating structure table with the SRV included and one without the SRV, on the basis that the SRV is not approved and only normal rate pegging is applied.

The Draft 2017/2018 Revenue Policy in regards to the Ordinary Rates section as been re-written to outline a proposed new rating structure for Council to consider. The rating structure outlined in Attachment 3 is based on outcomes from the following events:

- Council resolution **17-023** from the Ordinary Council Meeting held 2 February 2017.
- Presentation to the Finance Advisory Committee 16 February 2017
- Review by the Executive Team 1 March 2017
- Presentation to the Council Strategic Planning Workshop 9 March 2017
- Presentation to the Council Strategic Planning Workshop 6 April 2017 in conjunction with the Draft 2017/2018 Budget Estimates.

There were a number of alternate options provided but the option currently presented in the Draft 2017/2018 Revenue Policy is based on the following:

- Retention of the ad valorem rate subject to a minimum rate.
- Retention of existing rating categories.
- Abolition of the historical differentials where the ad valorem rate was established for Residential, then the ad valorem rate for Business was set at 150% of Residential, then the ad valorem rate for Business Byron Bay CBD set at 200% of Residential and the Farmland ad valorem rate was set at 73.73% of Residential.
- Application of new land values provided by the Valuer General for the 2017/2018 financial year to coincide with the introduction of the Fire and Emergency Services Levy (FESL) by the NSW Government.
- Application of the Special Rate Variation (SRV) of 7.50% if approved. On this basis the minimum rate will increase for 2017/2018 from \$695.00 to \$747.00 or \$52.00.
- Redistribution of the rating yields between rating categories as outlined in Table 6 below compared to the rating yields from 2016/2017 which has reduced the rate yield from the Residential category but increased the rate yield to the Business and Farmland categories.

Table 6 – Proposed Rating Yield % by Rating Category

| Rating Category | % Proposed Yield 2017/2018 | Actual % Yield 2016/2017 |
|--------------------------|---------------------------------------|-------------------------------------|
| Residential | 74.00% | 76.20% |
| Business – Other | 12.50% | 11.50% |
| Business – Byron Bay CBD | 8.50% | 7.90% |
| Farmland | 5.00% | 4.40% |
| Total | 100.00% | 100.00% |

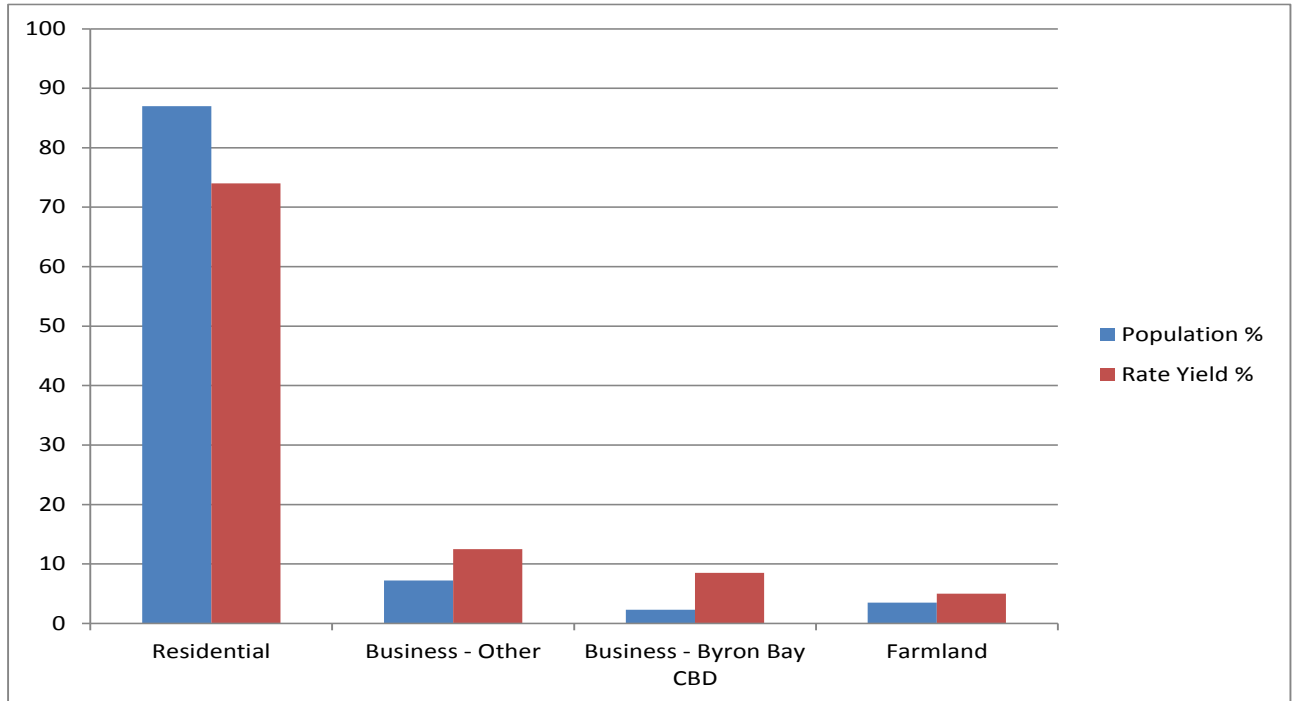
The current ratepayer population in Byron Shire Council is distributed amongst the following rating categories outlined in Table 7:

Table 7 – Ratepayer Population Distribution 2017/2018

| Rating Category | Number of Ratepayer Assessments | Proportion of Ratepayer Population % |
|--------------------------|--|---|
| Residential | 13,339 | 87.00% |
| Business – Other | 1,098 | 7.20% |
| Business – Byron Bay CBD | 349 | 2.30% |
| Farmland | 542 | 3.50% |
| Total | 15,328 | 100.00% |

Given the distribution of the Ratepayer population, if Council alters the redistribution of the rating yield amongst the rating categories, a small decrease in the Residential rating category creates significant increases in the Business and Farmland rating categories.

A comparison of the proportion of the ratepayer population and proportion of rate yields contributed by each rating category is provided in the graph below:



If Council proceeds with the suggested rating option contained in the Draft 2017/2018 Revenue Policy, and assuming the SRV is approved, a series of tables has been prepared to compare current 2016/2017 ordinary rates payable and to show the ordinary rate price path over the four years of the proposed SRV by land value range and rating category as follows:

5

10

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Table 8 – Residential Rating

| Residential | | | | | | | | |
|--|--------------------------------|-------------------------------------|--------------|--------------|--------------|--------------|--|---|
| Rates Over 4 Year SRV (7.5% increase per year) | | | | | | | | |
| Land Value (\$) | Number of properties (2016 LV) | 2016/17 rate - estimated 2015 LV*** | 2017/18 rate | 2018/19 rate | 2019/20 rate | 2020/21 rate | Change (\$) over 4 years to 2016/17 estimated rate | Change (%) over 4 years to 2016/17 estimated rate |
| \$100,000 | 280 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$200,000 | 1,072 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$300,000 | 2,005 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$400,000 | 3,092 | \$831 | \$868 | \$933 | \$1,003 | \$1,078 | \$246 | 29.6% |
| \$500,000 | 2,530 | \$1,039 | \$1,085 | \$1,166 | \$1,253 | \$1,347 | \$308 | 29.6% |
| \$600,000 | 1,523 | \$1,247 | \$1,301 | \$1,399 | \$1,504 | \$1,617 | \$370 | 29.6% |
| \$700,000 | 799 | \$1,455 | \$1,518 | \$1,632 | \$1,755 | \$1,886 | \$431 | 29.6% |
| \$800,000 | 537 | \$1,663 | \$1,735 | \$1,865 | \$2,005 | \$2,156 | \$493 | 29.6% |
| \$900,000 | 376 | \$1,871 | \$1,952 | \$2,099 | \$2,256 | \$2,425 | \$554 | 29.6% |
| \$1,000,000 | 229 | \$2,079 | \$2,169 | \$2,332 | \$2,507 | \$2,695 | \$616 | 29.6% |
| \$1,250,000 | 309 | \$2,598 | \$2,711 | \$2,915 | \$3,133 | \$3,368 | \$770 | 29.6% |
| \$1,500,000 | 220 | \$3,118 | \$3,254 | \$3,498 | \$3,760 | \$4,042 | \$924 | 29.6% |
| \$1,750,000 | 98 | \$3,638 | \$3,796 | \$4,080 | \$4,386 | \$4,715 | \$1,078 | 29.6% |
| \$2,000,000 | 80 | \$4,157 | \$4,338 | \$4,663 | \$5,013 | \$5,389 | \$1,232 | 29.6% |
| \$2,250,000 | 30 | \$4,677 | \$4,880 | \$5,246 | \$5,640 | \$6,063 | \$1,386 | 29.6% |
| \$2,500,000 | 34 | \$5,197 | \$5,423 | \$5,829 | \$6,266 | \$6,736 | \$1,540 | 29.6% |
| \$2,750,000 | 28 | \$5,716 | \$5,965 | \$6,412 | \$6,893 | \$7,410 | \$1,694 | 29.6% |
| \$3,000,000 | 16 | \$6,236 | \$6,507 | \$6,995 | \$7,520 | \$8,084 | \$1,848 | 29.6% |
| \$3,250,000 | 20 | \$6,756 | \$7,049 | \$7,578 | \$8,146 | \$8,757 | \$2,001 | 29.6% |
| \$3,500,000 | 15 | \$7,275 | \$7,592 | \$8,161 | \$8,773 | \$9,431 | \$2,155 | 29.6% |
| \$3,750,000 | 8 | \$7,795 | \$8,134 | \$8,744 | \$9,400 | \$10,105 | \$2,309 | 29.6% |
| \$4,000,000 | 7 | \$8,315 | \$8,676 | \$9,327 | \$10,026 | \$10,778 | \$2,463 | 29.6% |
| \$4,250,000 | 9 | \$8,835 | \$9,218 | \$9,910 | \$10,653 | \$11,452 | \$2,617 | 29.6% |
| \$4,500,000 | 2 | \$9,354 | \$9,761 | \$10,493 | \$11,279 | \$12,125 | \$2,771 | 29.6% |
| \$4,750,000 | 2 | \$9,874 | \$10,303 | \$11,075 | \$11,906 | \$12,799 | \$2,925 | 29.6% |
| \$5,000,000 | 2 | \$10,394 | \$10,845 | \$11,658 | \$12,533 | \$13,473 | \$3,079 | 29.6% |
| \$6,000,000 | 4 | \$12,472 | \$13,014 | \$13,990 | \$15,039 | \$16,167 | \$3,695 | 29.6% |
| \$7,000,000 | 9 | \$14,551 | \$15,183 | \$16,322 | \$17,546 | \$18,862 | \$4,311 | 29.6% |
| \$8,000,000 | 2 | \$16,630 | \$17,352 | \$18,653 | \$20,052 | \$21,556 | \$4,927 | 29.6% |
| \$10,000,000 | 3 | \$20,787 | \$21,690 | \$23,317 | \$25,066 | \$26,945 | \$6,158 | 29.6% |

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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Table 9 – Business – Other Rating

| Business | | | | | | | | |
|--|--------------------------------|-------------------------------------|--------------|--------------|--------------|--------------|--|---|
| Rates Over 4 Year SRV (7.5% increase per year) | | | | | | | | |
| Land Value (\$) | Number of properties (2016 LV) | 2016/17 rate - estimated 2015 LV*** | 2017/18 rate | 2018/19 rate | 2019/20 rate | 2020/21 rate | Change (\$) over 4 years to 2016/17 estimated rate | Change (%) over 4 years to 2016/17 estimated rate |
| \$100,000 | 112 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$200,000 | 272 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$300,000 | 166 | \$922 | \$1,115 | \$1,198 | \$1,288 | \$1,385 | \$463 | 50.2% |
| \$400,000 | 100 | \$1,229 | \$1,486 | \$1,597 | \$1,717 | \$1,846 | \$617 | 50.2% |
| \$500,000 | 60 | \$1,537 | \$1,858 | \$1,997 | \$2,147 | \$2,308 | \$771 | 50.2% |
| \$600,000 | 90 | \$1,844 | \$2,229 | \$2,396 | \$2,576 | \$2,769 | \$925 | 50.2% |
| \$700,000 | 47 | \$2,151 | \$2,601 | \$2,796 | \$3,005 | \$3,231 | \$1,079 | 50.2% |
| \$800,000 | 45 | \$2,459 | \$2,972 | \$3,195 | \$3,435 | \$3,692 | \$1,234 | 50.2% |
| \$900,000 | 29 | \$2,766 | \$3,344 | \$3,594 | \$3,864 | \$4,154 | \$1,388 | 50.2% |
| \$1,000,000 | 35 | \$3,073 | \$3,715 | \$3,994 | \$4,293 | \$4,615 | \$1,542 | 50.2% |
| \$1,250,000 | 43 | \$3,841 | \$4,644 | \$4,992 | \$5,366 | \$5,769 | \$1,927 | 50.2% |
| \$1,500,000 | 17 | \$4,610 | \$5,573 | \$5,990 | \$6,440 | \$6,923 | \$2,313 | 50.2% |
| \$1,750,000 | 17 | \$5,378 | \$6,501 | \$6,989 | \$7,513 | \$8,076 | \$2,698 | 50.2% |
| \$2,000,000 | 9 | \$6,146 | \$7,430 | \$7,987 | \$8,586 | \$9,230 | \$3,084 | 50.2% |
| \$2,250,000 | 4 | \$6,915 | \$8,359 | \$8,986 | \$9,660 | \$10,384 | \$3,469 | 50.2% |
| \$2,500,000 | 2 | \$7,683 | \$9,288 | \$9,984 | \$10,733 | \$11,538 | \$3,855 | 50.2% |
| \$2,750,000 | 8 | \$8,451 | \$10,216 | \$10,982 | \$11,806 | \$12,692 | \$4,240 | 50.2% |
| \$3,000,000 | 8 | \$9,220 | \$11,145 | \$11,981 | \$12,879 | \$13,845 | \$4,626 | 50.2% |
| \$3,250,000 | 2 | \$9,988 | \$12,074 | \$12,979 | \$13,953 | \$14,999 | \$5,011 | 50.2% |
| \$3,500,000 | 3 | \$10,756 | \$13,003 | \$13,978 | \$15,026 | \$16,153 | \$5,397 | 50.2% |
| \$3,750,000 | 2 | \$11,524 | \$13,931 | \$14,976 | \$16,099 | \$17,307 | \$5,782 | 50.2% |
| \$4,000,000 | 3 | \$12,293 | \$14,860 | \$15,975 | \$17,173 | \$18,461 | \$6,168 | 50.2% |
| \$4,250,000 | 0 | \$13,061 | \$15,789 | \$16,973 | \$18,246 | \$19,614 | \$6,553 | 50.2% |
| \$4,500,000 | 4 | \$13,829 | \$16,718 | \$17,971 | \$19,319 | \$20,768 | \$6,939 | 50.2% |
| \$4,750,000 | 3 | \$14,598 | \$17,646 | \$18,970 | \$20,392 | \$21,922 | \$7,324 | 50.2% |
| \$5,000,000 | 3 | \$15,366 | \$18,575 | \$19,968 | \$21,466 | \$23,076 | \$7,710 | 50.2% |
| \$6,000,000 | 7 | \$18,439 | \$22,290 | \$23,962 | \$25,759 | \$27,691 | \$9,252 | 50.2% |
| \$7,000,000 | 1 | \$21,512 | \$26,005 | \$27,955 | \$30,052 | \$32,306 | \$10,794 | 50.2% |
| \$8,000,000 | 2 | \$24,585 | \$29,720 | \$31,949 | \$34,345 | \$36,921 | \$12,336 | 50.2% |
| \$10,000,000 | 1 | \$30,732 | \$37,150 | \$39,936 | \$42,931 | \$46,151 | \$15,420 | 50.2% |

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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Table 10 – Business - Byron Bay CBD Rating

| Business - Byron Bay CBD | | | | | | | | |
|--------------------------|--------------------------------|-------------------------------------|--|--------------|--------------|--------------|--|---|
| | | | Rates Over 4 Year SRV (7.5% increase per year) | | | | | |
| Land Value (\$) | Number of properties (2016 LV) | 2016/17 rate - estimated 2015 LV*** | 2017/18 rate | 2018/19 rate | 2019/20 rate | 2020/21 rate | Change (\$) over 4 years to 2016/17 estimated rate | Change (%) over 4 years to 2016/17 estimated rate |
| \$100,000 | 62 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$200,000 | 65 | \$797 | \$946 | \$1,017 | \$1,093 | \$1,175 | \$378 | 47.4% |
| \$300,000 | 31 | \$1,196 | \$1,419 | \$1,525 | \$1,640 | \$1,763 | \$567 | 47.4% |
| \$400,000 | 46 | \$1,595 | \$1,892 | \$2,034 | \$2,186 | \$2,350 | \$756 | 47.4% |
| \$500,000 | 17 | \$1,994 | \$2,365 | \$2,542 | \$2,733 | \$2,938 | \$945 | 47.4% |
| \$600,000 | 11 | \$2,392 | \$2,838 | \$3,051 | \$3,280 | \$3,526 | \$1,133 | 47.4% |
| \$700,000 | 5 | \$2,791 | \$3,311 | \$3,559 | \$3,826 | \$4,113 | \$1,322 | 47.4% |
| \$800,000 | 5 | \$3,190 | \$3,784 | \$4,068 | \$4,373 | \$4,701 | \$1,511 | 47.4% |
| \$900,000 | 3 | \$3,588 | \$4,257 | \$4,576 | \$4,919 | \$5,288 | \$1,700 | 47.4% |
| \$1,000,000 | 4 | \$3,987 | \$4,730 | \$5,085 | \$5,466 | \$5,876 | \$1,889 | 47.4% |
| \$1,250,000 | 12 | \$4,984 | \$5,913 | \$6,356 | \$6,833 | \$7,345 | \$2,361 | 47.4% |
| \$1,500,000 | 10 | \$5,981 | \$7,095 | \$7,627 | \$8,199 | \$8,814 | \$2,834 | 47.4% |
| \$1,750,000 | 4 | \$6,977 | \$8,278 | \$8,898 | \$9,566 | \$10,283 | \$3,306 | 47.4% |
| \$2,000,000 | 9 | \$7,974 | \$9,460 | \$10,170 | \$10,932 | \$11,752 | \$3,778 | 47.4% |
| \$2,250,000 | 14 | \$8,971 | \$10,643 | \$11,441 | \$12,299 | \$13,221 | \$4,250 | 47.4% |
| \$2,500,000 | 7 | \$9,968 | \$11,825 | \$12,712 | \$13,665 | \$14,690 | \$4,723 | 47.4% |
| \$2,750,000 | 5 | \$10,964 | \$13,008 | \$13,983 | \$15,032 | \$16,159 | \$5,195 | 47.4% |
| \$3,000,000 | 6 | \$11,961 | \$14,190 | \$15,254 | \$16,398 | \$17,628 | \$5,667 | 47.4% |
| \$3,250,000 | 4 | \$12,958 | \$15,373 | \$16,525 | \$17,765 | \$19,097 | \$6,139 | 47.4% |
| \$3,500,000 | 6 | \$13,955 | \$16,555 | \$17,797 | \$19,131 | \$20,566 | \$6,612 | 47.4% |
| \$3,750,000 | 2 | \$14,951 | \$17,738 | \$19,068 | \$20,498 | \$22,035 | \$7,084 | 47.4% |
| \$4,000,000 | 1 | \$15,948 | \$18,920 | \$20,339 | \$21,864 | \$23,504 | \$7,556 | 47.4% |
| \$4,250,000 | 1 | \$16,945 | \$20,103 | \$21,610 | \$23,231 | \$24,973 | \$8,028 | 47.4% |
| \$4,500,000 | 4 | \$17,942 | \$21,285 | \$22,881 | \$24,597 | \$26,442 | \$8,501 | 47.4% |
| \$4,750,000 | 2 | \$18,939 | \$22,468 | \$24,153 | \$25,964 | \$27,911 | \$8,973 | 47.4% |
| \$5,000,000 | 0 | \$19,935 | \$23,650 | \$25,424 | \$27,331 | \$29,380 | \$9,445 | 47.4% |
| \$6,000,000 | 3 | \$23,922 | \$28,380 | \$30,509 | \$32,797 | \$35,256 | \$11,334 | 47.4% |
| \$7,000,000 | 3 | \$27,909 | \$33,110 | \$35,593 | \$38,263 | \$41,132 | \$13,223 | 47.4% |
| \$8,000,000 | 3 | \$31,897 | \$37,840 | \$40,678 | \$43,729 | \$47,009 | \$15,112 | 47.4% |
| \$10,000,000 | 2 | \$39,871 | \$47,300 | \$50,848 | \$54,661 | \$58,761 | \$18,890 | 47.4% |

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Table 11 – Farmland Rating

| Farmland | | | | | | | | |
|--|--------------------------------|-------------------------------------|--------------|--------------|--------------|--------------|--|---|
| Rates Over 4 Year SRV (7.5% increase per year) | | | | | | | | |
| Land Value (\$) | Number of properties (2016 LV) | 2016/17 rate - estimated 2015 LV*** | 2017/18 rate | 2018/19 rate | 2019/20 rate | 2020/21 rate | Change (\$) over 4 years to 2016/17 estimated rate | Change (%) over 4 years to 2016/17 estimated rate |
| \$100,000 | 2 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$200,000 | 3 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$300,000 | 4 | \$695 | \$747 | \$803 | \$863 | \$928 | \$233 | 33.5% |
| \$400,000 | 7 | \$695 | \$774 | \$832 | \$894 | \$962 | \$267 | 38.4% |
| \$500,000 | 23 | \$777 | \$968 | \$1,040 | \$1,118 | \$1,202 | \$425 | 54.6% |
| \$600,000 | 51 | \$933 | \$1,161 | \$1,248 | \$1,342 | \$1,442 | \$510 | 54.6% |
| \$700,000 | 57 | \$1,088 | \$1,355 | \$1,456 | \$1,565 | \$1,683 | \$595 | 54.6% |
| \$800,000 | 57 | \$1,244 | \$1,548 | \$1,664 | \$1,789 | \$1,923 | \$680 | 54.6% |
| \$900,000 | 79 | \$1,399 | \$1,742 | \$1,872 | \$2,013 | \$2,163 | \$764 | 54.6% |
| \$1,000,000 | 57 | \$1,554 | \$1,935 | \$2,080 | \$2,236 | \$2,404 | \$849 | 54.6% |
| \$1,250,000 | 98 | \$1,943 | \$2,419 | \$2,600 | \$2,795 | \$3,005 | \$1,062 | 54.6% |
| \$1,500,000 | 41 | \$2,332 | \$2,903 | \$3,120 | \$3,354 | \$3,606 | \$1,274 | 54.6% |
| \$1,750,000 | 23 | \$2,720 | \$3,386 | \$3,640 | \$3,913 | \$4,207 | \$1,486 | 54.6% |
| \$2,000,000 | 10 | \$3,109 | \$3,870 | \$4,160 | \$4,472 | \$4,808 | \$1,699 | 54.6% |
| \$2,250,000 | 8 | \$3,498 | \$4,354 | \$4,680 | \$5,031 | \$5,409 | \$1,911 | 54.6% |
| \$2,500,000 | 5 | \$3,886 | \$4,838 | \$5,200 | \$5,590 | \$6,010 | \$2,123 | 54.6% |
| \$2,750,000 | 3 | \$4,275 | \$5,321 | \$5,720 | \$6,149 | \$6,611 | \$2,336 | 54.6% |
| \$3,000,000 | 3 | \$4,663 | \$5,805 | \$6,240 | \$6,708 | \$7,212 | \$2,548 | 54.6% |
| \$3,250,000 | 6 | \$5,052 | \$6,289 | \$6,760 | \$7,267 | \$7,812 | \$2,761 | 54.6% |
| \$3,500,000 | 1 | \$5,441 | \$6,773 | \$7,280 | \$7,826 | \$8,413 | \$2,973 | 54.6% |
| \$3,750,000 | 1 | \$5,829 | \$7,256 | \$7,800 | \$8,386 | \$9,014 | \$3,185 | 54.6% |
| \$4,000,000 | 0 | \$6,218 | \$7,740 | \$8,321 | \$8,945 | \$9,615 | \$3,398 | 54.6% |
| \$4,250,000 | 1 | \$6,606 | \$8,224 | \$8,841 | \$9,504 | \$10,216 | \$3,610 | 54.6% |
| \$4,500,000 | 1 | \$6,995 | \$8,708 | \$9,361 | \$10,063 | \$10,817 | \$3,822 | 54.6% |
| \$4,750,000 | 0 | \$7,384 | \$9,191 | \$9,881 | \$10,622 | \$11,418 | \$4,035 | 54.6% |
| \$5,000,000 | 0 | \$7,772 | \$9,675 | \$10,401 | \$11,181 | \$12,019 | \$4,247 | 54.6% |
| \$6,000,000 | 1 | \$9,327 | \$11,610 | \$12,481 | \$13,417 | \$14,423 | \$5,096 | 54.6% |
| \$7,000,000 | 0 | \$10,881 | \$13,545 | \$14,561 | \$15,653 | \$16,827 | \$5,946 | 54.6% |
| \$8,000,000 | 0 | \$12,436 | \$15,480 | \$16,641 | \$17,889 | \$19,231 | \$6,795 | 54.6% |
| \$10,000,000 | 0 | \$15,545 | \$19,350 | \$20,801 | \$22,361 | \$24,038 | \$8,494 | 54.6% |

- 5 **Please Note: ***** The land values in tables 3 to 6 above are the new 2016 base date land value ranges to apply in the 2017/2018 financial year. To calculate the comparable 2016/2017 rates payable, these land values have been discounted by the increase in the actual 2016 base date land values by rating category to provide a more realistic and accurate comparison. The discount applied is Residential 9.7%, Business – Other 11.00%, Business – Byron Bay CBD 13.40% and
- 10 Farmland 8.40%.

The outcome of the four tables immediately above (Tables 8 to 11) naturally will be different if the Special Rate Variation is not approved and Rate Pegging only is to apply but represent an indicative outcome if it is approved.

15

As the recommended rating structure for 2017/2018 will create a redistribution of the rating yield, especially to the Business category as a whole, which is now proposed to contribute 21.00% of Council's rate yield overall compared to the 19.40% previously contributed. Council during the normal public exhibition period of the Draft 2017/2018 Operational Plan (including the Revenue Policy), will need to conduct additional consultation with the Byron Shire Business community to ensure they are informed of the proposed changes.

Given the proposed SRV, a review of waste, water and sewerage charges has been conducted and it is proposed for 2017/2018 not to increase these unit charges from those charged in 2016/2017. In respect of waste charges, these have been reviewed to the extent of proposed service types with the three bin service offered by Council. In addition, the stormwater charge has not increased given it is a regulated charge that has not changed over the last ten years.

Draft Fees and Charges

The Draft 2017/2018 Fees and Charges have been reviewed by respective program managers and included at Attachment 4. Where possible, fees have been altered/increased to reflect the following specific changes:

- Increases in the Consumer Price Index (CPI)/Indexation assumed at 1.50%.
- Review of fees and charges including benchmarking/cost of service provision and where possible introduction of new fees to assist Council generate additional/enhanced revenue as themed by its Financial Sustainability Plan(FSP).
- The Office of Local Government is yet to determine the fee to apply for Section 603 Certificates or the Statutory Interest Rate to apply to overdue rates and charges. Once determination has been advised, it is proposed Council apply the maximum amounts advised in respect of both items.
- Fees currently disclosed for Richmond Tweed Regional Library are the current fees for 2016/2017. Council is yet to receive advice from Lismore City Council as to the fees to apply for 2017/2018.

For the 2017/2018 financial year, the Draft Fees and Charges have continued to be developed utilising fees and charges software to manage fees and charges that was implemented on 2016/2017 for the first time.

Fire and Emergency Services Levy (FESL)

All Councils in NSW for the first time will be required to levy the Fire and Emergency Services Levy (FESL) on all rateable property from 1 July 2017. The levy will be calculated on the basis of a rate applied to land value depending upon the FESL classification applied to each property.

It clearly needs to be understood, whilst the FESL will appear on the Rate Notice, it is not Council revenue but is revenue for NSW Treasury to assist in the funding of Emergency Services. This levy will replace the previous levy included in insurance premiums for those in the community who hold property insurance.

With respect to the FESL, Councils do not determine the fixed charges/ad valorem rates to apply and will remit all FESL revenue collected to the NSW Treasury. Councils are simply the collection agent on behalf of NSW Treasury. It is for this reason, whilst there is some disclosure in the Revenue Policy on the FESL, Council has not and will not provide the fixed charges/ad valorem rates to be charged. Council is also not required to approve the FESL charges.

Consultation

A presentation was provided to the Council Strategic Planning Workshop held on 6 April 2017 concerning the Draft 2017/2018 Revenue Policy subject of this report. A report is also being provided to the Finance Advisory Committee for consideration at its Meeting to be held on 13 April 2017 consistent with this report for review and consideration. Recommendations from the Finance Advisory Committee will be advised to Council by way of Memo prior to the 20 April 2017 Ordinary Council Meeting.

The Draft 2017-2018 Statement of Revenue Policy incorporating the Draft 2017-2018 Budget Estimates will be included in the Draft 2017-2021 Delivery Plan that incorporated to Draft 2017-2018 Operational Plan will be placed on public exhibition for a period of no less than 28 days seeking submissions from the community.

Financial Implications

The proposed Draft 2017/2018 Budget Estimates provided in this report indicate a projected budget surplus of \$50,000. This projected surplus is the estimated outcome whether Council's application for a Special Rate Variation (SRV) is approved by the Independent Pricing and Regulatory Tribunal (IPART) or not approved.

Detailed financial aspects of the Draft 2017/2018 Budget Estimates are outlined for Council to consider earlier in this report.

The Draft 2017/2018 Revenue Policy is an integral part to Council's Operational Plan and provides the basis for Council to raise the required revenue to fund the estimated operating and capital expenditures contained in the proposed Draft 2017/2018 Budget Estimates.

There are direct financial implications to ratepayers of Council in regards to the proposed rates and charges contained in the Draft 2017/2018 Revenue Policy as it will determine, subject to final adoption after public exhibition and consideration of submissions, what ratepayers will be requested to pay when rate notices are issued in July 2017.

Statutory and Policy Compliance Implications

In respect of the Draft 2017-2018 Operational Plan including the Statement of Revenue Policy, Council must comply with the provisions of Section 405 of the Local Government Act 1993 as described below concerning the adoption of an Operational Plan.

405 Operational plan

"(1) A council must have a plan (its operational plan) that is adopted before the beginning of each year and details the activities to be engaged in by the council during the year as part of the delivery program covering that year.

(2) An operational plan must include a statement of the council's revenue policy for the year covered by the operational plan. The statement of revenue policy must include the statements and particulars required by the regulations.

(3) A council must prepare a draft operational plan and give public notice of the draft indicating that submissions may be made to the council at any time during the period (not less than 28 days) that the draft is to be on public exhibition. The council must publicly exhibit the draft operational plan in accordance with the notice.

(4) During the period of public exhibition, the council must have for inspection at its office (and at such other places as it may determine) a map that shows those parts of its area to which each

category and sub-category of the ordinary rate and each special rate included in the draft operational plan applies.

5 (5) *In deciding on the final operational plan to be adopted, a council must consider any submissions that have been made concerning the draft plan.*

(6) *The council must post a copy of its operational plan on the council's website within 28 days after the plan is adopted."*

10 The specific statements required by Council to be disclosed as part of its Revenue Policy are determined by Clause 201 of the Local Government (General) Regulation 2005 as follows:

201 Annual statement of council's revenue policy

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

(a) a statement containing a detailed estimate of the council's income and expenditure,

20 *(b) a statement with respect to each ordinary rate and each special rate proposed to be levied,*

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

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

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

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

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

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

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

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

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

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

55

(c) the estimated yield of the rate,

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

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

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

10

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

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

15

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

(d) the estimated yield of the charge,

20

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

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

25

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.8 **Report of the Planning Review Committee Meeting held on 21 March, 2017**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Major Projects Planner

File No: I2017/354

Theme: Ecology
Development and Approvals

Summary:

This report provides the outcome of the Planning Review Committee Meeting held on 21 March, 2017.

RECOMMENDATION:

That Council note the report.

Report:

The meeting commenced at 1.05pm and concluded at 1:30pm.

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

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

- 10 *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.*

| DA No. | Applicant | Property Address | Proposal | Exhibition Submissions | Reason/s Outcome |
|--------------------|----------------------------------|-----------------------------|--|------------------------|--|
| 10.2015.686.4 | Bayview land Development Pty Ltd | Tuckeroo Avenue Mullumbimby | S96 to modify condition 44 | Level 0 | Delegated Authority |
| 10.2009.314.1 1 | Bayview land Development Pty Ltd | Coral Avenue Mullumbimby | S96 for correction of error in description of land on Land Use Plan 2.1B | Level 0 | The perceived public significance of the application. Council |

15

Report No. 13.9 **Regulatory Impact Statement - Draft Biosecurity Regulations 2016**
Directorate: Sustainable Environment and Economy
Report Author: Clare Manning, Natural Environment Projects and Policy Officer
File No: I2017/294
Theme: Ecology
 Planning Policy and Natural Environment

Summary:

To broadly summarise the draft Biosecurity Regulation 2016 (draft Regulation) and note that the draft Regulations consolidate multiple pieces of legislation relating to biosecurity including the Noxious Weed Act 1993 following the passing of the Biosecurity Act 2015 (Act) through Parliament. The Biosecurity Act and Regulations will continue to provide specific legal requirements for state-level priority weeds and high-risk activities.

Gazettal of the draft Regulations in their current form, including mandatory requirements to eradicate noxious weeds or if that is not practicable, destroy as much of that weed as is practicable and suppress the spread of any remaining weed, is likely to have significant social, economic and environmental implications for Council. The Act and draft Regulations have triggered the need for Council to review its approach to integrated pest¹ management in the long term.

¹Pest means *a species, strain or biotype of a plant or animal, or a disease agent, that has the potential to cause, either directly or indirectly, harm to (a) human, animal or plant health or (b) the environment* (Biosecurity Act 2015).

RECOMMENDATION:

That Council note:

- 1. The information contained in this report on the draft Biosecurity Regulation 2016.**
- 2. That Council staff are undertaking an internal peer review of the draft Integrated Weed Strategy March 2016.**
- 3. That Council staff are developing a Directions Document to provide a continued direction for reducing the use of pesticide² on Council land in the long term.**

¹ Pesticide means *an agricultural chemical product as defined by the Agricultural and Veterinary Chemicals Code Act 1994. Definition of pesticides covers, bactericides baits, fungicides, herbicides, insecticides, lures, rodenticides and repellents. Pesticides are used in commercial, domestic, urban and rural environments* (Pesticides Act 1999).

Report

Fourteen separate pieces of legislation including the Noxious Weed Act 1993 have been wholly repealed with the passing of the Act. The Act and Regulations will continue to provide specific legal requirements for state-level priority weeds and high-risk activities.

Prohibited Matter

Prohibited Matter is listed in Schedule 2, Part 1 of the NSW Biosecurity Act 2015 and is aimed at prevention. This list includes weeds that are nationally targeted for eradication and which are not presently in NSW.

Control Orders

Weed Control Order 2017 (Part 6 Division 1) under the NSW Biosecurity Act will include weeds that are subject to a Control Order for the purpose of eradication. Control Orders will be proposed as required to address subsequent eradication campaigns where appropriate.

Biosecurity Zones

Biosecurity Zones are listed in Part 5 of the draft Biosecurity Regulation 2016. These zones are created to allow on-going 'strategic' management. Zones are aimed at containment. However, each species may be subject to recommended measures tailored by the region either within the zone or outside it. A bitou bush biosecurity zone has been identified between Cape Byron and the Queensland-New South Wales border. Eradication of the weed or if that is not practicable, destroy as much of the weed as is practicable and suppress the spread of any remaining weed will be mandatory.

Mandatory Measures

Mandatory Measures are listed in Division 8 of the draft Biosecurity Regulation 2016. They are used where specific action is required to mitigate the biosecurity risk to protect an asset e.g. Endangered Ecological Community or threatened species. It must be noted that Byron Shire has extremely high biodiversity at the ecosystem, species and genetic levels. The Shire is centred in the Wet Subtropics Bioregion, an area of great ecological significance. This is one of the richest and most diverse regions for fauna and flora in Australia. Indeed, Byron Shire supports amongst the highest number of threatened species in New South Wales. Approximately 70 plant species and 90 animal species recognised as vulnerable or endangered are known to occur in the Shire

The mandatory measures include prohibition on certain dealings - including Weeds of National Significance (Clause 29), parthenium weed carriers - machinery and equipment (Clause 31) and duty to notify of importation of plants into the state (Clause 30). Nine (or 33%) of the weed species under Mandatory Measure are found in the Byron Shire.

Social, Economic and Environmental Implications

If adopted, the Regulation is likely to have significant social, economic and environmental implications for Council, particularly in light of Council's aspirational goal of *ceasing the use of all non-organic chemical based herbicides and the repetitive use of all non-organic chemical pesticides* (Resolution 13-621).

In the absence of detail in the draft Regulations, Council staff made a submission to the NSW Department of Primary Industries. Council staff had concerns about the ambiguous use of terminology such as the mandatory requirements to eradicate the said weed or if that is not 'practicable', destroy as much of the weed as is 'practicable'. This use of terminology is open to interpretation and potentially risks an outcome where landowners undertake no works to eradicate the said weed or suppress the spread of any remaining weed on their land.

More significantly are the financial implications to an owner or occupier of land in a biosecurity zone and/or with mandatory measures. Recent case studies in the Shire have shown that reverting to hand-weeding (as part of the transition to a non-organic pesticide-free approach) while equally effective to the use of synthetic pesticide, such alternative methods can result in up to an approximate 8-fold increase in labour to control a weed infestation and/or an increase soil disturbance that can result in new weed infestations. Over time this may lead to less biodiversity outcomes and potentially increase areas of occupational health. Nonetheless, since Council's Resolution **13-621**, Council has reduced the use of pesticides (specifically herbicides) over the last 3-years but details are yet to be reported.

Conclusion

In response to (i) the Biosecurity Act and Regulations and (ii) Resolution 13-621 Council staff is currently reviewing its position with respect to the use of all pesticide use and reviewing the draft Integrated Weed Management Strategy. The review process will lead to a Directions Document that aims to provide a continued direction for working towards reducing the use of pesticides on Council managed land in the long term including a draft policy framework that recognises the need to minimise the use of pesticides and combines or promotes alternative methods that are sustainable and practical for the situation, but consider where required e.g. to meet current legislation, to use them responsibly in the control pests.

As part of integrated pest management approach Council staff is committed to providing a safe and healthy environment.

Report No. 13.10 PLANNING - Submissions Report - 26.2015.1.1 - Planning Proposal to permit a heliport and amend the minimum lot size at Tyagarah Airfield

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Consultant Planner

5 **File No:** I2017/322

Theme: Ecology
Planning Policy and Natural Environment

10 **Summary:**

This report presents the outcomes of the public exhibition of the planning proposal relating to the Tyagarah Airfield site. The proposal seeks to amend Byron Local Environmental Plan (LEP) 2014 to permit a heliport at the site and to amend the minimum lots size applicable to the land.

15 The proposed amendment relates to eight Council-owned lots, located immediately north of the airfield runway. It relates only to the areas within the site that are zoned RU2 under Byron LEP 2014.

20 There are two areas that are Deferred Matters under the LEP. Those parts of the site are not included in the planning proposal.

The planning proposal is included as Attachment 1. It will amend Schedule 1 of the LEP to specify that development for the purposes of a heliport is permitted with development consent on the land.

25 It will also amend the Minimum Lot Size Map to establish a minimum lot size of 1,000m² for the land (currently 40ha). The reduction in minimum lot size will allow the subdivision of the land to rectify lots that were previously created for lease purposes but not registered, formalise the existing internal roadway, and create additional lots to utilise operational Council land to ensure that the
30 airfield is economically sustainable.

The planning proposal received an initial Gateway determination from the Department of Planning and Environment on 24 March 2016. A revised Gateway was issued on 28 November 2016 following Council's request for an extension of time in order for additional technical studies to be
35 prepared in response to the submission from the Office of Environment and Heritage (OEH).

The planning proposal was placed on public exhibition for a period of 28 days, from 5 May 2016 to 2 June 2016. Seven public submissions were received during the exhibition period (see Attachment 2), in addition to submissions from the Australian Department of Infrastructure and
40 Regional Development (Attachment 3), NSW Rural Fire Service (Attachment 4) and NSW Office of Environment and Heritage (Attachment 5). One further late public submission was received in February 2017, with a supplementary submission provided shortly after (included in Attachment 2).

Of the eight public submissions received (includes the late submission):

- 45 • one was in objection, suggesting that the use of the land as an airfield should be discontinued and the site used instead for "high technology industry", and raising a number of other issues that are addressed in the body of this report;
- three submissions expressed support for the proposal; and
- four submissions were not directly relevant to the planning proposal, instead including:
 - 50 - suggested improvements to existing facilities at the site;
 - a desire by existing tenants to remain on-site;
 - suggested opportunities to increase revenue; and
 - concerns from the Cape Byron Pistol Club regarding potential impacts on their site (located outside of the planning proposal area) associated with ecological offset proposals.

55

NSW OEH raised a number of concerns in regard to the planning proposal, requesting further detail and assessment regarding cultural heritage issues; flooding and biodiversity.

- 5 A number of additional studies were prepared to address these concerns and, following review of that additional information, OEH advised that they have no remaining concerns regarding the planning proposal.

The remaining agency submissions raised no objections to the planning proposal.

- 10 This report recommends that Council proceed with the planning proposal.

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

- 15 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That Council

1. **Forward the planning proposal to the NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared.**
2. **Liaise with Parliamentary Counsel's Office as necessary to finalise the content of the draft LEP and to enable the Office to issue an Opinion that the plan can be made.**
3. **Make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning and Environment for notification on the NSW Government legislation website.**

25 Attachments:

- 1 Planning Proposal as Exhibited, E2016/27739 
- 2 Confidential - Public Submissions, E2017/17203
- 3 Submission - Commonwealth Dept of Infrastructure and Regional Development, E2017/17209 
- 30 4 Submission - NSW Rural Fire Service , E2016/82881 
- 5 Office Environment & Heritage - initial submission / comments, E2017/17198 
- 6 Office Environment & Heritage Final Response Tyagarah Airfield , E2017/16804 
- 7 Aboriginal Cultural Heritage Assessment LtdCHA_EV460_160914(2), E2016/84241 
- 8 Flood Study , E2017/9027 

Report

Background

5 The Airport Group (TAG) was engaged by Council in 2012 to undertake a future options report for the Tyagarah Airfield (resolution 01/12/2011).

10 The analysis completed by TAG made a number of recommendations as to how the Tyagarah Airfield could become financially sustainable to meet the objectives of Council's Financial Sustainability Project Plan.

These included:

- Minor runway upgrade works;
- Ratification of occupancy agreements;
- Implementation of formal management processes; and
- 15 • Development of existing land.

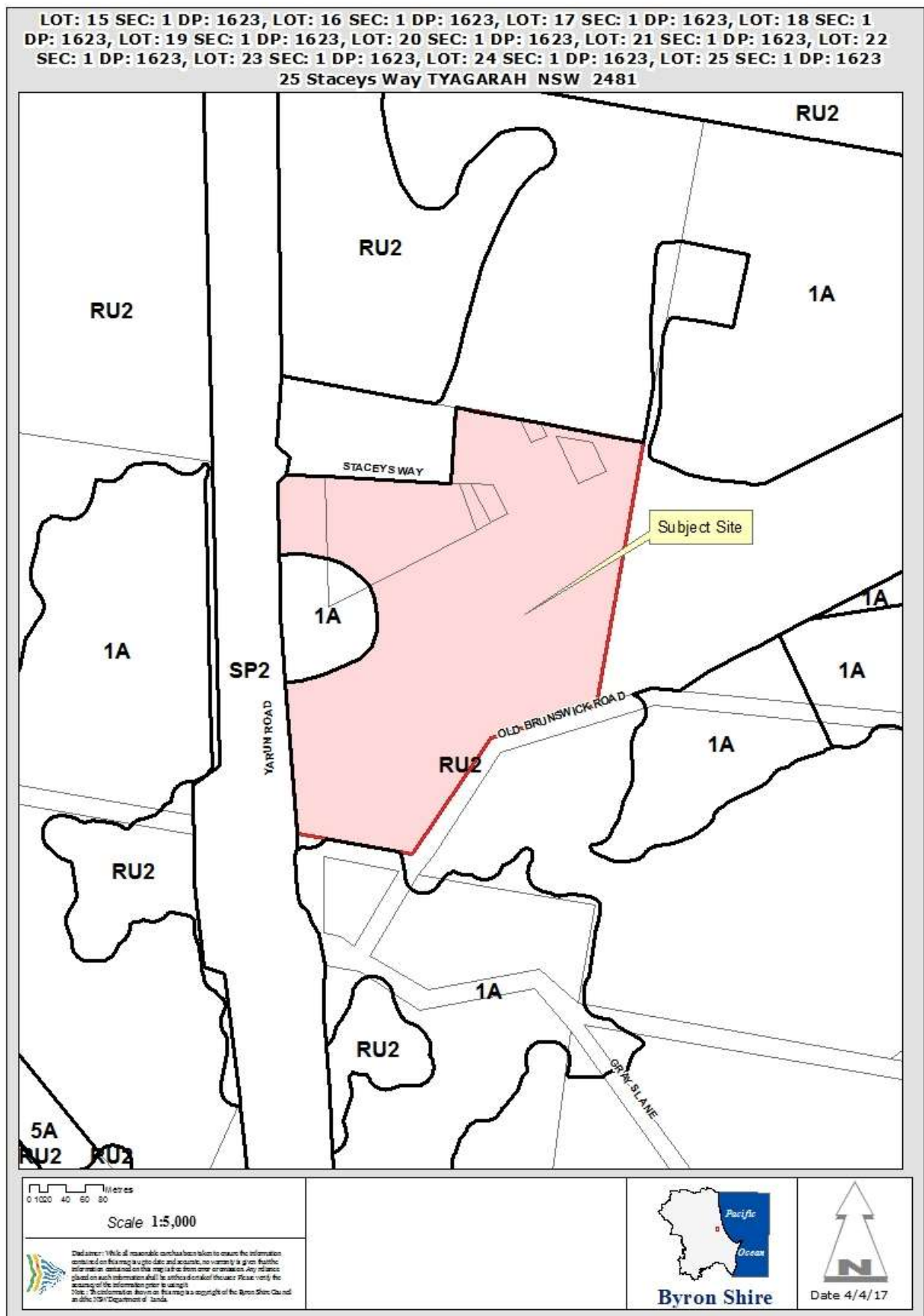
This Planning Proposal is a result of the recommendation to develop the existing land.

20 At the Council meeting of 10 December 2015, Council considered a planning proposal relating to the Tyagarah Airfield site and resolved to send the planning proposal to the NSW Department of Planning and Environment for Gateway Approval (**15-659**).

25 The proposal relates to land located on the eastern side of the Pacific Highway, north of Grays Lane at Tyagarah, which is accessed from Yarun Road. The site contains the following Council-owned operational properties.

| | | |
|------------------|---------------------|--|
| Lot 2 DP 749851 | 1,460m ² | Leased. Contains an existing industrial shed/ hangar |
| Lot 1 DP 713023 | 1.525ha | Subdivided for lease purposes under DP 805678 – see below: |
| Lot 4 DP 805678 | 5,136m ² | Created for lease purposes. Leased to private individual. Contains the base and business premise of <i>Skydive Byron Bay</i> |
| Lot 5 DP 805678 | 1.011ha | Created for lease purposes. Currently vacant. |
| Lot 6 DP 836887 | 867.9m ² | Leased. Contains two existing hangars |
| Lot 8 DP 856832 | 385.7m ² | Leased. Contains an existing building owned by the Byron Lapidary Society |
| Lot 9 DP 856832 | 747.8m ² | Leased. Contains an existing building servicing as administration for a joy flight operator |
| Lot 49 DP 881232 | 13.21ha | Residual of the Council-owned land. Contains the western end of runway and, in the north-eastern sector, the Tyagarah Public Hall and associated amenities building. The land leased and used by the Tyagarah Clay Shooting Club is partially on this land, and partially on the adjoining Crown Land (Lot 181). Part of the land is also leased to the Tyagarah Recreation and Flying Club as the site for their hanger. |

30 The proposal relates only to the areas within the site that are zoned RU2 under Byron LEP 2014. There are two areas that are Deferred Matters under the LEP. Those parts of the site are not included in the planning proposal.



The proposal will amend Schedule 1 of the Byron LEP 2014 to specify that development for the purposes of a heliport is permitted with development consent on the land.

5 It will also amend the Minimum Lot Size Map to establish a minimum lot size of 1,000m² for the land (currently 40ha). The reduction in minimum lot size will allow the subdivision of the land to rectify lots that were previously created for lease purposes but not registered, formalise the existing internal roadway, and create additional lots to utilise operational Council land to ensure that the airfield is economically sustainable.

10 The planning proposal received an initial Gateway determination from the Department of Planning and Environment on 24 March 2016. A revised Gateway was issued on 28 November 2016 following Council's request for an extension of time in order for additional technical studies to be prepared in response to the submission from the Office of Environment and Heritage (OEH).

15 **Consultation**

In accordance with the requirements of the Gateway determination, the planning proposal was placed on public exhibition for a period of 28 days, from 5 May 2016 to 2 June 2016. Seven public submissions were received during the exhibition period, in addition to submissions from the Australian Department of Infrastructure and Regional Development, NSW Rural Fire Service and
20 NSW Office of Environment and Heritage. One further late public submission was received in February 2017, with a supplementary submission provided shortly after.

The Gateway determination required Council to consult with:

- NSW Office of Environment and Heritage (OEH);
- 25 • Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome;
- NSW Roads and Maritime Service (RMS); and
- NSW Rural Fire Service (RFS).

30 The submissions received from those agencies are included as Attachments 3, 4 and 5 and are summarised below (Note: RMS did not make a submission).

NSW Rural Fire Service:

The RFS raised no objection to the planning proposal, and provided the following comments:

- 35 • *The proposed internal road, at subdivision stage, shall comply with the public road provisions of Planning for Bush Fire Protection 2006.*
- *Reticulated water supply to the development, at subdivision stage, shall comply with Planning for Bush Fire Protection 2006.*
- 40 • *All buildings to be constructed on each proposed and existing allotments, shall have a minimum 15 metre separation distance from the property boundary adjoining the hazard.*
- *Each proposed lot shall be maintained as an 'inner protection area' as per Planning for Bush Fire Protection 2006 and the NSW RFS document Standards for Asset Protection Zones.*

Australian Government Department of Infrastructure and Regional Development:

45 The Department provided no comment on the intent and content of the proposal, noting that if, in the future, an application is made to establish a heliport at the site the Department would welcome the opportunity to comment.

NSW Office of Environment and Heritage:

50 Prior to finalising a submission, OEH advised that, while the addition of heliport to the Schedule of additional permitted uses was supported, they identified a number of issues requiring further

consideration. They provided a number of recommendations, which are identified below, together with comments relating to how those recommendations were subsequently addressed.

1. *Prepare an Aboriginal cultural heritage assessment in support of the planning proposal.*

Council engaged Everick Heritage Consultants to undertake an Aboriginal Cultural Heritage Assessment for the project (see Attachment 6). That assessment was undertaken in conjunction with representatives of the Arakwal Aboriginal Corporation Byron Bay. It concluded that there are no culturally significant sites or areas affected by the proposal.

The Cultural Assessment Report was provided to OEH, who advised that they have no outstanding issues relating to the planning proposal.

2. *Prepare an appropriate flood assessment in support of the planning proposal.*

Council engaged BMT WBM to undertake the flood assessment for the project (see Attachment 7). That assessment involved the expansion of existing contemporary flood modelling to account for the site. In that modelling, the assessment conservatively assumed that the entire planning proposal site would be filled.

The modelling demonstrated negligible flood increases external to the site, associated with the assumed filling.

The Flood Assessment was provided to OEH, who advised that they have no outstanding issues relating to the planning proposal.

3. *Confirm the location and extent of proposed "new lots" and associated infrastructure to be enabled by the planning proposal to allow the OEH to accurately assess the potential extent of direct and indirect impacts on biodiversity arising from the proposed Minimum Lot Size Map and whether these lots and associated infrastructure extend into deferred areas. The Minimum Lot Size Map should align with the boundaries of the proposed subdivision area and avoid deferred areas and areas of high environmental value.*

There was some confusion created by the inclusion (as appendices to the planning proposal) of various technical studies previously prepared to examine the subdivision potential of the land.

Further information was provided to OEH clarifying that a detailed subdivision proposal has not yet been developed, but that avoidance of areas of high environmental value would be a design criteria for any future development. The extent of the planning proposal site was also clarified, noting that deferred areas are not included within the proposal.

4. *Confirm whether Endangered Ecological Communities are present in the planning area and their full extent by demonstrating due consideration of the edaphic features of the site in addition to the floristic characteristics present, including in areas identified as regrowth native vegetation.*

Additional ecological information was provided as requested.

5. *Assess the indirect impacts on biodiversity values of future land uses to be enabled by the planning proposal.*

6. *Confirm the full extent of requirements for Asset Protection Zones and consider these in assessing the planning proposal.*

7. *Confirm the planning proposal is consistent with the NSW Coastal Policy and apply appropriate zonings recognising the land's inherent conservation values.*

8. *Confirm the planning proposal is consistent with the Far North Coast Regional Conservation Plan*

Additional information was provided as requested in relation to these matters, and OEH have advised that they have no outstanding issues relating to the planning proposal.

Public Submissions

Seven public submissions were received during the exhibition period, with one further late public submission received in February 2017 (with a supplementary submission provided shortly after).

Of the eight public submissions received (includes the late submission):

- one was in objection, suggesting that the use of the land as an airfield should be discontinued and the site used instead for “high technology industry”; and raising a number of other issues that are addressed in the body of this report;
- three submissions expressed support for the proposal; and
- four submissions were not directly relevant to the planning proposal, instead including:
 - suggested improvements to existing facilities at the site;
 - a desire by existing tenants to remain on-site;
 - suggested opportunities to increase revenue; and
 - concerns from the Cape Byron Pistol Club regarding potential impacts on their site (located outside of the planning proposal area) associated with ecological offset proposals.

The following table summarises issues raised in the submissions, and provides staff comments for Council’s consideration.

| Issues Raised | Staff Comment |
|---|---|
| <i>Letter of Objection (late submission):</i> | |
| <p>Cumulative environmental and social impacts of the compliance works necessary to bring the airstrip up to CASA standards have not been addressed</p> <p>A better alternative would be to maintain the planning proposal to reduce minimal lot size but to replace the use of “heliport permitted with consent” with “high technology industry permitted with consent”</p> <p>The Tyagarah Airfield Aviation Option Report prepared by The Airport Group – Australian Airports Association (2013), commissioned by Council, was not publicly released as part of the planning proposal.</p> <p>The Byron Shire Council Tyagarah airfield future strategic direction project was not made publicly available</p> <p>No social impact assessment was completed regarding increased noise pollution as part of expanded or intensified airfield operations or possible new heliport operations</p> | <p>The planning proposal does not relate to any works proposed or required on the airstrip. It deals primarily with existing and proposed use of land directly adjoining the strip to the north. Suggestion is noted. It would require a new planning proposal, a new Gateway determination and re-exhibition.</p> <p>That report was commissioned to provide internal advice to Council regarding the operation of the airfield. It was referred to in the planning proposal, to provide relevant background and context to the current proposal.</p> <p>The planning proposal is part of the project, but it is not considered to be relevant for the whole of that project to be publicly exhibited for the purposes of finalising this planning proposal.</p> <p>The planning proposal merely establishes a mechanism whereby a heliport and subdivision proposals could be considered at the site.</p> <p>Any future development proposals would be subject to a detailed merits assessment, which would include an examination of noise and other potential impacts.</p> <p>The amendment of the LEP, as proposed, provides no guarantees regarding the merit assessment, nor does it in any way suggest that such development would be approved in the</p> |

| Issues Raised | Staff Comment |
|--|---|
| <p>No report on existing noise and operational complaints relating to the Tyagarah airfield was prepared</p> <p>No Tyagarah airfield operational plan or occupational health and safety plan has been prepared to accompany the proposal</p> <p>Notice should also have been issued to the Aircraft Noise Ombudsman and Air Services Australia for comment on the planning proposal</p> <p>The additional use map for helicopter use does not need to cover the entire area of the planning proposal. It is inappropriate to do so and a heliport is not needed at Tyagarah airfield. Even the need for a helipad is questionable. All reference to a heliport should be removed from the planning proposal. If it is deemed that helicopter landing facilities are required, then references to "heliport" in the planning proposal should be replaced with "helipad"</p> <p>The changed minimum lot size map is appropriate but the use of the land for retail or residential purposes should be further investigated. A way should be found to specifically NOT permit any ancillary use of the land for retail or residential uses until further studies on impacts are carried out.</p> | <p>absence of positive merit assessment outcomes.</p> <p>As such, it is considered that social assessment is not required at this planning proposal stage.</p> <p>See above. In relation to noise, the TAG <i>Tyagarah Airfield Options Report</i> (March, 2014) noted:</p> <p><i>"The airstrip and the approaches to the North east and South West ends of the runway are not close to any township. As such, noise abatement and mitigation is not an important operational consideration. It is understood that BSC has received some complaints on aircraft movements but due to limited movements and space population density, aircraft noise is considered minimal relative to background noise including traffic noise along the highway."</i></p> <p>Such plans are not considered necessary in relation to this planning proposal.</p> <p>Consultation was undertaken in accordance with the Department of Planning and Environment's Gateway Determination.</p> <p>The justification for, and location of, and heliport proposal will be assessed in a future development application, should one be lodged.</p> <p>Having the additional use map cover the whole of the planning proposal site provides flexibility.</p> <p>The relevant LEP definitions are:</p> <p>helipad means a place not open to the public used for the taking off and landing of helicopters.</p> <p>heliport means a place open to the public that is used for the taking off and landing of helicopters, whether or not it includes:</p> <p>(a) a terminal building, or</p> <p>(b) facilities for the parking, storage or repair of helicopters.</p> <p>The definition of helipad is much more limited in terms of potential future operations.</p> <p>It is considered that, subject to detailed assessment of any future development applications, a heliport could be a suitable use at this site.</p> <p>The planning proposal does not alter the existing planning controls in relation to retail or residential uses.</p> |

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.10

| Issues Raised | Staff Comment |
|--|---|
| <p>Due to the existing social impact of the Tyagarah Airfield on a small percentage of the population in Tyagarah, Myocum and Brunswick Heads all residences should have received written notification of the planning proposal and been notified of the 28 day public exhibition period. No formal written notice was provided. The Byron Shire News published council notices but it is only delivered to less than half of the residences in this area. As a consequence, many community members who are directly impacted by Tyagarah Airfield missed out on any opportunity to publicly comment on the planning proposal.</p> | <p>The public exhibition was appropriate for the nature of the proposal.</p> <p>Any future application for a heliport would require notification and public exhibition.</p> |
| <p>The ecological assessment that was carried out as part of the Planning Proposal included the condition that the number of lots be significantly reduced but the planning proposal continues to recommend a 15 lot sub-division. This should be changed to reflect the conditions in the ecological assessment.</p> <p>I am requesting a Public Hearing be held on the Tyagarah Airfield Planning proposal despite the gateway determination not requiring one.</p> | <p>The ecological assessment was undertaken in relation to a proposed subdivision layout that is no longer relevant.</p> <p>The ecological report, and other technical reports, were included in the planning proposal to provide background overview of the site.</p> <p>The planning proposal does not recommend or promote any development layout.</p> <p>Any future development application for subdivision of the land will need to include a detailed and updated ecological assessment that demonstrates that the subdivision design is an appropriate response to the environment of the site.</p> <p>Section 57(5) of the <i>Environmental Planning and Assessment Act 1979</i> provides that, in relation to a draft LEP, a person making a submission may request a public hearing into the matters raised.</p> <p>Council can arrange such a hearing if it considers that the issues raised in the submission are of such significance that they should be the subject of a hearing.</p> <p>In the circumstances of this planning proposal, it is considered that the submission does not raise issues of a significance to warrant a public hearing.</p> |
| <p>The submissions also included a number of detailed comments and objections relating to airfield operational matters and in relation to proposals for clearing / pruning works undertaken in relation to maintaining the Obstacle Limitation Surface around the airfield.</p> <p>These matters are not directly relevant to the planning proposal, which seeks only to allow 'heliport' as a permissible use (subject to consent) and to reduce the minimal lot size that could be applicable for the future subdivision of land.</p> | |
| <p><i>Letters of support:</i></p> | |
| <p>I recognise the economic, social and transport benefit that the airfield provides to the community and I also acknowledge the need for</p> | <p>Noted.</p> |

| Issues Raised | Staff Comment |
|--|---|
| a commercial heliport in the region to accommodate the increasing helicopter traffic and usage in the area. | |
| As a long term lessee at Tyagarah Airfield, I support Council in this proposal. I feel the measures outlined, together with an equitable "users pays" system will go a long way to ensuring the future viability of the Tyagarah Airfield. | Noted. |
| As a flight instructor, business owner and lessee, I express strong support for the proposal | Noted. |
| <i>Other letters:</i> | |
| New hangars should be built on higher ground, a safe distance from both sides of the airstrip. Suggestions relating to location of parking areas. | Noted. |
| Tyagarah Clay Target Club wishes to continue tenure over the lands currently used | Noted. |
| Detailed submission from Cape Byron Pistol Club, primarily relating to ecological issues, such as offset proposals that have potential to impact on the area leased by the Club. | The area leased by the Club is outside of the area covered by the planning proposal. The ecological offset proposals relate to Obstacle Limitation Surface works, which are not part of this planning proposal. |
| A number of opportunities suggested that have the potential to increase Council's ability to increase revenue from the airfield. | Noted. Not directly relevant to the planning proposal. |
| Some inaccuracies identified in the leasing arrangements outlined in the planning proposal. | Noted. |

Many of the issues and concerns raised relate to the specifics of potential future land use, particularly helicopter use, and potential ecological impacts associated with current and proposed vegetation management works (tree clearing and pruning to maintain the obstacle limitation surface adjoining the airstrip).

In relation to future uses, the planning proposal merely provides a mechanism whereby development for the purposes of a heliport and/or subdivision of the land can be considered. Development consent will be required for any such proposals and the provisions of the Environmental Planning and Assessment Act will apply, requiring a detailed environmental assessment of any proposal.

The planning proposal does not provide any guarantee regarding the success of any such assessment.

Recommendation

It is recommended that Council proceed with the planning proposal (Attachment 1).

Financial Implications

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

Statutory and Policy Compliance Implications

Council has followed the appropriate statutory process to amend BLEP 2014 through this planning proposal.

5

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

Report No. 13.11 **PLANNING - 10.2016.273.1 Multi Dwelling development plus Strata Subdivision, 21 Ballina Road Bangalow**

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Consultant Planner

Chris Larkin, Major Projects Planner

File No: I2017/359

Theme: Ecology

Development and Approvals

Proposal:

Proposal description: Stage One: Two (2) Lot Subdivision; Stage Two: Construction of 20 Two Bedroom Dwelling Houses and Staged Strata Subdivision

Property description: LOT: 3 DP: 1220608
21 Ballina Road BANGALOW

Parcel No/s: 268262

Applicant: Ardill Payne & Partners

Owner: Ms G Hart-Hughes

Zoning: R3 Medium Density Residential / PART DM Deferred Matter (1(a) General Rural under BLEP 1988)

Date received: 5 May 2016

Integrated Development: Yes

Controlled Activity under *Water Management Act 2000*;

Bush Fire Safety Authority under *Rural Fires Act 1997*

Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

– Exhibition period: 19/05/16 TO 01/06/16

– Submissions received: 2 objections

Other approvals (S68/138): Not applicable

Planning Review Committee: Meeting 23/6/2016

Delegation to determination: Council

Issues:

- SEPP No. 1 Objection – minimum lot size in 1(a) zone (residual lot)
- CI 4.6 variation – building height limit
- Compliance with DCP provisions – minor encroachment into Building Height Plane

Summary:

The development application proposes a two lot subdivision, which will create a 'development lot' 6,000m² in area, to be developed by the staged construction (and staged strata subdivision) of five separate two-storey buildings, each containing four two-bedroom residential units (i.e. 20 units in total). A residual lot of 1.822 hectares will also be created with a dwelling entitlement.

The site is located at the end of Ballina Road, which was previously the Pacific Highway and now terminates in a cul-de-sac at the frontage to the site. The development site is zoned R3 Medium Density Residential, and the proposal is considered to satisfy the objectives of this zone.

It is considered the development generally complies with the provisions of Byron LEP 2014 and Byron DCP 2014 for multi dwelling housing and subdivision. A minor breach of the 9 metre height limit is proposed in relation to a small section of Building 5, containing Units 17-20 by half a metre for a length of approximately 1.2m. The applicant has sought a variation to the height limit, and having regard to the topography of the land and the level of variation being sought, strict compliance with the development standard is not warranted in this instance.

In general the development will not generate adverse impacts on the surrounding built and natural environment, whilst the proposal is unlikely to create a dangerous precedent. The development will provide for an alternate form of accommodation not readily available in Bangalow which will suit those wishing to live in smaller housing within the town. The application is recommended for approval subject to conditions of consent




NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That, pursuant to Section 80 of the *Environmental Planning and Assessment Act 1979*, development application 10.2016.273.1 for the subdivision of land and the construction of a multi-dwelling residential development (including staged strata subdivision), be granted approval subject to the conditions listed in Attachment 3 (#E2017/21284).

Attachments:

- 1 Proposed Plans Multi Dwelling development plus strata subdivision at 21 Ballina Road Bangalow ,
E2017/20985 
- 2 Proposed Engineering Plans subdivision 21 Ballina Road Bangalow prepared by Ardill Payne ,
E2017/22589 
- 3 Recommended Conditions of Consent, E2017/21284 
- 4 Confidential - Submission received DA 10.2016.273.1 17 Ballina Road Bangalow , E2017/20987



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

The property is vacant and rural and residential land with no specific development history at present

1.2 Description of the proposed development

This application seeks approval for residential development to be carried out in stages:

1. The subdivision of the site to create two lots:

- proposed Lot 1, with an area of 6,000m², encompassing the majority of the area zoned R3 Medium Density Residential (at Ballina Road frontage); and
- proposed Lot 2, with an area of 1.882ha, being the residue of the existing site (containing a small area fronting Ballina Road within the R3 zone, and the remainder of the lot containing the deferred land, which is zoned 1(a) General Rural under BLEP 1988).

2. Construction and strata subdivision of a multi-dwelling development, containing 20 two-bedroom units in 5 separate double-storey buildings.

The construction and strata subdivision of the units is proposed to be under taken in stages, with the western-most building, containing units 1-4, to be constructed first. This building will be subdivided under the *Strata Schemes Development Act 2015*, and the staged strata subdivision will also create four additional 'development lots', to be developed in the following subsequent stages of building construction:

- Stage 2 – Building 2 containing Units 5-8;
- Stage 3 – Building 3 containing Units 9-12;
- Stage 4 – Building 4 containing Units 13-16; and
- Stage 5 – Building 5 containing Units 17-20.

Construction of the whole of the internal driveway and associated engineering and stormwater works will occur with the Stage 1 building construction.

Each of the five buildings has the same design and materials, constructed using a combination of fibre cement cladding, metal wall sheeting, rendered brickwork with a metal roof. Each building contains garages toward the street frontage, with the unit buildings behind stepping down the slope. A single garage is provided for each unit, with five open visitor spaces provided along the internal driveway.

One-way access is proposed, with an entry from Ballina Road on the western side and exit on the east. Given the slope of the land, the internal driveway is below street level. The units are similar in design and layout, containing two bedrooms toward the street frontage, with kitchen, dining and living areas toward the east. Balconies are included off all living areas with an area of 18m². The units each have a floor area of approximately 100m², proving a total Gross Floor Area of 2,000m² for the development.

1.3 Description of the site

Land is legally described as: LOT: 3 DP: 1220608

Property address is: 21 Ballina Road BANGALOW

Land is Zoned: R3 Medium Density Residential / PART DM Deferred Matter (1(a) General Rural under BLEP 1988)

Land area is: 2.482ha
Property is constrained by: Bush fire prone land (vegetation buffer)
Drinking water catchment
Key fish habitat
Regionally significant farmland

5 The site is located at the edge of the Bangalow Village, in an area characterised mainly by single dwellings. The site has an eastern frontage of 324m to the Hinterland Way and a south-western frontage of approximately 160m to Ballina Road (the old Pacific Highway) which terminates in a cul-de-sac at the southern end of the property.

10 The site is vacant, with some stands of vegetation, located primarily in the north of site and parts of the eastern and western boundaries. A small creek traverses the site, located behind the proposed building location. The site falls sharply from the Ballina Road frontage, where the elevation is at around RL 60m AHD. The low lying parts of the site, around the creek and in the northern section average around RL 50m AHD.



15 **The Site (Source: Six Maps)**



Site Locality (Source: Six Maps)

2. SUMMARY OF REFERRALS

5

| Referral | Issue |
|--|---|
| Environmental Health Officer | No objections subject to conditions. |
| Development Engineer | A Strata Development Contract and associated Plan have been submitted for the proposal that links the approved development to the vacant strata lots created during subdivision process No objections subject to conditions. |
| S64 / Systems Planning Officer | No objections subject to conditions. |
| S94 / Contributions Officer | Contributions are payable. Condition recommended. |
| Rural Fire Service | Bush Fire safety Authority issued. Included in recommended conditions. |
| Department of Planning & Environment | Concurrence issued relating to SEPP No. 1 Objection (see explanation below). |
| Department of Primary Industries Water | General Terms of Approval issued for Controlled Activity Approval. Included in recommended conditions. |

Issues:

Department of Primary Industries Water

10

The Department initially expressed concerns regarding the proximity of the buildings to an existing water course within the site. The applicants responded by amending the proposal to move two of the buildings forward on the site, to maximise the set back to the creek. In response to this amendment, the Department has now issued their General Terms of Approval, agreeing to the integrated development consent.

15

NSW Rural Fire Service

The property is on land that is identified as bushfire prone land. The development application was referred to the NSW Rural Fire Service, whereby a Bush Fire Safety Authority was issued under Section 100B of the Rural Fires Act 1997. The conditions contained in that Authority are included in the Recommendation of this Report below.

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

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

3.1 State Environmental Planning Instruments

| | Satisfactory | Unsatisfactory |
|---|-------------------------------------|--------------------------|
| State Environmental Planning Policy No 1—Development Standards | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Consideration: Stage 1 of the development involves the subdivision of the existing Lot 3, to create Proposed Lot 1, being the majority of land zoned R3, to be developed in Stage 2 for the units, and a residue parcel, Proposed Lot 2. Lot 2 contains a potential dwelling site within the R3 zone, but the majority of the lot is zoned 1(a) General Rural under BLEP 1988.</p> <p>The minimum lot size for subdivision of land zoned 1(a) is 40ha. Proposed Lot 2 has an area of 1.882 ha.</p> <p>The applicants have submitted an objection under SEPP No 1, arguing that the need to adhere to the 40ha development standard is unreasonable in the subject case, based on the fact that the 1(a) zoned land is not fragmented by the proposed subdivision.</p> <p>The objection is well founded in this case and can be supported.</p> <p>The Department of Planning and Environment have issued concurrence to the approval of this objection.</p> | | |
| State Environmental Planning Policy No 14—Coastal Wetlands | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: There are no mapped SEPP 14 wetlands in this locality. | | |
| State Environmental Planning Policy No 26—Littoral Rainforests | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: There are no mapped SEPP 26 Littoral Rainforests in this locality. | | |
| State Environmental Planning Policy No 44—Koala Habitat Protection | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The site has an area greater than 1ha. It does not, however, contain potential koala habitat. | | |
| State Environmental Planning Policy No 55—Remediation of Land | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The potential for contamination was assessed as part of the previous rezoning of the site (2007), concluding that the land use history is such that there is no likelihood of soil contamination. No further assessment is necessary. | | |
| State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The SEPP only applies to residential development containing 3 or more storeys. Not applicable in this case. | | |
| State Environmental Planning Policy (Building Sustainability | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

| | Satisfactory | Unsatisfactory |
|--|--------------|----------------|
| Index: BASIX) 2004 | | |
| Consideration: ABSA certification has been provided. | | |

3.2A Byron Local Environmental Plan 2014 (LEP 2014)

- 5 **Zone:** R3 Medium Density Residential and part DM Deferred Matter (zoned 1(a) General Rural under Byron Local Environmental Plan 1988)
- Definition:** *Multi dwelling housing* means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building (which is defined as 3 or more dwellings within a single building).
- 10 *Multi dwelling housing* is a type of *residential accommodation*.
- Permissibility:** *Subdivision* is permissible pursuant to clause 2.6 of the LEP. *Multi dwelling housing* is permissible with consent in the R3 zone.
- 15 Schedule 3 of the LEP provides that *strata subdivision* is exempt development, but only where it proposes the subdivision of an existing lawfully erected building. The subject application proposes a staged strata subdivision, to create a number of 'development lots' so that the residential unit buildings can be constructed and sold in stages. As such, the staged strata subdivision requires development consent, and is permissible pursuant to cl. 2.6.
- 20

| LEP - Summary of Requirement | Proposed | Complies |
|---|---|----------|
| Objectives of the R3 Medium Density Residential zone Objectives of zone <ul style="list-style-type: none"> To provide for the housing needs of the community within a medium density residential environment. To provide a variety of housing types within a medium density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. | The proposed development provides for additional residential housing and is consistent with these zone objectives. | Yes |
| Clause 4.1 Minimum subdivision lot size The minimum lot size for the R3 component of this site is 300m ² . | Proposed Lot 1 (which will be development for the residential units) has an area of 6,000m ² . The minimum lots size development standard does not apply to the strata subdivision component. | Yes |
| Clause 4.1E Minimum lots sizes for dual occupancies, multi dwelling housing and residential flat buildings Provides that multi dwelling housing cannot be approved in the R3 zone unless the lot has an area of at least 800m ² . | The multi dwelling housing will be constructed on proposed Lot 1, which has an area of 6,000m ² . | Yes |
| Clause 4.3 Height of buildings The Height of Buildings Map specifies a maximum height of 9m. | There is a section of the building containing Units 17-20 that exceeds the maximum height limit, with a maximum height of 9.5m over a | No |

| LEP - Summary of Requirement | Proposed | Complies |
|--|---|-----------------|
| | <p>section of roof for approximately 1.2m in length.</p> <p>The application includes a request, made pursuant to cl 4.6, to approve a variation to the 9m building height development standard.</p> <p>The variation request is addressed below.</p> | |
| <p>Clause 4.4 Floor space ratio The Floor Space Ratio Map specifies a maximum of 0.6: 1 for this site.</p> | <p>The development site (proposed Lot 1) has an area of 6,000m². The total floor space of the units is approximately 2,000m² (see above) providing a maximum FSR of 0.3:1.</p> | Yes |
| <p>Clause 4.6 Exceptions to development standards This clause provides a degree of flexibility in applying certain development standards.</p> | <p>See assessment below. The requested variation is acceptable in the subject case. The concurrence of the Department of Planning and Environment can be assumed, because BLEP 2014 incorporates the Standard Template clause for this purpose.</p> | |
| <p>Clause 6.2 Earthworks The intent of this clause is to minimise the environmental impacts associated with earthworks.</p> | <p>Some cut and fill is required to set the internal driveway and buildings into the sloping site. The concept design provided is based on minimising cuts required for the access and internal driveway, with garage levels and building floor levels dependant on the driveway level.</p> <p>The driveway requires minor cut at its western end and minor filling at the east.</p> <p>Overall, it is apparent that the design has minimised the earthworks required, and that these works will not result in adverse environmental impacts.</p> | Yes |
| <p>6.3 Flood planning Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is compatible with the flood hazard of the land, and will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties.</p> | <p>Previous flood modelling in the Bangalow locality suggest a 1 in 100 year flood level of RL 47.85m AHD. Given that a low lying watercourse traverses the site, it is apparent that the low lying areas of the site will experience some local flooding.</p> <p>The proposed buildings have a minimum floor level at around RL 54m AHD, so will not be impacted by flooding. Being above the flood level, the development will also not effect flood behaviour within or outside the site.</p> | Yes |

| LEP - Summary of Requirement | Proposed | Complies |
|--|---|-----------------|
| 6.6 Essential services Council must be satisfied at that all required services are available. | The application has demonstrated that appropriate services can be provided for all lots. As originally lodged, the proposed development raised issues relating to effective stormwater management. The applicants were requested to revise aspects of the design to correct these issues and, as currently proposed, the development is satisfactory in relation to stormwater management. | Yes |
| 6.7 Affordable housing in residential and business zones In approving development for residential accommodation in the R3 zone, Council must consider the need for providing affordable housing. | While the application has not been made pursuant to the SEPP (Affordable Rental Housing), in providing 20 two-bedroom apartments, the development will provide housing that is affordable in the Bangalow context. The majority of housing stock in Bangalow consists of single dwellings on larger lots. There are very few units available in the village, and these units will therefore provide additional housing options for moderate income families. | Yes |

Clause 4.6 – Variation to development standard: maximum building height

The Applicant has submitted a clause 4.6 variation request, which is considered with reference to relevant matters as follows:

- 5 **1. Introduction – Summary of proposed development**
The development application proposes the construction of multi dwelling in the form of 5 buildings, each containing 4 two-bedroom units, providing a total of 20 units.
- 10 **2. Clause 4.6 Exceptions to Development Standards**
Clause 4.6 of Byron LEP 2014 provides that development consent may be granted for development even though the development would contravene a development standard imposed by the LEP.
- 15 It specifies, however, that consent must not be granted unless Council has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - 20 (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

These matters are assessed below in item 7.

3. The Development Standard to be varied

The development standard to be varied is contained in clause 4.3 of LEP 2014. In this case, the Height of Buildings map specifies a maximum height of 9m.

4. Extent of Variation to the Development Standard

The architects' plans show that the building containing Units 17-20 (the eastern most building) has a maximum height of 9.5m. The 9m development standard is breached for a distance of approximately 1.2m of the roof line.

5. Objective of the Development Standard

The objectives of the development standard are:

- (a) *to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*
- (b) *to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- (c) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

6. Objectives of the Zone

The objectives of the R3 Medium Density Residential Zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

7. Assessment – the specific questions to be addressed:

(a) Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Non-compliance with the standard arises, in this case, primarily due to the topography of the site, which slopes relatively steeply down from the road frontage, and also falls slightly across the site, from west to east. The floor level of each of the five unit buildings is linked to the internal driveway level and the floor level of the garages. BCA access requirements limit the grade allowable from garage level to the adjoining floor level.

In the eastern end of the site, because of existing topography, the internal access (and garage level) is approximately 1-1.5m above ground level. This is necessary to achieve the appropriate access grade and to minimise the need to cut the driveway at the western end.

Because the garage is set above the natural ground level, the associated building also needs to be set above natural ground (to achieve the required access grades). Given the slope down the hill and across the property, the NW corner of the building ends up at a maximum height of 9.5m for a short distance. Reducing this corner to comply with the development standard would require lowering the whole of the development, which would result in the need to cut into the hill for the western end of the driveway, which would require further substantial earthworks to get the driveway from the adjoining road level into the site.

The overall impacts of that would be greater than the potential impacts associated with the small extent of non-compliance with the height limit.

Given that this section of the building overlooks the vacant residue lot, which has an entitlement for a single dwelling, it is considered that the height does not result in impacts on adjoining land.

5 Overall, in the circumstances, compliance with the development standard is unreasonable.

(b) Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

10 See above. Given the zoning of the site and the location of the non-compliance within the site, there are sufficient environmental planning grounds to support the variation required.

(c) Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest? Is it consistent with the objectives of the standard and the zone as set out above?

15 The development is consistent with the R3 Medium Density zone objectives. It is also consistent with the objectives of the building height standard, in that the majority of the buildings are well below the 9m maximum and the small area of breach is located at the point furthest away from existing development. There are also no lots located further to the east, which could be impacted by the height.

20 The proposed development would produce a better planning outcome than one that strictly complies with the development standard because requiring strict compliance would result in a need for more earthworks across most of the development site.

25 3.2B Byron Local Environmental Plan 1988 (LEP 1988)

The majority of Proposed Lot 2 is zoned 1(a) Rural under the BLEP 1988. The creation of this lot will not fragment the area zoned 1(a); the entirety of that area remains unchanged within this residue lot (which also has a small area adjacent to proposed Lot 1 which is zoned R3 under BLEP 30 2014).

| LEP - Summary of Requirement | Proposed | Complies |
|--|---|----------|
| Objectives of the 1(a) General Rural Zone <ul style="list-style-type: none"> to encourage and permit a range of uses creating a pattern of settlement, at a scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron, to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character, to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses, to allow the use of land within the zone for agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture, | <p>The proposed development creates a lot which contains the area zoned 1(a) General Rural, but no development is proposed within that area.</p> <p>The lot created will have a dwelling entitlement, but there is an area zoned R3 Medium Density Residential under BLEP 2014 which is more likely to contain a future dwelling.</p> <p>The proposal raises no issues which are inconsistent with the zone objectives.</p> | Yes |

| LEP - Summary of Requirement | Proposed | Complies |
|--|--|----------|
| <ul style="list-style-type: none"> • <i>to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development,</i> • <i>to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in road side service areas,</i> • <i>to ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry,</i> • <i>to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality, and</i> • <i>to permit the development of limited light industries which do not pose any adverse environmental impact, (eg software manufacture and film processing), and</i> • <i>to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora.</i> | | |
| Clause 10 Subdivision generally Specifies that consent is required for the subdivision of land | | Yes |
| Clause 11 Subdivision in rural areas for agriculture etc. This clause specifies a minimum lot size of 40ha for land zoned 1(a) General Rural. | Proposed lot 2, which contains the 1(a) zoned land, does not have an area of 40ha. The applicants have provided an objection under SEPP No. 1 (discussed above) in relation to this standard. The objection is considered to be well founded in this case as the proposed subdivision does not fragment the existing area of 1(a) or create any additional entitlement within that zone. | No |
| Clause 24 Development of flood liable land Council must be satisfied that development will not restrict the flow of flood water or | The 1(a) zoned land contains an existing creek and the areas immediately around this creek are flood liable. There is no physical development in this flood liable | Yes |

| LEP - Summary of Requirement | Proposed | Complies |
|--|--|-----------------|
| increase the level of flooding outside the site. | area, so the development is acceptable in regard to the requirements of this clause. | |

3.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

- 5 There are no applicable draft planning instruments.

3.4A Byron Shire Development Control Plan 2014 (DCP 2014)

| Byron Development Control Plan 2014 | | |
|--|---|-------------------|
| Control | Assessment | Compliance |
| Chapter B3 Services | | |
| B3.2.1 Provision of Services | | |
| a) Water Supply <i>Development shall be provided with an adequate water supply connection or have suitable arrangements in place for the provision of an adequate water supply service.</i> | Reticulated water supply is available to the site and can be provided and/or upgraded as required to service the proposed development. | Yes |
| b) Electricity Supply <i>Development shall be provided with an adequate connection to grid supplied electricity services or its equivalent</i> | Conventional connection to grid is proposed. | Yes |
| c) Telecommunications Infrastructure <i>Development shall be provided with adequate access to the telecommunications network for fixed line telephone services.</i> | Conventional services are proposed. | Yes |
| d) Sewage Management <i>Development shall be provided with an adequate reticulated sewer connection or have suitable arrangements in place for such a connection to be made where access to reticulated sewer is available</i> | Conventional reticulated sewerage is proposed. | Yes |
| e) Stormwater and Drainage <i>Development applications must contain sufficient information to assess whether the proposed stormwater system is effective and feasible, both within the site and in its connection to the public drainage system.</i> | Stormwater Management Plan was provided to support the application. | Yes |
| f) Road Access – General <i>Development must comply with road access requirements contained in Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access, and the Northern Rivers Development & Design Manual.</i> | <p>Access is provided from Ballina Road by way of a one-way driveway entering from the western side of proposed Lot 1 (unit site) and exiting at the eastern end.</p> <p>Access is also available to the residual lot (proposed Lot 2) by a separate driveway off Bangalow Road, immediately east of the proposed unit exit driveway.</p> <p>Concepts have been provided to demonstrate these access works can be designed and constructed in accordance with relevant standards.</p> | Yes |
| Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access | | |
| B4.2.1 Traffic Impact <i>Development likely to result in moderate to high</i> | A Traffic Impact Statement has been submitted. It identifies that the | Yes |

| Byron Development Control Plan 2014 | | |
|---|---|-------------------|
| Control | Assessment | Compliance |
| <i>traffic impacts (10-15+ peak hour trips) is required to be supported by a Traffic Impact Statement</i> | development is likely to generate in the order of 8-10 peak hour trips. The property is located at the eastern end of Ballina Road, which terminates at the SE boundary of the land. This was previously the Pacific Highway and contains a two-way bitumen sealed road. Ballina Road intersects with Byron Street at an intersection containing dedicated turning lanes. The Statement concludes that the proposed development is acceptable in terms of traffic generation and potential impacts. | |
| B4.2.3 Vehicle Access and manoeuvring areas <i>Driveways and manoeuvring areas are to be designed and constructed in accordance with the requirements of the current editions of Australian Standard 2890 and the Northern Rivers Local Government Development & Design Manual.</i> | Sufficient information has been provided demonstrating that access can be provided to both lots and all buildings in accordance with these requirements. | Yes |
| B4.2.5 Car parking requirements <i>In relation to medium density residential development, the DCP requires:</i> <ul style="list-style-type: none"> • 1 space per 1 or 2 bedroom unit; • 1 visitor space per 4 units (or part thereof); <i>Each dwelling is to have at least 1 covered space.</i> | The proposed development includes: <ul style="list-style-type: none"> • 20 two-bedroom units @ 1 space = 20 spaces; and • 1 visitor space per 4 units = 5 spaces. A total of 25 spaces are provided, with 20 provided in garages (one for each unit) and 5 open spaces in the access driveway. | Yes |
| Chapter B9 Landscaping | | |
| B9.4 Multi dwelling housing, residential flat buildings and attached dwellings | | |
| B9.4.1 Landscape Principles <i>The following design requirements apply to multi dwelling housing, attached dwellings and residential flat buildings developments:</i> <ul style="list-style-type: none"> • retention of suitable existing vegetation; • screen planting to street frontages and driveway areas, to provide privacy between dwelling houses and around the boundaries of the site; • provision of pleasant landscaped settings for the enjoyment of residents; • planting selection that relates to building scale and mass. | The proposed development requires the removal of a single Camphor laurel tree. There is no other significant vegetation within the development footprint. Landscaping is proposed along the street frontage side of the internal driveway, but the grades here, with the driveway well below the level of the street, are such that this planting will not provide an effective screen. A condition is recommended requiring screen planting within the verge of the Ballina Road reserve. | Yes |
| The common landscaped area must be at least 90m ² per unit (large units). A minimum of 75% of the total common landscaped area of the site must consist of deep soil areas. Areas of landscaping over underground car parks, and the like, cannot be included in the calculation of deep soil areas. | There is sufficient area available within Proposed Lot 1 to meet this requirement. A detailed landscape plan will be required at Construction Certificate stage to demonstrate where this common landscaped area will be provided. | Yes |
| Chapter B13 Access and Mobility | | |
| B13.2.2 Multi dwelling housing, attached dwellings, residential flat buildings, shop to | Proposed Units 1 & 2 have been designed in accordance with these requirements. | Yes |

| Byron Development Control Plan 2014 | | |
|--|---|---|
| Control | Assessment | Compliance |
| housing and serviced apartments <i>Design and Access in accordance with AS1428.1 – Design for Access and Mobility –General Requirements for Access – New Buildings (for class 3, 5, 6, 7, 8 and 9 buildings) and AS 4299 -Adaptable Housing must be provided to and within a minimum of 10% of units.</i> | | |
| Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones | | |
| D1.2 General Provisions | | |
| D1.2.1 Building Height Plane <i>The building height plane in combination with boundary setbacks prescribed in this DCP, and building height prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development</i> | The proposal involves minor encroachments into the Building Height Plane, which are identified and assessed below. As outlined below, the encroachments do not result in overshadowing or privacy issues and can therefore be supported. | No – but variation supported |
| D1.2.2 Setbacks <i>Street frontage – 4.5m Side & Rear – 1.5m (& BHP) Between buildings – 3m</i> | Proposed: Street frontage: min. approx. 9m Sides: min. approx 3.4m Between buildings: 3.1m | Yes |
| D1.6 Multi dwelling housing, residential flat buildings and attached dwellings | | |
| D1.6.1 Private open space courtyards <i>Each dwelling must have access to an individual courtyard at ground level having a minimum area of 30m² and a minimum length and width each of 4 metres, not including any area used exclusively for the circulation or parking of vehicles. The courtyard must be designed to facilitate access to winter sunshine and must be landscaped to Council's satisfaction.</i> | Each ground floor dwelling has access to yard space meeting these requirements. Upper floor dwellings are provided with balconies (see below). | No – but open space balconies provided (see D1.6.2) |
| D1.6.2 Open space balcony <i>Where dwellings are situated or have access entirely above the ground level of the development, Council may consent to the provision of private open space by means of a balcony which is of sufficient size and which is located so as to provide a usable private outdoor area to Council's satisfaction. A private open space balcony must have a minimum area of 15m² and a minimum length and width of 2.4 metres. A private open space balcony must be demonstrated to have appropriate orientation and adequate provision for winter sun and summer shade</i> | The proposed upper floor units all include balconies that meet the requirements. | Yes |
| D1.6.5 Sound proofing <i>Division walls between dwellings must be of sound-resisting construction to Council's satisfaction. The floors in single storey multi-dwelling housing, residential flat buildings and attached dwellings must be so constructed or treated as to minimise the conduct of sound between dwellings.</i> | The proposed development can comply. Relevant BCA provisions will apply. | Yes |
| D1.6.6 Clothes drying facilities <i>The minimum provision of clothes drying facilities must be at the rate of 7.5 metres of line per dwelling,</i> | Drying areas/ decks are provided for each unit. | Yes |

| Byron Development Control Plan 2014 | | |
|---|--|-------------------|
| Control | Assessment | Compliance |
| <i>located in suitably screened external drying areas.</i> | | |
| Chapter E2 – Bangalow | | |
| <p>E2.1.2 Objectives of this Chapter</p> <ol style="list-style-type: none"> <i>To facilitate and provide guidelines for the development of the Bangalow Urban Area consistent with the provisions of Byron LEP 2014 and other relevant Chapters of this DCP.</i> <i>To maintain and enhance the unique character and amenity of Bangalow as a rural township with strong historical linkages and heritage values; and to encourage new development to complement that special character to support and strengthen the historical context, heritage values, living amenity and tourist potential of the town.</i> <i>To provide for a variety of residential development forms and densities, including innovative multi dwelling housing and other medium density forms which best utilise the town's topography and maximises the use of services.</i> <i>To establish specific guidelines for the conservation of places and buildings identified as historically significant with criteria for extensions, alterations and infill development sympathetic to the important buildings in terms of design, scale, detailing, materials, colours, etc.</i> <i>To provide for an upgraded network of public open space, integrated with pedestrian access, cycleway and recreation facilities to meet public open space and recreation needs as the town expands.</i> <i>To preserve areas of significant habitat and vegetation value, to promote their active regeneration and to protect them from the impacts of development and domestic animals.</i> <i>To allow for the provision and upgrading of community facilities to meet needs as growth occurs.</i> | <p>The proposed development is generally consistent with these aims. It will provide for a variety of housing, in a medium density form. There is little existing medium density in the Village, so the development provides complimentary housing options.</p> | Yes |
| <p>E2.2.1 Character, Bulk and Scale of Development</p> <p><i>Proposed development must respect and complement this historical and architectural significance in its setting. Development applications must demonstrate that:</i></p> <ol style="list-style-type: none"> <i>The character, bulk, scale, density and landscape treatment of proposed development will be compatible with and will enhance the low rise, historical character and scale of Bangalow, its built environment and its surrounds, including the characteristics (a) to (e) inclusive in Section E2.1.3 above.</i> <i>Building materials, textures, finishes and colours will be compatible with and will enhance the low rise, historical character and scale of Bangalow, its built environment and its surrounds, including the characteristics discussed above where relevant. Reflective colours or surfaces are to</i> | <p>The subject site is one of only two sites zoned for medium density development in Bangalow.</p> <p>It is expected therefore, that the development on this site would be of a greater density than the remainder of the village.</p> <p>The existing residential stock within the village is generally characterised by single timber dwellings.</p> <p>The design of the proposed units does not reflect that existing character, with five two-storey buildings that are virtually identical. The materials are more in keeping with the existing character, using fibre cement sheeting and colourbond roofing.</p> | Yes |

| Byron Development Control Plan 2014 | | |
|--|---|-------------------|
| Control | Assessment | Compliance |
| <p><i>be avoided unless required for heritage reasons.</i></p> <p>c) <i>Where applicable the proposed development is consistent with the requirements of Chapter C1 Non-Indigenous Heritage.</i></p> | <p>The topography of the site helps to mask the bulk of the buildings, in that they are sited well below the level of the adjoining street. The location at the end of this street also assists.</p> <p>Overall, it is considered that the design of the development is acceptable in its context.</p> | |
| E2.4 Development outside the Conservation Area | | |
| <p>E2.4.3 New Urban Areas</p> <p><i>New development must complement the bulk, scale and character of development in the existing town to assist compatibility between new and old development in terms of streetscape, landscaping, building materials, colour, roof pitch and materials</i></p> | Discussed above. | Yes |
| E2.5 Bangalow Urban release Areas | | |
| <p>E2.5.3 Desired Future Character</p> <p><u>Street Design:</u> Not relevant to this area</p> <p><u>Natural Environment:</u> Remnant bushland, wetland and riparian vegetation are to be retained where possible and enhanced as significant natural features within the land.</p> <p><u>Water Sensitive Urban Design:</u> Stormwater management including at-source treatments.</p> <p><u>Pedestrian and Cycle Linkages:</u> Not relevant to this area</p> <p><u>Solar Access:</u> Dwellings should be sited to maximise solar access.</p> | <p>The riparian area associated with the small creek that flows through the site will be enhanced in accordance with a vegetation management plan required by the Controlled Activity approval (Water Management Act).</p> <p>Stormwater management measures have been assessed and are acceptable.</p> <p>The units are appropriately orientated to maximise solar access.</p> | Yes |
| <p>E2.5.6 Buffers and Environmental Corridors</p> <p><i>A riparian corridor must be rehabilitated adjacent to the new residential areas.</i></p> | See above | Yes |

Building Height Plane encroachments:

1. The western elevation of Building 1 (Units 1-4):

The encroachment involves a small section of the roof edge.

This building adjoins an existing residential lot, containing a single dwelling. The area of encroachment is located slightly downslope of the rear of the adjoining dwelling, which is to the west. The encroachment is not likely to result in overshadowing or privacy impacts for the adjoining dwelling.

2. The eastern elevation of Building 5 (Units 17-20):

The encroachment involves the upper floor balcony (Unit 20).

This encroachment is associated with the Stage 1 (internal) subdivision boundary between proposed Lots 1 and 2. There is no dwelling on proposed Lot 2.

The Building Height Plane encroachments are quite minor, resulting from the topography of the site. They do not result in overshadowing or privacy impacts for neighbouring lots and can therefore be supported.

3.4B Byron Shire Development Control Plan 2010 (DCP 2010)

DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988.

There is no physical development proposed within the 1(a) zoned land, and therefore there are no relevant provisions of DCP 2010.

3.5 Any Planning Agreement or Draft Planning Agreement?

| | Yes | No |
|---|--------------------------|-------------------------------------|
| Is there any applicable planning agreement or draft planning agreement? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

3.6 Environmental Planning & Assessment Regulation 2000 Considerations

The proposal raises no issues for consideration in terms of Clauses 92, 93, 94 and 94A of the Regulations.

3.7 Any coastal zone management plan?

The site is not in the coastal zone and no CZMP applies.

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

| Impact on: | Likely significant impact/s? |
|----------------------------|---|
| Natural environment | The proposal will not have a significantly adverse impact on the natural environment of the locality. |
| Built environment | The proposal will not have a significantly adverse impact on the built environment of the locality. |
| Social Environment | The proposal will not have a significant social impact on the locality. |
| Economic impact | The proposal will not have a significant economic impact on the locality. |

Minor impacts are anticipated during the construction phase. Appropriate conditions of consent are recommended in relation to hours of work, construction noise, builders waste and the like to manage such impacts

3.9 The suitability of the site for the development

The site is one of only two areas of R3 Medium Density Zoning in Bangalow, with the other also located along Ballina Road. The site is a cleared, serviced, urban lot on the edge of the existing village. Given the location and the slope of the lot down from the road frontage, medium density development is somewhat 'hidden' from view.

The development is consistent with the planning intent of the land and the site is suitable for the development as proposed.

3.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited. There were 2 submissions made on the development application, objecting to the proposed development. The issues raised in objection are addressed below:

5

| Issue | Comment |
|---|--|
| <i>The development is out of character with the surrounding residences which are of workers cottage or 'Queenslander' styles. Some of heritage value that date back to the early 1900s.</i> | <p>The proposed units are quite different in design from the single dwellings located in the area.</p> <p>The site, however, is zoned differently to the adjoining land, with an R3 Medium Density Residential zone as opposed to an R2 Low Density residential Zone.</p> <p>It is considered that the density and character of the development is consistent with the planning intent of the R3 zone.</p> |
| <i>Twenty apartments on such a small block is unprecedented in Bangalow and is certainly not in keeping with the semi-rural nature of Ballina Road.</i> | <p>See above. The site is zoned R3 Medium Density Residential. The development is consistent with the planning controls applicable to this zone.</p> |
| <i>The aesthetic nature of the proposed buildings is on no way sympathetic to the style of architecture commonly seen in the rest of the street, or the town of Bangalow for that matter.</i> | <p>The buildings are of a more conventional medium density design, and not reflective of the 'Queenslander' style that is prevalent in Bangalow.</p> <p>The Queenslander style, however, is specific to low density, predominantly single-dwelling, residential development and does not translate well to a multi-dwelling form.</p> <p>The matter was raised with the applicant who provided a evidence of contemporary residential design existing throughout Bangalow, particularly in more recent subdivision areas near the subject site.</p> <p>Having regards to the location of the site on the southern periphery of the Bangalow, the design of the development set well below street level reducing the impact of the bulk of the proposed buildings, and in the absence of any clear development guidelines to direct applicants to construct Queenslander style housing, this is not a reason for refusal.</p> |
| <i>Concern regarding impacts on the water course</i> | <p>Conventional construction management techniques will be able to effectively manage protection of the creek.</p> <p>The General terms of Approval associated with the Department of Primary Industry Water's Controlled Activity approval also require rehabilitation and vegetation management plans that will further protect the water course.</p> |
| <i>Flooding – concerns that development will exacerbate flooding of downstream properties</i> | <p>Flood modelling undertaken in this area indicates that the 1 in 100year flood level is</p> |

| Issue | Comment |
|--------------|---|
| | <p>approximately at the location of the water course on the land.</p> <p>The buildings are all set above this level and will therefore have no impact on downstream flooding.</p> |

3.11 Public interest

5 The proposed development will provide for a form of medium density housing which is not readily available in Bangalow. It is likely such housing will be utilised by smaller households such as couples, young families and others wishing to downsize. It is considered the development is unlikely to prejudice or compromise the public interest or create a dangerous precedent.

3.12 Section 5A of the EP&A Act – Significant effect on threatened species

10 Having regard to sections 5A, 5C and 5D of the EP&A Act, there is unlikely to be a significant effect on threatened species, populations or ecological communities, or their habitats as a result of the proposed development as no tree clearing is required.

3.13 Section 5B of the EP&A Act – Have regard to register of critical habitat

15 The NSW Critical Habitat Register does not identify any critical habitat on or adjacent to the site.

4. DEVELOPER CONTRIBUTIONS

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4.1 Water & Sewer Levies

Water & Sewer levies are payable.

4.2 Section 94 Contributions

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Developer contributions are payable.

5. CONCLUSION

30

It is considered the development generally complies with the provisions of Byron LEP 2014 and Byron DCP 2014 for multi dwelling housing and subdivision. A minor breach of the 9 metre height limit is proposed in relation to a small section of Building 5, containing Units 17-20 by half a metre for a length of approximately 1.2m. The applicant has sought a variation to the height limit, and having regard to the topography of the land and the level of variation being sought, strict compliance with the development standard is not warranted in this instance. The development site is zoned R3 Medium Density Residential, and the proposal is considered to satisfy the objectives of this zone, and the planning intent for the site.

35

It is concluded the development will not generate impacts on the surrounding built and natural environment, whilst the proposal is unlikely to create a dangerous precedent. The development will provide for an alternate form of accommodation not readily available in Bangalow which will suit those wishing to live in smaller housing within the town. The application is recommended for approval subject to conditions of consent

45

6. RECOMMENDATION

It is recommended that, pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*, development application 10.2016.273.1 for Stage One: Two (2) Lot Subdivision; and Stage

Two: Construction of 20 Two Bedroom Dwelling Houses and Strata Subdivision, be granted consent subject to the conditions listed in Attachment 3(#E2017/21284).

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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| | |
|--|----|
| Has a Disclosure Statement been received in relation to this application | No |
| Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division. | No |

Provide Disclosure Statement register details here: Not applicable

Report No. 13.12 Update West Byron Development Control Plan - Advice from the Minister for Planning

Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
File No: I2017/430
Theme: Ecology
 Planning Policy and Natural Environment

Summary:

Council has prepared and publically exhibited a draft West Byron Urban Release Area DCP. The purpose of the DCP was to provide guidance to the West Byron Urban Release Area, including staging plan: transport movement hierarchy; landscaping; stormwater and water quality management controls. Over 750 submissions were received.

Council considered a report on the submissions at the 17 November 2016 meeting and resolved *'that subject to peer reviews of frog, koala, traffic, and water and flood management reports, Council approve the Byron Shire Development Control Plan 2014 - Chapter E8 West Byron Urban Release Area and associated amendments to Part A and Part D of the Byron Shire Development Control Plan 2014 in Attachments 1 and 2 at the first Ordinary Meeting after Council's summer recess'. (Resolution 16-583)*

Part 4 of the resolution stated: *"4. That if the Department is not supportive of the timeline outlined in 1, Council endorse the DCP without the peer reviews and that these reviews be completed after the DCP has been approved."*

Council has now received written advice from the Minister for Planning The Hon Anthony Roberts about the finalisation of the West Byron Development Control Plan.



The purpose of this report is to advise Council of this advice, and to confirm the response to be given to the Minister having regard to Part 4 of Resolution 16-583 and Resolutions 17-045 and 17-071 which pertain to the scope of Peer Reviews sought of the DCP by Council.

RECOMMENDATION:

That Council:

1. **Approve the Byron Shire Development Control Plan 2014 – Chapter E8 West Byron Urban Release Area and associated amendments to Part A and Part D of the Byron Shire Development Control Plan 2014 in Attachments 1 (#E2017/22828) and 2 (E2017/23011), and that notice of the decision be published in a local newspaper within 28 days of this decision being made.**
2. **Notify the Minister for Planning of the decision made in (1).**
3. **Not proceed with the peer reviews of the Development Control Plan 2014 – Chapter E8 West Byron Urban Release Area as per Resolutions 16-583, 17-045 and 17-071.**

Attachments:

- 1 Letter from Minister for Planning dated 30 March 2017 , E2017/22828 
- 2 draft Amendments to Part A and Part D of Byron Shire DCP 2014, E2017/23011 

- 3 Draft Byron DCP 2014 Chapter E8 - West Byron Urban Release Area, E2016/83304 ➡



Report

5 Council has prepared and publically exhibited a draft West Byron Urban Release Area DCP. The purpose of the DCP was to provide guidance to the West Byron Urban Release Area, including staging plan: transport movement hierarchy; landscaping; stormwater and water quality management controls. Over 750 submissions were received.

10 Council considered a report on the submissions at the 17 November 2016 meeting and resolved *'that subject to peer reviews of frog, koala, traffic, and water and flood management reports, Council approve the Byron Shire Development Control Plan 2014 - Chapter E8 West Byron Urban Release Area and associated amendments to Part A and Part D of the Byron Shire Development Control Plan 2014 in Attachments 1 and 2 at the first Ordinary Meeting after Council's summer recess'*. (Resolution 16-583)

15 Part 4 of the resolution stated: *"4. That if the Department is not supportive of the timeline outlined in 1, Council endorse the DCP without the peer reviews and that these reviews be completed after the DCP has been approved."*

20 Council has now received written advice from the Minister for Planning The Hon Anthony Roberts about the finalisation of the West Byron Development Control Plan (Attachment 1).

In short the Minister:

- 25
- Has reviewed the matter and the staff report and recommendation from the 17 November 2016;
 - Is concerned about the amendments proposed and the impact on site as well as the additional peer reviews being required prior to it being finalised;
 - Requests that Council respond within 28 days as to why the DCP cannot immediately be made, with only the Council staff post exhibition amendments; and
- 30
- If no response, will issue a direction for the DCP to be made or he will make the DCP.

Council received an email copy of the letter from the Minister dated 30 March 2017. Council has until the 27 April 2017 to respond.

35 It is staff recommendation that Council advise the Minister that it will proceed with the finalisation of the DCP in accordance with Part 4 of Res 16-583.

40 This will also assist with the management and assessment of development applications likely to be received in the near future. It should be noted that the Environmental Planning and Assessment Act enables such development applications to be submitted in the absence of a DCP for the site.

45 Given that this resolution provides for the peer reviews to be completed after the DCP is made, staff seek Council clarification whether or not there is a need to continue with the peer reviews of the DCP as per Resolutions 16-583, 17-045 and 17-071 given that a DCP if made will be operational. This also takes into consideration the cost of the peer reviews. This is discussed below.

In the circumstances it is staff recommendation that the peer reviews not proceed.

50 Financial Implications

The cost of undertaking the peer review has not been allocated within Council's existing budget and requires funding to proceed to meet the requirements of Resolution 17-045 and 17-071. Consideration of the funding will be given as part of the 2017/18 budget process if deemed

necessary to progress further given the Minister's letter and advice. The cost of the peer review is approximately \$20,000.

Statutory and Policy Compliance Implications

5

A Development Control Plan is made under the provisions of the Environmental Planning and Assessment Act 1979.

10

As advised in the Minister's letter a direction can be issued to Council under section 74F of the Environmental Planning and Assessment Act to make the DCP.

Report No. 13.13 **Rural Land Use Strategy Implementation Plan**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
File No: I2017/444
Theme: Ecology
 Planning Policy and Natural Environment

Summary:

Council considered Report No. 13.12 - Strategic Planning Project Update at its Ordinary Meeting of 23 February 2017.

This report presented a summary of the status, key actions and any financial considerations required to progress the key planning studies, strategies and plans current, including the Rural Land Use Strategy.

With respect to the Rural Land Use Strategy Council at this meeting resolved:

“17-045 Resolved:

- ...
 2. That Council adopt the project recommendations contained in this report being:
 a) amend the draft Rural Land Use Strategy to address the matters raised in the Department's letter (Attachment 1) and present an amended draft strategy back to Council for adoption together with a full program for implementation.....”




The purpose of this report is to address Item 2 in resolution 17-045 above.

RECOMMENDATION:

That Council adopt:

1. The amended ‘Rural Land Use Strategy’ and supporting ‘Policy Directions Paper’ and ‘Site Suitability Criteria & Mapping Methodology’ (as contained in Attachments 2-4 E2017/24327, E2017/24339, E2017/24343 respectively), and submit these documents back to the Department of Planning and Environment for final endorsement.
2. A prioritisation order for the Actions contained in the ‘Rural Land Use Strategy Implementation Plan’ as follows: (X-Y to be included at meeting);
3. The ‘Rural Land Use Strategy Implementation Plan’ (as contained in Attachment 5 #E2017/23508), as amended by 2 above.

Attachments:

- 1 Response letter from NSW Department of Planning & Environment dated 20Oct2016 - re endorsement of Draft Rural Land Use Strategy (as adopted 4/8/16), E2017/24308 
- 2 Amended draft RLUS and Appendices - incorporating changes in response to 20 October 2016 submission from DPE, E2017/24327 
- 3 Site Suitability Criteria and Mapping Methodology (as amended), E2017/24339 

4 Rural Land Use Strategy Policy Directions Paper (as amended), E2017/24343 [⇒](#)



5 Rural Land Use Strategy Implementation Plan, E2017/23508 [⇒](#)



Report

Council at its 4 August 2016 meeting resolved (**Res 16-414**) *to adopt the draft Rural Land Use Strategy with a number of amendments*. The Strategy was finalised to incorporate the adopted amendments and forwarded to the Director General of the Department of Planning and Environment for endorsement.

The Department responded to the adopted document advising that *'at this stage the Department is unable to endorse the Strategy'* due to a number of outstanding matters that need to be addressed. Attachment 1 contains the Department of Planning and Environment's response letter.

Council considered Report No. 13.12 - Strategic Planning Project Update at its Ordinary Meeting of 23 February 2017.

With respect to the Rural Land Use Strategy, Council at this meeting resolved:

"17-045 Resolved:

....2. That Council adopt the project recommendations contained in this report being:

- a) amend the draft Rural Land Use Strategy to address the matters raised in the Department's letter (Attachment 1) and present an amended draft strategy back to Council for adoption together with a full program for implementation...."*

The amended Rural Land Use Strategy is contained in Attachment 2 to this report. In summary the main changes made to accord with the resolution above, are inclusion of amendments in response to submission issues raised by Department of Planning & Environment (DPE) in order to enable their endorsement of a final document. These are set out below:

1. Identification of **slopes > 25% (14 degrees)** in Policy Directions Paper and Site Suitability Criteria and Mapping Methodology as 'constrained land' (reduced from original threshold of slopes > 32% or 18 degrees)

This amendment has been applied in the determination of 'constrained land' for rural lifestyle living opportunities and is generally consistent with slope thresholds used by other councils in the region.

2. **Exclusion of 2km service catchments** (as presence of a primary school and/or general store is considered unlikely to provide a sufficient level of service to support new rural residential development)

3. **Exclusion of areas that cannot be adequately serviced by existing or committed road infrastructure**

This is consistent with DPE's settlement planning guidelines (principles 19 and 20) and the approach applied to other councils to ensure that identified priority release areas can be serviced adequately by existing or committed road infrastructure.

4. **Removal of 'Figure 4 – Decision Framework for Future Rural Lifestyle Living Opportunities' and all variation criteria (as identified in Res 16-414)**

This has been replaced by the following revised criteria used to identify new large lot residential subdivision opportunities (with only 2 sites now satisfying criteria):

- i) situated west of the Pacific Highway (undeveloped sites only) AND within a 5 km radius of a town with a high school; and

- ii) not identified in a draft or adopted strategy for future urban purposes, or for future village / urban development in this strategy (Append 2); and
- iii) contains at least 10ha of unconstrained land AND does not require access through constrained land, as identified in Table 1 of the Site Suitability Criteria and Mapping Methodology; and
- iv) can be adequately serviced by existing or committed road infrastructure at a standard suitable for the predicted level and type of traffic resulting from development, at no cost to the wider community.

Future alternative proposals that are supported by Council can only be progressed via an amendment to the RLUS. This will ensure they are considered in a shire wide context, transparently and by the community.

5. Removal of the 8 additional sites included in Res 16-414 of previous Council

These sites were not included in the draft RLUS that went on exhibition in 2016.'

- 6. Revised Priority Sites for future rural lifestyle living opportunities** to better reflect unconstrained land in appropriate locations having regard to amendments '1' – '5' above and community submissions received during exhibition. [Note: these are the same sites that were reported to Council for adoption in August 2016]

Where required, the above amendments have also been included in the Site Suitability Criteria and Mapping Methodology and Policy Directions Paper, as contained in Attachments 3 and 4 respectively.

Note: Attachment 3 (Site Suitability Criteria and Mapping Methodology) does not include the supporting maps due to their large file size. Instead the maps can be viewed on Council's website at <http://www.byron.nsw.gov.au/rural-land-use-strategy> by scrolling to the following map links:

- SSCMM Maps 1-7
- SSCMM Maps 8-14
- SSCMM Maps 15-18
- SSCMM Map 19
- SSCMM Maps 20-20A

Attachment 5 is the Rural Land Use Strategy Implementation Plan prepared to inform the development of specific project and engagement plans to deliver the key actions in the Strategy.

Staff seek clarification from councillors about their priorities as the current Implementation Plan has not been arranged to reflect a specific prioritisation. Council's endorsement of an Implementation Plan will assist staff in the preparation of work plans for agreed high priority key actions with resourcing for the next financial year.

Councillors received a briefing on the above matters at the councillor workshop on 6 April, 2017. This report requests Council's consideration and adoption of the above documents.

Financial Implications

Projects plans will be considered for the high priority key actions as part of the forward budget process.

Statutory and Policy Compliance Implications

This Strategy is consistent with Commonwealth, State and Regional policy frameworks and provides an understanding and perspective from a local level.

5

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.14 **Erosion at Clarkes Beach, Byron Bay**
Directorate: Infrastructure Services
5 **Report Author:** James Flockton, Drain and Flood Engineer
 Chloe Dowsett, Coastal and Estuary Officer
File No: I2017/411
Theme: Ecology
10 Planning Policy and Natural Environment

Summary:

15 At Council's Ordinary Meeting held 23 March 2017 it was resolved that a report be provided to the next Council meeting outlining the issues contributing to "*erosion taking place through the tertiary coastal dune*" at the far end of Clarkes Beach near the Holiday Park.

RECOMMENDATION:

20 **That Council note the report outlining the issues contributing to the erosion at Clarkes Beach, Byron Bay.**

Background

At Council's Ordinary Meeting held 23 March 2017 it was resolved:

5

17-095 Resolved that Council:

10

1. *Prepare a report for Council's meeting on the 20th of April outlining the issues that are contributing to the massive erosion taking place through the tertiary coastal dune and caused by a stormwater outlet which is discharging from a height of approximately 5m above Main Beach at the far end of Clarke's Beach Caravan Park, also exposing ancient Aboriginal middens.*

15

2. *Establish whether Council consulted or gave any opinion or approval on the design of the stormwater outlet.*

20

3. *Take urgent action to reduce its contributions to erosion at the stormwater outlet and work with other stakeholders, encouraging them to do the same while an alternative outlet arrangement is established and implemented.*

25

4. *Ascertain its responsibilities in relation to the stormwater outlet and determine whether it meets best practice guidelines or method for this sensitive, much loved, public and controversial coastal environment.*

5. *Receive a report at its Ordinary Meeting in May outlining what corrective actions were agreed to for the eastern stormwater outlet (to protect the midden currently being exposed) and when they will be carried out.*

Report

30

The purpose of this report is to provide Council with an outline of the issues contributing to the large-scale shoreline erosion of tertiary dunes at Clarkes Beach and localised erosion in the vicinity of the Clarkes Beach Holiday Park eastern stormwater outlet currently threatening an Aboriginal midden.

35

The beach erosion that has occurred (and is occurring) along Clarkes Beach particularly in the vicinity of the Clarkes Beach Holiday Park is caused by the macro-effects of the northward movement (or lack) of sand along the east coast. The eastern stormwater outlet at the Clarkes Beach Holiday Park is causing localised erosion effects only.

40

Council has been liaising with technical staff from the Office of Environment and Heritage (OEH) and has received professional advice from the Senior Coastal and Estuary Officer (OEH) that the eastern stormwater outlet is creating localised erosion only, and that erosion of the seaward toe of the tertiary dune is by wave action.

45

It is the erosion of the seaward toe of the dune that is threatening an Aboriginal midden, however, stormwater flows from Lighthouse Road and the Holiday Park are also contributing to the loss of the midden.

50

Erosion of the seaward toe of the dune by wave action is a natural process and an issue quite unrelated to the stormwater outlet issue. This is also stated in a Technical Report prepared by Coastal Zone Management and Planning (Angus Gordon, previous NSW Coastal Panel member). This Technical Report, *'Stormwater Management and Gully Rehabilitation Clarkes Beach, Byron Bay' (Report No 2016/4 prepared September 2016)* provides a peer review of an engineering and site rehabilitation report prepared for NSW Crown Holiday Parks Trust (NSWCHPT) titled *'Concept*

Design Options for Stormwater management and Site Rehabilitation Clarkes Beach Reserve”
(Ardill Payne and Partners, June 2016).

Excerpts from the Angus Gordon report “*Stormwater Management and Gully Rehabilitation Clarkes Beach, Byron Bay*’ (Report No 2016/4 prepared September 2016) state:

“The report (Concept Design Options for Stormwater management and Site Rehabilitation Clarkes Beach Reserve) presents the predicted coastal erosion hazard for the Holiday Park as contained in the Water Research Laboratory Report (Coastal Hazard management Study, Byron Bay Embayment, Carley et al, 2016). Figure 2 of this report shows that the midden on the eastern side of the erosion gully is under threat from the “Immediate erosion hazard” due to natural processes. Further, it also shows that much of the gully will be impacted by the projected 2050 recession of the coastal shoreline. In addition, by 2100 the gully will potentially have been totally eliminated. These findings are in keeping with the results of earlier studies (Gordon et al, 1978 and WBM, 2000)”.

“While there is some indurated sand/rock material that may slow the shoreline recession rate, the available evidence is that the midden will be lost in the short to medium term and will suffer progressive degradation in the shorter term, as is currently happening. This is due to the projected natural ambulation of the coastal shoreline, not erosion from the gully. The current erosion escarpment at the back of the beach along the length of the holiday park is testament to this natural recessional trend in this area of the embayment”.

Council has received professional advice from OEH that the Byron Bay Embayment is presently starved of sand, especially in the southern area of Clarkes Beach due to the limited sand bypassing of Cape Byron. Coastal processes at the moment are not conducive to the accretion of beaches as there has been an insignificant southerly swell regime for the past 1- 2 years which is the primary factor for movement of sand by longshore drift. The area also received a large north-easterly swell last year in June 2016.

In parallel with present reduced longshore sand transport (and as stated in the report excerpts above), the Byron Bay Embayment is undergoing a long term trend of shoreline recession which is significantly higher in embayments north of controlling headlands, such as Clarkes Beach (*Byron Shire Coastline Hazards Assessment Update*, BMT WBM report prepared for Byron Shire Council, September 2013).

NSWCHPT have completed various upgrades to the park, including road, stormwater drains and structures in the eroded gully. Council and NPWS have also undertaken upgrade works in the Captain Cooks carpark that has increased the pavement area contributing to runoff. These works may or may not have increased the erosion in the gully. This is hard to quantify or prove either way, therefore, it is not proposed to investigate it further. However, it is noted that Council staff are not aware of Council ever being consulted about the NSWCHPT works.

There are no typical best practice guidelines for resolving issues such as these. There are various hard and natural engineering solutions for gully and beach erosion around stormwater outlets and all have good and bad features. Council staff will be working with NSWCHPT, NPWS and Consultant Ardill Payne and Partners to prepare the most efficient engineering design available that maintains the beauty of the area, while protecting it from erosion in the long term.

Council staff met with North Coast Holiday Park (NSWCHPT) staff, OEH and NPWS staff on site at Clarkes Beach on Wednesday 8 March 2017. Agreement was reached for NSWCHPT and Council to immediately implement corrective action at the eastern stormwater outlet to protect the midden currently being exposed. It was acknowledged that the macro-effects of the northward movement of sand causing the general beach erosion would eventually impact significantly on the midden regardless of what short term actions are implemented.

A follow up meeting between Council staff and NSWCHPT was completed on Friday 10 March 2017 to initiate the approval process for both the short term and medium term work required for this area, to outline stakeholder responsibilities and to commence the project. NSWCHPT are leading the project and commissioning the design/s for the short term and longer terms works identified. There is in principle agreement from Council staff that there will be a contribution to the project in relation to stormwater flow coming from Lighthouse Road into the holiday park. The quantum of the contribution and the methodology to quantify the cost split between the various parties is yet to be determined.

Council staff will continue to liaise with NSWCHPT to finalise the engineering design/s and provide advice/support on the planning pathway and approvals (as required).

Council staff will provide a further report once more details of the proposed corrective actions have been agreed to for the eastern stormwater outlet, and the proposed time frames and costs. It is noted Council is not the lead agency in the delivery of this project and is subject to the time frames and execution of on-ground actions by NSWCHPT.

Financial Implications

The NCHP has indicated it will be the lead agency in undertaking this work. Council will however need to identify funds to contribute to the short term mitigation measures to protect the midden. The NPWS has indicated legal action may be taken in relation to the midden damage if no action is taken in the short term.

It is expected that the total cost of the short term mitigation measures around the stormwater outlet will be of the order of \$200,000, Council's contribution to this is yet to be discussed in detail or agreed.

Statutory and Policy Compliance Implications

The Local Government Act 1993 also sets out a broad range of Council responsibilities to ensure Council manage the local environment effectively. They are no clear clauses that cover this particular issue, however, clause 7 states:

7 Purposes of Act

The purposes of this Act are as follows:

- (a) to provide the legal framework for the system of local government for New South Wales,*
- (b) to set out the responsibilities and powers of councils, councillors and other persons and bodies that constitute the system of local government,*
- (c) to provide for governing bodies of councils that are democratically elected,*
- (d) to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government,*
- (e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.*

OEH have the ability to use the POEO Act 1997 for environmental protection, they may issue clean up notices to a Council, to enforce resolution of inappropriate practices. Clause 91 of this Act deals with clean up notices. They are not appealable and can incur fines of up to \$250,000 for corporations. They can also use the NPWS Act 1974 for similar issues.

At this stage NPWS are satisfied Council and NSWCHPT are working towards a resolution to the issue. However, this may change if it does not continue to progress to on ground works.

Report No. 13.15 **Multi Use of Rail Corridor Within Byron Shire**
Directorate: Infrastructure Services
Report Author: Joshua Winter, Civil Engineer
File No: I2017/453
5 **Theme:** Community Infrastructure
 Open Space and Recreation

Summary:

10 Council resolved on 19 December 2016 under Resolution 16-670 to undertake works to illustrate to the State Government a community wide support for multi-use of the rail corridor within Byron Shire and to prepare for possible funding opportunities. The resolution supported multi use of the rail corridor within Byron Shire defined as a dual use within the rail corridor, comprising public
15 transport provisions in conjunction with a walking and cycling path where feasible.

20 The resolution supported developing a consultant's brief for completing a state and use of the rail corridor report and an economic and social feasibility report, in order to present a formal, costed and community supported project within the rail corridor to achieve local transport and tourism benefits within Byron Shire.

Council staff have prepared a brief incorporated in a Request for Tender document, as provided in Attachment 1 for Council's information, review and approval.

RECOMMENDATION:

1. **That Council review Attachment 1 (E2017/24777) – Request for Tender – Multi Use Rail Corridor, prepared by Council staff, and endorse proceeding to Tender utilising this document.**
2. **That Council allocate a budget of \$200,000 from the Infrastructure Renewal Reserve to undertake the works identified in the Request for Tender.**

Attachments:

- 1 RFT Request for Tender - Multi Use Rail Corridor, E2017/24777 ➡



Report:

Council Resolution 16-670 dated 19 December 2016 resolved as follows:-

Resolved 16-670 that Council with the intent to illustrate to the State Government a community wide support for multi use of the rail corridor within Byron Shire and to prepare for possible funding opportunities:

1. Supports a dual use within the rail corridor, comprising public transport provision in conjunction with a walking and cycling path where feasible.
2. Convenes a meeting with the community group, Friends of the Byron Line, MPs Tamara Smith and Ben Franklin and representatives of Regional Development Australia- Northern Rivers, to consider opportunities to develop a consultant's brief for completing a state and use of the rail corridor report and an economic and social feasibility report, in order to present a formal, costed and community supported project within the rail corridor to achieve local transport and tourism benefits within Byron Shire.
3. Notes the following that may need to be included in a brief:

State and Use of Corridor Report

1. Engineering study on re- instatement of railway:
 - i) bridge conditions and costs for repair
 - ii) track condition and cost for repair
 - iii) other infrastructure
2. Engineering study on construction of a walking and cycling path within the rail corridor but clear of the rail line itself and possibly diverting out of the corridor where there are significant obstructions like narrow rock cuttings or tunnels
3. Identification of pinch spots
 - i) consideration of facilitating signalled, shared uses or diverting trail
 - ii) land identification and costs for outside corridor land access
4. Accessibility Issues
5. Weights of transport options and implications.
6. Speeds and required fencing
7. Residential impact-noise etc.

Economic and Social Feasibility

1. Park and Ride option including possible locations, estimate usage
2. Events and Festivals- estimate usage, including utilising Yelgun and Tyagarah stations
3. Markets- usage estimates
4. Analysis of local and regional
5. Estimate local and regional patronage catchment
6. Estimate community benefits and savings of decreasing car use- environmental and road network
7. New business opportunities arising within corridor
8. Above and below rail costs.
9. Funding models-including cost sharing options-public and private
10. Options if transport activity is disrupted, out of service
11. Health and social benefits
12. Risk management

13. *Peripheral and adjacent land uses and value add opportunities*
14. *Degree of community revitalisations*
15. *Tourism usage*
4. *That a report be provided to Council prior to Easter 2017 with the outcomes of the meeting referred to in 2 above.*
5. *Reports back to Council a draft brief, with recommendations as to:*
 - a) *A preferred structure of the consultants brief; ie, the possibilities of creating two or three separate briefs to report on varied aspects within the overall brief.*
 - b) *Ways forward to seek expressions of interest*
 - c) *The work that can be completed within Council, with community assistance and by consultants*
 - d) *the possibilities of complimenting information required within this brief with other council investigations, in particular its Transport Study for Byron Bay*
 - e) *a funding source*
6. *Writes to the MPs Tamara Smith, Ben Franklin and Walt Secord; informing them of this resolution with requests for their assistance in supporting Council's endeavours.*
7. *Writes to Regional Development Australia- Northern Rivers, informing them of this resolution with requests for their assistance in supporting Council's endeavours.*
8. *Writes to neighbouring councils, informing them of this resolution with an invitation for them to participate in investigating the feasibility of a multi-modal use of the rail corridor.*

As per resolution item numbers 3 and 5, Council staff have prepared a consultant's brief for completing a state and use of the rail corridor report and an economic and social feasibility report, in order to present a formal, costed and community supported project within the rail corridor to achieve local transport and tourism benefits within Byron Shire.

Financial Implications

A budget of \$200,000 from the Infrastructure Renewal Reserve is to be allocated to undertake the Works identified in the Request for Tender.

Statutory and Policy Compliance Implications

The tendering process would be undertaken in accordance with the statutory requirements of the Local Government Act 1993.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES**Report No. 14.1 Report of the Water, Waste and Sewer Advisory Committee Meeting held on 2 March 2017**

Directorate: Infrastructure Services
Report Author: Helen Waldron, EA Infrastructure Services
File No: I2017/346
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 2 March 2017 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 2 March 2017.

2. That Council adopt the following Committee Recommendation:

Report No. 4.1 Resource Recovery Current State of Play
File No: I2016/1256

Committee Recommendation 4.1.1

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

3. That Council adopt the following Committee Recommendations:

Report No. 4.2 Ocean Shores to Brunswick Valley STP Transfer Feasibility Study
File No: I2017/244

Committee Recommendation 4.2.1

1. That Council notes the report, including risks associated with Option 4 in Section 13 recommendations and that Council investigate the operational risks (as described under Item 5).
2. That the Water, Waste and Sewer Advisory Committee meet again prior to the scheduled meeting in June 2017.

4. That Council adopt the following Committee Recommendations:

Report No. 4.3 Water and Sewer Strategic Business Plan Workshop
File No: I2017/246

Committee Recommendation 4.3.1

That at the next meeting of the Water, Waste and Sewer Committee the following expenditure items be considered for addition to a revised Water and Sewer Strategic Business Plan:

- i) **overcome fundamental problems in the sewer connections and lines in Mullumbimby, Brunswick Heads and Byron Bay**
- ii) **make reuse (e.g. agricultural irrigation) the primary means of disposal ahead of discharge to waterways**
- iii) **bring in full-spectrum testing and treatment (including alkyl-phenols) of sewage**
- iv) **consider minimising energy usage and the use of renewable energy**

Attachments:

5

- 1 Minutes Water, Waste and Sewer Advisory Committee Meeting 02/03/17, I2017/249 ➡



Report

5 The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 2 March 2017 for determination by Council. The agenda for this meeting can be located on Council's website at:

http://byron.infocouncil.biz/Open/2017/03/WW SAC_02032017_AGN_630_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 2 March 2017.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 2 March 2017.

Report No. 14.2 **Report of the Local Traffic Committee Meeting held on 21 March 2017**
Directorate: Infrastructure Services
Report Author: Dominic Cavanough , Contract Engineer
File No: I2017/445
5 **Theme:** Community Infrastructure
 Local Roads and Drainage

Summary:

- 10 The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 21 March 2017 for determination by Council.
-

RECOMMENDATION:

1. That Council note the minutes of the Local Traffic Committee Meeting held on 21 March 2017.
2. That Council adopt the following Committee Recommendations:

Report No. 6.1 Traffic - Events - Anzac Day 2017 - Road Closures in Byron, Mullumbimby, Brunswick Heads, Bangalow
File No: I2017/154

Committee Recommendation 6.1.1

1. That Council approve the Traffic Management Plan for the four ANZAC Day Marches for 25 April 2017 for the Return Services League sub branches of Byron Bay, Mullumbimby, Bangalow and Brunswick Heads / Billinudgel.
2. That the approval provided in Part 1 is subject to:
 - a) separate approvals by NSW Police and RMS being obtained, noting that the Bangalow event is on a state road or may impact the state road network
 - b) implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation
 - c) that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints
 - d) the event be notified on Council's webpage
 - e) the event organiser:
 - i. undertake consultation with community and affected businesses including adequate response / action to any raised concerns
 - ii. undertake consultation with emergency services and any identified issues addressed

- iii. holding \$20m public liability insurance cover which is valid for the event
- iv. paying Council's Road Event Application Fee prior to the event
- v. that a debrief be held within two weeks of the event involving staff, Police (if they had incidents) and traffic controllers

3. That Council:

- a) assists where requested with implementing the necessary temporary road closures and detours
- b) places a public notice advertisements in a local weekly newspaper which is circulated prior to the event and a copy of which is placed on Council's web site
- c) write to the applicants, RSL sub-branches at Byron Bay, Bangalow, Brunswick Heads and Mullumbimby asking them to have their requests for their 2018 events to Council by 08 January 2018.

4. That the approvals provided above are subject to NSW Police approval being obtained and that each event is undertaken either under Police escort and / or traffic control and / or Council's implemented traffic control.

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

Report No. 6.2 Events - Mullum2Bruns Paddle - 28 May 2017 - Road One Way
File No: I2017/156

Committee Recommendation 6.2.1

- 1. That Council approve the Traffic Management Plan for the Mullum2Bruns Paddle 2017 to be held Sunday 28 May 2017, that includes the temporary road closure below:
 - a) Brunswick Terrace, Mullumbimby between Tincogan Street and Gordon Street One Way), between 06:30am and 10:00am on Sunday 28 May 2017.
- 2. That the approval provided in Part 1 is subject to:
 - a) separate approvals by NSW Police and RMS being obtained
 - b) implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation;
 - c) that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints.
 - d) the event be notified on Council's webpage.

- e) the event organiser:
 - i. undertake consultation with community and affected businesses including adequate response/action to any raised concerns.
 - ii. undertake consultation with emergency services and any identified issues addressed.
 - iii. holding \$20m public liability insurance cover which is valid for the event.
 - iv. paying Council's Road Event Application Fee prior to the event.
- 3. That a debrief be held within two weeks of the event involving staff, Police (if they had incidents) and traffic controllers.
- 4. That Council adopt the following Committee Recommendation(s):

Report No. 6.3 Regulatory Signage - Wilfred St 2 - No Stopping - Emergency Services
File No: I2017/300

Committee Recommendation 6.3.1

That Council:

 - 1. approve the installation of No Stopping signs and lines at the Billinudgel Ocean Shores Rural Fire Brigade Station at 2 Wilfred St, Billinudgel
 - 2. approve funding for the works
- 5. That Council adopt the following Committee Recommendation(s):

Report No. 7.1 Event - Byron St, Bangalow - Road Closure - Bangalow Billy Cart Derby 21 May 2017
File No: I2017/151

Committee Recommendation 7.1.1

 - 1. That Council approve the Traffic Management Plan for the Bangalow Billy Cart Derby to be held on Sunday 21 May 2017, that includes the temporary road closure below:
 - a) Byron Street, Bangalow between Ashton Street and Granuaille Road, between 6am and 4pm on Sunday 21 May 2017.
 - 2. That the approval provided in Part 1 is subject to:
 - a) separate approvals by NSW Police and RMS being obtained, noting that the event is on a state road or may impact the state road network
 - b) implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation
 - c) that the impact of the event be advertised via a notice in the local weekly paper

a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints

- d) the event be notified on Council's webpage
 - e) the event organiser:
 - i. undertake consultation with community and affected businesses including adequate response/action to any raised concerns
 - ii. undertake consultation with emergency services and any identified issues addressed
 - iii. holding \$20m public liability insurance cover which is valid for the event
 - iv. paying Council's Road Event Application Fee prior to the event
3. That a debrief be held within two weeks of the event involving staff, Police (if they had incidents) and traffic controllers.
6. That Council adopt the following Committee Recommendation(s):
- Report No. 7.2 Traffic - Events - Byron Bay Triathlon 13 May 2017 - Road Closures**
File No: I2017/160
- Committee Recommendation 7.2.1**
- 1. That Council approve the Traffic Management Plan for the Byron Bay Triathlon to be held Saturday 13 May 2017, that includes the temporary road closure below:
 - a) Lawson Street (Middleton Street to Massinger St), between 11:30am and 3:30pm on Saturday 13 May 2017
 - b) Marvell Street, Middleton Street , Bay Street (Fletcher St to Middleton St), Bay Ln (Fletcher St to Middleton St), Marvell St (Middleton St to Tennyson St), Tennyson St, between 12:00pm and 3:30pm on Saturday 13 May 2017
 - c) Bangalow Road (Browning St to Broken Head Rd), between 12:25pm and 3:30pm on Saturday 13 May 2017
 - d) Broken Head Road (Bangalow Rd to Ross Lane), between 1:00pm and 3:30pm on Saturday 13 May 2017
 - 2. That the approval provided in Part 1 is subject to:
 - a. separate approvals by NSW Police and RMS being obtained, noting that the event is on a state road or may impact the state road network
 - b. implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and

implemented by those with appropriate accreditation

- c. that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints
 - d. the event be notified on Council's webpage
 - e. the event organiser:
 - i. undertake consultation with community and affected businesses including adequate response/action to any raised concerns.
 - ii. undertake consultation with emergency services and any identified issues addressed.
 - iii. holding \$20m public liability insurance cover which is valid for the event.
 - iv. paying Council's Road Event Application Fee prior to the event.
3. That a debrief be held within two weeks of the event involving staff, Police (if they had incidents) and traffic controllers.

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

Report No. 7.3 Traffic - Events - Byron Bay Blues Festival 13 to 17 April 2017
File No: I2017/162

Committee Recommendation 7.3.1

- 1. That Council approve the Traffic Management Plan for the Byron Bay Bluesfest 2017 to be held on Thursday 13 April 2017 to Monday 17 April 2017, that includes the including the installation and enforcement of No Camping and No Stopping signs between 6am and 6pm, subject to conditions at:
 - a. Gulgan Road, from Mullumbimby Road intersection to the Pacific Highway interchange at Tyagarah
 - b. Foxs Lane, Tyagarah
 - c. Tanner Lane and Yarin Lane, Tyagarah and
 - d. Grays Lane, Tyagarah
- 2. That the approval provided in Part 1 is subject to:
 - a. separate approvals by NSW Police and RMS being obtained, noting that the event is on a state road or may impact the state road network
 - b. implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation

- c. that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints
- d. the event be notified on Council's webpage
- e. the event organiser:
 - i. undertake consultation with community and affected businesses including adequate response/action to any raised concerns
 - ii. undertake consultation with emergency services and any identified issues addressed
 - iii. hold \$20m public liability insurance cover which is valid for the event
 - iv. pay Council's Road Event Application Fee prior to the event
- 3. That a debrief be held within two weeks of the event involving staff, Police (if they had incidents) and traffic controllers.

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

Report No. 8.1 DA - Splendour in the Grass, 21-23 July 2017
File No: I2017/301

Committee Recommendation 8.1.1

- 1. That Council approve the Traffic Management Plan for Splendour in the Grass 2017, to be held Friday 21 July 2017 to Sunday 23 July 2017, that includes including the installation and enforcement of No Camping and No Stopping signs between 6am and 6pm, subject to conditions at Tweed Valley Way, Brunswick Valley Way and Yelgun Road
- 2. That the approval provided in Part 1 is subject to:
 - a. separate approvals by NSW Police and RMS being obtained, noting that the event is on a state road or may impact the state road network
 - b. implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation
 - c. that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints
 - d. the event be notified on Council's webpage

- e. **the event organiser:**
 - i. **undertake consultation with community and affected businesses including adequate response/action to any raised concerns**
 - ii. **undertake consultation with emergency services and any identified issues addressed**
 - iii. **holding \$20m public liability insurance cover which is valid for the event**
 - iv. **paying Council's Road Event Application Fee prior to the event**
 - v. **the holding of an event debrief within a month following the festival which includes but not limited to Council, RMS and Police**
- 3. **Council's Parking Enforcement be invited to assist the event in compliance of no stopping areas within the Road Reserve**
- 4. **That a debrief be held within two weeks of the event involving staff, Police (if they had incidents) and traffic controllers**

Attachments:

5

- 1 Minutes Local Traffic Committee Meeting 21/03/17, I2017/348 [⇒](#)



Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 21 March 2017 for determination by Council. The agenda for this meeting can be located on Council's website at:

http://byron.infocouncil.biz/Open/2017/03/LTC_21032017_AGN_709_AT.PDF

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

Financial Implications

As per the Reports listed within the Local Traffic Committee Meeting of 21 March 2017.

Statutory and Policy Compliance Implications

As per the Reports listed within the Local Traffic Committee Meeting of 21 March 2017.

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.1 **CONFIDENTIAL - Belongil Creek Bridge Pile Repairs and Corrosion Protection Works**

Directorate: Infrastructure Services
Report Author: Shane Pearce, Engineer - Bridges
File No: I2017/357
Theme: Community Infrastructure
 Asset Management

Summary:

Staff prepared and advertised tenders for Belongil Creek Bridge – Pile Repairs and Corrosion Protection Works.

The open tender process opened on 15 November 2016 and closed on 13 December 2016.

This report is presented to Council on the Tender evaluation assessment outcome, to enable Council to determine the successful Tenderer.

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

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 CONFIDENTIAL - Belongil Creek Bridge Pile Repairs and Corrosion Protection Works.
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:
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposed to conduct) bussiness; and
 - (d) (i) commercial information of a confidential nature that would, if disclosed prejudice the commecial position of the person who supplied it.

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, CONFIDENTIAL - Belongil Creek Bridge Pile Repairs and Corrosion Protection Works 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 - Tender Assessment Belongil Bridge, E2017/22625