



# Byron Shire Council



## Agenda

### Ordinary Meeting

Thursday, 26 October 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

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## CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

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

### Disclosure and participation in meetings

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

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

### Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

**Non-pecuniary Interests** - Must be disclosed in meetings.

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

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

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## RECORDING OF VOTING ON PLANNING MATTERS

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

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

# BYRON SHIRE COUNCIL

## ORDINARY MEETING

### **BUSINESS OF ORDINARY MEETING**

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1.1. Presentation on the Draft 2016/17 Financial Statements

#### **2. APOLOGIES**

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

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

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

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

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***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.***

NOTICES OF MOTION

Notice of Motion No. 9.1 Mayor's Discretionary Allowance  
File No: I2017/1292

I move:

1. That Council confirm the following donation from the Mayor's Discretionary Allowance 2017/18:

Mullum Cares - \$250

2. That Council advertise the donations in accordance with Section 356 of the Local Government Act 1993.

Councillor's Background Notes:

**\$250.00 Mullum Cares**

Funds were provided to Mullum Cares for the payment of advertising War on Waste Day in the Byron Shire Echo.

The War on Waste Day event was co-sponsored with Byron Shire Council's Waste Team and held on Saturday 26<sup>th</sup> August 2017 in the grounds surrounding the Council Chambers.

This free community event provided demonstrations and interactive waste saving activities. Talks and demonstrations also provided information on how to keep backyard chickens, making compost and compost tea, and making your own beeswax strips.

Recommended priority relative to other Delivery Plan tasks:

Minimal Impact.

Definition of the project/task:

That Council note and advertise the donations from the Mayor's Discretionary Allowance for 2017/18.

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 donation from the Mayor's Discretionary Allowance for 2017/18 being:

Mullum Cares - \$250

Director responsible for task implementation:

5 Director Corporate and Community Services

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

This will have minimal impact on other projects/tasks.

10

Financial and Resource Implications:

The 2017/18 Budget adopted by Council included an allocation of \$2,000.00 for budget item Mayor – Discretionary Allowance. Sufficient funds are available for making the nominated donation of \$250.00.

15

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: -

20

***“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.”***

25

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.

30







Let's make Tyagarah Beach safe again.

### Staff comments by Ralph James Coordinator Legal Services:

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

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### Background

*Gold Coast Bulletin August 21, 2017*

10 *POLICE are targeting nudists on a "clothes-optional" strip of beach at Byron Bay after a spate of lurid sexual behaviour.*

*But the local council and National Parks and Wildlife Service (NPWS) are passing the buck over who should take responsibility for alerting the public about the nude beach at Tyagarah.*

15

*Police say the Tyagarah Lakes and beach area is a well-known meeting place for hanky panky. This year, they launched a crackdown on offenders after reports of nefarious behaviour in the paradise-like locale.*

20 *Byron Shire Council also confirmed they had received complaints from residents about sleazy goings on.*

*"Members of the public have made complaints, particularly about the Gray's Lane area," Tweed Byron Local Area Command Detective Superintendent Wayne Starling said.*

25

*"It's well known to us as a haunt for particular members of the community," he said.*

*In past month alone several people have been sexually propositioned in the middle of the day, including a 28-year-old tourist who had to run for help after being indecently assaulted by a partially clothed man in his 50s.*

30

*The man was later charged with several offences, including detaining a person with the intent to commit a serious offence, committing an act of indecency and indecent assault.*

35 *Another woman in her 20s was walking through a bush track nearby Tyagarah beach about 1.30pm two weeks ago when a 54-year-old naked man with an erection came up behind her.*

*He is accused of aggressively sexually propositioning her before grabbing her breasts.*

40 *The man was charged with assault and committing an act of indecency....*

*Police are targeting nudists on a "clothes-optional" strip of beach at Byron Bay after a spate of lurid sexual behaviour.*

45 *On other occasions men have been seen masturbating naked on the beach in the middle of the day and police have arrested nude beachgoers for possessing drugs.*

*Det Supt Starling said police had previously given people move-on directions if caught acting inappropriately, but were now ramping up their approach.*

50

*"People need to know if they are committing offences in that area they will be charged, brought before the courts and prosecuted," he said.*

*"We have extra patrols in the area, which is a well-known to us, because when members of the public are at risk we take it very, very seriously."*

55

*"We have extra patrols in the area, which is a well-known to us, because when members of the public are at risk we take it very, very seriously," Det Supt Starling said of Tyagarah Beach*

A NPWS spokeswoman said while the Tyagarah Nature Reserve was managed by the agency, the clothes-optional strip of coastline was the council's domain.

5 "NPWS is aware of complaints and alleged assaults in the area and undertakes daily patrols of Tyagarah Nature Reserve. NPWS works closely with police," she said.

"NPWS has approved Byron Shire Council to place signs on the nature reserve approach to the council-managed beach advising that clothing is optional."

10 The council denied the beach was their responsibility, pushing it back on the NPWS.

"The beach to the north of Belongil at Tyagarah is a clothes-optional beach. The beach at Tyagarah is part of the Tyagarah Nature Reserve which is managed by the (NPWS)," a council spokeswoman said.

15 "Council has asked NPWS to consider erecting signs at the beach to inform people it is a clothes-optional area."

### Statutory context

20 LOCAL GOVERNMENT ACT 1993 - SECT 633

### **633 BATHING (INCLUDING NUDE BATHING) AND OTHER WATER-BASED RECREATIONAL ACTIVITIES**

25 (2) A person who is in public view in the nude in any place (other than a designated beach) referred to in subsection (1) is guilty of an offence unless a notice erected by the council at the place allows the use of the place (or part of the place) for the purposes of nude bathing.

Maximum penalty: 10penalty units.

30 A "designated beach" means any of the following beaches, or any part of the following beaches (including the sea adjacent to any such beach):

35 Lady Bay (Lady Jane) Beach  
Cobblers Beach  
Obelik Beach  
Werrong Beach  
Samurai Beach

40 In the present context this section permits a person to be nude, without committing an offence, provided that the nudity takes place on a designated beach or one which has a notice erected by the Council allowing the use of the place for the purpose of nude bathing.

45 As Tyagarah is not a designated beach in order to permit nude bathing it must be the subject of a notice erected by Council allowing the use of the beach for the purpose of no bathing.

(3) A council may erect a notice:

50 (a) on land vested in or under the control of a council, or  
(b) on any other land, with the consent of the person who owns or controls the land.

(4) The terms of a notice referred to in this section may relate to one or more of the following:

55 (a) the conduct and costume of the bathers in the place,  
(b) the use of the place (or any part of the place open to public view) for the purposes of nude bathing,  
(c) the use of water-based recreational equipment in the place.

In order for Council to erect a notice it must be on land vested in under the control of Council or on other land with the consent of the person who owns or controls the land.

### SUMMARY OFFENCES ACT 1988- SECT 4

#### 4 OFFENSIVE CONDUCT

(1) A person must not conduct himself or herself in an offensive manner in or near, or within view or hearing from, a public place or a school.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

(2) A person does not conduct himself or herself in an offensive manner as referred to in subsection

(1) merely by using offensive language.

(3) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting "himself or herself in the manner alleged in the information for the offence.

In this context a person who is nude on a designated beach or on one which is the subject of a notice erected by Council would have the benefit of the defence in (3). This would be to the nudity only and would not extend to any other form of offensive conduct committed whilst nude.

### SUMMARY OFFENCES ACT 1988- SECT 5

#### 5 OBSCENE EXPOSURE

A person shall not, in or within view from a public place or a school, wilfully and obscenely expose his or her person.

Maximum penalty: 10 penalty units or imprisonment for six months.

Generally speaking, something is obscene if it is offensive, based on the contemporary standards of society.

It is arguable therefore that if a particular area has been designated by a Council as a place where nude bathing is permitted, such an activity at that place would not offend the contemporary standards of society-as have been dictated by the Council with responsibility for the area.

Again this would be to the nudity only and would not extend to any other form of offensive conduct committed whilst nude.

#### The location

The area of land encompassing Tyagarah Beach is owned by National Parks and Wildlife Service, The land is not registered and has no Lot or Deposited Plan.



### Previous resolution

- 5 Council resolved **(8147)** at its Ordinary Meeting of 27 October 1998 to declare part of the beach at Tyagarah as clothes optional.

### History

- 10 It appears that this issue was raised via a Notice of Motion from then Cr. Ian Hosken dated 12 October 1998.

Staff have been unable to locate a staff report (or any documents at all) prepared for this matter.

- 15 No information is available as to the reasoning, rationale and basis for Council's decision to consider and adopt this NOM. No document evidencing the existence of consent to the erection of signage has been located.

- 20 Council advertised the 'Clothes Optional' beach in the Byron Shire News on 15, 22 and 29 December 1998.

A memo dated 3 November 1998 from the Health & Environment Manager to Council's Ranger gives directions about site location maps and placement of signs.

- 25 Council has the clothes optional beach listed on its website at <http://www.byron.nsw.gov.au/beaches>

- 30 In the recent past, Council has at the request of state government agencies erected signage in the car park at the end of Grays Lane, and has replaced this following vandalism or theft and at the request of NPWS.

On 8 August 2013 Council resolved **(13-381)** as follows:

1. That Council investigate suitable locations within the Shire where Clothes Optional Bathing may be declared.
2. That Council consult with close optional bathers, relevant community groups and state agencies regarding the issue of managing anti-social behaviour in regards to Clothes Optional Bathing within the Shire.
3. That a report be prepared for Council is to inform determinations regarding current Clothes Optional Bathing declarations and any proposed future declarations.

It appears that this resolution has not been actioned.

It is open to resolve that Council revoke its declaration of 27 October 1998 declaring a part of the Tyagarah Beach as clothes optional (Resolution 8147).

As previously advised, Council had the power to erect signage. Section 633 (3) (b) of the Local Government Act provides that Council could erect a notice on land it did not control provided that it had the consent of the person who owned or controlled the land.

As Council does not have jurisdiction over this land any notice erected to prohibit clothes optional activity in this area would not be enforceable by Council. The Police may be able to take enforcement action under the Summary Offences Act – as referred to earlier.

Council does not benefit in any way from declaring part of the beach to be clothes optional. In fact, the opposite applies. If the situation with anti social behaviour continues or deteriorates Council will continue to receive complaints, will be requested to install and replace signage, and to become involved with regulatory and enforcement operations.

Should any of the state government agencies feel the need for this part of the beach to remain as clothes optional then those agencies are at liberty to pursue, implement and regulate this.

Resolving as moved would not be adopting either an anti or pro clothes optional beach position, but would instead be simply recognising that Council has no jurisdiction to declare this part of the beach as clothes optional, or the means to enforce or regulate this. If people continue to use this area as clothes optional that is not a matter over which Council has any regulatory control.

### Financial/Resource/Legal Implications:

As set out in the body of the staff comments.

### Is the proposal consistent with any Delivery Program tasks?

N/A.

**Notice of Motion No. 9.3     Refunding Council's Feral Animal Management Program**  
**File No:                             I2017/1460**

I move that Council reinstates the Feral Animal Management Programme by allocating \$10,000 to assist meeting the costs of a trapper from January to June 2018 and a further \$20,000 be allocated in the 18/19 and subsequent financial years.

**Attachments:**

1     Feral Animal Wild Dog, Fox and Cat Management Plan 2013-15 , E2017/94456 

**Signed:   Cr Alan Hunter**

**Councillor's supporting information:**

Feral animals, including wild dogs, foxes and feral cats can have a significant impact on livestock and wildlife. In Australia, feral animals typically have few natural predators or fatal diseases and high reproductive rates. As a result, they have a high survival rate and can form large populations, often to the detriment of native species. Feral animals impact on native species by predation, competition for food and shelter, destroying habitat, and by spreading diseases. Feral animals impact on a range of livestock, mainly through predation and transmission of disease.

Council commenced a trapping program in late 2011, mainly targeting wild dogs but also foxes and cats. Significant trapping effort was carried out between March and September 2012 resulting in removal of 63 dogs, 21 foxes and 5 cats. The trapping program was successfully carried out on private land and involved financial support from both Council and landholders. Following this initial trapping program Council resolved to provide additional funding and an ongoing commitment to feral animal management.

Residents in the Byron hinterland have seen an increase in wild dog numbers, and have had repeated sightings of dogs chasing native fauna and constant reports of packs roaming the country side. Bush regenerators have been bailed up by these dogs in the bush. Dogs don't observe property boundaries and the problem is for all residents and Council shire wide.

The North Coast Local Land Services (LLS) assists landholders to manage wild dogs through advice, supply of baits, assistance with coordinating baiting programs and developing wild dog management plans. The effectiveness of this sort of assistance is difficult to measure because rarely evidence is found of carcasses in the target species. The LLS doesn't assist at all with trapping, other than provide advice in management plans.

For the past few years, funds for the pest animal control were allocated from the Byron Council environmental levy and external funded projects including Koala Connections and Bush Connect. These projects effectively finished 30 June 2017 and the levy reallocated, therefore funds for the pest animal control program are no longer available, effectively putting the whole program on hold.

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

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

Council previously allocated \$12,000 as a one off amount to provide an alternate to baiting wild dogs on private property. These funds were extended through the Koala Connections grant for a further two years. The monies allocated were used to retain a trapper who undertook live trapping

on private property. If dogs were caught the landowners also paid a fee to the trapper. It was a generous program that supported a limited number of private property owners.

- 5 Council has again been receiving enquiries about funding this program again. Staff have been advising landowners that there are no Council monies to support trapping on private land and that this previous offer from Council was an extremely generous offer only for a limited time.

10 Notwithstanding the above, it is acknowledged that unabated, feral animals like wild dogs, cats and foxes present a serious and long term threat to farm livestock and native animals.

Under legislation all landowners are expected to control feral animals. At present Council has no clear understanding of the feral animal issue on Council owned/managed lands or that on private lands in the Shire.

- 15 Council has recently received a \$40,000 grant from Office Environment and Heritage under the Saving our Species for education and threat abatement activities as per the Byron Comprehensive Koala Plan of Management. It is intended that part of these funds be used for this analysis of threats such as feral animals so that Council can gain an understanding of the extent of the issue and allocate resources accordingly.

20 What is proposed, is the collection of data on wild dog 'hotspots' mapped against Council owned/managed land, koala habitat and baiting programs run by Local Land Services and National Parks and Wildlife Services.

- 25 This work is expected to occur over the next 12 months. It would be preferable therefore that before any further funding allocations are made by Council to private landowners for trapping on their land that the hotspot work be completed to ensure the maximum benefit is derived from any trapping program.

30 Financial/Resource/Legal Implications:

All the Environment Levy finds for 2017-18 are committed to other priority Council projects. A funding source will therefore need to be identified from the 2017/18 operational budget and forward 2018/19 budget.

35 Is the proposal consistent with any Delivery Program tasks?

- 40 Yes En 1.1.1 Protect and enhance our natural environment and biodiversity - Continue to develop partnerships with NSW Local Lands Services, State and Federal Government to facilitate investment in Biodiversity Programs.



**Notice of Motion No. 9.4 Commitment to the Community Charter for Good Planning**

**File No:** I2017/1461

5

**I move:**

- 1. That Council reaffirm its commitment to the Community Charter for Good Planning.**
- 2. That Councillors work with staff to integrate the principles of the Charter into planning decisions.**

**Attachments:**

- 10 1 Planning for People Charter Companion document, E2017/94460 

**Signed: Cr Cate Coorey**

**Councillor's supporting information:**

- 15 *Planning for People: A Community Charter for Good Planning in NSW* (the Charter) is a 2 page document that sets a community vision, key principles and desired outcomes for good planning in NSW.

20 The Charter and its Companion were prepared by a working group of community organisations in consultation with the Better Planning Network, Community Councillors Network, Inner Sydney Regional Council for Social Development, National Parks Association of NSW, National Trust of Australia (NSW), Nature Conservation Council of NSW, NSW Heritage Network, Shelter NSW and the Total Environment Centre.

25 The Charter is accompanied by a Companion document that details these principles and outcomes, as well as some of the mechanisms through which the Charter could be implemented.

**Staff comments by Shannon Burt, Director Sustainable Environment and Economy:**  
(Management Comments must not include formatted recommendations – resolution 11-979)

- 30 *Planning for People: A Community Charter for Good Planning in NSW* (the Charter) is a 2 page document that sets a community vision, key principles and desired outcomes for good planning in NSW.

35 The Charter is accompanied by a Companion document that details these principles and outcomes, as well as some of the mechanisms through which the Charter could be implemented.

40 The Charter was developed for use by a wide range of groups and individuals in the lead-up to the NSW Elections in March 2015, to put the need for good planning on the agenda of voters and candidates.

45 The Charter and its Companion were prepared by a working group of community organisations in consultation with the Better Planning Network, Community Councillors Network, Inner Sydney Regional Council for Social Development, National Parks Association of NSW, National Trust of Australia (NSW), Nature Conservation Council of NSW, NSW Heritage Network, Shelter NSW and the Total Environment Centre.

The Mayor introduced support of the *Community Charter for Good Planning in NSW* to Council as a Mayoral Minute at the Ordinary meeting held on 11 December 2014. Council resolved in favour of my Mayoral Minute (Res 14-624) as follows:

5 **Res 14-624 that Council:**

- a) *support the Community Charter for Good Planning in NSW by signing the Charter, which appears as an Attachment to this Mayoral Minute and on: [www.thecommunitycharter.org](http://www.thecommunitycharter.org).*
- b) *endorse its five key principles as they appear on the Charter;*
- 10 c) *recognise that Council's name will be added to that of many other individuals and organisations that have signed, will appear publicly and will be sent to the following state politicians:*
  - *the Hon. Pru Goward, MP, Minister for Planning;*
  - *the Hon. Luke Foley, MLC, Shadow Minister for Planning;*
  - *Mr David Shoebridge, MLC, The Greens NSW Spokesperson for Planning;*
  - 15 • *the Hon. Robert Borsak, MLC, Shooters and Fishers Party;*
  - *Reverend the Hon. Fred Nile, MLC, Christian Democratic Party; and*
  - *the Hon. Rob Stokes, MP, Assistant Minister for Planning and Minister for the Environment and Heritage.*
- d) *endeavour to make planning decisions consistent with those principles;*
- 20 e) *operate an open, transparent and accountable public consultation system;*
- f) *engage with members of the public about positive and negative impacts on the local community before decisions are made and make minutes from such meetings public;*
- g) *ask the Mayor to also write to the state politicians listed in point c) above, advising them of this resolution.* (Richardson/Spooner)

25 Endorsing the Charter means that Council agrees with and supports its contents. Endorsement of the Charter acknowledges the issues raised in its Companion document.

30 The Companion document to Planning for People: A Community Charter for Good Planning in NSW (the Charter) details the principles and expected outcomes of a good planning system, as well as mechanisms through which the Charter could be implemented. These are presented below:

**Section 1 Principles governing good planning**

35 The well-being of the whole community, the environment and future generations across regional, rural and urban NSW

Effective and genuine public participation in strategic planning and development decisions

40 An open, accessible, transparent and accountable, corruption-free planning system

The integration of land use planning with the provision of infrastructure and the conservation of our natural, built and cultural environment

45 Objective, evidence-based assessment of strategic planning and development proposals

**Section 2 Expected outcomes of a good planning system**

Respects, values and conserves our natural environment and the services it provides.

50

Facilitates world-class urban environments with well-designed, resource-efficient housing, public spaces and solar access that meet the needs of residents, workers and pedestrians.

5 Provides housing choice, including affordable housing and sufficient housing for the disadvantaged, in a diversity of locations.

Celebrates, respects and conserves our cultural (including Aboriginal) and built heritage.

10 Protects and sustainably manages our natural resources, including our water resources, fragile coastlines and irreplaceable agricultural land for the benefit of present and future generations while maintaining or enhancing ecological processes and biological diversity.

15 Retains and protects our Crown lands, natural areas, landscapes and flora and fauna for the benefit of the people of NSW.

Gives local and regional communities a genuine and meaningful voice in shaping their local area and region, its character and the location, height and density of housing. Provides certainty and fairness to communities.

### 20 **Section 3 Possible mechanisms for implementation**

Establishment of a Strategic Planning and Policy Unit

25 Establishment of an independent Spatial Data Authority

Establishment of a Development Assessment Unit

Establishment of a Statutory Development Assessment Commission

30 Establishment of a Statutory Community Board

Access to Information

35 The above principles, outcomes and mechanisms underpin the planning and development policy and decision making of the current Council already. A review of these if deemed necessary could be undertaken.

### Financial/Resource/Legal Implications:

40 N/A

### Is the proposal consistent with any Delivery Program tasks?

Yes CM 2.2.2 Facilitate meaningful and inclusive community participation.

**Notice of Motion No. 9.5     Affordable Housing**  
**File No:                             I2017/1491**

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I move that Council:

1. **Tables an affordable housing addendum to its Supporting Partnerships Policy, focused on providing a clear framework to support partnerships based on providing affordable housing outcomes.**
2. **Identify the preferred coordinating entity, structure and delivery arrangements which can deliver on Councils intent in a coordinated way, harnessing a range of community, private and Government resources and ensuring that benefits are retained for the community and that the principles of public accountability, community partnership and sustainability are embedded in the arrangement.**

**Signed: Cr Sarah Ndiaye**

**Councillor's supporting information:**

The problem of housing affordability has grown and deepened in the Shire over recent times and the problem is having a negative impact on social and economic inclusion.

Council has acknowledged, that though it cannot solve the problem alone and much of the deliverance of affordable housing is beyond its control, it can play a constructive role in mitigating this problem and is working through its options to maximise positive community benefits.

There are a wide range of Government, Community and Private agencies that share an interest in addressing this problem.

Currently there are a number of affordable housing projects are being proposed to help address the problem, however a 'project by project' approach, without an overarching strategic plan, supported by effective policy, will not deliver maximum benefits to the community. A co-ordinated approach that can harness a wide range of external resources can provide the basis for maximising the outcomes for the community and leveraging Council assets and recourses.

For Council to move forward in this area we needs to ensure that the actions and interventions to improve housing affordability are strategic, policy driven, effectively targeted and sustainable, providing short, medium and long-term benefits for the Community.

**Staff comments by Christopher Soulsby, Developer Contributions Officer, Assets and Major Projects and Shannon Burt, Director Sustainable Environment and Economy:**

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

The Supporting Partnerships Policy is being presented to Council with a recommendation to adopt the policy in a separate report to this meeting – *Public Exhibition of Draft Policy –Supporting Partnerships Policy (#I2017/1148)*. Part 2 of the recommendation in this report notes that further guidelines will need to be prepared.

A guideline on affordable housing partnerships would be used to prepare the requirements for expressions of interest (EOI) requests where Council solicits proposals and to provide the criteria to assess unsolicited proposals. The guideline would provide an additional level of detail to

compliment the policy. In addition to the items covered in Part 2 of the NOM, the guidelines may include:

- 5
- Options for value capture of the increase in land value resulting from land rezoning;
  - Use of voluntary planning agreements;
  - Recoupment of foregone developer contributions;
  - Specifications for the financial data to be presented to enable Council to model the proposal;
  - Types of affordable housing management model.
- 10

Upon completion of the guideline it will be presented to a Strategic Planning Workshop and then reported to Council for adoption.

Financial/Resource/Legal Implications:

15

Preparation of the guideline will be undertaken within existing resources.

Is the proposal consistent with any Delivery Program tasks?

20

Yes EN 2.1.2 Establish planning for and provision of inclusive and accessible housing that can meet the needs of our community.

9.6

5 **File No:** I2017/1496

10

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page 21

**Councillor's supporting information:**

If successful, this motion will provide a timely assessment of the Bangalow STP capacity as we develop a new residential strategy. More immediately, the potential for a proposed 'rural industries food precinct' (DA No:10.2016.283.1) has called into question the current capacities of the Bangalow STP. Byron Shire Council planning staff are currently assessing the above mentioned Development Application. This DA has been on public exhibition twice and is before the Northern Joint Review Planning Panel. The DA has proposed an on-site waste management system that has been identified by both Council planning staff and independent experts as inadequate. The developers are currently working with Council waste water staff to have the development use the Bangalow STP rather than an onsite treatment system.

The community of Bangalow does not believe that this development, with the manufacturing and processing activities described in the DA, is capable of satisfactorily connecting to the Bangalow STP and are concerned about potential augmentation of the STP/sewerage system and increasing loads on Byron Creek and Wilsons River.

**Flow and pollutant loads.**

It is important to distinguish between flow and pollutant loads. The Bangalow STP currently has sufficient flow capacity to meet current needs and may be able to handle additional flows generated by the development though it is unclear whether an upgrade would be required and at what cost. A further question regarding increased flows is to what extent this would limit capacity for Bangalow including residential expansion already in the pipeline.

Pollutant loads represent a more significant issue. It has been estimated that the organic pollutant load generated by the development would be 350% higher than the total pollutant load from all of Bangalow currently. Whether the Bangalow STP is capable of handling such an increase in pollutant loads is unknown as is what level of upgrade of the STP might be required and at what cost.

**Receiving environment**

Whether such pollutant loads can be treated sufficiently either by the STP or onsite before entering Byron Creek and Willson's River is unknown and needs to be carefully considered particularly as the Wilson's River is part of the drinking water catchment.

Recommended priority relative to other Delivery Plan tasks:

High as the issue is currently live and the information is needed to inform current decision making.

Definition of the project/task:

Obtain independent assessments of the Bangalow STP, sewerage system and receiving environments as detailed in the motion.

Source of Funds (if applicable):

Risk management reserve (subject to further advice on alternative sources)



**Staff comments by Peter Rees, Manager Utilities, Infrastructure Services:**

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

5 To undertake an independent assessment of all components of the sewerage system will take several months and cost of the order of \$30,000 (Ex GST).

10 However staff's assessment is that the current average dry weather flow (ADWF) for the treatment plant is approximately 330 kilolitres per day. The plant is designed for an ultimate average dry weather flow of 850 kilolitres per day.

15 The information provided for this DA indicates a Trade Waste facility classification C requiring concurrence approval from DPI Water and approval by Council. This requires pre treatment of the effluent on the proponent's site complete with ongoing monitoring and testing of the effluent from the site to ensure the pollutant loads are within tolerance of the plant influent design.

The design influent characteristics for the plant are

Flow Characteristics	Units	Influent
ADWF	m <sup>3</sup> /d	850
Max Month Flow (assumed)	m <sup>3</sup> /d	1,062
Max Day Flow	m <sup>3</sup> /d	2,550
Influent Wastewater Characteristics	Units	Influent
BOD5	mg/L	275
TSS	mg/L	250
VSS	mg/L	200
NH3-N	mg/L	40
TKN	mg/L	60
TP	mg/L	11.0
Alkalinity	mg/L as CaCO <sub>3</sub>	220
Minimum Wastewater Temperature	°C	14
Maximum Wastewater Temperature	°C	28
Minimum Ambient Air Temperature	°C	5
Maximum Ambient Air Temperature	°C	30
Site Elevation	m	46

20 Staff's preliminary assessment of the sewage transfer system indicates an upgrade of pump station 1004 will be required to accommodate this development. This upgrade will be at the proponent's cost to Council's specifications.

Financial/Resource/Legal Implications:

25 To undertake an independent assessment of the Bangalow STP, sewerage system and receiving environments will cost of the order of \$30,000 and take several months. These funds are available in Council's Sewer Reserve fund.

30 Is the proposal consistent with any Delivery Program tasks?

Not applicable

**Notice of Motion No. 9.7**     **Supporting community resilience in flood planning**  
**File No:**                             I2017/1498

**I move that Council:**

1.     **Note Res 17-130**
2.     **Invite the State Emergency Service (SES) to provide a briefing to Council on current efforts to establish 'Community Action Teams' (CATs) as part of forward planning and responsiveness to flood events in local communities.**
3.     **Determine and provide support to potential CAT formation within the Byron Shire in conjunction with the SES and local communities.**
4.     **Develop a response plan as to how Council will respond to flood events with particular focus on the coordination of information and resources required by the community during and in the immediate aftermath of a flood.**
5.     **Implement a communications strategy to ensure widespread community understanding of Council's role during and in response to a flood event.**
6.     **Consider funding and resources necessary to support these initiatives and provide a report to Council by the end of 2017.**

**Signed: Cr Basil Cameron**

**Councillor's supporting information:**

I recently attended a series of community meetings conducted by the SES in Mullumbimby, Ocean Shores and Billinudgel. The purpose was to explore the preparedness of local communities to prepare for flood events by forming Community Action Teams (CATs) with the support of the SES. CATs have been established elsewhere in NSW successfully and the SES is now promoting their establishment following the March floods. In principle they are the same as the proposed 'mud army' referred to in Res 17-130.

The basic idea is that where there are willing volunteers, the SES will provide a local store (maybe a shipping container) of resources for the community to access during and immediately after a flood. CATs would then have the resources necessary to take responsibility for community safety during events. Volunteers determine the needs for their community - torches, first aid, hi viz wear, blankets, witches hats etc. CATs are also covered by the SES insurance.

This initiative from the SES is timely and provides Council with the opportunity to follow up on many of the actions referred to in Res 17-130. Most notably the possibility to dovetailing with the SES on the establishment of a 'mud army' as local first responders. One of the lessons of the March event was that Council is seen as an immediate responder as waters subside. While the SES have expertise and resources during the emergency phase, Council may be able to provide additional resources to CAT's for the immediate aftermath that would help local communities. For example road/flood signs, protocols and instructions for starting pumps etc.

Attendees at all the meetings were positive about the establishment of CATs and the SES is undertaking further work with those who registered an interest.

Part 4 and 5 of the motion are a response to other items referred to in Res 17-130, particularly the need for Council to have a clear response plan that includes contingencies for coordination of information and resources sought by the community in the immediate aftermath. While in many cases the action will be referral to other agencies (eg housing), it is important that Council is prepared with a plan for the who and how these services can be delivered. Clearly communicating Council's role prior to an event will also assist the community.

Obtaining a briefing from the SES is the first step to identifying the steps necessary to implement the objectives of the motion.

No significant additional funding is anticipated at this stage and it is suggested that the tasks be undertaken as part of ongoing operations.

### Recommended priority relative to other Delivery Plan tasks:

High.

### Definition of the project/task:

Arrange meeting with SES. Determine and provide support to potential CAT's. Develop a coordination action plan for responses to floods. Implement a communications strategy.

### Source of Funds (if applicable):

Existing operational

### **Staff comments by Anna Vinfield, Manager Governance Services, Community Corporate Services and Tony Nash, Manager Works, Infrastructure Services:**

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

The State Emergency Service (SES) have been invited to present to Councillors at the 9 November Strategic Planning Workshop. This presentation will outline community preparedness for future natural disasters including the potential formation of 'Community Action Teams' as part of forward planning and responsiveness to flood events in local communities.

Staff are preparing a detailed report on proposed Natural Disaster Response following a Mayoral Minute (RES 17-130) for presentation to the 23 November 2017 Ordinary Council Meeting. The report will detail:

- Extreme weather and disaster communication protocols;
- Review of Council infrastructure performance during flood events; and
- Community support and protocols.

It will also outline the implementation of 'community action teams' and consider required funding and resources.

### *Communication protocols*

A draft emergency management communications plan has been developed and endorsed by Council's communication committee. This plan is a guideline for Byron Shire Council in the event of an emergency and supports the Tweed Byron Local Emergency Management Plan. Communications from the Tweed Byron Local Emergency Management Committee (TBLEMC) when it is operational can be done a number of ways, such as from the TBLEMC, the Regional Emergency Management Committee, at a State level or referred back to the local committee and done by local government, such as was the case for Upper Coopers Creek landslip in 2013. It depends upon the size, extent and severity of the event.

It should be noted that Byron Shire Council does not play a lead role other than when the emergency relates to infrastructure failure of water, sewerage, roads and other transport assets. During an emergency event, Council's media and communication priority focus will be to residents, visitors and staff; local media; and national media. The plan also articulates processes for the stages of preparation; response; and recovery.

### *Provision of resources to CAT's*

*The resources required by each CAT will vary, as will the storage options and who provides these resources and controls access. They will be developed in the formation of each individual CAT. Funding for Council to provide our share of the resources will become clearer as the discussions and formations of CATS in our area progresses.*

### *Community support*

A regional learning from the March flood event was the need for strong coordination of community volunteers in order to maximise the impact of community good will and avoid duplication to ensure residents affected by natural disaster receive clear messaging in relation to assistance. Council is working with key service providers to develop a community response protocol which will include the development of a mechanism to effectively harness community volunteers in relation to provision of support for disaster affected residents.

The 'community action teams' proposed by the SES could be the appropriate mechanism for this.

Council will continue to play a lead role in advocating for community payments and grants in the wake of natural disasters and will, where appropriate, submit grant funding applications, or support key organisations to do so.

### Financial/Resource/Legal Implications:

Implications will be determined in the report to be submitted to the November meeting.

### Is the proposal consistent with any Delivery Program tasks?

Yes

CI2.4.1 Provide and facilitate local emergency management - Enhance communication to community during Natural Disasters

**Notice of Motion No. 9.8     Effluent Pathway as per Bayley Report**  
**File No:                             I2017/1502**

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I move that Council consider the “Bayley Report” as amended after the Panel meeting 28 September complete, and use it as the basis for application for permissions from various authorities (including BSD Union) to introduce a second drainage path as described by Option 2 of the Report.

**Signed:   Crs Michael Lyon and Jan Hackett**

**Councillor’s supporting information:**

The Byron Bay Sewage Treatment Plant (BBSTP) currently discharges up to 4 ML per day of dry weather flow into the Belongil catchment, which has led to significant concerns from adjoining landholders in recent years, particularly during wet weather where the low-lying areas remain inundated due to flow introduced by the town's sewerage system.

Additionally anticipating increased development in Byron Bay, effluent flowrates are expected to further increase over the next 5-10 years, which led Byron Shire Council to engage Australian Wetlands Consulting to prepare a capacity assessment of the Belongil Creek Drainage System, investigating both current BBSTP flows and projected 5ML/day and 8ML/day flows (the “Bayley Report”) in December 2016. This report was discussed at the last Coastal Estuary Catchment Panel meeting on 28 September and after minor amendments is now recommended for adoption. The report undertook a comprehensive review of ecological factors, rainfall and water-related events, geology and soil composition, water quality monitoring, hydraulic impacts and more, and included the development and modeling of two alternative effluent release pathways. Ultimately, the study recommended that an alternative pathway be provided via release into the Industrial Estate drainage system.

Furthermore, the Belongil Swamp Drainage Union has recently been reinstated, for the purpose of managing the Belongil Union Drain and ensuring it is in good operational condition. Under the *Water Management Act 2000*, drainage unions have the ability to collect rates within their gazetted areas for their purpose of maintaining their management and functionality. The Union's jurisdiction includes the current flow path, which is to be retained for sharing effluent flows. it may also include the alternative flow path.

**Staff comments by Peter Rees, Manager Utilities, Infrastructure Services:**

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

At the 25 May 2017 Council resolution 17-163 adopted the Coastal Estuary Catchment Panel meeting recommendation 4.1.1

*That the Coastal Estuary Catchment Panel recommends to Council that:*

1. *feasibility plans be developed, including negotiations with State Government agencies and regulators to make the primary effluent release point through the Industrial Estate drain (Option 2 in the Capacity Assessment of the Belongil Creek Drainage System Report) as a modification to the current licence as soon as possible.*

2. *the parameters, triggers and limits of reuse at the current licence point (EPA 4) for the purpose of ensuring that acidic runoff events and / or peat fires are limited within the upper drainage catchment be determined.*

5 3. *Council acknowledge its commitment at the commissioning of Byron Bay STP to relying on reuse to match increases in sewer load and either find a strategy to achieve that level of reuse, or consider calling a moratorium.*

10 4. *within development of the strategy, both reuse for human activities, as well as within the environment, be considered.*

5. *feasibility studies be commenced for the recommended Byron Bay Sewage Treatment Plant 2025 augmentation to 10 ML/day.*

15 6. *Council include an easement over Lot 12 Bayshore Drive to ensure the feasibility of Option 2 effluent flow path through the industrial drain into the future. The cost of the easement, including opportunity cost, to be reimbursed to the General Fund from the Sewer Fund.*

20 7. *further information be provided on both the historical and future reuse regime and moratorium implications.*

8. *upon Council endorsement, this be sent to the Drainage Union.*

25 Submissions have been sought from a relevant consultant to undertake the planning for items 1 and 2.

30 A draft Effluent Management Strategy has been developed for the Byron Shire. This has been been reported to the Water Waste and Sewer Advisory Committee and is subject to ongoing consultation. The strategy address items 4 and 7.

Item 6 has been actioned.

Data is being collated and a report will be prepared to address item 3.

35 A tender document is being prepared for item 5.

### Financial/Resource/Legal Implications:

40 The costs associated for this work are included in the Sewerage 30 year capital works programme and operational plan.

### Is the proposal consistent with any Delivery Program tasks?

45 Yes

**Notice of Motion No. 9.9     Drainage Union Contributions**  
**File No:                             I2017/1504**

I move that Council estimate a contribution rate it is likely to pay to the reformed S D Union for use of the Drain as part of the effluent path from BBSTP, and pay that amount in advance to assist the Union cover its expenses such as preparing a Management Plan.

**Attachments:**

1     Revised Agreement Belongil Swamp Drainage Union, E2017/97400 

**Signed:    Crs Michael Lyon and Jan Hackett**

**Councillor's supporting information:**

The Byron Bay Sewage Treatment Plant (BBSTP) currently discharges up to 4 ML per day of dry weather flow into the Belongil catchment, which has led to significant concerns from adjoining landholders in recent years, particularly during wet weather where the low-lying areas remain inundated due to flow introduced by the town's sewerage system.

Additionally anticipating increased development in Byron Bay, effluent flowrates are expected to further increase over the next 5-10 years, which led Byron Shire Council to engage Australian Wetlands Consulting to prepare a capacity assessment of the Belongil Creek Drainage System, investigating both current BBSTP flows and projected 5ML/day and 8ML/day flows (the "Bayley Report") in December 2016. This report was discussed at the last Coastal Estuary Catchment Panel meeting on 28 September and after minor amendments is now recommended for adoption. The report undertook a comprehensive review of ecological factors, rainfall and water-related events, geology and soil composition, water quality monitoring, hydraulic impacts and more, and included the development and modeling of two alternative effluent release pathways. Ultimately, the study recommended that an alternative pathway be provided via release into the Industrial Estate drainage system.

Furthermore, the Belongil Swamp Drainage Union has recently been reinstated, for the purpose of managing the Belongil Union Drain and ensuring it is in good operational condition. Under the *Water Management Act 2000*, drainage unions have the ability to collect rates within their gazetted areas for their purpose of maintaining their management and functionality. The Union's jurisdiction includes the current flow path, which is to be retained for sharing effluent flows. It may also include the alternative flow path.

**Staff comments by Peter Rees, Manager Utilities, Infrastructure Services:**

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

As a landholder in the Belongil, Council should be levied drainage charges on the same basis as other landholders. However, in addition to normal run off volumes, Council discharges varying volumes of highly treated effluent into the drainage system.

Council had prepared a draft memorandum of Understanding for an agreement between the Belongil Swamp Drainage Union (BSDU) and Council to both reflect this increased flow in the system define a mechanism for increased contributions by Council to the BDSU. Please find attached a copy of this agreement.



However due to the lack of governance in the management of the BDSU, the revised agreement appears to have not been executed and payments in accordance with the agreement were suspended in 2007.

5 In accordance with the agreement a fixed fee of \$10,000 per annum for existing flows up to 900 Megalitre/year plus \$10 per megalitre for flows above 900 megalitres /year. Based on the generally accepted of current flows of 3 megalitres/day currently discharged, the annual amount payable for 2017 would be \$11,950.

10 It could be argued that had the BDSU undertaken governance in accordance with its legislative requirements, Council would have been liable to pay \$10,000 a year for the past 10 years of operation - \$100,000 in total.

15 It is proposed therefore that this \$100,000 be allocated from Sewer Fund reserve to allow the BDSU to prepare and implement a Drainage Management Plan in accordance with its legislative requirements on the following conditions

The BDSU enters into a Memorandum of Understanding with Council generally in accordance with the attached MOU.

20 The BDSU give an undertaking to supply Council with appropriate governance documents as required under the legislation. In particular:-

- Minutes of Drainage Union meetings
- 25 • Annual Statements
- Independent audit of financial statements

The BDSU Drainage Management Plan reflect:-

- 30 • Best practice drain maintenance guidelines
- Council's adopted Belongil Catchment Management Plan
- Water Sensitive Urban Design Principles

Financial/Resource/Legal Implications:

35 The \$100,000 payment to be sourced from Council's Sewer Reserve fund.

Is the proposal consistent with any Delivery Program tasks?

40 Yes

EN1.1.2 Restore degraded areas and habitats that have or provide significant or high environmental and or community value

45 EN1.4.1 Implement Estuary Management Program

CI1.51. Ensure stormwater infrastructure to improve flood management, social and environmental outcomes

50 CI1.5.2 Implement the Sewerage Strategic Business Plan

**SUBMISSIONS AND GRANTS**

**Report No. 11.1**      **Byron Shire Council Submissions and Grants as at 27 September 2017**

5    **Directorate:**      Corporate and Community Services  
    **Report Author:**      Jodi Frawley, Grants Co-ordinator  
    **File No:**      I2017/1362  
10    **Theme:**      Corporate Management  
                         Governance Services

**Summary:**

15    Council have submitted applications for a number of grant programs which, if successful, would provide significant funding to enable the delivery of identified projects. This report provides an update on these grant submissions.

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**RECOMMENDATION:**

**That Council note the report**

20    **Attachments:**

1      Byron Shire Council Current Submissions and Grants as at 27 September 2017, E2017/97401 

25

### Report

This report provides an update on grant submissions including funding applications submitted, potential funding opportunities and those awaiting notification.

#### Funding Applications – Successful

- Building capacity in Byron's Community Halls, Building Better Regions Fund Community Investments, (Australian Government) - \$20,000
- Blindmouth Creek Crossing replacement Bridges Renewal Programme, (Australian Government) - \$570,275
- Bridges for the Bangalow Agricultural Area, Bridges Renewal Programme, (Australian Government) - \$2,588,908
- North Byron Coastline Management Plan, Coastal and Estuary Grants Program (NSW Government) - \$75,000

#### Funding Applications - Unsuccessful

- Fishing Platform Brunswick River, Recreational Fishing Trust, (NSW Government)

#### Funding opportunities identified for consideration by staff

- Byron Shire Bike Plan, Active Transport (Roads and Maritime Services, NSW Government)
- Cycle/walking paths, Broken Head road (Suffolk Park to Byron Bay), Active Transport (Roads and Maritime Services, NSW Government)
- Cycle/walking paths, Lismore Road, Active Transport (Roads and Maritime Services, NSW Government)
- Cycle/walking paths, Ewingsdale Road, Active Transport (Roads and Maritime Services, NSW Government)
- Cycle/walking paths, Balemo Road, Active Transport (Roads and Maritime Services, NSW Government)
- Shared Zones for Lateen and Bay Lanes, Byron Bay Active Transport (Roads and Maritime Services, NSW Government)
- Clarks Beach Amenities, Stronger Country Communities Fund (Regional Growth Fund, NSW Government)
- Ocean Shore Community Centre upgrade, Stronger Country Communities Fund (Regional Growth Fund, NSW Government)
- Active Recreation Waterlily Park, Ocean Shores, Stronger Country Communities Fund (Regional Growth Fund, NSW Government)
- Refurbishment of Sandhills Childcare Centre, Stronger Country Communities Fund (Regional Growth Fund, NSW Government)
- International Busking Festival, Festivals Australia (Australian Government)

#### Funding submissions submitted and awaiting notification

- 3D Mapping Tool, Smart Cities and Suburbs, (Australian Government)
- Byron Bay Bypass, Regional Jobs and Investment Package for North Coast NSW (Australian Government)
- Shark Smart Alert and Advice System, Shark Management Strategy Program (NSW Government)
- 622 Bangalow Road Safety Treatments, Safer Roads including Black Spot Funding (Roads and Maritime Services, NSW Government)
- Brunswick Harbour Boat Ramp, NSW Boating Now (RMS, NSW Government)

- Bridges for the Bangalow Agricultural Area, Fixing Country Roads (NSW Government Restart NSW)
- Brunswick Library renovation and extension, Regional Cultural Fund (Regional Growth Fund, NSW Government)
- 5 • Byron Trails, Northern Rivers Business Recovery Program (Commonwealth-NSW National Disaster Relief and Recovery)
- Emergency Relief Information, Northern Rivers Business Recovery Program (Commonwealth-NSW National Disaster Relief and Recovery)
- 10 • Billi's Back, Northern Rivers Business Recovery Program (Commonwealth-NSW National Disaster Relief and Recovery)
- Northern Rivers Resilience Masterclasses, Northern Rivers Business Recovery Program (Commonwealth-NSW National Disaster Relief and Recovery)
- Byron Bay Town Centre Bypass, Growing Local Economies, (NSW Government)
- McGettigans Lane to Pacific Highway, Growing Local Economies, (NSW Government)
- 15 • Clifford Street Roundabout, Growing Local Economies, (NSW Government)
- Byron Bay Town Centre Bypass, Growing Local Economies, (NSW Government)
- The Cavanbah Extension, Regional Sports Infrastructure, (NSW Government)

20 Additional information on the grant submissions made and or pending is provided in Attachment 1 – Grants report as at 27 September 2017

### Financial Implications

25 If Council is successful in obtaining the identified grants more than \$12 million would be achieved which would provide significant funding for Council projects. Some of the grants require a contribution from Council (either cash or in-kind) and others do not. Council's contribution is funded. The potential funding and allocation is noted below:

30	Requested funds from funding bodies	\$12,620,784
	Council cash contribution	\$7,670,525
	Council in-kind contribution	\$151,470
	Other contributions	\$10,526,060
	Funding applications submitted and awaiting notification (total project value)	<b>\$30,968,839</b>

### 35 Statutory and Policy Compliance Implications

40 Council is required under Section 409 3(c) of the *Local Government Act 1993* to ensure that 'money that has been received from the Government or from a public authority by way of a specific purpose advance or grant, may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose'. This legislative requirement governs Council's administration of grants.

**STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**

**Report No. 13.1      Local Government NSW Annual Conference 2017**

**Directorate:** Corporate and Community Services

**Report Author:** David Royston-Jennings, Corporate Governance and Strategic Planning Officer

**File No:** I2017/641

**Theme:** Corporate Management  
Councillor Services

**Summary:**

In accordance with Council's Mayor and Councillors Payment of Expenses and Provision of Facilities Policy, "A resolution of Council is required to authorise attendance of Councillors at Local Government and Shires Association Conference(s) as a voting delegate."

The Local Government NSW Annual Conference 2017 will be held from 4 to 6 December 2017 at the Hyatt Regency, Sydney, NSW.

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**RECOMMENDATION:**

**That Council:**

1. **Note the authorisation for Councillor Ndiaye to attend the Local Government NSW Annual Conference as a voting delegate, as per Council Resolution 17-439, adopted at its Ordinary meeting held on 21 September 2017.**
2. **Authorise the following additional Councillors to attend the Local Government NSW Annual Conference 2017 to be held at the Hyatt Regency, Sydney, NSW from 4 to 6 December 2017:**

**Cr (A) \_\_\_\_\_ and Cr (B) \_\_\_\_\_ to attend as the voting delegates.**

**Attachments:**

- 1 Letter from Local Government NSW - Invitation to the Local Government NSW Annual Conference 2017, S2017/12042 
- 2 Voting entitlements\_LGNSW Conference 2017, E2017/96176 

**Report**

The Local Government NSW Annual Conference 2017 will be held at the Hyatt Regency NSW, from 4 - 6 December.

In accordance with Council's Mayor and Councillors Payment of Expenses and Provision of Facilities Policy, "A resolution of Council is required to authorise attendance of Councillors at (a) Local Government and Shires Association Conference(s) as a voting delegate."

Council is entitled to three voting delegates in the debating session. This number is determined by population (see attachment 2 – E2017/96176).

Additional information and updates can be found on the Local Government Associations website at the address below.

<http://www.lgsa.org.au/events-training/local-government-nsw-annual-conference>

Council is to notify LGNSW of its voting delegates by Wednesday 1 November 2017 and may notify LGNSW of any changes to its voting delegates by giving notice in writing, signed by either the Mayor or the General Manager, no later than 5pm AEDT Monday 4 December 2017.

Council previously resolved (17-439) at its Ordinary Meeting held 21 September 2017 to delegate authority to Councillor Ndiaye to attend the LGNSW Annual Conference.

The purpose of this report is to enable Council to authorise the attendance of no more than three (3) Councillor delegates to the Local Government Association of NSW Annual Conference 2017.

**Financial Implications**

Council has an allocation for Conferences (2145.004) of \$19,400 within the 2017/18 budget. As at 4 October 2017, the remaining allocated budget for Councillors to attend Conferences in the 17/18 Financial Year is \$13,765.85.

Council is therefore able to fund the cost of three delegates from this budget.

Where: Hyatt Regency NSW

Dates: Monday 4 December – Wednesday 6 December 2017

Costs <b>per person</b> :	Registration Fee ( <i>early bird due 23 October</i> )	\$900.00
	Flights ( <i>approx</i> )	\$300.00
	Conference Functions ( <i>approx</i> )	\$300.00
	Accommodation ( <i>approx</i> )	<u>\$1,020.00</u>

<b>Total</b>	<b>\$2,520.00</b>
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**Statutory and Policy Compliance Implications**

In accordance with Council's Mayor and Councillors Payment of Expenses and Provision of Facilities Policy, "A resolution of Council is required to authorise attendance of Councillors at Local Government and Shires Association Conference(s) as a voting delegate."

**Report No. 13.2**      **Public Exhibition of Draft Policy - Supporting Partnerships Policy**  
**Directorate:**      Corporate and Community Services  
**Report Author:**      Anna Vinfield, Manager Governance Services  
**File No:**      I2017/1148  
5 **Theme:**      Corporate Management  
                 Financial Services

**Summary:**

Delivering better services and results for the community is a priority and it is recognised that Council is not able to solve problems alone. There is an opportunity to harness the innovation and capital of the non-government sectors to deliver better outcomes for the community.

Council at its 22 June 2017 Ordinary Meeting considered the draft *Supporting Partnerships Policy* and resolved (**17-278**) to place the draft policy on public exhibition.

This report is provided to Council to consider the submissions received during the consultation period and outline the next steps in implementing this policy.

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**RECOMMENDATION:****That Council:**

- 1. Adopt the Supporting Partnerships Policy as detailed in Attachment 1.**
- 2. Note that supporting guidelines and assessment frameworks are being developed.**

**Attachments:**

- 1 Draft Supporting Partnerships Policy, E2017/62241 
- 2 Confidential - Supporting Partnerships Policy Submission 1, E2017/83966
- 3 Confidential - Supporting Partnerships Policy Submission 2, E2017/83963
- 4 Confidential - Supporting Partnerships Policy Submission 3, E2017/95448
- 5 Confidential - Supporting Partnerships Policy Submission 4, E2017/83965



**Report**

Council at its Ordinary Meeting held on 22 June 2017 considered Report 13.31 – Supporting Partnerships Policy.

Council resolved (Resolution: **17-278**):

1. *That the Draft Supporting Partnerships Policy be placed on public exhibition for a period of 28 days.*
2. *That in the event:*
  - a) *that any submissions are received on the Supporting Partnerships Policy, they be reported back to Council prior to adoption of the policy; or*
  - b) *that no submissions are received on the Supporting Partnerships Policy, the policy be adopted and incorporated into Council's Policy Register.*

Council placed the draft policy on public exhibition for a period of 28 days, which closed on 10 August 2017.

The draft policy was promoted through media release (<http://www.byron.nsw.gov.au/media-releases/2017/08/04/byron-shire-council-looking-at-innovative-ways-to-deliver-community-outcom>, 40 subscribers), social media, e-news (7200 subscribers) and public advertisements in the Byron Shire News and Sydney Morning Herald, impact investors' networks and discussed with State Government agencies.

**Submissions received**

During the public exhibition period one submission was received. Three were received after the deadline, however have been included below for completeness. The submissions are contained at Attachment 2 (names have been removed).

The submissions are summarised below with management comments noted.

Comment received	Management response
<b>Submission 1 (E2017/83966):</b>	
<ul style="list-style-type: none"> <li>Draft Policy is broad and lack of detail means it may not meet the stated purpose of "establishing a framework to assess if a partnership approach is the best project delivery mechanism"</li> </ul>	<ul style="list-style-type: none"> <li>The framework is set by the Policy detailing the scope, objectives, principles and strategic context in which partnerships might be considered in future.</li> <li>Policies need to set the policy direction of Council and be broad enough to accommodate future innovations that are rapidly occurring in this space.</li> </ul>
<ul style="list-style-type: none"> <li>Policy makes no mention of:                             <ol style="list-style-type: none"> <li>Mechanisms for identifying and prioritising service and infrastructure needs that may be opportunities for PPPs</li> <li>Meaningful public consultation and comment</li> <li>Identification of responsibilities for decision making (eg committees, councils or staff)</li> <li>Making those responsible take account of community concerns identified in public</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>These procedural matters are addressed through other processes and Council delegations eg the forward works program and annual budget process, Council resolved delegations and engagement strategies etc.</li> <li>It is not practical to restate procedural matters in policies eg if when a change is made holistically to Council processes, each policy would have to be updated.</li> <li>Those making decisions do have responsibility to take into account community submissions before</li> </ul>

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

<p>consultation</p> <p>5) The sourcing of sufficient expertise to make assessment of potential social and economic impact</p>	<p>making final decisions.</p> <ul style="list-style-type: none"> <li>The degree of expertise required to assess environmental, social, economic and governance outcomes will vary with each potential partnership project. Resourcing will be assessed and adequate arrangements put in place during the project planning phase for each project.</li> </ul>
<ul style="list-style-type: none"> <li>The Policy may give authority for major decisions to staff who are not “electorally accountable to the public”.</li> </ul>	<ul style="list-style-type: none"> <li>A Policy cannot do this.</li> <li>The allocation of responsibilities between the Council and staff is governed by the Local Government Act, the delegations Council resolves to grant to the General Manager and any delegations issued by State Government.</li> </ul>
<ul style="list-style-type: none"> <li>Policy may be seen by elected officials to negate the need for wide public information and consultation on individual projects.</li> </ul>	<ul style="list-style-type: none"> <li>The Policy embeds a requirement for open competitive processes on each project, which involves wide consultation, but as always, elected Councillors retain discretion to make decisions on a case by case basis.</li> <li>Supporting tools are currently under development including a register of unsolicited proposals (ie those proposals that get sent to Council outside of a public consultation process) so members of the public will be able to see them and what Council’s responses to them have been. While it will need to be a simpler version, the intention is to provide information similar to what the State Government does – see <a href="https://www.nsw.gov.au/contact-us/unsolicited-proposals/#currentcompleted-proposals">https://www.nsw.gov.au/contact-us/unsolicited-proposals/#currentcompleted-proposals</a> .</li> </ul>
<ul style="list-style-type: none"> <li>There is great potential for both benefits and problems from PPPs in any level of government or size of community so the implications for a small community like Byron Shire, with so much attraction for potential profit making, should not be underestimated.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed. PPP’s are governed by a strict legislative framework that includes independent oversight.</li> </ul>
<ul style="list-style-type: none"> <li>There will inevitably be tensions in any potential project between elements of policy eg between achieving 'the financial sustainability of the Council' with and within the 'quadruple bottom line outcomes'. What mechanisms will be used to fairly and democratically resolve these tensions?</li> </ul>	<ul style="list-style-type: none"> <li>Council has been using quadruple bottom line sustainability ie assessment of environmental, social, community economic and governance (including Council finances) outcomes, to guide services and projects for a long time and the same approach will be taken for partnership proposals.</li> <li>For partnerships, additional guidance is also set out in the Principles section of the Policy.</li> </ul>
<ul style="list-style-type: none"> <li>The policy should bind all decision makers to rigorous processes of a proposal by proposal nature. I do not believe it does this in its current form.</li> </ul>	<ul style="list-style-type: none"> <li>Policies guide elected council decisions (only legislative requirements bind the elected Council) but Policies do bind staff. The Policy requires “an open, market-based process, where everyone is given the opportunity to compete for the partnership opportunity”.</li> <li>The Policy makes it clear that Council is bound</li> </ul>

	by and required to follow the rigorous legislative requirements that apply to PPP's.
<b>Submission 2 (E2017/83963) (received after deadline):</b>	
<p>1) PUBLIC SECTOR CHAMPION:</p> <ul style="list-style-type: none"> <li>There needs to be public champions for the project. People of influence in the community and BSC that support and understand the benefits of the project to the community. In the case of BSC this is an important resource not necessarily achieved purely through committee processes and also speaks to three below.</li> </ul>	<ul style="list-style-type: none"> <li>Noted</li> </ul>
<p>2) STATUTORY ENVIRONMENT:</p> <ul style="list-style-type: none"> <li>"There should be a statutory foundation for the implementation of each partnership. Transparency and a competitive proposal process should be delineated in this statute. However, unsolicited proposals can be a positive catalyst for initiating creative, innovative approaches to addressing specific public sector needs."</li> <li>There must be room to encourage innovative thinking, not discouraged by a difficult to negotiate point of access to the public sector.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed unsolicited proposals can be a positive and the Policy encourages them. Any potential partnership opportunity that is identified as a result of an unsolicited proposal, will then be subject to a competitive process.</li> <li>The Policy encourages and invites innovation from the market and at the same time maintains openness and transparency, around all proposals including unsolicited proposals.</li> </ul>
<p>3) PUBLIC SECTOR'S ORGANISED STRUCTURE:</p> <ul style="list-style-type: none"> <li>P3's may become an important process for BSC to ensure advancement of public objectives. The organised structure must allow access as stated above. It must also allow for retention of knowledge and experience.</li> <li>"The public sector should have a dedicated team for P3 projects or programs. This unit should be involved from conceptualisation to negotiation, through final monitoring of the execution of the partnership. This unit should develop Requests For Proposals (RFPs) that include performance goals, not design specifications. Consideration of proposals should be based on best value, not lowest prices. Thorough, inclusive value for money (VFM) calculations provide a powerful tool for evaluating overall economic value."</li> <li>Taking time to create these tools for each project is an essential part of successful 3P's.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed. PPP's are governed by a strict legislative framework that includes independent oversight.</li> <li>The Office of Local Government does have staff charged with oversight of Public Private Partnerships (called P3's in the submission). At Council an internal working group has been formed to initially develop the policy and supporting guidelines, and to assess proposals.</li> <li>Council has recently engaged a Business Analyst who will be central to this process.</li> </ul>
<p>4) DETAILED CONTRACT (BUSINESS PLAN):</p> <ul style="list-style-type: none"> <li>"A P3 is a contractual relationship between the public and private sectors for the execution of a project or service. This contract should include a detailed description of the responsibilities, risks and benefits of both the public and private partners. Such an agreement will increase the probability of success of the partnership.</li> </ul>	<ul style="list-style-type: none"> <li>Agreed. PPP's are governed by a strict legislative framework that includes independent oversight.</li> </ul>

<p>Realising that all contingencies cannot be foreseen, a good contract will include a clearly defined method of dispute resolution.”</p>	
<p>5) CLEARLY DEFINED REVENUE STREAM:</p> <ul style="list-style-type: none"> <li>• “While the private partner may provide a portion or all of the funding for capital improvements, there must be an identifiable revenue stream sufficient to retire this investment and provide an acceptable rate of return over the term of the partnership. The income stream can be generated by a variety and combination of sources (fees, tolls, availability payments, shadow tolls, tax increment financing, commercial use of underutilised assets or a wide range of additional options), but must be reasonably assured for the length of the partnership’s investment period.”</li> <li>• Unfortunately in Australia at the moment the techniques for financing these projects and incentives through the tax system are nascent.</li> <li>• However, it is broadly fair to say that in Australia land is in most instances the largest cost item in a 3P. As a result one of the most impactful actions available to the public sector is the contribution of land for a rent style payment and not a capital sum.</li> <li>• This is recognised in the Draft Policy but deserves considerable thought in determining the mechanisms that are acceptable to the public sector. The sustainable mechanism for pricing the return to the public sector has a range of options with a range of risks and it would be wise for BSC to commission a paper providing insights prior to undertaking the first EOI for a 3P.</li> </ul>	<ul style="list-style-type: none"> <li>• Cost benefit analyses will be undertaken for all proposals and pricing mechanisms will be reviewed on a project basis. Council has recently engaged a Business Analyst who will be central to this process.</li> </ul>
<p>6) STAKEHOLDER SUPPORT:</p> <ul style="list-style-type: none"> <li>• “More people will be affected by a partnership than just the public officials and the private sector partner. Affected employees, the portions of the public receiving the service, the press, appropriate labor unions and relevant interest groups will all have opinions, and may have misconceptions about a partnership and its value to all the public. It is important to communicate openly and candidly with these stakeholders to minimise potential resistance to establishing a partnership.”</li> <li>• This speaks to the accumulation and creation of a knowledge base that builds on successes and has flexibility to address inevitable challenges that we merge in the processes.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> </ul>
<p>7) PICK YOUR PARTNER CAREFULLY:</p> <ul style="list-style-type: none"> <li>• “The “best value” (not always lowest price) in a</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> </ul>

<p>partnership is critical in maintaining the long-term relationship that is central to a successful partnership. A candidate's experience in the specific area of partnerships being considered is an important factor in identifying the right partner. Equally, the financial capacity of the private partner should be considered in the final selection process."</p> <ul style="list-style-type: none"> <li>If external finance instruments are to be used it is also crucial that the financier has confidence in the ability of the commercial partner to deliver a project.</li> </ul>	
<b>Submission 3 (E2017/95448) (received after deadline):</b>	
<ul style="list-style-type: none"> <li>It's a great signal of intent from Council and captures the intention of the potential partnerships nicely.</li> </ul>	<ul style="list-style-type: none"> <li>Noted.</li> </ul>
<ul style="list-style-type: none"> <li>Council's alignment with SDG's and incorporation of GNH into its operations is such a wonderful evolution of local governance.</li> </ul>	<ul style="list-style-type: none"> <li>Noted.</li> </ul>
<b>Submission 4 (E2017/83965) (received after deadline):</b>	
<ul style="list-style-type: none"> <li>I really like the document.</li> </ul>	<ul style="list-style-type: none"> <li>Noted.</li> </ul>
<ul style="list-style-type: none"> <li>I would just add some comments about certifications that align with the values of council and a preference to procure from companies with that certification. Business certification would be B Corp. Product certifications would be Fair-trade, FSC, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Council's procurement policy outlines principles for sustainable and ethical procurement and captures these values.</li> <li>Reference can be made in the supporting guidelines that are currently under development.</li> <li>Council will conduct relevant due diligence on investments, including individual private companies, managers and funds for SRI, PRI, Impact and ESG investments and portfolios</li> </ul>

### **Next steps**

- 5 Officers are developing the supporting guidelines and framework to assess both solicited and unsolicited proposals. This is likely to include a flow chart with decision points, criteria and publication requirements. Stakeholder engagement and transparency will be key and an on-line register, for both solicited and unsolicited proposals, is also currently under development.

### **Financial Implications**

- 10 None from adoption of the Policy. The Policy requires that each partnership Council enters should return positive dividends for community and Council.

### **Statutory and Policy Compliance Implications**

- 15 The draft Supporting Partnership Policy has been prepared having regard to the statutory requirements of the Local Government Act and Regulations, as well as the Independent Commission Against Corruption Guidelines on Direct Negotiations.

**Report No. 13.3**      **Appointment of new alternate Councillor representative to Richmond Tweed Regional Library Committee**

**Directorate:**      Corporate and Community Services

**Report Author:**      David Royston-Jennings, Corporate Governance and Strategic Planning Officer

**File No:**      I2016/3

**Theme:**      Corporate Management  
Councillor Services

**Summary:**

Council's appointed representatives to the Richmond Tweed Regional Library ("RTRL") are Cr Coorey and Cr Ndiaye, with Cr Hackett as the current alternate representative. Council appointed its representatives at its Extraordinary Meeting held on 29 September 2016.

Councillors are appointed for a 4 year term in line with the Local Government Ordinary Elections unless otherwise resolved by Council.

The purpose of this report is to seek a replacement alternate representative for Cr Hackett, who has recently resigned as the alternate representative for this Committee.

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**RECOMMENDATION:**

**That Council appoint Cr \_\_\_\_\_ as the alternate representative to the Richmond Tweed Regional Library Committee.**

**Report**

The RTRL Committee has two Councillor Representatives appointed from each member local government area. The local government members of the RTRL are Ballina Shire, Byron Shire, Tweed Shire and Lismore City Councils. Each of the member Councils may also appoint an alternate delegate, if one of the appointed Councillor Representatives cannot attend.

Cr Hackett is currently the alternate member to the RTRL Committee, but has recently resigned due to conflicts which impact on her availability to attend RTRL meetings.

**Background**

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

The RTRL Vision is:

*We will support our communities to achieve.*

The RTRL Mission is:

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

The RTRL Values are:

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

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

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

**Financial Implications**

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

**Statutory and Policy Compliance Implications**

The RTRL requires the appointment of two Councillor representatives and an alternate representative.

**Report No. 13.4**      **Review of Mullumbimby Outside of School Hours Care Services**  
**Directorate:**      Corporate and Community Services  
**Report Author:**      Sarah Ford, Manager Community Development  
**File No:**      I2017/1351  
5 **Theme:**      Society and Culture  
                 Children's Services

**Summary:**


10 A review of Council's Outside School Hours Care (OSHC) services in Mullumbimby has identified a lack of quality classroom or facility to provide services, low enrolments since 2015, and increased staffing costs to ensure the child protection risk to Council is managed. Council's licence with  
15 Department of Education to provide OSHC services in Mullumbimby expires on 23<sup>rd</sup> December 2017.

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**RECOMMENDATION:**

1. That Council note the current facility constraints, low enrolment numbers, child protection provisions and requirements to meet National Quality Standards at the Mullumbimby OSHC service.
2. That Council note the commitment and support from the Principal of Mullumbimby Public School and the Parents and Citizens Association of Mullumbimby Public School to overcome the current facility constraints and low enrolment numbers.
3. That Council renew its Department of Education Licence for a period of 12 months from 23<sup>rd</sup> December 2017, and work intensively with Mullumbimby Public School to grow enrolments in an improved facility.

**Attachments:**

- 20 1 Photographs of Mullumbimby OOSH service, E2017/91611 



### Report

Council is licenced by NSW Department of Education to provide three Outside School Hours Care (OSHC) services within the Shire. These services are delivered at:

- Byron Bay Public School – licenced 25 places OSHC & 50 Vacation Care
- Brunswick Heads Public School – licenced 25 places OSHC & 50 Vacation Care
- Mullumbimby Public School – licenced 20 OSHC & 40 Vacation Care

Services operate from 2:30pm-6pm during school term. Vacation care services are provided during the school holiday periods and operate from 8am-6pm.

Licences for the three services expire on 23<sup>rd</sup> December 2017 and Council will be required to submit a tender for ongoing services.

#### Mullumbimby OSHC & Vacation Care

The Mullumbimby service is located under an elevated building with no dedicated classroom or enclosed space for the children.

The critical issues with the current space include:

- The area is concrete with no fixed walls. During rain events, there is water ingress and in winter there is no heating and the space is very dark
- Furniture was purchased second hand from a thrift shop and the condition is poor
- The kitchen is unhygienic and out of supervision view for educators
- Children must access bathrooms unsupervised

The National Quality Standard (NQS) is a key aspect of the National Quality Framework (NQF) and sets a high national benchmark for early childhood education and care, and outside school hours care services in Australia. The Mullumbimby service is due to go through Assessment and Rating under the NQS.

Given the constraints of the existing site, the service is potentially in breach of the Regulations, as it will not successfully meet a number of Assessment and Rating criteria in Quality Areas 2 and 3.

Enrolments at the Mullumbimby Service have been low for a number years, with the enrolment statistics being detailed in the table below.

Table 1 – Enrolment Statistics

Mullumbimby OSHC	Average Children per day	
2015	4.2	On 25 occasions there were between 0-2 children at the service occasions
2016	4.3	On 19 occasions there were between 0-2 children at the service
2017	4.85	Regular days with one or two children only

Low numbers at the Mullumbimby service were thought to be a result of the national “no jab, no pay” legislation introduced in January 2016, reflecting the low immunisation rates for the Shire and the impact on families of no longer being eligible for the child care rebate. An analysis of the data

however shows that prior to the change in legislation, numbers were on average around 4.7 per day.

5 All Children's services must be compliant with the 1998 Child Protection Act. Having two educators is best quality practice although not currently required under the NSW Regulations. Given the low numbers at Mullumbimby, there had been a practice of employing one staff member. After reviewing the Child Protection risk to Council, it was agreed that two staff members should be rostered on at all times.

10 As a result of the review, Council staff have been working with the Principal of Mullumbimby Public School to address concerns in relation to the viability of the service. The Principal acknowledges the importance of the service to families and the school community and has offered to support the continuation of the service in the following ways:

- 15
- Provision of a dedicated classroom to 31 December 2018
  - Development and distribution of a survey to gauge enrolment interest in a new classroom space. The survey will be distributed to all primary schools within the catchment area.
  - Dedicated full page promotional space in the school newsletter twice per term in addition to the current weekly advertisement
- 20
- Waive the annual lease fee of \$3,000 for the use of the classroom space
  - Support grant applications for a demountable building onsite to house OSHC services

**Consultation:**

25 Further consultation with the Mullumbimby Public School P&C Association has seen a high level of support for the continuation of services at the school. The P&C have offered support to grow the service by:

- 30
- Promoting the service via P&C social media and word of mouth
  - Assisting the service to transition to the new classroom location via a P&C and family working bee
  - Providing support for fit out of the new space through fund raising activities

35 An initial parent survey was advertised via the school newsletter in September. Twenty responses were received with ten respondents identifying they use or would use the service. Comments from families using the service praise the professionalism of staff as well as highlight the poor facilities as a barrier to the service.

40 Results from the new parent survey developed in conjunction with the Principal and distributed in hard copy to all families, as well as schools within the catchment area, will be collated and provided at the 26 October Council meeting.

**Financial Implications**

45 Fee per day per child - \$25.

One off annual grant of \$10,500 for Rural Community Support from DEC.

50 Occupancy needs to be at 43% on daily basis to break even with two staff members.

**Table 2 - Budget Analysis for 2017 – 2018**

			<b>2018 to September</b>	<b>2017</b>
<b>Income</b>	1214.1	DEEWR Grant	1,743.33	10,857.00
	1214.2	Special Needs Grant		2,068.88
	1214.3	Fee Relief Grant	1,695.87	9,582.85
	1231.3	Fees and Charges	1,233.08	13,132.32
<b>Total Income</b>			<b>4,672.28</b>	<b>35,641.05</b>
<b>Expenditure</b>	2388.1	Salaries & Oncosts	6585.47	34,738.95
	2388.2	SNSS Salaries & Oncosts	0	-
	2388.3	Rent	618.55	1,957.06
	2388.4	Other Operating Expenses	232.42	4,696.18
		Oncosts	1,730.56	10,216.67
<b>Total Expenditure</b>			<b>9,167.00</b>	<b>51,608.86</b>
<b>Surplus/(Deficit)</b>			<b>- 4,494.71</b>	<b>- 15,967.81</b>

5 The cost to Council in 2017 for provision of the service was \$15,968. Since the decision to have two staff at all times in services, the cost to Council for the first two months of 2017/18 financial year is \$4,495. Based on this figure, the projected loss for 2017/18 will be approximately \$22,475.

10 The service would need to increase enrolments from an average of 4.85 students per day, to 9 students per day to break even.

### **Statutory and Policy Compliance Implications**

15 Children and Young Persons (Care and Protection) Act 1998  
Education and Care Services National Law Act 2010  
Education and Care Services National Regulations & National Quality Standards  
Children's Services Policy 2017

**Report No. 13.5**      **Section 355 Management Committee matters**  
**Directorate:**      Corporate and Community Services  
**Report Author:**      Joanne McMurtry, Community Project Officer  
**File No:**      I2017/1353  
5 **Theme:**      Society and Culture  
                    Community Development

**Summary:**

10 This report updates Council on recent resignations and proposed appointments to various committees. There is also an update on a number of capacity building projects, including the 'Love Byron Halls' project, currently underway and working towards community halls being the central hub of a locality, by providing opportunities for community connections and strengthening social cohesion.


15

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**RECOMMENDATION:**

1. That in regards to the Brunswick Heads Memorial Hall:
  - a) the resignation from Linda Hibbard be accepted and a letter of thanks be provided.
  - b) staff work with the Committee on alternative solutions to managing the Hall considering the difficulty in recruiting active members on the management committee.
2. That the resignation from Richard Willan from the South Golden Beach Community Centre Management Committee be accepted and that a letter of thanks be provided.
3. That the resignation from Heika Braha be accepted from the Lone Goat Gallery Board of Management and that a letter of thanks be provided.
4. That Denise Curran and Wendy Smith be appointed to the Ocean Shores Community Centre Management Committee.
5. Council note the Capacity Building Projects and 'Love Byron Halls' project currently underway with a view to community halls being the central hub of a locality, by providing opportunities for community connections and strengthening social cohesion.

**Attachments:**

- 20
- 1 Confidential - Confidential annexure to Council report 26 October 2017 addition community representatives for Section 355 committees, E2017/97402
  - 2 New Visual Identity for Lone Goat Gallery - examples, E2017/94219 
- 25

**Resignations and Committee appointments**

This report details new appointments for Section 355 committees where nominations have been received; a resignation; and a change in Councillor representative request for Senior Citizen's Hall Byron Bay.

**Brunswick Heads Memorial Hall**

A resignation has been received from Linda Hibbard from the Brunswick Heads Memorial Hall Management Committee.

Current members of this Management Committee are:

**Councillors**

Cr Simon Richardson

**Community Representatives**

Stephen Bond (on extended leave of absence)

Marj Trimble (Treasurer)

Beverley Rahill

Ann Burnett

Leah Schinagl

Melinda Bennett (Bookings)

The remaining members of this committee have struggled to reach a quorum at the last three meetings and an advertisement has been placed in local media, including social media, calling for new member nominations. No new nominations have been received and staff are now considering alternative options for the management of this hall.

**Management Recommendation**

That the resignation from Linda Hibbard be accepted and a letter of thanks be provided.

That staff work with the Committee on alternative solutions to managing the Brunswick Heads Memorial Hall considering the difficulty in recruiting active members on the management committee.

**South Golden Beach Community Centre**

A resignation has been received from Richard Willan from the South Golden Beach Management Committee. Current members on this Management Committee are:

**Councillors**

Cr Basil Cameron

Sarah Ndiaye (alternate)

**Community Representatives**

Lotte Boer

Zerina Millard (Chair)

Jennifer Parenteau

Gabrielle Ranaldi (Secretary)

Maureen Lightfoot (Treasurer)

Tony Horrigan (bookings)

Ana Mantuaneli

Melissa Tonnet

**Management Recommendation**

That the resignation from Richard Willan from the South Golden Beach Community Centre Management Committee be accepted and that a letter of thanks be provided.

**5 Lone Goat Gallery Board of Management**

A resignation has been received from Heika Braha from the Lone Goat Gallery Board of Management.

10 Current members on this Board of Management are:

**Councillors**

Cr Jan Hackett

Cr Sarah Ndiaye (alternate)

15

**Community Representatives**

Maureen Lightfoot (Treasurer)

Denise Napier

Faye Dorczak (Secretary)

20

Margaret White (Chair)

Shanti Des Fours

**Management Recommendation**

25 That the resignation from Heika Braha be accepted from the Lone Goat Gallery Board of Management and that a letter of thanks be provided.

**Ocean Shores Community Centre Management Committee**

30 Advertising for new members for this committee was conducted. Two new nominations have been received from Denise Curran and Wendy Smith. Details of nominees can be found in the confidential attachment.

Current members on this Management Committee are:

**35 Councillors**

Cr Jeannette Martin

Cr Cate Coorey (alternate)

**Community Representatives:**

40

Gail Fuller (Chair and Treasurer)

Leah Kapral (Bookings Officer)

Robyn Bolden

Susan Cubis

45

**Management Recommendation:**

That Denise Curran and Wendy Smith be appointed to the Ocean Shores Community Centre Management Committee.

**Capacity Building Projects**

50

Council staff continue to support Section 355 volunteer committees to develop capacity and respond to community need. The projects outlined below will all contribute towards bringing community halls into a place of being a central hub of a locality providing a role in improving community connections and strengthening social cohesion. Current projects include:

55

1. Lone Goat Gallery Board have been progressing actions in the Lone Goat Gallery Strategic Plan and soon will launch a new website and application process for artists to exhibit at the Gallery. There is a whole new look and feel with the development of a new visual identity for the Gallery. This new visual identity will be carried through all of the Lone Goat Gallery promotion material and documents for consistency. Attachment two provides examples of the new visual identity.
2. Ocean Shores Community Centre Management Committee are working with staff towards attracting support services to outreach to local Ocean Shores residents, including play group and other activities supporting families.
3. Senior Citizen's Hall Byron Bay Management Committee have been working with staff to upgrade and freshen up the building with a view to a promotional launch of this facility to the community – "now open for bookings". One of the committee members has written a play and the plan is to stage the play along with other activities on a launch day – date to be announced, probably in the new year. This committee are also soon to trial 'senior's afternoons' which will be held as a fundraiser for the hall and will provide an opportunity for seniors to partake in card games, Ma Jong and other activities, or to just pop in for a cuppa and a chat.
4. South Golden Beach Management Committee have been trialling some community get togethers in the form of a movie night. The movie nights have been so successful in attracting local families, the committee have decided to set up a Film Society and show regular movies on a monthly basis. The committee are working with local businesses and other supporters and are using these nights as fundraisers for the hall.

**Love Byron Halls Project**

Council was recently successful in obtaining Building Better Regions – Community Investment Stream funding of \$20,000 to improve the management, accessible information and promotion of Byron Shire cultural and community facilities. The project will improve the information about each facility, identify opportunities for enhanced use, and at the same time build the capacity of the volunteer committees managing the facilities. This project will roll out over the next 12 months.

**Financial Implications**

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

**Statutory and Policy Compliance Implications**

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

***3.2 Committee Membership***

*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.*

*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.*

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. 13.6      Council Investments September 2017**

**Directorate:** Corporate and Community Services

**Report Author:** James Brickley, Manager Finance

**File No:** I2017/1355

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 September 2017 for Council's information.

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

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**RECOMMENDATION:**

**That the report listing Council's investments and overall cash position as at 30 September 2017 be noted.**

20

**Report**

In relation to the investment portfolio for the month of September 2017, Council has continued to maintain a diversified portfolio of investments. At 30 September 2017, the average 90 day bank bill rate (BBSW) for the month was 1.72%. Council's performance to 30 September 2017 is 2.51%. 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 and purchasing floating rate notes with attractive interest rates.

- 5 The table below identifies the investments held by Council as at 30 September 2017:

**Schedule of Investments held as at 30 September 2017**

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Ethical ADI	Type	Interest Rate Per Annum	Current Value
24/03/17	1,000,000	NAB Social Bond (Gender Equality)	N	AA-	24/03/22	N	B	3.44%	1,011,100.17
28/10/16	650,000	Teachers Mutual Bank	P	BBB+	28/10/19	Y	FRN	3.17%	653,642.89
31/03/17	1,000,000	CBA Climate Bond	N	AA-	31/3/22	N	FRN	3.25%	1,000,000.00
23/08/17	2,000,000	NAB	P	AA-	23/11/17	N	TD	2.47%	2,000,000.00
08/08/17	2,000,000	NAB	N	AA-	06/11/17	N	TD	2.45%	2,000,000.00
03/07/17	1,000,000	NAB	N	AA-	09/10/17	N	TD	2.44%	1,000,000.00
30/08/17	2,000,000	NAB	N	AA-	30/11/17	N	TD	2.23%	2,000,000.00
08/08/17	2,000,000	Bank of Queensland	P	BBB+	05/02/18	Y	TD	2.60%	2,000,000.00
02/08/17	2,000,000	Police Credit Union	P	NR	02/11/17	U	TD	2.55%	2,000,000.00
15/08/17	2,000,000	ME Bank	N	BBB	15/11/17	Y	TD	2.45%	2,000,000.00
01/06/17	2,000,000	Beyond Bank	P	BBB	03/10/17	Y	TD	2.65%	2,000,000.00
07/07/17	2,000,000	ME Bank	P	BBB	07/10/17	Y	TD	2.55%	2,000,000.00
08/08/17	2,000,000	ME Bank	N	BBB	08/11/17	Y	TD	2.45%	2,000,000.00
04/07/17	1,000,000	Bananacoast Credit Union	P	NR	04/01/18	Y	TD	2.70%	1,000,000.00
18/09/17	2,000,000	AMP Bank	P	A	18/12/17	N	TD	2.40%	2,000,000.00
08/09/17	2,000,000	NAB	N	AA-	08/12/17	N	TD	2.52%	2,000,000.00
30/08/17	2,000,000	ME Bank	N	BBB	30/11/17	Y	TD	2.45%	2,000,000.00
27/09/17	1,000,000	Bank of Queensland	N	BBB+	27/03/18	Y	TD	2.50%	1,000,000.00
04/07/17	2,000,000	Beyond Bank	N	BBB	04/10/17	Y	TD	2.65%	2,000,000.00
13/06/17	1,000,000	Auswide Bank Ltd	N	BBB-	13/10/17	Y	TD	2.60%	1,000,000.00
05/07/17	1,000,000	Police Credit Union	N	NR	05/10/17	U	TD	2.60%	1,000,000.00
15/08/17	1,000,000	Bank of Queensland	N	BBB+	12/01/18	Y	TD	2.55%	1,000,000.00
06/09/17	1,000,000	Bananacoast Credit Union	N	NR	07/03/18	Y	TD	2.60%	1,000,000.00
23/08/17	1,000,000	The Capricornian Credit Union	P	NR	23/11/17	Y	TD	2.50%	1,000,000.00
19/07/17	2,000,000	Beyond Bank	N	BBB	30/10/17	Y	TD	2.65%	2,000,000.00
03/04/17	2,000,000	Police Credit Union	N	NR	04/10/17	U	TD	2.80%	2,000,000.00

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.6

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Ethical ADI	Type	Interest Rate Per Annum	Current Value
03/05/17	1,500,000	Auswide Bank Ltd	P	BBB-	08/11/17	Y	TD	2.68%	1,500,000.00
10/05/17	1,000,000	Auswide Bank Ltd	N	BBB-	15/11/17	Y	TD	2.70%	1,000,000.00
02/06/17	1,500,000	ME Bank	N	BBB	04/12/17	Y	TD	2.67%	1,500,000.00
05/06/17	1,000,000	Intech Bank Ltd	P	NR	05/12/17	Y	TD	2.80%	1,000,000.00
08/06/17	2,000,000	ME Bank	N	BBB	08/12/17	Y	TD	2.65%	2,000,000.00
13/06/17	1,000,000	Bananacoast Credit Union	N	NR	13/10/17	Y	TD	2.60%	1,000,000.00
05/07/17	1,500,000	Hunter United Employees Credit Union	P	NR	06/11/17	U	TD	2.85%	1,500,000.00
05/07/17	1,000,000	Police Credit Union	N	NR	17/10/17	U	TD	2.60%	1,000,000.00
10/07/17	1,000,000	Hunter United Employees Credit Union	N	NR	10/10/17	U	TD	2.65%	1,000,000.00
17/07/17	1,000,000	Police Credit Union	N	NR	17/11/17	U	TD	2.65%	1,000,000.00
28/07/17	2,000,000	ME Bank	N	BBB	30/10/17	Y	TD	2.45%	2,000,000.00
03/08/17	1,000,000	Maitland Mutual Building Society	P	NR	03/11/17	Y	TD	2.50%	1,000,000.00
15/08/17	1,000,000	ME Bank	N	BBB	15/11/17	Y	TD	2.45%	1,000,000.00
17/08/17	1,000,000	AMP Bank	N	A	17/11/17	N	TD	2.45%	1,000,000.00
17/08/17	1,000,000	ME Bank	N	BBB	17/11/17	Y	TD	2.45%	1,000,000.00
17/08/17	1,000,000	Bank of Queensland	N	BBB+	19/02/18	Y	TD	2.55%	1,000,000.00
23/08/17	1,000,000	ME Bank	N	BBB	23/11/17	Y	TD	2.45%	1,000,000.00
24/08/17	1,000,000	ME Bank	N	BBB	24/11/17	Y	TD	2.45%	1,000,000.00
30/08/17	1,000,000	ME Bank	N	BBB	28/11/17	Y	TD	2.45%	1,000,000.00
31/08/17	2,000,000	NAB	N	AA-	12/12/17	N	TD	2.50%	2,000,000.00
31/08/17	2,000,000	NAB	N	AA-	18/12/17	N	TD	2.50%	2,000,000.00
01/09/17	1,000,000	NAB	N	AA-	02/01/18	N	TD	2.52%	1,000,000.00
05/09/17	1,000,000	Bananacoast Credit Union	N	NR	06/03/18	Y	TD	2.60%	1,000,000.00
15/09/17	1,000,000	Auswide Bank Ltd	N	BBB-	15/12/17	Y	TD	2.40%	1,000,000.00
15/09/17	1,000,000	Peoples Choice Credit Union	N	NR	15/03/18	Y	TD	2.55%	1,000,000.00
28/09/17	2,000,000	Rural Bank	N	BBB+	29/01/18	Y	TD	2.50%	2,000,000.00
28/09/17	1,000,000	NAB	N	AA-	29/12/17	N	TD	2.51%	1,000,000.00
N/A	2,065,297	CBA Business Online Saver	N	A	N/A	N	CALL	1.40%	2,065,296.85
<b>Total</b>	<b>76,215,297</b>						<b>AVG</b>	<b>2.51%</b>	<b>76,230,039.91</b>

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

**Note 2. Ethical ADI**

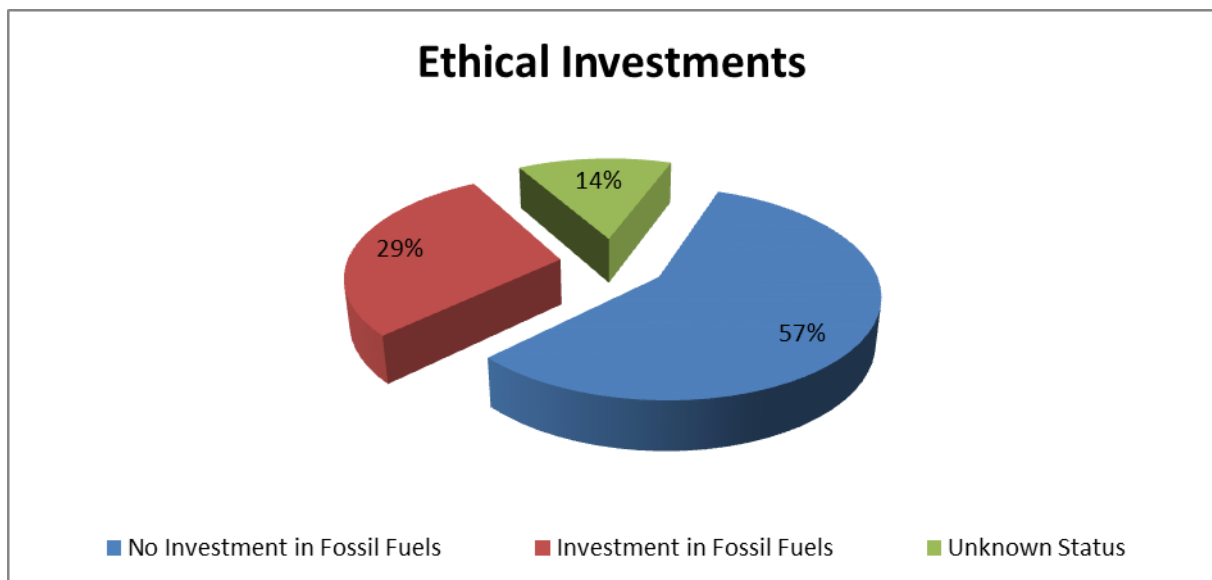
Y = No investment in Fossil Fuels  
N = Investment in Fossil Fuels  
U = Unknown Status

Note 3.	Type	Description	
	B	Bonds	Principal can vary based on valuation, interest payable via a fixed interest, payable usually 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.

5 Environmental and Socially Responsible Investing

An additional column has been added to the schedule of Investments above, to identify if the financial institution holding the Council investment, has been assessed as an “Ethical” institution. This information has been sourced through [www.marketforces.org.au](http://www.marketforces.org.au) and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below highlights the percentage of each classification across Councils total investment portfolio.

10



15 For the month of September 2017, as indicated in the table below, there is a dissection of the investment portfolio by investment type:

**Dissection of Council Investment Portfolio as at 30 September 2017**

<b>Principal Value (\$)</b>	<b>Investment Linked to:-</b>	<b>Current Market Value (\$)</b>	<b>Cumulative Unrealised Gain/(Loss) (\$)</b>
71,500,000.00	Term Deposits	71,500,000.00	0.00
1,650,000.00	Floating Rate Note	1,653,642.89	3,642.89
2,065,296.85	Business On-Line Saver (At Call)	2,065,296.85	0.00
1,000,000.00	Bonds	1,011,100.17	11,100.17
<b>76,215,296.85</b>		<b>76,230,039.91</b>	<b>14,743.06</b>

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

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

**Movement in Investment Portfolio – 1 to 30 September 2017**

<b>Item</b>	<b>Current Market Value (at end of month) \$</b>
<b>Opening Balance at 31 August 2017</b>	<b>79,227,666.14</b>
Add: New Investments Purchased	13,000,000.00
Add: Call Account Additions	0.00
Add: Interest from Call Account	2,373.77
Less: Investments Matured	16,000,000.00
Less: Call Account Redemption	0.00
Less: Fair Value Movement for period	0.00
<b>Closing Balance at 30 September 2017</b>	<b>76,230,039.91</b>

15 **Investments Maturities and Returns – 1 to 30 September 2017**

<b>Principal Value (\$)</b>	<b>Description</b>	<b>Type</b>	<b>Maturity Date</b>	<b>Number of Days Invested</b>	<b>Interest Rate Per Annum</b>	<b>Interest Paid on Maturity \$</b>
1,000,000.00	Bananacoast Credit Union	TD	06/09/17	187	2.75%	14,089.04
1,000,000.00	Bank of Queensland	TD	27/09/17	176	2.60%	12,536.99
2,000,000.00	ME Bank	TD	20/09/17	126	2.55%	17,605.48
1,000,000.00	Bananacoast Credit Union	TD	06/09/17	189	2.75%	14,239.73
2,000,000.00	NAB	TD	08/09/17	91	2.50%	12,465.76
2,000,000.00	AMP Bank	TD	18/09/17	186	2.75%	28,027.40
2,000,000.00	Beyond Bank Australia	TD	13/09/17	126	2.65%	18,295.90
1,000,000.00	Police Credit Union	TD	27/09/17	188	2.80%	14,421.92
1,000,000.00	Beyond Bank Australia	TD	13/09/17	163	2.70%	12,057.53

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.6

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
1,000,000.00	Maitland Mutual Building Society	TD	27/09/17	133	2.60%	9,473.97
2,000,000.00	Community Alliance Credit Union	TD	29/09/17	92	2.65%	13,213.70
<b>16,000,000.00</b>						<b>166,427.42</b>

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

### Dissection of Council Cash Position as at 30 September 2017

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
<b>Investments Portfolio</b>			
Term Deposits	71,500,000.00	71,500,000.00	0.00
Floating Rate Note	1,650,000.00	1,653,642.89	3,642.89
Business On-Line Saver (At Call)	2,065,296.85	2,065,296.85	0.00
Bonds	1,000,000.00	1,011,100.17	11,100.17
<b>Total Investment Portfolio</b>	<b>76,215,296.85</b>	<b>76,230,039.91</b>	<b>14,743.06</b>
<b>Cash at Bank</b>			
Consolidated Fund	2,250,076.67	2,250,076.67	0.00
<b>Total Cash at Bank</b>	<b>2,250,076.67</b>	<b>2,250,076.67</b>	<b>0.00</b>
<b>Total Cash Position</b>	<b>78,465,373.52</b>	<b>78,480,116.58</b>	<b>14,743.06</b>

## 10 Financial Implications

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

### Statutory and Policy Compliance Implications

15

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.

20 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.

25

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.

5

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

10

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.

15

**Report No. 13.7      Public Art Panel - minutes of meeting 28 September 2017****Directorate:** Corporate and Community Services**Report Author:** Joanne McMurtry, Community Project Officer**File No:** I2017/1451

5    **Theme:** Society and Culture  
Community Development

**Summary:**

10    A Public Art Panel meeting was held on 28 September 2017. This report provides the minutes of the meeting.

15    The meeting received presentations on key art projects in the Shire and further developed the draft Public Art Strategy.

---

**RECOMMENDATION:**

1.    That Council note that in principal support is provided to the Brunswick Nature Sculpture Walk event proposed for October long weekend in 2018, and request a formal application from BNSW to developing a partnership.
2.    That Council:
  - a)    Note the resignation from Rebecca Townsend and provide a letter of thanks for her participation in the Public Art Panel;
  - b)    Seek a youth representative for the Panel via advertising and social media;
  - c)    Note the change of nominee for the Public Art Panel from the Bundjalung of Byron Bay (Arakwal) Corporation Pty Ltd, being Sharon Sloane, Acting General Manager.

20    **Attachments:**

- 1      Minutes 28 09 2017 Public Art Panel, E2017/97403  

25



**Report**

5 A Public Art Panel meeting was held on 28 September 2017. This report provides the minutes of the meeting. The meeting received presentations on key art projects in the Shire and further developed the draft Public Art Strategy.

The Panel made several recommendations to Council as provided on the first page of this report, and these recommendations are supported by staff.

10 A copy of the Agenda for the Public Art Panel meeting of 28 September 2017 can be found at the following link:- [http://byron.infocouncil.biz/Open/2017/09/PAP\\_28092017\\_AGN\\_645\\_AT\\_WEB.htm](http://byron.infocouncil.biz/Open/2017/09/PAP_28092017_AGN_645_AT_WEB.htm)

**Financial Implications**

15 The Public Art budget year-to-date balance for 2017/18 financial year is approximately \$39,700.

**Statutory and Policy Compliance Implications**

20 Public Art Policy  
Public Art Guidelines and Criteria



**Report No. 13.8      2017-2018 Financial Assistance Grant****Directorate:** Corporate and Community Services**Report Author:** James Brickley, Manager Finance**File No:** I2017/1463

5    **Theme:** Corporate Management  
Financial Services

**Summary:**

- 10    The NSW Local Government Grants Commission has advised Council of its 2017-2018 Financial Assistance Grant entitlement via Grants Commission Circular GC146, which has been included at Attachment 1, with the Payments Schedule at Attachment 2.
- 15    The Payments Schedule at Attachment 2 not only outlines the Financial Assistance Grant entitlement to Byron Shire Council but also to all other Councils in NSW for the information of Councillors.
- 20    This report is provided to Council to advise the Financial Assistance Grant entitlement for the 2017-2018 financial year.
- 

**RECOMMENDATION:****That the report be received and noted.****Attachments:**

- 25    1    Circular from NSW Grants Commission 2017-2018 Financial Assistance Grant Allocations, E2017/94573 
- 2    2    Schedule of 2017-2018 Financial Assistance Grant Entitlements, E2017/95743 

30

## Report

The NSW Local Government Grants Commission has advised Council of its 2017-2018 Financial Assistance Grant entitlement via Grants Commission Circular GC146, which has been included at Attachment 1, with the Payments Schedule at Attachment 2. The Payments Schedule at Attachment 2 not only outlines the Financial Assistance Grant entitlement to Byron Shire Council but also to all other Councils in NSW for the information of Councillors.

The monetary value of the Council's 2017-2018 Financial Assistance Grant is provided in the table below:

Grant Component	Value \$
General Purpose	1,857,706
Roads Component	1,109,098
Less CPI Adjustment from 2016-2017 General	(3,637)
Add CPI Adjustment from 2016-2017 Roads	381
<b>Total Financial Assistance Grant 2017-2018</b>	<b>2,963,548</b>

The total General Purpose component of the Financial Assistance Grant for 2017-2018 is \$1,854,069 and the total Roads component is \$1,109,479.

The Commonwealth Government as part of the May 2017 Federal Budget determined to pay an instalment of the 2017-2018 Financial Assistance Grant in advance. In this regard, Council received a total advance payment of \$1,478,664 on 8 June 2017. Grant payments received during the course of the 2017-2018 financial year will be reduced by the amount of the advance payment.

The Financial Assistance Grant to Council is a general purpose grant. That is whilst it has defined components that make up the grant ie General and Roads, there are no conditions attached to the grant in terms of how Council expends it. Council recognises this grant in the General Purpose Revenues Program along with rate revenue which by virtue of the budget is distributed to other programs of Council.

Incorporating the advance payment received at the end of the 2016-2017 financial year, that Council has carried forward to expend in the 2017-2018 financial year, Council's estimated budget is approximately \$24,300 below the proposed 2017-2018 Financial Assistance Grant. This will represent an additional \$24,300 in revenue that will be included in the 30 September 2017 Budget Review to be presented to Council for consideration at the November 2017 Ordinary Meeting.

The NSW Local Government Grants Commission usually provides details of how the Financial Assistance Grant has been calculated for Council in October each year. At the time of preparing this report, this information is yet to be received.

## Financial Implications

There are no financial implications associated with this report as it is informing Council of its Financial Assistance Grant entitlement for 2017-2018.

## Statutory and Policy Compliance Implications

Funding of the Financial Assistance Grant is provided by the Commonwealth Government via the NSW Local Government Grants Commission. The NSW Local Government Grants Commission determines the distribution of the Financial Assistance Grant to each Council in NSW from the pool of funds allocated to the State of NSW by the Commonwealth Government. Each State in

Australia is required to have a Local Government Grants Commission to determine distributions to Councils in their respective State.

- 5 The Financial Assistance Grant is governed by the Local Government (Financial Assistance) Act 1995 Cth.

**Report No. 13.9**      **Draft 2016/2017 Financial Statements**  
**Directorate:**      Corporate and Community Services  
**Report Author:**   James Brickley, Manager Finance  
**File No:**            I2017/1464  
**Theme:**            Corporate Management  
                          Financial Services

**Summary:**

The Draft 2016/2017 Financial Statements have been prepared and been subjected to external audit. This report recommends to Council the adoption of the Draft 2016/2017 Financial Statements and the completion of the statutory steps outlined in Section 418 to 420 of the Local Government Act 1993.

The Draft 2016/2017 Financial Statements have also been submitted to the Audit, Risk and Improvement Committee and considered at an Extraordinary Meeting of the Committee held on 12 October 2017.





The External Auditor, being the NSW Auditor General (represented by a Director of Financial Audit from the NSW Audit Office) and their representative firm Thomas Noble and Russell have been invited to this Ordinary Council Meeting, to present on the Draft 2016/2017 Financial Statements, and answer any questions from Councillors on the Financial Statements.

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**RECOMMENDATION:**

1. **That Council suspend standing orders to allow for a presentation from Council's External Auditor.**
2. **That Council adopt the Draft 2016/2017 Financial Statements incorporating the General Purpose Financial Statements, Special Purpose Financial Statements and Special Schedules.**
3. **That Council approve the signing of the "Statement by Councillors and Management" in accordance with Section 413(2)(c) of the Local Government Act 1993 and Clause 215 of the Local Government (General) Regulation 2005 in relation to the 2016/2017 Draft Financial Statements.**
4. **That Council exhibit the Financial Statements and Auditor's Report and call for public submissions on those documents with submissions closing on 30 November 2017 in accordance with Section 420 of the Local Government Act 1993.**
5. **That the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 23 November 2017 in accordance with Section 418(1) of the Local Government Act 1993.**

**Attachments:**

- 1 Draft 2016/2017 General Purpose Financial Statements, E2017/96022 
- 2 Draft 2016/2017 Special Purpose Financial Reports, E2017/96025 
- 3 Draft 2016/2017 Special Schedules, E2017/96026 
- 4 Draft Conduct of the Audit Report recieved from NSW Audit Office, E2017/96021 



**Report**

The purpose of this report is to recommend the adoption and exhibition of the Financial Statements for the year ended 30 June 2017. The Financial Statements presented to Council for the financial year ended 30 June 2017 (refer to Attachments 1 to 4) are the final audited results and includes the Auditors Report. Council has received an unmodified audit opinion for the 2016/2017 financial year.

The Draft 2016/2017 Financial Statements were also considered by the Audit, Risk and Improvement Committee at an Extraordinary Meeting held on 12 October 2017. This report was been completed prior to that meeting being held and Council will be advised by way of Memo of the Audit, Risk and Improvement Committee recommendations concerning the Draft 2016/2017 Financial Statements prior to this Ordinary Meeting.

The External Auditor, being the NSW Auditor General (represented by a Director of Financial Audit from the NSW Audit Office) and their representative firm Thomas Noble and Russell have been invited to this Ordinary Council Meeting, to present on the Draft 2016/2017 Financial Statements, and answer any questions from Councillors on the Financial Statements.

The Financial Statements and Auditor's Reports are a statutory requirement and provide information on the financial performance of Council over the previous twelve-month period.

Council should place emphasis on the Auditors Report contained at Attachment 4 relating to the attached Draft 2016/2017 Financial Statements, as this Report provides some analysis of Council's financial operations overall, and highlight the trends of major items within the Financial Statements.

The Draft 2016/2017 Financial Statements provided in the attachments are broken down into three sections being;

- General Purpose Financial Statements – Attachment 1
- Special Purpose Financial Statements – Attachment 2
- Special Schedules – Attachment 3

Brief explanations for each of these items are as follows.

**General Purpose Financial Statements**

These Statements provide an overview of the operating result, financial position, changes in equity and cash flow movement of Council as at 30 June 2017 on a consolidated basis with internal transactions between Council's General, Water and Sewerage Funds eliminated. The notes included within these reports provide details of major items of income and expenditure with comparisons to the previous financial year. The notes also highlight the cash position of Council and indicate which funds are externally restricted (i.e. may be used for a specific purpose only), and those that may be used at Council's discretion.

**Special Purpose Financial Statements**

These Statements are a result of the implementation of the National Competition Policy and relate to those aspects of Council's operations that are business orientated and compete with other businesses with similar operations outside the Council. Mandatory disclosures in the Special Purpose Financial Reports are Water and Sewerage. Additional disclosure relates to Council business units that Council deems 'commercial'. In this regard Council has traditionally reported its Caravan Park Operations being Suffolk Beachfront Holiday Park and First Sun Holiday Park on a combined basis. These financial reports must also classify business units in the following categories:

- Category 1 – operating turnover is greater than \$2million
- Category 2 – operating turnover is less than \$2million

5 All of Council's business units are classed as Category 1 with all having operating turnover greater than \$2million.

10 Another feature of the Special Purpose Financial Reports is to build in taxes and charges where not physically incurred into the financial results to measure the results in the sense of a level playing field with other organisations operating similar businesses, who are required to pay these additional taxes and charges. These taxes and charges include:

- Land tax – Council is normally exempt from this tax so notional land tax is applied.
- Income tax – Council is exempt from income tax and in regard to these reports, company tax. Any surplus generated has a notional company tax applied to it.
- Debt guarantee fees – Generally due to the low credit risk associated with Councils, Councils can often borrow loan funds at lower interest rates than the private sector. A debt guarantee fee inflates the borrowing costs by incorporating a notional cost between interest payable on loans at the interest rate borrowed by Council and one that would apply commercially.

20 In regard to the Special Purpose Financial Reports, these are prepared on a non consolidated basis or in other words grossed up to include any internal transactions with the General Fund.

### **Special Schedules**

25 These schedules are prepared essentially for use by the Australian Bureau of Statistics, the NSW Grants Commission, the Office of Local Government, and are primarily used to gather information for comparative purposes. Special Schedules 3 to 6 are also used by the Department of Primary Industries (NSW Office of Water) in analysing the performance of the Water and Sewer Funds and are also non consolidated and grossed up including internal transactions. Special Schedule 7 provides an approximate value of what funds are needed for the maintenance and renewal of Council assets in comparison to what is currently allocated in the budget. Special Schedule 8 is also included, which is a disclosure regarding Council's compliance with General Rate revenue raising and rate pegging. Special Schedule 8 is also subject to separate external audit aside from the financial statements.

### **Auditors Report on the Financial Statements**

40 Council's auditors, The Auditor General of NSW (NSW Audit Office) and their representative firm Thomas Noble and Russell, have completed their audit of the Draft 2016/2017 Financial Statements. All matters identified during the audit have been adjusted and included in the Draft 2016/2017 Financial Statements (if required) included at Attachments 1, 2 and 3. The Auditors Report contained at Attachment 4 is to report on the following:

- 45 • A report on the conduct of the audit. This report states the financial statements have been audited with an opinion. For the year ended 30 June 2017 the opinion is unmodified. In addition, this report outlines significant audit issues and observations, and a analysis of the major aspects of the financial statements.

### **Specific Items relating to 2016/2017 Draft Financial Statements**

The Draft 2016/2017 Financial Statement results have been impacted by the following items that require explanation to Council:

- 55 • Operating Result from Continuing Operations



# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.9

The 2016/2017 financial year has seen a further significant improvement in the operating financial results of Council. Overall Council recorded a \$21.174million surplus compared to a \$15.974million surplus in 2015/2016. This represents a positive change of \$5.200million between financial years. This result incorporates the recognition of capital revenues such as capital grants and contributions for specific purposes and asset dedications including part of the Old Pacific Highway that amounted to \$18.767million in 2016/2017 compared to \$12.707million in 2015/2016.

A more important indicator is the operating result before capital grants and contributions. This result for Council was a surplus of \$2.407million in 2016/2017 compared to a surplus of \$3.267million in 2015/2016 representing a decrease of \$0.860million between financial years. Whilst this was a decline, it is still a surplus.

If reference is made to the Income Statement to the General Purpose Financial Reports included at Attachment 1, the following table indicates the major changes between 2016/2017 and 2015/2016 by line item:

Item	Change between 2016/2017 and 2015/2016 \$'000	Change Outcome	Comment
<u>Income</u>			
Rates & Annual Charges	+\$1,280	Increase	Reflects imposition of rate peg increase for 2016/2017 of 1.80% and changes in annual charges from Council's adopted 2016/2017 Revenue Policy
User Charges and Fees	+\$3,553	Increase	Major changes include additional \$371k revenue for holiday parks, \$356k for planning and development fees, \$1,484k increase in parking fees (first full year of expanded pay parking), 1,236k increase in water and sewerage user charges. Further information is available in Note 3(b) in Attachment 1.
Interest and Investment Revenue	-\$88	Decrease	Decrease in revenues due to further decline in interest rates reflective of economic conditions. Council's cash position though did not decrease as expected which enabled more funds to be invested which minimised the extent of the decline.
Other Revenues	-\$58	Decrease	Decline mainly due to less fine revenue.
Grants & Contributions – Operating	-\$939	Decrease	Increase in financial assistance grant \$1,573 including 50% advance payment of 2017/2018 grant and additional \$940k recognition of Roads to Recovery grant. There was a decline of \$3.643million in funding for natural disaster restoration works.
Grants & Contributions – Capital	+\$6,060	Increase	Increased transport grants \$2,071k, decrease in developer contributions \$2,460k, additional \$6,399k in contributed or dedicated assets including approx. \$4,000k for the former Pacific Highway gazetted to Council.
Net gain from disposal of assets	-\$1,270	Decrease	Specific details are contained in Note 5 to Attachment 1 but in 2016/2017 there was no profit on disposal of assets.
Total Income Change	+\$8,538	Increase	
<u>Expenditure</u>			

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.9

Item	Change between 2016/2017 and 2015/2016 \$'000	Change Outcome	Comment
Employee Benefits and Oncosts	+\$698	Increase	Increased salary and wages \$914k including Award increase of 2.8% and additional staffing. Increased superannuation of \$261k. There was a further \$440k of employee costs capitalised given increased emphasis on capital works in 2016/2017 that reduced overall gross amount of employee costs charged as an operating expense.
Borrowing Costs	-\$311	Decrease	Results from Council gradually repaying loans and not borrowing new loans, however that may change in 2017/2018.
Materials & Contracts	-\$867	Decrease	Shifting emphasis onto capital works has contributed in part to the reduction in raw materials and contracts of \$1,015k. There were decrease in agency temporary staff of 165\$k, decreases in legal expenses \$192k, operating lease expenses increased \$293k relating to parking meters, and waste contract \$67k
Depreciation	+802	Increase	Major change is due to roads 96k increase, buildings \$101k increase and provision for quarry/tip asset reinstatement \$536k increase due to reassessment of costs and remaining useful life in 2015/2016.
Other Expenses	+599	Increase	Overall increase but there were variations in line items as disclosed at Note 4(e) in Attachment 1. Most significant item was cost of Council election \$187k.
Net Losses from Disposal of Assets	+2,417	Increase	Reflection of the written down value of assets disposed at the end of financial year and is contingent upon the extent of assets disposed and their written down value at the time of disposal which can vary. For 2016/2017, Council has more disposals than gains including the disposal of Periwinkle Pre-School \$580k and Infrastructure \$1,743k
Total Expenditure Change	+\$3,338	Increase	
Change in Result	+5,200	Increase	

5 Following on from the operating results, there are performance ratios disclosed at note 13 to the General Purpose Financial Statements and in Special Schedule 7. These ratios have been derived following the financial assessments undertaken by NSW Treasury Corporation on all NSW Councils in 2012, and are now continued to be incorporated into the latest update to the Code of Accounting Practice and Financial Reporting that determines the content of Council's Financial Statements. These ratios also have trend graphs and all look to be presenting either a stable or improving result for Council in Note 13. Council though in relation to the ratios for Special Schedule 7 in terms of Asset Management, whilst showing some improvement generally, still has a ways to go to meet the required benchmarks.

10 It is also important to note that the ratios and benchmarks outlined in Note 13 to the General Purpose Financial Statements and Special Schedule 7 are on an annual basis. Whilst some of these ratios were also benchmarks in Council's 'Fit for the Future' response, these were reported

as a three year average as required. Therefore direct comparison cannot be made based on these reported benchmarks.

- Asset Revaluations

During 2016/2017, there was a revaluation conducted for the following asset categorie(s):

- Water and Sewerage – revaluation done by an external valuer.
- Community Land – revaluation done by the Valuer General.

The impact of the revaluation process realised an overall decrease in asset values of \$4.162million. Increases in asset revaluations related to Community Land increasing \$6.081million and Water Infrastructure \$8.456million. The revaluation of Sewerage assets has indicated a decrease in Sewerage Infrastructure valuations of \$18.699million.

In respect of Community Land, Council has undertaken a comprehensive review. The revaluation process identified 60 parcels of land controlled by Council not previously included in Council's financial Statements in previous years. The majority of these assets relate to Crown Reserves where Council is appointed as the Reserve Trust Manager. The work conducted included a reconciliation of information from the Department of Primary Industries – Crown Lands and Council's records. This has resulted in the recognition at Note 20 to the Financial Statements of a Prior Period Error of \$27.593million to increase the Equity of Council in respect of recognising these assets. The residual revaluation amount of \$6.081million relates to other Community Land assets not previously recognised (ie land dedicated to Council from Developers).

- Cash and Investments

As at 30 June 2017, Council has maintained \$1.145million in unrestricted cash and investments being the same level as 2016. This is an ongoing pleasing result and Council has been able to maintain another one of its short term financial goals of reaching unrestricted cash balance of \$1million. All other cash and investments totalling \$77.694million are restricted for specific purposes. Overall the cash and investment position of Council decreased by \$0.650million during the year.

- Receivables

As at 30 June 2017, Council was due \$10.363million in receivables. Of this amount \$2.120million was due from Roads and Maritime Services for expenditure claims and \$1.051million from the Commonwealth Government for Goods and Services Tax and \$0.611million in Government grants and subsidies. Overall receivables increased by \$1.109million compared to the 2015/2016 financial year.

- Payables and Provisions

At 30 June 2017, total payables by Council were \$11.403million including \$4.270million held in security bonds, deposits, retentions, payments received in advance, \$0.773million in accrued expenses and \$6.413million payable to suppliers. In addition at 30 June 2017, Council has accrued employee leave entitlements valued at \$5.567million. Specific employee leave entitlements include \$1.888million for annual leave, \$3.527million for long service leave and \$0.152million for gratuities. In comparison to 2015/2016, total payables increased \$0.699million whereas total provisions for employee leave entitlements increased \$0.285million.

• Loan Borrowings

During 2016/2017 Council did not borrow any new loans but continued to make normal loan repayments. This has been the fifth year that Council has not borrowed any new loans and as a consequence has continued to reduce its level of debt. Council though for 2017/2018 financial year is currently proposing to borrow up to \$6million for bridge replacement program.

Council's outstanding loans as at 30 June 2017 are \$62.720million. Total loan expenditure for 2016/2017 included interest of \$4.493million and principal payments of \$2.592million. Total expenditure of Council in 2016/2017 related to loan repayments was \$7.085million or 10.25% of Councils revenue excluding all grants and contributions.

Outstanding loans by Fund totalling \$60.128million are as follows:

- General Fund \$13.957million
- Water Fund \$0 – Water Fund is debt free
- Sewerage Fund \$46.171million

**Liquidity**

Council's balance sheet indicates net current assets of \$69.640million. It is on this basis in the opinion of the Responsible Accounting Officer that the short term financial position of Council remains in a satisfactory position and that Council can be confident it can meet its payment obligations as and when they fall due. That is, there is no uncertainty as to Council being considered as a 'going concern'. In addition, Council's cash expense cover ratio is out to 14.32 months whereas the minimum benchmark is 3 months. Council exceeds this benchmark by nearly four times.

Council's Unrestricted Current Ratio has improved to 3.20 demonstrating Council has \$3.20 in unrestricted current assets compared to every \$1.00 of unrestricted current liabilities.

However, on a longer term basis Council will need to consider its financial position carefully but in isolation the financial results for 2016/2017 continue to be an ongoing improvement for Council and demonstrate the ongoing gains through the implementation of the Financial Sustainability Plan (FSP), the Council Improvement Plan (CIP) and the efforts of Council.

**Financial Implications**

There are no direct financial implications associated with this report as the report does not involve any future expenditure of Council funds but it is a report advising the financial outcomes of Council during the 2016/2017 financial year which are identified in this report, Attachments 1 to 3 and the Auditors report in Attachments 4.

**Statutory and Policy Compliance Implications**

Section 413(2)(c) of the Local Government Act 1993 and Regulation 215 of the Local Government (General) Regulation 2005 requires Council to specifically form an opinion on the financial statements. Specifically Council needs to sign off an opinion on the Financial Statements regarding their preparation and content as follows:

In this regard the Financial Statements have been prepared in accordance with:

- The Local Government Act 1993 (as amended) and the Regulations made thereunder.
- The Australian Accounting Standards and professional pronouncements.
- The Local Government Code of Accounting Practice and Financial Reporting.

And the content to the best of knowledge and belief:

- Present fairly the Council's operating result and financial position for the year.
  - Accord with Council's accounting and other records.
- 5     • Management is not aware of any matter that would render the Financial Statements false or misleading in any way.

10     Section 416(1) of the Local Government Act 1993, requires a Council's annual Financial Statements to be prepared and audited within four (4) months of the end of that financial year ie on or before 31 October 2017.

Section 417(4) of the Local Government Act 1993 requires, as soon as practicable after completing the audit, the Auditor must send a copy of the Auditor's Reports to the Departmental Chief Executive and to the Council.

15     Section 417(5) of the Local Government Act 1993 requires Council, as soon as practicable after receiving the Auditor's Reports, to send a copy of the Auditor's Reports on the Council's Financial Statements, together with a copy of the Council's audited Financial Statements, to the Departmental Chief Executive before 7 November 2017.

20     Section 418(1) of the Local Government Act 1993 requires Council to fix a date for the Meeting at which it proposes to present its audited Financial Statements, together with the Auditor's Reports, to the public, and must give public notice of the date so fixed. This requirement must be completed within five weeks after Council has received the Auditors Reports ie prior to 5 December 2017.

25     Section 420 of the Local Government Act 1993 requires Council to provide the opportunity for the public to submit submissions on the Financial Statements. Submissions are to be submitted within seven days of the Financial Statements being presented to the public. In the case of the 2016/2017 Financial Statements, closing date for submissions will be 30 November 2017.

**Report No. 13.10      Draft 2016-2017 Annual Report**

**Directorate:** Corporate and Community Services  
**Report Author:** Anna Vinfield, Manager Governance Services  
**File No:** I2017/1472  
**Theme:** Corporate Management  
Governance Services

**Summary:**

Each NSW Local Government Authority is required under S428 of the Local Government Act 1993 to prepare and submit to the Minister of Local Government an Annual Report. The preparation of an Annual Report is an opportunity for Council to celebrate its achievements and to provide feedback back to the community on how the Council has implemented its operational plan and delivered outcomes for the community.

This report seeks for Council to note the draft 2016/17 Annual Report and the submission of the Annual Report to the Minister for Local Government.

A separate Report on the Draft 2016/17 Financial Statements has been prepared for and will be considered at this meeting of Council.

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**RECOMMENDATION:**

**That Council note the draft 2016/2017 Annual Report (#E2017/97181), included as Attachment 1 to this report, and its submission to the Minister for Local Government.**

**Attachments:**

1      Draft Annual Report 2016-17, E2017/97181 

### Report

Each Council in NSW has an obligation to prepare and submit an Annual Report. It is an opportunity to celebrate Council's achievements and report back to the community on these.

It is one of the key points of accountability between a Council and its community, acting as a report card against Council's operational plan and financials.

The report has been designed in an effort to improve its readability, celebrate Council's achievements, and includes the following:

- Message from Mayor and General Manager
- Profile of our community
- Snapshot (infographics) of statistics
- Profile of management team and organisational structure
- Summary of achievements
- Progress against operational plan
- Statutory information – human resources, freedom of information, compliance, business activities, legal services, financial management
- Appendices – linkages to community strategic plan, GIPA report, mayor and councillors entitlements policy, financial statements

### *Achievements*

Notable achievements (grouped by Community Strategic Plan theme) for the financial year include:

- Corporate management – customer service focus, procurement roadmap, commercial activities, Mullumbimby Hospital site acquisition, records management, Special Rate Variation for infrastructure investment
- Economy – affordable housing summit, social enterprise, Byron young innovators
- Society and Culture – Arawkal Memorandum of Understanding, Children's services sector analysis, Ex-Tropical Cyclone Debbie flood recovery, Disability Access and Inclusion Plan, Development Assessment assistance, Love Byron Halls project, village and town masterplans, lifeguard services
- Environment – Rural land use strategy, electric vehicle charge station, illegal dumping study, organics diversion, Community Recycling Centre, increased public place recycling, recycling campaign, waste-wise schools program, land for wildlife, vegetation mapping, Byron Bay Graminoid Clay Heath restoration, commitment to 100% zero emissions by 2025, low carbon strategy
- Community infrastructure – New North Ocean Shores sportsfield, Byron Bay Town Centre Bypass, new reservoirs at Banaglow and Coopers Shoot, ten major infrastructure works, Waterlily Park Ocean Shores, Bangalow Weir, Cavanbah Centre, South Golden Beach Community Hall, timber bridge replacement program, South Byron sewerage treatment plant site, partnership for affordable housing, transport infrastructure investment proposal, land acquisition in Suffolk Park, Tom Kendall change facility, Better Byron Crew, 25 major water and sewer upgrades

Regarding the operational plan, 53% activities were completed, 44% substantially completed, 3% not achieved.

Key statistics for the financial year include:

- \$24.9M capital expenditure on new assets
- \$12.71M capital expenditure on asset renewal
- 10 major road reconstruction projects delivered
- 13.49km of roads resealed
- 3.94km of roads reconstructed

- 599 food inspections completed
- \$587,746 of section 356 donation or contributions to community groups
- \$185M of approved developments
- 607 certificates for building construction, occupation and subdivision approved
- 10 strategic partnerships entered into
- 200kg of phones, batteries and lightbulbs collected in speciality recycling stations
- 14 Council meetings held
- 18 major contracts (greater than \$150,000) entered into
- 162 citizenships granted

**Financial Implications**

The preparation of the document was funded within existing budget allocations

**Statutory and Policy Compliance Implications**

Section 428 requires Council to prepare an annual report within 5 months after the end of each year and detail its achievements in implementing its delivery program and the effectiveness of the principal activities undertaken in achieving the objectives at which those principal activities are directed.

The report must include a copy of the council's audited financial reports prepared in accordance with the *Local Government Code of Accounting Practice and Financial Reporting* published by the Department, as in force from time to time, and such other information or material as the regulations or the guidelines under section 406 may require. A copy of the council's annual report must be posted on the council's website and provided to the Minister.



**Report No. 13.11      Selection of Councillors for Mullumbimby Hospital Site Project  
Reference Group**

**Directorate:** Corporate and Community Services

**Report Author:** Joanne McMurtry, Community Project Officer

**File No:** I2017/1484

**Theme:** Society and Culture  
Community Development

**Summary:**

Council resolved the membership of the newly established Mullumbimby Hospital Site Project Reference Group at its meeting held on 21 September 2017. However, Council have not yet selected which three Councillors will make up the final members of this PRG.

---

**RECOMMENDATION:**

**That Council select three Councillors to make up the members for the Mullumbimby Hospital Project Reference Group, being:**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**Report**

Council resolved (17-432) at the 21 September 2017 ordinary meeting:

- 5           1.   *That Council increase the number of representatives the Mullumbimby Hospital Site Project reference Group from 15 to 16 as a result of strong applications and interest in the Project Reference Group as outlined below*
- 10               a)   *That Council select 12 representatives for appointment to the Mullumbimby Hospital Site Project Reference Group from the Community Organisation nominees, noting the Project Guidance Group have recommended the appointment of representatives of the following groups:*
- 15                       •   *Mullumbimby Hospital Action Group*  
                              •   *North Coast Community Housing*  
                              •   *Third Sector Australia (formerly On Track Community Programs)*  
                              •   *Mullumbimby & District Neighbourhood Centre*  
                              •   *Mullumbimby Chamber of Commerce*  
                              •   *Byron Youth Service*  
                              •   *Mullumbimby Residents Association*  
                              •   *Brunswick Heads Progress Association*  
 20                       •   *Ocean Shores Community Association*  
                              •   *Arts Northern Rivers*  
                              •   *Creative Mullumbimby*  
                              •   *Aboriginal Services Coalition*
- 25               b)   *That Council appoint the following 5 individual community representatives to the Mullumbimby Hospital Site Project Reference Group from the individual community nominees:*
- 30                       - *Mandy Hallinan*  
                              - *Jeremiah O'Toole*  
                              - *Simone O'Brien*  
                              - *Gill Lomath*  
                              - *Louise Earnshaw*
- 35           3.   *That Council thank all other nominees for their interest and time in submitting an Expression of Interest and invite them to participate in future broader consultation activities;*
- 40           4.   *That Council adopt the Draft Constitution for the Mullumbimby Hospital Site Project Reference Group including the purpose, objectives, membership and timeframe for the group to operate, and amend the number of community representatives from 4 to 5.*

However, Council have not yet selected which three Councillors will make up the final members of the Project Reference Group.

**Financial Implications**

Nil

**Statutory and Policy Compliance Implications**

Guide to Operations – Advisory Committees and Panels

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.12 PLANNING - S96 10.2009.314.11 Tallowood**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Rob Van Iersel, Major Projects Planner

**File No:** I2017/971

**Theme:** Ecology  
Development and Approvals

**Proposal:**

**Section 96** 10.2009.314.11

**Application No:**

**Proposed modification:** S96 to amend approved Land Use Plan to increase areas designated for Conservation and clarify areas for Managed Conservation

**Original Development:** Staged Subdivision development with first stage to create 29 residential lots, public roads and open space

**Type of s96 sought:**

**Property description:** LOT: 105 DP: 1232439  
Tuckeroo Avenue MULLUMBIMBY, Coral Avenue MULLUMBIMBY

**Parcel No/s:** 268751

**Applicant:** Bayview Land Development Pty Ltd

**Owner:** Gainsplay Pty Ltd

**Zoning:** R2 Low Density Residential / PART RU1 Primary Production / PART DM  
Deferred Matter / PART RU2 Rural Landscape

**S96 Date received:** 9 February 2017

**Original DA determination date:** 14/09/2010

**Integrated Development:** Yes

**Public notification or exhibition:** Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

**Issues:**

- Conservation of forest remnants

**Summary:**

The application proposes minor adjustments to approved Plan 2.1, being the Land Use plan approved in September 2010 as part of the original Court-approved Concept Plan. The Plan outlines proposed land use categories across the Tallowood development site.

Since approval of the Concept Plan, five stages of subdivision have been approved. Four stages have been completed and construction of Stage 5 is nearing completion.

The proposed modification relates to existing vegetated areas in the south of the site, on the ridge adjacent to approved Stage 5 and proposed Stage 6, and in the south-west of the land within the residual land, which was subject to a recent rezoning proposal. As originally approved, the forested area behind Stages 5 & 6 was designated “Low Density/ Conservation”, which provided the potential for future development. The forested areas in the site residue were designated

“Managed Conservation”, which provided for thinning of the vegetation. A single large paddock tree was identified as “Low Density/ Conservation” and was proposed to be incorporated into a future public park.

- 5 The most recent modification to the approval altered the designation of the southern forested area and the single paddock tree from “Low Density/ Conservation” to “Conservation”. The “Managed Conservation” land in the site residue to the west remained unchanged.

- 10 The land use designations form part of the approved Concept Plan. Protection of the vegetated areas is not, however, included in the LEP, with the land zoned R2 Low Density Residential and RU2 Rural Landscape.

The current application proposes to:

- 15 • Retain the “Conservation” designation for the forest area behind Stages 5 & 6, with “Managed Conservation” (MC) designation applied to the outer 10m edge of this vegetation, to provide for some flexibility in the management of bush fire risk;
- Modify the “Conservation” designation on the existing single paddock tree to “Managed Conservation” (MC), as this is proposed (in Stage 6) to be included with a larger residential lot; and
- 20 • Modify the “Managed Conservation” designation for two larger forested areas in the south-west of the site to “Conservation”, retaining the “Managed Conservation” for the 10m outer edge of these stands.

- 25 Overall, the increased protection for the two forest remnants in the south-west corner will provide an improved biodiversity outcome, whilst the small amendments to Managed Conservation designation around the edges of the Conservation Designation to Stages 5 and 6 are supported in terms of managing bushfire whilst also enabling trees of significance in this area to be suitable identified and retained. The Section 96 Application is recommended for approval.

- 30 NOTE TO COUNCILLORS:


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

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**RECOMMENDATION:**

**That, pursuant to Section 96 of the *Environmental Planning & Assessment Act 1979*, Application No. 10.2009.314.11, to amend approved Land Use Plan 2.1B to increase areas designated for Conservation and clarify areas for Managed Conservation, be approved by modifying Development Consent number 10.2009.314.1 as indicated in Attachment 1.**

- 40 **Attachments:**

- 1 Attachment 1 Modification of Conditions, E2017/84647 

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**Report**

**1. INTRODUCTION**

5

**1.1. History/Background**

<b>10.2009.314.1</b>	DA was refused by Council on 12 November 2009. Prior to the determination of the Development Application, an appeal was lodged with the NSW Land & Environment Court against the deemed refusal of the proposal. Consent orders were made granting Staged Development Consent for the subdivision of the site, with development consent for the first stage, comprising 29 residential allotments.	Court approval 23.12.2010
<b>10.2009.314.2</b>	Delete the sewer levies that were inadvertently issued in the court consent, and to reword Condition No. 51 with respect to Developer Contributions.	Approved 30.03.2011
<b>10.2009.314.3</b>	Incorporate a bikeway/access path within the public road reserve adjacent to the southern boundary of the site and within Lot 2	Withdrawn 04.05.2011
<b>10.2009.314.4</b>	Make further amendments to the development consent. Only an amendment with respect to Condition No. 51 (Developer Contributions) was endorsed.	Approved 02.06.2011
<b>10.2009.314.5</b>	Enable the approved subdivision to connect to the Council sewerage system as part of Stage 1 of the proposal, rather than wait until the completion of Stage 2.	Approved 12.08.2011
<b>10.2009.314.6</b>	Alter a condition regarding the Biodiversity Conservation Management Plan.	Withdrawn 15.12.2011
<b>10.2009.314.7</b>	Adjust the staging of the subdivision development by swapping the residential lots from Stage 3 with the residential lots from Stage 4. In addition, it proposed to slightly enlarge Stage 1 so that it aligns with the boundary adjustment proposed within Development Application No. 10.2012.197.1.	Approved 08.08.2012
<b>10.2009.314.8</b>	Modify the existing development consent (concept plan) to revert the numerical order of the development stages back to the order within the original court approved Stages Plan. In effect, the proposed modification sought to reverse the order between existing Stages 3 and 4 as approved by Section 96 approval reference 10.2009.314.7.	Approved 17.10.2013
<b>10.2009.314.9</b>	Modifications to sports and recreation fields/facilities and phasing of development.	Approved 09.06.2015
<b>10.2009.314.10</b>	Modifications to open space, staging, roads, bikeways, rehabilitation areas, residential density and relocation of a potential commercial site.	Approved 13.04.2016
<b>10.2015.686.1</b>	Subdivision to create twenty-four (24) residential allotments, a public reserve, a residual allotment, associated roads and infrastructure (Stage 5).	Approved 25.08.2016



## 1.2. Description of the proposed development

The application proposes minor adjustments to approved Plan 2.1, being the Land Use designation plan. This Land Use Plan was approved as part of the Concept Approval for the development, requiring applications for all stages after Stage 1 to be consistent with the designations shown on the plan.

The proposed modification relates to existing vegetated areas in the south of the site, adjacent to approved Stage 5 and proposed Stage 6, and in the south-west of the land within the residual land, which was subject to a recent rezoning proposal.

As originally approved, the forested area south of Stages 5 & 6 was designated "LD/C" being "Low Density/ Conservation", with larger forested areas in the site residue designated "MC", being "Managed Conservation". A single large Tallowood tree was identified as "LD/C" and was proposed to be incorporated into a future public park.

**Figure 1: Extract from Plan 2.1 as originally approved**



The most recent modification to the approval altered the designation of the southern forested area and the single Tallowood Tree from "LD/C" to "C", being "Conservation" (see Figure 2).

**Figure 2: Most recent amendment to Plan 2.1**



5 The land use definitions approved in association with the concept plan are:

**LD/C – Low Density/ Conservation**

10 *Within this precinct dwelling houses are intended to be sited in a manner which provides an appropriate dwelling house envelope but also provides for the preservation of trees within private residential lots.*

**MC – Managed Conservation**

15 *The managed conservation precincts are locations where larger tracts of trees are intended to be retained but the ground fuels are to be kept at a level appropriate for bush fire mitigation purposes.*

**C – Conservation**

*The “C” conservation land use applies to pockets of existing vegetation which are intended to be retained in so far as is reasonably practicable.*

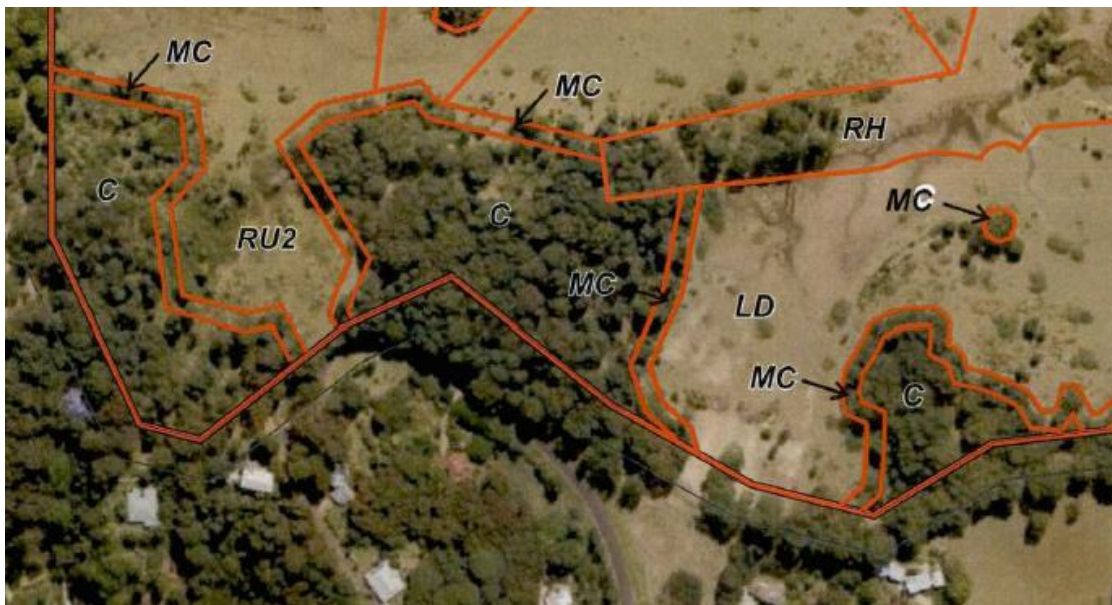
20 While forming part of the ‘Concept Approval’, these land use designations are not reflected in the zoning of the land under the LEP. The vegetated land within the Stage 5 & 6 areas in zoned R2 Low Density Residential, with the areas in the south-west of the land are zoned RU2 Rural Landscape and DM (Deferred Matter – 1(a) under BLEP 1988).

25 The current application proposes to:

- Retain the “Conservation” designation for the forest area behind Stages 5 & 6, but apply the “Managed Conservation” (MC) designation to the outer 10m edge of this vegetation, to provide for some flexibility in the management of bush fire risk;
- Modify the “Conservation” designation on the existing Tallowood tree to “Managed Conservation” (MC), as this is proposed (in Stage 6) to be included with a larger residential lot; and
- Modify the “Managed Conservation” designation for two larger forested areas in the south-west of the site to “Conservation”, retaining the “Managed Conservation” for the 10m outer edge of these stands.



**Figure 3: Current proposed amendment to Plan 2.1**



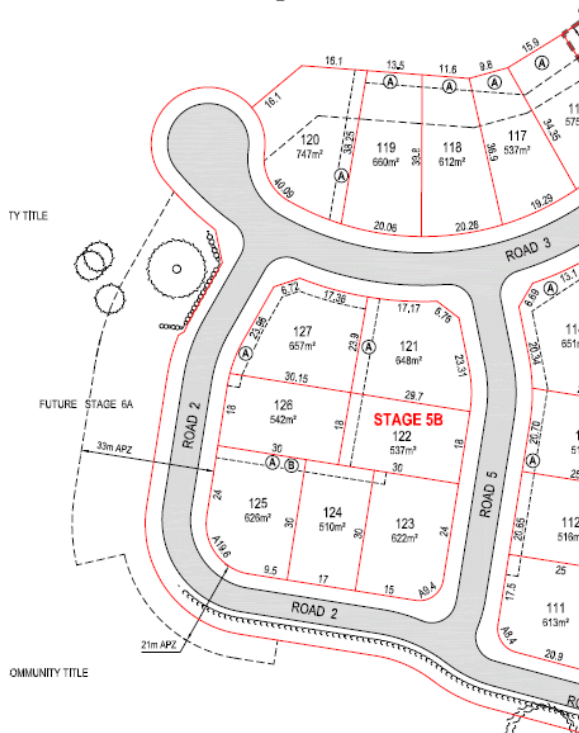
The tallwood tree is located within the part of the site that is subject to the current stage 6 development application (DA 10.2017.402.1). That application proposes that the tree be incorporated into a large urban lot. Assessment of that application is underway with the long term preservation of the tree being an issue of importance. The remaining vegetation is within the residue land, which will be subject to future applications.

**Figure 4: Plan 2.1 in relation to current Stage 6 subdivision plan (blue line denotes proposed APZ)**

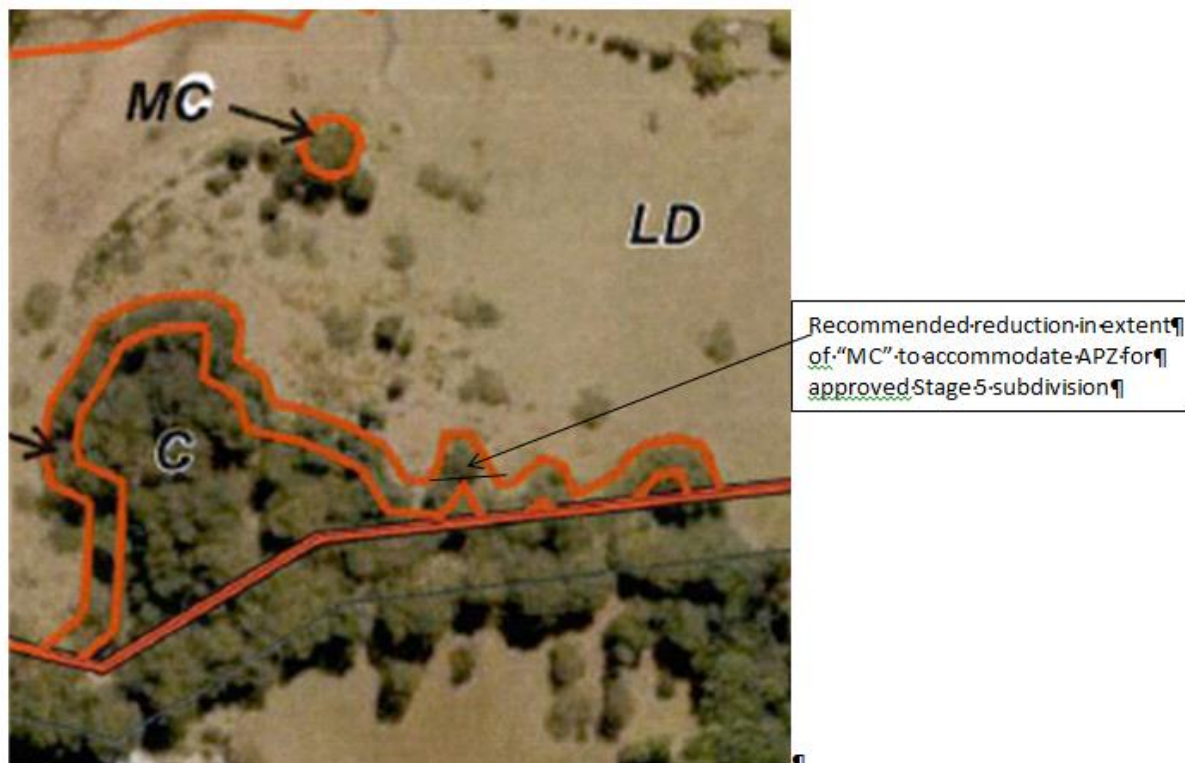


Approval for Stage 5 (DA 10.2015.686.1) includes a requirement for a 21m wide Asset Protection Zone (APZ) in the south-west corner of that Stage. The majority of that APZ will be provided in the constructed road reserve, but there will be requirement to reduce ground fuels and tree canopy density within a minor (3-5m wide) section of vegetation. Pursuant to the currently approved Plan 2.1, that vegetation area is designated C – Conservation. The current application proposes that it would be modified to MC – Managed Conservation.

**Figure 5: Extract from approved Stage 5 subdivision plan**



**Figure 6: Recommended amendment to MC area**





Bush fire hazard reduction, consistent with the requirements for an 'inner protect area' APZ, is incompatible with both C and MC designations. It is recommended, therefore, that Plan 2.1 be amended in this small area, immediately south of the approved Stage 5 to reduce the width of the MC area, and therefore provide for the approved APZ to be within a LD area. The change will only impact on a very small portion of the site, as shown in Figure 6 in relation to one tree. .

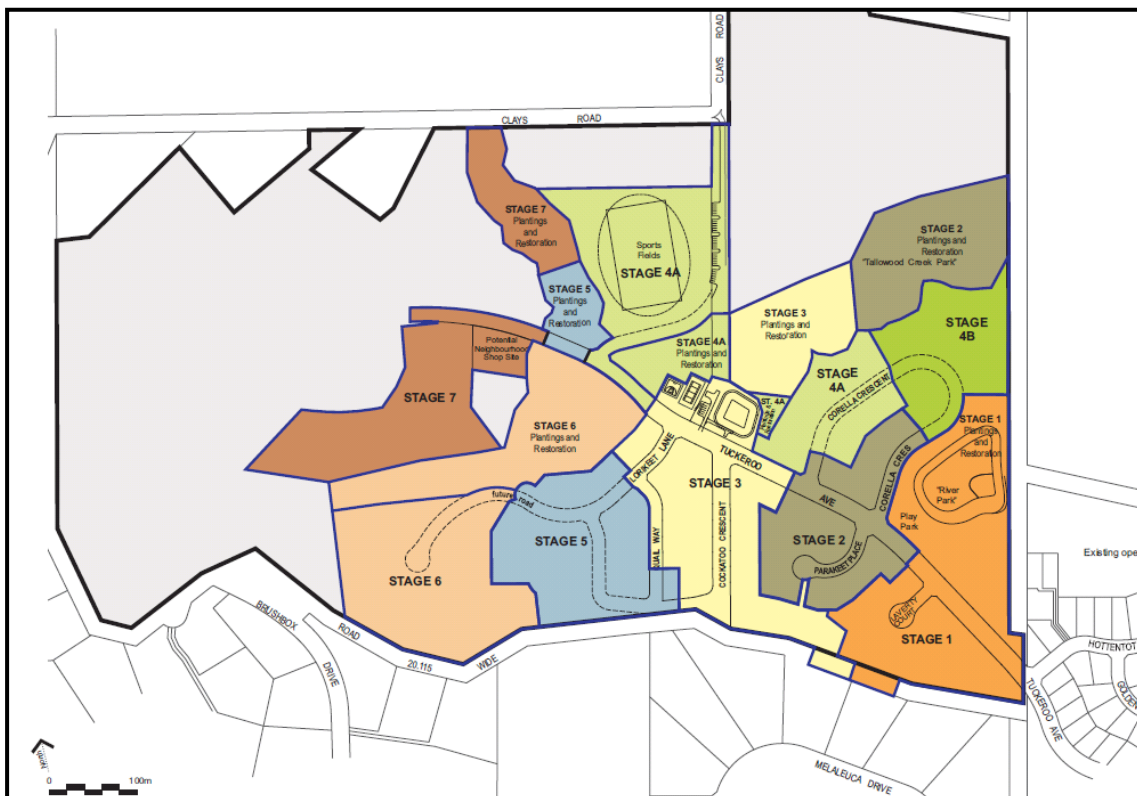
### 1.3. Description of the site

Land is legally described as: LOT: 105 DP: 1232439  
 Property address is: 77 Tuckeroo Ave MULLUMBIMBY  
 Land is zoned: R2 Low Density Residential / PART RU1 Primary Production / PART DM Deferred Matter / PART RU2 Rural Landscape  
 Land area is: 44.9ha  
 Property is constrained by: Bush Fire Prone Land  
 Flood Prone Land  
 High Environmental Value Vegetation (including areas subject to proposed modification)  
 Koala habitat

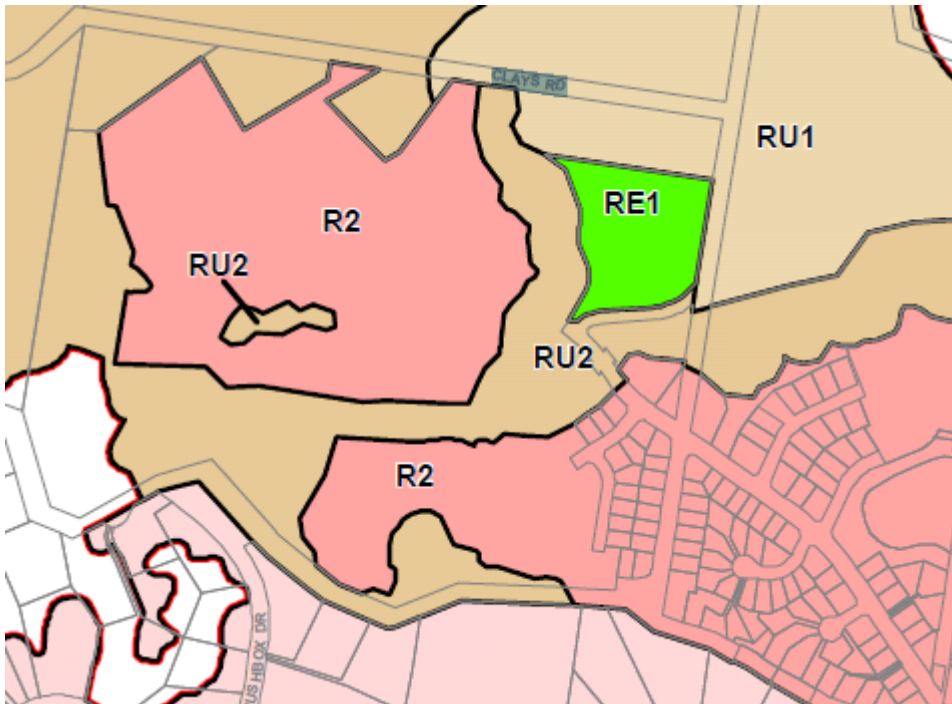
The vegetated areas subject to the proposed designation of "C" and "MC" are located on land zoned RU2 Rural Landscape. The stand-alone Tallowood tree, proposed to be designated "MC" is on land zoned R2 Low Density Residential. The site is the residual allotment created following the completion and registration of existing residential subdivisions of the Tallowood Ridge Estate.

The approved residential subdivision is south of Tuckeroo Avenue, adjoining Cockatoo Crescent, Lorikeet Lane and Quail Way. The approved development area of Stage 5 comprises generally cleared land with sloping topography, the site level falling towards the north and Tallowood Creek.

### Staging Plan



**Zoning Plan**



5

**2. SECTION 96(1A) ASSESSMENT**

**Section 96(1A)**

- 10 Comment: The proposed modification is of minimal environmental impact. The development as modified is substantially the same as that originally approved. The application is not required to be notified.

**Section 96(3)**

- 15 Comment: Section 79C(1) matters are considered below.

**3. ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000**

**Clause 115(1)**

- 20 Comment: The appropriate information has been provided.

**Clause 117(2)**

Comment: Adjoining owner or public notification of this application is not required.

**Clause 120(1)**

- 25 Comment: The application was referred to NSW Rural Fire Service. See comments below.

**4. REFERRAL TO NSW RURAL FIRE SERVICE**

- 30 The site is bush fire prone land and the NSW Rural Fire Service (RFS) has previously issued a Bush Fire Safety Authority relating to the approved subdivision. In relation to the current modification application, the RFS have provided further advice, given that the modification relates to an overarching Concept Plan rather than a specific DA for subdivision approval.

That advice highlighted the potential discrepancy between the inner protection area APZ approved as part of Stage 5 and the MC designation in the small area affected by that APZ. As discussed above, a very minor adjustment in the MC 'edge' as required by the RFS will adequately address any potential for inconsistency.

## 5. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

### 5.1. State Environmental Planning Instruments

#### SEPP 44 Koala Habitat Protection

Previous site assessments have indicated that potential koala habitat exists on the site. However the site is not considered as Core Koala Habitat in terms of SEPP 44 and a specific Koala Plan of Management is not required. The increased protection provided in the south-west vegetated area, by the Conservation Designation as proposed, recognises this potential habitat values of the site, and provides a strong layer of protection. The vegetation in this area also connects to forested areas outside of the site, and therefore the Conservation designation will assist in maintaining opportunities for koala movement in the future.

The proposed modifications raise no issues in regard to any other applicable State Environmental Planning Policies.

### 5.2. Byron Local Environmental Plan 2014 (LEP 2014)

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The approved development is not defined in the LEP 2014 Dictionary, but is defined in the *Environmental Planning and Assessment Act 1979* as *subdivision of land*;
- (b) The land is within R2 Low Density Residential / PART RU1 Primary Production / PART DM Deferred Matter / PART RU2 Rural Landscape, according to the Land Zoning Map, with the subject areas of vegetation predominantly within the RU2 zone;
- (c) The proposal is permitted with consent; and
- (d) The proposed modifications raise no issues in regard to the Zone Objectives or any provisions of the LEP.

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

#### *Draft SEPP (Coastal Management) 2016*

The Draft Coastal Management State Environmental Planning Policy (SEPP) proposes to establish a new, strategic land use planning framework for coastal management. It is intended to support the implementation of the management objectives set out in the Coastal Management Act 2016.

Once adopted, the Coastal Management SEPP will be the single land use planning policy for coastal development and will bring together and modernise provisions from SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The aim of the Draft SEPP is to promote an integrated and co-ordinated approach to planning in the 'Coastal Zone', identifying four coastal management areas:

- coastal wetlands and littoral rainforests area
- coastal environment area;
- coastal use area; and
- coastal vulnerability area.

The whole of the subject site will be mapped within the *coastal use* area. The proposed modifications raise no issues in regard to the matters contained in the draft SEPP.

**5.4. Byron Shire Development Control Plan 2014 (DCP 2014)**

The proposed modifications raise no issues in relation to any applicable DCP provision.

**5.5. 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?
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality. Overall, the modifications as proposed will result in the conservation of an increased area of native vegetation.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.

**5.6. The suitability of the site for the development**

Subdivision has been approved over part of the land, demonstrating that it is suitable for urban development. The land use designations, as proposed within that part of the site, do not alter any considerations of suitability.

The vegetated land in the south-west corner of the site, proposed to be protected by way of "Conservation" land use designation, is not suitable for urban development, and the modification as proposed will assist in clarifying that for future applications.

The "Managed Conservation" designation of the outer 10m of these vegetated areas will assist in managing the bush fire risk on adjoining urban land.

**5.7. Public interest**

The proposed modification of the development approval is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

**6. DEVELOPER CONTRIBUTIONS**

The modifications have no implications in relation to developer contributions.

**7. CONCLUSION**

The application proposes to:

- Retain the "Conservation" designation for the southern forest area, but apply the "Managed Conservation" (MC) designation to the outer 10m edge of this vegetation, to provide for some flexibility in the management of bush fire risk;
- Modify the "Conservation" designation on the existing single Tallwood tree to "Managed Conservation" (MC), as this is proposed (in Stage 6) to be included with a larger residential lot; and
- Modify the "Managed Conservation" designation for two larger forested areas in the south-west of the site to "Conservation", retaining the "Managed Conservation" for the 10m outer edge of these stands.

It is considered that the modifications will provide an improved outcome, both in terms of managing bush fire risk for approved development and in increasing the extend of vegetation designated “Conservation” on the approved land use plan, to ensure its protection within future stages of subdivision.

5

#### 8. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

10 Provide Disclosure Statement register details here: Not applicable

**Report No. 13.13**      **PLANNING - Review of further subdivision potential in the Ewingsdale and Mullumbimby 'R5 Large Lot Residential Zone'**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Alex Caras, Team Leader Land Use Strategy

**File No:** I2017/1253

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

### Summary:

Council at its 23 March 2017 Ordinary Meeting resolved that staff “*examine a change of lot size in the R5 zones at Ewingsdale and Left Bank Road to increase available residential land in the short term*”, as one of a number of actions to progress ahead of Council's adoption of the draft Rural Land Use Strategy. This report presents the results of a range of minimum lot size (MLS) scenarios considered within the above estates, as well as preliminary findings arising from the Ewingsdale Road / McGettigans Lane intersection review (currently underway). The report recommends that further investigations to determine re-subdivision potential of the R5 zone at Ewingsdale be deferred until Council has considered the findings of the Ewingsdale Road / McGettigans Lane intersection review in a future report. Consultation with affected residents would be the next step in the process of examining further subdivision potential in the R5 zone at Left Bank Road (Mullumbimby), should Council wish to proceed down this path.

### NOTE TO COUNCILLORS:

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

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### RECOMMENDATION:

1. That Council note the results of the preliminary subdivision analysis for the R5 zones at Ewingsdale and Left Bank Road, as contained in this report;
2. That further investigations to determine re-subdivision potential of the R5 zone at Ewingsdale be deferred until Council has considered the findings of the Ewingsdale Road / McGettigans Lane intersection review in a further report; and
3. That staff consult with affected residents in the R5 zone at Left Bank Road (Mullumbimby) to determine key issues associated with, and whether there is a sufficient level of support for, amending Byron LEP 2014 to allow smaller lot subdivision within this estate.

### Attachments:

- 1 Template - Form of Special Disclosure of Pecuniary Interest , E2017/97406 



**Report**

Council resolved the following at its 23 March 2017 Ordinary Meeting:

**Res 17-094:**

- 5     1.     *That Council staff examine a change of lot size in the R5 zones at Ewingsdale and Left Bank Road to increase available residential land in the short term; and,*
2.     *That Council report the possible lot yield result in the two zones within 3 months.*
- 10    This resolution relates to Action 22 of the recently exhibited draft Rural Land Use Strategy (RLUS), being: *"Investigate capacity for re-subdivision within existing Large Lot Residential estates."*

This is one of a number of actions being progressed ahead of Council's adoption of the draft Rural Land Use Strategy.

15

**Preliminary Subdivision Analysis Results**

Current minimum lot size requirements for subdivision in the R5 Large Lot Residential Zone of these estates are:

- 20     • Ewingsdale: 8,000 m<sup>2</sup> (except 10,000m<sup>2</sup> for certain land fronting Citriadora Drive)
- Left Bank Road (Mullumbimby): 8,000 m<sup>2</sup>

The following site attributes were considered in examining their further subdivision potential:

- 25     • Slope
- Vegetation
- Flood / Riparian
- Bushfire
- 30     • Existing development

A range of minimum lot size (MLS) scenarios were explored in both estates, with the results of the preliminary analysis presented below:

LOCALITY	Additional Lot Yield Scenarios		
	4000m <sup>2</sup> MLS	6000m <sup>2</sup> MLS	8000m <sup>2</sup> MLS (additional yield if current potential realised)
Ewingsdale	91	52	34
Mullumbimby	39	17	11

- 35     It is noted that actual lot yields may vary from those shown above pending a more detailed land capability assessment, including capacity for onsite waste management.

The above scenarios, if realised, may not have any measureable influence on the overall supply and price of available residential land in the short term. This is because rural residential land in these estates generally has a higher purchase price than in the urban (non-coastal) residential areas of the Shire, mainly due to the perceived lifestyle attributes associated with larger lot sizes. Therefore additional lot releases within these estates are likely to exceed the price-point of most first-time home buyers and working families seeking housing in the Shire.

45

**Traffic Capacity at Ewingsdale Road / McGettigans Lane intersection**

The Ewingsdale Road / McGettigans Lane intersection has been identified in a number of recent studies along the Ewingsdale Road corridor to reach full capacity by 2019, notwithstanding any additional (new) development within this corridor. Preliminary review findings suggest that this intersection will most likely require upgrading prior to any additional development occurring in this locality. However Council is unlikely have sufficient S94 funds to upgrade this roundabout until 2023. On this basis, it is recommended that further investigations to determine re-subdivision potential of the R5 zone at Ewingsdale be deferred until Council has considered the findings of the Ewingsdale Road / McGettigans Lane intersection review (currently underway) in a further report expected before the end of the year.

**Next steps**

Draft RLUS section '4.3 - Process for enabling re-subdivision within existing Large Lot Residential estates' states: *"Council will need to undertake further investigations to determine re-subdivision potential of existing rural residential estates. Following those investigations, Council will consult with affected residents within the relevant estates to determine key issues and gauge whether there is sufficient level of support to amend Byron LEP 2014 for this purpose."*

Consultation with affected residents would be the next step in progressing RLUS Action 22 (ie. the process of examining further subdivision potential) in the R5 zone at Left Bank Road (Mullumbimby), should Council wish to proceed down this path. In this regard a number of the submissions to the recently exhibited draft Rural Land Use Strategy raised the need to also consult with surrounding rural landowners about the potential impacts of re-subdivision on their amenity and/or ability to continue or expand farming operations.

As recommended above, further investigations in the Ewingsdale R5 zone should be deferred until Council has considered the findings of the Ewingsdale Road / McGettigans Lane intersection review (currently underway) in a further report.

**Financial Implications**

The administration costs of progressing RLUS Action 22 for the above estates can be accommodated within existing Council budgets.

**Statutory and Policy Compliance Implications**

Progression of draft RLUS Action 22 (in part) is consistent with the relevant Delivery Program Actions 2017-2021 and Operational Plan Activities 2017-2018 for the 'Environment' category (EN1.2.1).

**Report No. 13.14      Local Heritage Places Grants 2017--18**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Luke Munro , Planner

**File No:** I2017/1320

**Theme:** Ecology  
Development and Approvals

**Summary:**

The Byron Local Heritage Places Grants have been established by Council to assist property owners to carry out restoration works to listed heritage properties throughout the Shire.

There is a total of \$12,000.00 in the fund made up of a grant from the Heritage Division of the NSW Office of Environment of \$6,000.00 and \$6,000.00 from the Council.

The Local Heritage Places Grants 2017-18 is jointly funded by Council and the NSW Heritage Division as part of the commitments to heritage management and tourism within Byron Shire. The purpose of the fund is to provide a small grant to support owners of heritage items or draft heritage items in maintaining their heritage property.

The focus for the 2017-2018 Local Heritage Places Grants is conservation works that enhance individual places, buildings and historic streetscapes including buildings in conservation areas that will promote and foster community appreciation of the history of the Shire.

Five applications were received this year for projects with a total value of over \$85,000. After consideration by the Heritage Adviser and staff, all five projects were each awarded a share of the available \$12,000.

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**RECOMMENDATION:**

**That Council receive the information in the report on Local Heritage Places Grants 2017-18 and endorse the funding recommendations made by the Heritage Advisor and staff.**

**Attachments:**

- 1 Confidential - Project Application Local Heritage Places Fund - 39 Leslie Street, Bangalow , S2017/17059
- 2 Confidential - Assessment Criteria 39 Leslie Street Bangalow, E2017/93142
- 3 Confidential - Project Application Local HEritage Places Fund - 26 Carlyle Street Byron Bay, S2017/17077
- 4 Confidential - Assessment Criteria 26 Carlyle Street Byron Bay, E2017/93151
- 5 Confidential - Projection Application Local Heritage Places Funding 5 Lismore Road Bangalow, E2017/91286
- 6 Confidential - Assessment Criteria 5 Lismore Road Bangalow, E2017/93153
- 7 Confidential - Project Application Local Heritage Places Fund Deacon & Ashton Streets Bangalow , E2017/91289
- 8 Confidential - Assessment Criteria Deacon & Ashton Streets Bangalow, E2017/93156
- 9 Confidential - Project Application Local Heritage Places Fund 31 Byron Street Bangalow, E2017/91298
- 10 Confidential - Assessment Criteria 31 Byron Street Bangalow, E2017/93158

**Report**

The Byron Local Heritage Places Grants have been established with the aid of a grant from the Heritage Division of the NSW Office of Environment and Heritage with Council providing \$6,000 to qualify for \$6,000 from the Heritage Division.

The purpose of the Byron Local Heritage Places Grants is to help property owners carry out restoration works on listed heritage properties. As well as encouraging restorative work, the program raises awareness of the benefits of heritage conservation and in doing so, promotes and preserves the rich local history of the Byron Shire.

Up to \$3,000 was available for each project from a total funding pool of \$12,000. The main conditions are that property owners need to provide one dollar for every dollar contributed jointly by Council and the Heritage Division and that the work must be completed before or by April 2017.

Five applications were received this year. Each proposal was assessed by Council's Heritage Advisor against Heritage Division criteria.

<http://www.byron.nsw.gov.au/byron-local-heritage-places-grants-2016-2017>

Ordinarily a report by the Heritage Advisor would be considered by the Heritage Advisory Panel, but given the need to allocate the fund now; this report has been submitted directly to Council for endorsement. The five successful projects and the grant assistance provided are listed in the attachments.

The funding of these five projects enables over \$85,000 worth of work to be carried out in this financial year which will increase community participation and pro-active conservation works to heritage assets in the local area. The fund will also contribute to the business and tourism industry by ensuring the recognition and quality of Byron's heritage attractions.

**Financial Implications**

Council has delivered the Local Heritage Places Grants with the aid of a grant from the Heritage Division of the NSW Office of Environment and Heritage with Council providing \$6,000 to qualify for \$6,000 from the Heritage Division.

**Statutory and Policy Compliance Implications**

The operation of the Local Heritage Places Grants program is a task of the Byron Shire Heritage Strategy 2016-2019.

**Report No. 13.15      Submissions Report on the Draft Byron Shire Flying-fox Camp Management Plan**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Clare Manning, Natural Environment Projects and Policy Officer

**File No:** I2017/1332

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

**Summary:**

This report presents the public exhibition outcomes of the draft Byron Shire Flying-fox Camp Management Plan (Plan). Specifically it is proposed to adopt the Plan with changes to minimise the impacts of flying-foxes to the community, while ensuring long-term conservation of flying-foxes and their habitat within Byron Shire. Under a Council adopted Plan Council is eligible to take advantage of the Flying-foxes Grants Program that has been established to assist councils to manage flying-fox camps in their area, consistent with the Office of Environment and Heritage (OEH) Flying-Fox Camp Management Policy 2015 (Policy).

The Plan is consistent with the OEH Camp Management Plan Template and Policy to facilitate licensing of camp management actions over the next five years. The Plan is consistent with the Biodiversity Conservation Strategy 2004 (currently under review) and Operational Plan 2017-18.


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**RECOMMENDATION:**

**That Council note this report with the following recommendations:**

1. **adopt the Byron Shire Flying-fox Camp Management Plan (Attachment 1) that includes changes following public exhibition as outlined in Table 1 of this report.**
2. **consider an allocation of:**
  - a) **\$20,000 in the 2018-19 annual budget to leverage 1:1 funding from the Flying-foxes Grants Program to fund specific management actions**
  - b) **\$35,000 in the 2018-19 budget to appoint a part time Flying-fox Project Officer, to organise and facilitate the initial stages of the Plan implementation where a high level community engagement and development of protocols and procedure will be required.**
3. **note that funding commitment is required annually and long term beyond the five year life of the Plan.**
4. **seek the Office of Environment & Heritage endorsement of the Byron Shire Flying-fox Camp Management Plan.**

**Attachments:**

- 1 Byron Shire Flying-fox Camp Mgt Plan Version 5, E2017/93262 
- 2 Confidential - OEH Office Environment and Heritage Response Submission - Byron Bay LGA Flying-fox Camp Management Plan Signed D Young, E2017/79375
- 3 Confidential - Submission - Byron Shire Flying Fox Camp Plan - OEH Additional Information Consultation, E2017/91978
- 4 Confidential - Submission - Byron Shire Flying Fox Camp Plan - All, E2017/91500

**Report**

Flying-foxes are protected under State legislation and some species are listed as threatened. Grey-headed Flying-fox are also listed as a vulnerable species under Commonwealth legislation.

5 Flying-foxes play a crucial role in pollinating native forests and spreading seeds to ensure longevity of native bushland. Like all urban wildlife, they bring benefits and challenges to the way we live.

The draft Plan (**Attachment 1**) identifies 16 known flying-fox camps within Byron Shire but specifically how to manage flying-fox camps in Mullumbimby, Bangalow, Byron Bay (including

10 camps located at Butler Street and Middleton Street) and Suffolk Park.

**Consultation**

On 4 August 2017, Council 17-290 resolved to publicly exhibit the draft Byron Shire Flying-fox

15 Camp Management Plan for 4 weeks.

The draft Plan was on exhibited from 4 August to 1 September 2017.

Over the exhibition period, 7 submissions were received including a submission from OEH.

20

**Submissions**

*Office of Environment and Heritage Submission*

OEH provided extensive feedback and recommendations on the draft Plan (**Attachment 2 & 3**).

25 Key recommendations included actions to develop a process for responding to unlawful activities in consultation with OEH and make such a process publically available via Council's website updated (refer Table 1 Compliance), and the need to improve more information on Federal, State and local government legislation and policy and their role in the delivery of the Plan (refer Table 1 Legislation and Policy).

30 Additionally, OEH recommended actions to improve Council's preparedness by recommending that Council develop response procedures for new and/or emerging camps with an influx of flying-foxes; adverse weather events e.g. bushfire threat, flood or storm, extreme heat events that lead to flying-foxes changing their behaviour and/or dying. An action to develop a procedure for scheduled

35 and/or unanticipated works to infrastructure maintenance associated near to or within a flying-fox camp was also recommended (refer Table 1 Planned management approach).

*Public Submissions*

Over the exhibition period, Council recorded 3,583 total visits in response to the draft Plan via

40 facebook. A total of 221 facebook postings of mixed response recorded. Postings advocated dispersal as the only and preferred management option or supporting flying-fox-human co-existence. Additionally, Council was shown support for a planned approach to managing camps but our ability to implement the Plan in a timely manner was questioned. Six written submissions were received (**Attachment 4**), including one submission that was published in the Byron Echo

45 dated 6 September 2017:16.

These matters have been addressed within the Plan, and Council staff has applied the following changes to the draft Plan.

**Table 1.** Summary of all submissions and Council staff response.

No.	Issues Raised	Staff Comment	Staff Recommendation
	<b>Context</b>		
1.	To simplify implementation and reporting, reduce and tailor the objectives of the plan to consolidate similar community, ecological and statutory dot points.	Accepted	Merge objectives 1, 7 & 8 to read minimise impacts to the community while ensuring long-term conservation of flying-foxes and their habitat within Byron Shire. Plan's implementation and reporting simplified.
2.	Clarify the status of flying-foxes.	Noted	The Plan addresses flying-fox ecology and behaviours including threats and trends via Appendix D
3.	Include a section on all known camps in the LGA. The Plan should outline all camps including the historic, seasonal, and temporary camps throughout the LGA	Accepted	Section 1 Illustration 1.1 shows all known Flying-fox Camps in Byron Shire. A total of 16 flying-fox are known in Byron Shire.
4.	Include the Aboriginal Cultural Heritage values of the subject camps. Review the management actions in consultation with the Local Aboriginal Lands Council (LALC) and local Aboriginal knowledge holders within the community.	Accepted	Council staff contacted LALCs and the Awakwal MOU Advisory Committee for input and involvement.  Section 2 notes that 16 camps are located on Bundjalung Country of the Arakwal people, and each camp is located upon land covered by the respective Local Aboriginal Land Council (LALC). Section 8 notes that relevant LALC will be consulted and involved in any associated works on camps. This will ensure respectful consideration of the cultural values.
5.	Clarify the impact on other fauna, businesses and water pollution in section 2.6	Accepted	Section 2.6 reports issue relating to the camps including impacts on businesses: for example, residences working from homes e.g. accountancy or therapists and/or direct businesses e.g. accommodation. Impacts on other fauna species: for example, reported temporary dispersal of native birds. Impacts on water pollution: for example, faecal droppings have impacted on water quality and alleged cause a decline in fish and mud crab stocks.
	<b>Community engagement</b>		
6.	Include a section describing the agencies, stakeholders and community organisations directly involved in the implementation of the Plan to provide a clear scope for council's regulatory and	Accepted	Section 1 acknowledges that GeoLink and Byron Shire Council have prepared this flying-fox management plan in consultation with the OEH and Department of Primary Industries - Crown, community groups and broader

No.	Issues Raised	Staff Comment	Staff Recommendation
	support structure.		community etc.  Section 3 tabulates stakeholders that have been consulted in the Plan and those that will need to be involved in the implementation of the Plan.
	<b>Legislation and policy</b>		
7.	Include a list any of the documents or plans held by Council or Trusts for the reserves containing the subject camps, e.g. Plans of Management or restoration plans. A summary of how these documents will interact, support or influence the outcomes of the Plan should be provided	Accepted	Table 4.1 provides LGA & Trusts documents and their relevance to the Plan
8.	Include more information on the Biodiversity Conservation Act 2016 and its role in the delivery of the Plan	Accepted	Section 4 provides more information on the Biodiversity Conservation Act 2016 and its role in the delivery of the Plan.  The purpose of the Biodiversity Conservation Act 2016 (BC Act) is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development including conserving biodiversity, maintaining the diversity and quality of ecosystems, regulating human interactions with wildlife, and supporting conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature.
9.	Consider the statutory functions of the Biodiversity Conservation Act 2016.	Accepted	Section 4 states <i>It should be noted that this Plan does not constitute a licence to undertake works. Land owners seeking to undertake works on private property will need to acquire the relevant approvals via Council and/ or OEH.</i>
10.	Include reference to the new license requirement will be a Biodiversity Conservation License, under the Biodiversity Conservation Act 2016	Accepted	Section 4 notes that Part 2 Division 3 of the BC Act provides for the issuing of Biodiversity Conservation Licences to authorise the doing of an act likely to result in one or more of the following: a) harm or attempted harm to any animal that is of a threatened species or is part of threatened ecological community



No.	Issues Raised	Staff Comment	Staff Recommendation
			<ul style="list-style-type: none"> <li>b) harm or attempted harm, dealing in, or liberating a protected animal</li> <li>c) the picking of any plant that is of a threatened species or is part of threatened ecological community</li> <li>d) picking or dealing in protected plants</li> <li>e) damage to declared areas of outstanding biodiversity value</li> <li>f) damage to any habitat of a threatened species or threatened ecological community.</li> </ul>
	<b>Compliance</b>		
11.	<p>Include a section on compliance processes and the roles of the agencies involved. Management should be proactive in nature, but a compliance response is sometimes warranted. Information on what constitutes a breach of the respective legislation that applies to the reserves, ecological communities and species present should be included.</p>	Accepted	<p>Section 7 states that <i>culling is addressed here as it is often raised by community members as a preferred management method; however, culling is contrary to the objects of the BC Act and will not be permitted as a method to manage flying-fox camps.</i></p> <p>Action Table 8.1 states that <i>Council will develop a process for responding to unlawful activities in consultation with OEH and make such a process publically available via Council's website updated.</i></p> <p>Information on what constitutes a breach of the respective legislation that applies to the reserves, ecological communities and species present and triggers for informing OEH will be included.</p>
	<b>Other ecological values</b>		
12.	<p>Include, more detail on the referenced "coastal sand plain", which is noted in the discussion for the lack of endangered ecological community status applied to the Swamp Sclerophyll Forests found at Beech Drive, Butler Street and Middleton Street Camps. Advise presenting evidence (a soil analysis) that the sites have been assessed appropriately and lack the presence of alluvial soils and/or association with the coastal floodplain</p>	Partly Accepted	<p>Section 5 outlines desktop assessment of ecological values of each flying-fox camp including threatened species, ecological communities, critical habitat, SEPP 14 Coastal Wetlands and SEPP 26 Littoral Rainforest &amp; criteria for High Environmental Values. Appendix C &amp; D provides Results of ecological desktop assessment &amp; Flying-fox ecology and behaviour.</p> <p>A soil analysis is not warranted as Council have completed extensive vegetation mapping including ground truthing (2017)</p>

No.	Issues Raised	Staff Comment	Staff Recommendation
<b>Site specific analysis of camp management options</b>			
13.	Clarify how dispersal has the potential to impact on aircraft safety	Accepted	<p>The full range of options available for management of the five subject flying-fox camps were identified and reviewed throughout community consultation and Plan preparation.</p> <p>Table 7.1 supporting references include Parson et al 2008 conclude the majority of flying-foxes fly at elevations of approx. 150m, with few records of flights of up to 1,500m. Aircraft in Australia spend a relatively small proportion of their total flight time at 150m. With the exception of ultra-light aircraft, even aircraft forced to circuit an airport while waiting to land are required to do so above 300m.</p>
14.	Supportive of Level 3 active dispersal is the only viable option for the future.	Noted	<p>Section 7 outlines site-specific analysis of camp management options. Section 8 outlines consideration of active dispersal including cost analysis. Section 8 outlines that Council must demonstrate Level 1 &amp; 2 actions prior to Level 3 actions e.g. dispersal, as per OEH Policy.</p>
<b>Planned management approach</b>			
15.	Include a section that recognises new and emerging camps, and how this will form part of the Plan's adaptive management process	Accepted	<p>Action Table 8.1 states that <i>Council will develop a response procedure for new and/ or emerging camps with an influx of flying-foxes; for adverse weather events e.g. bushfire threat, flood or storm, extreme heat events (leading to flying-foxes changing their behaviour and/ or dying) and;</i></p>
16.	<p>Include a section on emergency or arising camp issues, with supporting contingency planning. The contingency planning should include the council's response, consultation, administrative process, and consent requirements to deliver on the escalating management responses. These issues may include:</p> <ul style="list-style-type: none"> <li>a) bushfire threat and fire protection</li> <li>b) serious flood or storm mitigation works</li> <li>c) heat event</li> <li>d) service location relative to the camp, such as water or sewer</li> </ul>	Accepted	<p><i>develop a procedure for scheduled and/or unanticipated works to infrastructure maintenance associated near to or within a flying-fox camp.</i></p>

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.15

No.	Issues Raised	Staff Comment	Staff Recommendation
	e) arrival of Little Red Flying-foxes in large numbers or a seasonal influx of Grey-headed or Black Flying-foxes.		
17.	Include a point that all restoration activities must remain consistent with an 'Council' approved vegetation management plan	Accepted	Section 8 action tables states that <i>a Council approved integrated VMP is required at all sites to complement the Plan. The VMP would encompass site specific bush regeneration or habitat creation actions, as well as the management of vegetation removal sites with the objective of minimising adverse vegetative or habitat impacts</i>
18.	Include a process to review the plan's actions, consultation requirements and level of approval required	Accepted	Action Table 8.1 states that <i>Council will develop a procedure (a series of actions or steps taken) in order to review the Plan's actions, consultation requirements and level of approval requirements.</i>
19.	Pro-active action on emerging camps is supported for its cost effectiveness. Notwithstanding, supportive of dispersal at Mullumbimby is the only viable option for the future.	Noted	Section 8 outlines that Council must demonstrate Level 1 & 2 actions prior to Level 3 actions as per OEH Policy.
20.	Assessing the impacts of droppings on natural waterways should be included as an action	Noted	Since the early days of European settlement, people have observed that flying-foxes roost and fly along rivers and creek lines. This is a consistent behaviour developed over evolutionary time – not a response to recent environmental change. It would be hard to argue that a causal relationship with alleged recent declines in local fish and crab stocks, and therefore action within the Plan.
	<b>Human and animal health</b>		
21.	Submission is made with reference to health related matters specifically to the individual's circumstances.	Noted	Section 6 outlines disease and flying-fox management.  Additionally, Council sought professional health advice and response from NSW Primary Industries regards health matters specifically to the individual's circumstances. NSW Primary Industries have since responded to the individual specific health enquiries.
	<b>Assessment of impacts to flying foxes</b>		
22.	Outline habitat loss, at each	Accepted	Section 9 Assessment of impacts to

No.	Issues Raised	Staff Comment	Staff Recommendation
	camp and the supplementary information provided, to provide an explanation and an appropriate assessment of actual habitat present.		flying-foxes tabulates % habitat loss
23.	Include more information on the assessment of impacts, offset requirements and the role of vegetation management plans.	Accepted	Section 9 outlines that the Development Control Plan Chapter B2 prevails in regards to offsetting. However, should the total area of clearing be greater than 0.25ha at any of the sites, then the BAM method (plots and transects) under the Biodiversity Conservation Act 2016 will be used by Council staff and a credit requirement generated.

### **Financial Implications**

Council received a \$15,000 NSW Government grant to help prepare the Plan.

5 As part of the Funding Agreement, Council committed funds and in-kind contributions on a 1:1 basis. The Plan will address the impact of flying fox colonies located in Mullumbimby, Bangalow, Byron Bay and Suffolk Park.

10 Under a Council adopted Plan, Council is eligible to take advantage of the Flying-foxes Grants Program. This \$1 million program is funded through the OEH and is administered by Local Government NSW to address identified flying-fox management issues facing NSW councils. A combination of competitive and non-competitive funding is available up to \$50,000. Council will be required to commit matching funds or in-kind contributions for any proposal on a 1:1 basis.

15 The Flying-fox Grant will not however fund works that primarily target noxious weeds. Such weeds are the core responsibility of landowners and are enforceable by the Biosecurity Act 2016 and local control authorities e.g. Rous County Council. Nor will the Flying-fox Grant fund a project officer.

20 Flying-fox camp management actions such as creating a buffer between camps and residents often entail trimming, removal and/or control of woody weeds such as Camphor Laurel and Lantana (e.g. Paddy's Creek, Bangalow). Under the flying-fox grant, actions proposing to remove and/or control noxious weeds may be funded, where the applicant's matching contribution focuses on weed management and the flying-fox grants funding caters for other elements of the action

25 such as community engagement, community support, erosion control and revegetation.

### **Statutory and Policy Compliance Implications**

30 In responding to recommendation by OEH, the Plan complies with the OEH Policy, guidelines and management plan template. The Plan is consistent with the Biodiversity Conservation Strategy 2004 (currently under review) and Operational Plan 2017-18.

**Report No. 13.16**      **Mobile Food Venders**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Sarah Nagel, Community Enforcement Officer  
**File No:**      I2017/1341  
5 **Theme:**      Ecology  
                         Development and Approvals

**Summary:**

10 On 2 February 2017, Council resolved (17-031):

- 15 1. *That the petition regarding objection to “Designer Collective Markets and Food Truck Street Party” be noted.*  
2. *That the petition be referred to the Director Sustainable Environment and Economy.*  
3. *That a report be brought to Council concerning DA and or other approval requirements for designer collective markets and food truck street parties.*


20 The purpose of this report is to provide Council with a discussion paper / report on the options for Mobile Vendors (food and products) and commercial users of road reserves within the Byron Shire.

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**RECOMMENDATION:**

1. That one Council policy incorporates the commercial use of road reserves authorised under the Roads Act;
2. That the policy incorporates all licenced/approved activities on those areas as authorised under the Roads Act i.e. mobile food vendors, mobile product vendors, footpath dining and goods and chattels;
3. That the policy works in conjunction with Council’s policy “Road Airspace”; and
4. That the policy works in conjunction with Council’s policy 5.52 “Commercial Activities on Coastal and Riparian Crown Reserves”.

**Attachments:**

- 25 1 Draft Policy - Commerical use of Road Reserve, E2017/95798 

**Report**

The objective of the revision of Council's current 'Itinerant Food Vendor' Policy No. 5.4 is to facilitate the establishment of a burgeoning street food/food truck/product truck industry and to take advantage of the economic, cultural and social benefits within the Shire. This is balanced against the protection of the Shire's current retail sector and the maintenance of public health.

Research has been undertaken of policies (relating to food trucks) that have been implemented by Gold Coast City Council, Lismore City Council and Sydney City Council. Relevant to this discussion:

- a. Gold Coast City Council undertook a test period of mobile food vendors within their area before introducing relevant licencing. This Council now allows at least 26 operators in permitted zones (with a restriction on what number may operate in each permitted zone at any one time) on a first in/first served basis. They also allow two (2) permanent food stalls in two (2) locations with exclusive use of those locations.
- b. Sydney City Council also undertook a test period before introducing relevant licencing. This Council now has two categories – food vans (food/drinks not requiring a kitchen, max stopping time of 15min [not permitted to "set-up stand"], trade only in restricted areas) and food trucks (requires kitchen, max stopping time 5hrs, trade in all zones)
- c. Lismore City Council allows mobile vendors on an ad-hoc application basis and appears to have limited policies in place in that regard.

Research was also undertaken of Eurobodalla Shire Council's approach to implementing a comprehensive policy relating to activities on road reserves, activities on Council managed/owned lands and activities on air space.

On 31 May 2017, the Executive Team noted report No. 4.4 'Commercial Activities on Road Reserve' File No: I2017/693 and that a draft policy will be prepared and reported back to the Executive Team by the end of July 2017.

On 2 August 2017, the Executive Team considered and endorsed recommendations in Report No. 52 File No: I2017/767:

1. That one Council policy incorporates use of road reserves, air spaces and Council owned land;
2. That the policy also incorporates all licenced/approved activities on those areas i.e. busking, mobile food vendors, mobile product vendors, events etc;
3. The report No. 4.4 of ET 31/05/2017 File No: I2017/693 draft policy be used as a starting point to incorporate the other activities into; and
4. That the policy works in conjunction with Council's policy 5.52 "Commercial Activities on Coastal and Riparian Crown Reserves".

As Council's Road Airspace Policy has recently been amended and has been to public exhibition, following a council resolution in December last year, it is no longer recommended to include use of airspace in this policy.

As busking and events approvals/licences do not fall within the scope of the Roads Act, it is no longer recommended to include busking or events within this policy.

In order to reduce confusion from members of the public and also different areas of Council, it is suggested that Council implement one comprehensive policy that:

1. Incorporates commercial use of road reserves under the Roads Act;
2. Incorporates all activities i.e. mobile food vendors, mobile product vendors, footpath dining and goods and chattels;

3. Amends the current processes and policies relating to mobile food vendors and mobile product vendors;
4. Endorses the current processes and policies relating to footpath dining and goods and chattels;
5. Works in conjunction with Council's policy "Road Airspace"; and
- 5 6. Works in conjunction with Council's policy 5.52 "Commercial Activities on Coastal and Riparian Crown Reserves".

10 In relation to mobile vendors, it is suggested that three (3) categories be considered that may be authorised/licensed within the Byron Shire under the *Roads Act 1993* and the *Local Government Act 1993* (where relevant):

- 15 1. Mobile vendor – class 1: selling food/drinks/products that do not require a kitchen with a maximum stopping time to trade of 15min. i.e. a Mr Whippy Van. These vendors would require a class 1 licence from Council to permit them to trade on road reserves but would not be permitted to trade on/in the 'permitted zones', on/in Council-owned land, on/in Crown-owned Council-managed land or on/in Crown owned/managed land. These vendors would be required to display a red Council compliance sticker on their vehicles, carts, stalls, etc.
- 20 2. Mobile vendor – class 2: selling food/drinks/products that may require a kitchen with allowance to trade within permitted trading hours. i.e. a taco van. These vendors would require a class 2 licence from Council to permit them to trade on/in one (1) specified permitted zone each. These vendors would be required to display a green Council compliance sticker on their vehicles, carts, stalls, etc.
- 25 3. Mobile vendor – class 3: selling food/drinks that may require a kitchen on private land. i.e. the Design Collective Markets. These vendors would require a DA so are not covered by the draft "Commercial Use of Road Reserves" Policy.

#### 30 Class 1 and class 2 licences

35 Whilst councils vary upon the period of their licences, the recommendation is for licences to be for a period of two (2) years, with a possible renewal up to two (2) years for class 1 vendors and class 2 vendors. The suggested time period of the class 1 and class 2 licences is likely to result in less administrative work for Council and more business security/continuity for licensees. However, it also allows for variation and ongoing consideration of the suitability of vendors and/or their products within the Shire over the first licence period.

40 Whilst class 1 licensees would operate within the Shire on road reserves, it is recommended that class 2 licensees only operate on/in certain "permitted zones" indicated by an Expression of Interest process (see discussion below of possible locations). These permitted zones have been identified to create the least impact on paid parking/parking restrictions within the Shire, ensure pedestrian/road safety, ensure minimal impact on similar retail premises and create non-disruption to other services/public activities. For less complexity all identified areas are not located on Council-owned land, Crown-owned Council-managed land, licenced Crown land or Crown owned/managed land due to their restrictive nature of use.

50 Each class 2 licensee would only be permitted to operate in one 'permitted zone' each (akin to exclusive possession). Whilst other councils have taken the approach of allowing licensees to operate on a first-in, first-served basis within their identified permitted zones, the limited number of suitable areas within the Byron Shire (and the likelihood that only one class 2 licensee could reasonably operate in each permitted zone) resulted in the draft policy being termed to allow each class 2 licensee a permitted zone each. This would result in less conflict between licensees, more stability of business for licensees and a rationale for a higher licensing fee to be charged to each licensee. It would also allow for more protection and consideration of current retail operators within the Shire.

Once the number of permitted zones is determined, it is recommended that Council offer an Expression of Interest for the number of permitted zones (i.e. the number of permitted zones shall determine the number of licences offered by Council).

5 Consideration of how many class 1 licences would be sustainable within the Shire should also be undertaken.

10 As a result of the rights conferred by the licences (particularly the class 2 licences) and the limited number of licences that are reasonably sustainable within the Byron Shire, it is recommended that Council undertake an Expression of Interest in relation to the issuing of class 1 and class 2 licences. Both Sydney City Council and Gold Coast City Council undertook a tender process. Lismore City Council allows operators to simply apply as they see fit.

15 Possible permitted zones for Class 2 licences

Some possible locations that have been identified for consideration as follows:

- Wategos Beach (one road reserve location);
- Denning Park road reserve (two locations);
- 20 • Brunswick Heads road reserve (three locations);
- Middleton Street car-park, Byron Bay;
- The current location of Sunrise Cycles (Lot 7 Jonson Street, Byron Bay);
- The Byron Bay Library (where a previous coffee cart operated from);
- Coolamon Scenic Lookout;
- 25 • Devine's Hill road reserve;
- The corner of the sports-field at Shara Boulevard, Ocean Shores;
- Suffolk Park community land (Suffolk Park sporting fields);
- The Myocum tip;
- The Bangalow Weir park;
- 30 • The laneway next to Bangalow Fire Station (28 Byron Road, Bangalow);
- The operational land located opposite Bangalow School (behind the bakery);
- The park in Federal;
- At cemeteries (i.e. flower sales);
- The Byron Bay rail corridor (once Council takes over management of the area).
- 35 • OR
- Ask for EOI from members of the public as to identified locations within the Shire.

Considerations for inclusion of mobile vendors in the draft Commercial Use of Road Reserves Policy

- 40
- All approvals/licences to be issued in accordance with the *Food Act 2003*, the *Roads Act 1993* and the *Local Government Act 1993*
  - 45 - Licensing requirements:
    - Applicable application fees and licence fees:
      - to be paid prior to application being processed/licence or approval issued.
    - Requirements of licences:
      - 50 ▪ one per vehicle, cart, stall, etc;
      - non-transferable;
      - vendor's details to match ABN, licensee and licensed vehicle, cart, stall etc;
      - employees of vendors to be nominated;



- Operating requirements
  - All relevant insurances (noting Council) and licences to be in place;
  - Vehicles, carts, stalls etc to have health clearance certificate;
  - All vehicles, carts, stalls etc to be registered as required by the *Road Transport Act 2013*;
  - All vehicles, carts, stalls, etc to be kept clean and in a good state;
  - Not to operate outside of permitted zones or in/on parks, reserves or beaches;
  - Class 1 licensees not to operate directly outside of residential properties;
  - Restricted distance between class 1 licensees operating near similar retail premises (when open to trade);
  - Compliance with all legislative requirements including, but not restricted to, the *Food Act 2003*, the *Local Government Act 2003*, the *Road Transport Act 2013*, the *Roads Act 1993*, the *Protection of the Environment Operations Act 1997* and the *Factories, Shops and Industries Act 1962*.
- Inspections and penalties
  - Comply with restrictions relating to pollution;
  - Comply with regular inspections (and pay relevant inspection fee) and display relevant approvals/certificates;
  - Council reserves right to decide legal remedy of breaches of policy;
  - Authorised officers may take enforcement action for non-compliance with policy and related legislation.
- Garbage and litter
  - All to be disposed in manner acceptable to Council's Health Officers;
  - Licensees to be responsible for management and disposal of all waste (i.e. not in public bins);
  - Suitable garbage disposal units to be contained in vehicles, carts, stalls, etc;
  - Trading areas to be left clean and tidy;
  - No liquid waste to be discharged to ground or stormwater drains;
  - Licensees encouraged to recycle.
- General requirements
  - Approval/licence may be cancelled at Council's discretion due to non-compliance or if reasonable complaint received;
  - Approval/licence may be cancelled by Council if class 1 or class 2 vendor ceases trading or does not operate for a period longer than six (6) months;
  - Product/food/drink sold not to be altered without Council approval;
  - Potable water, hot water and waste water requirements;
  - No animals, flashing lights, banners/signs/bunting, alcohol sales, dangerous/illegal/offensive goods sales, advertising/direct soliciting/donation collecting or amplified sound;
  - No obstruction of traffic, pedestrians, entrance ways or shops;
  - No disruption normal business activities or unduly disturb ambience of residents/passers-by.

**Class 3 licences**

Class 3 vendors will each be required to submit a development application and will be restricted by the applicable LEP to their proposed location. The *Byron Local Environmental Plan 2014* shall apply.

*Zone RE2 Private Recreation*

*Permitted without consent:*

*Environmental protection works; Home-based child care; Home occupations*

*Permitted with consent:*

*Boat launching ramps; Boat sheds; Car parks; Child care centres; Community facilities; Emergency services facilities; Environmental facilities; Flood mitigation works; Function centres; Helipads; Information and education facilities; Jetties; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Roads; Signage*

*Prohibited:*

*Any development not specified in item 2 or 3*

*Retail premises* means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) bulky goods premises,
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (m) timber yards,
- (n) vehicle sales or hire premises,

*but does not include highway service centres, service stations, industrial retail outlets or restricted premises.*

*Note.*

*Retail premises are a type of commercial premises—see the definition of that term in this Dictionary.*

*Market means* an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.

*Note.*

*Markets are a type of retail premises—see the definition of that term in this Dictionary.*

**Zone RU1 Primary Production**

*Permitted without consent:*

*Environmental protection works; Extensive agriculture; Home-based child care; Home occupations*

*Permitted with consent:*

*Airstrips; Animal boarding or training establishments; Business identification signs; Camping grounds; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Extractive industries; Farm buildings; Flood mitigation works;*

*Forestry; Helipads; Home businesses; Home industries; Industrial retail outlets; Industrial training facilities; Intensive livestock agriculture; Intensive plant agriculture; Landscaping material supplies; Open cut mining; Places of public worship; Plant nurseries; Recreation areas; Restaurants or cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Secondary dwellings; Tourist and visitor accommodation; Veterinary hospitals*

*Prohibited:*

*Backpackers' accommodation; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3*

**Zone No 1 (a) (General Rural Zone)**

*Without development consent:*

*Agriculture (other than animal establishments); bushfire hazard reduction; forestry.*

*Only with development consent:*

*Any purpose other than a purpose specified in item 2 or 4.*

*Prohibited:*

*Brothels; bulk stores; caravan parks; commercial premises (other than veterinary establishments); drive-in banks; drive-in take-away food shops; educational establishments; industries (other than light industries using less than 100 square metres of floor area, or home, extractive or rural industries); hostels; hotels; motels; motor showrooms; recreation vehicle areas; residential flat buildings; restricted premises; shops (other than general stores); service stations; surf life saving facilities; tourist facilities; units for aged persons; warehouses.*

**Zone No 7 (b) (Coastal Habitat Zone)**

*Without development consent:*

*Nil.*

*Only with development consent:*

*Agriculture (other than animal establishments); building of levees; bushfire hazard reduction; clearing of land; environmental facilities; drains; home industries; oyster farming; primitive camping grounds; roads; utility installations.*

*Prohibited:*

*Any purpose other than a purpose specified in item 2 or 3.*

**Market means** a fair or any other event which involves more than six stalls offering goods, arts, crafts or services which:

- (a) is operated on a temporary basis at a frequency of not more than fifteen days per year in total, and
- (b) does not involve the erection of any permanent structure, and
- (c) is managed by a community or charity based organisation, in accordance with a management plan for that fair or other event.

**Food shop** means premises used for the purpose of selling, exposing or offering for sale by retail, food or beverages (or both) for consumption other than on the premises (not including food or beverages (or both) which has or have been pre-packaged on another premises), but (in the Table to clause 9) does not include:

- (a) a building or place elsewhere specifically defined in this Dictionary, or  
(b) a building or place used for a purpose elsewhere specifically defined in this Dictionary.

5 Footpath dining and goods and chattels

It is recommended that the current requirements/approvals/licences for footpath dining and goods and chattels be endorsed in their current form by the draft Commercial Use of Road Reserves Policy.

10 Depending on the nature of the proposed land and the applicable LEP section, an application may or may not be successful in obtaining a mobile vendor licence – class 3.

If the above policy is progressed, a new application form for mobile vendor licences will need to be drafted.

## 15 Financial Implications

Provides a methodology for Council to approve and collect revenue for the use of Council's road reserves for commercial benefit.

20 **Statutory and Policy Compliance Implications**

1. Building Code of Australia
2. Byron Local Environmental Plan 2014
- 25 3. Byron Shire Development Control Plan 2014
4. Environmental Planning and Assessment Act 1979
5. Factories, Shops and Industries Act 1962
6. Food Act 2003
7. Local Government Act 1993
- 30 8. Local Government (General) Regulation 2005
9. Protection of the Environment Operations Act 1997
10. Retail Leases Act 1994
11. Road Transport Act 2013
12. Roads Act 1993
- 35 13. Work Health and Safety Act 2011
14. NSW Food Authority – Guidelines for Mobile Food Vending Vehicles
15. Council's Road Airspace Policy
16. Council's Footpath Dining Policy
17. Council's Itinerant Food Vendor Policy

**Report No. 13.17      PLANNING - Rural Land Use Strategy - Submissions Report and Finalisation**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Natalie Hancock, Senior Planner  
Alex Caras, Team Leader Land Use Strategy

**File No:** I2017/1344

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

**Summary:**

Council has prepared a draft Rural Land Use Strategy (RLUS) to guide the future zoning and use, protection and/or development of our rural lands over the next 20 years. At the Ordinary Meeting of 20 April 2017 Council resolved (Res 17-126) to exhibit for further community feedback and discussion the draft Rural Land Use Strategy and supporting documents and commence actioning priorities. This report:

- provides an update on a number of actions being progressed ahead of Council's adoption of the draft Rural Land Use Strategy
- summarises government agency and community responses received during exhibition of the revised Rural Land Use Strategy (RLUS)
- proposes a number of amendments to the draft Rural Land Use Strategy (RLUS) and supporting documents to enable final endorsement by Department of Planning & Environment

As the final stage in the preparation of the Rural Land Use Strategy, the exhibition for just over six weeks from 7 June to 24 July 2017 was designed to complement the earlier 2016 exhibition and encouraged discussion around how best to implement the actions of the strategy. These actions identify how Council can act, inform, guide and lead over the strategy life to build upon the strength of existing communities and ensure a balance between the rural environment, economy, living arrangements and infrastructure services.

**NOTE TO COUNCILLORS:**

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

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**RECOMMENDATION:**

**That Council:**

1. **Note the update on priority actions progressed to date as contained in Table 1 of this report;**
2. **Adopt the proposed amendments to the draft Rural Land Use Strategy (RLUS) and supporting documents, as contained in Table 2 and Table 3 of this report, to enable submission to Department of Planning & Environment;**
3. **Delegate authority to the Director Sustainable Environment & Economy to amend the draft Rural Land Use Strategy in relation to any consequential (non-policy) and/or other minor editorial amendments required for clarity or accuracy, prior to submitting to Department of Planning & Environment for final endorsement; and**

4. **Resolve not to proceed with the Planning Proposal (ref # 26.2014.10) to allow multiple occupancy development with consent at 74 Charltons Road, Federal, as it does not satisfy the draft RLUS criteria for future rural lifestyle living opportunities and the State/regional policy framework (namely the North Coast Regional Plan and s117 Ministerial Direction 5.3).**

**Attachments:**

- 5 1 Submissions summary report for revised draft Rural Land Use Strategy April 2017 exhibition, E2017/97411 [⇒](#) 
- 2 Department of Planning and Environment response letter to the 2017 version of the Draft Rural Land Use Strategy , S2017/16741 [⇒](#) 
- 3 Department of Primary Industries response letter to the 2017 version of the Draft Rural Land Use Strategy, E2017/97412 [⇒](#) 
- 10 4 Department of Planning and Environment Resources and Geoscience response letter to the 2017 version of the Draft Rural Land Use Strategy, E2017/97417 [⇒](#) 
- 5 5 Consistency with State Policy Framework Rural Land Use Strategy 2017, E2017/97423 [⇒](#) 
- 6 6 Template - Form of Special Disclosure of Pecuniary Interest, E2017/97406 [⇒](#) 
- 15

## Report

### Overview

- 5 The draft Rural Land Use Strategy (RLUS) has been prepared as part of a staged process that commenced in early 2015. The draft RLUS will guide the future zoning and use, protection and/or development of our rural lands over the next 20 years.

At the Ordinary Meeting of 20 April 2017 Meeting Council resolved (**Resolution 17-126**) to:

- 10
1. *Exhibit for further community feedback and discussion the draft Rural Land Use Strategy, supporting 'Policy Directions Paper', 'Site Suitability Criteria and Mapping Methodology' and the draft 'Rural Land Use Strategy Implementation Plan' for 28 days.*
  - 15 2. *As part of the exhibition process encourage guidance from the community on priorities for the 'Rural, Land Use Strategy Implementation Plan'.*
  3. *That Council commence actioning priorities confirmed following the exhibition process prior to the winter recess.*
  4. *That a public communication and engagement strategy be created in consultation with the Communications Panel to guide the exhibition process.*

20

The resolution has been actioned by Council staff and this report:

- provides an update on a number of actions being progressed ahead of Council's adoption of the draft Rural Land Use Strategy,
- 25 • summaries government agency and community responses received during exhibition of the revised Rural Land Use Strategy (RLUS), and
- makes recommendations for amendments to the draft Rural Land Use Strategy (RLUS) and supporting documents.

### 30 **Item 3 of Res 17-126 – Progress on actioning priorities**

The following is an update on a number of actions being progressed ahead of Council's adoption of the draft Rural Land Use Strategy. This is in line with Item 3 of Resolution 17-126 and other Council resolutions, as referenced in Table 1.

### 35 **Table 1: Priority actions already progressed**

Action (related Council resolution/s, if relevant)	Related RLUS action/s	Status
<b>E Zones review</b> (Res 16-576)  Council resolved at the 17 November 2016 Ordinary Meeting to endorse a process for amending Byron Local Environmental Plan (LEP) 2014 in order to implement the Northern Councils E Zone Review Final Recommendations Report.	9	The final stage of the Shire wide Vegetation Mapping has been completed, together with mapping of potential E3/E3 zones. Letters have been issued to affected landowners regarding the process going forward.  Where required and in response to the submissions received from affected landowners, Council officers will conduct any necessary ground-truthing over the coming months to verify accuracy of land use and/or vegetation mapping.

<b>Action</b> (related Council resolution/s, if relevant)	<b>Related RLUS action/s</b>	<b>Status</b>
<b>Support for agribusiness; rural enterprise and innovation</b>	13, 14	Research is continuing, including consultation with industry groups and individual farmers to enable preparation of a draft Discussion Paper.
<b>Rural wedding venues</b>	16	A Discussion Paper on 'Rural Events' (i.e. weddings) is in preparation, following consultation with rural land owners and industry representatives. This includes a preliminary draft LEP provision, should Council wish to proceed in the direction of allowing events in rural zones, subject to appropriate controls.
<b>Rural lifestyle living opportunities</b> <ul style="list-style-type: none"> <li>- Site '1': McAuley's Lane Myocum</li> <li>- Site '2': Alidenes Road Wilson Creek.</li> </ul>	17/20/25	<p>Site '1': landowners have submitted a road condition /capacity and intersection assessment for Council's consideration.</p> <p>Site '2': a detailed site inspection was undertaken with the landowner in August. Staff subsequently provided the landowner with guidelines for a 'road condition /capacity and intersection assessment'.</p> <p>Landowners of both sites will be able to progress with a planning proposal upon endorsement of the Strategy by DPE.</p>
<b>R5 Land – lot size review</b> (Res 17-094) <p>Council resolved the following at its 23 March 2017 Ordinary Meeting:</p> <ol style="list-style-type: none"> <li>1. <i>That Council staff examine a change of lot size in the R5 zones at Ewingsdale and Left Bank Road to increase available residential land in the short term; and,</i></li> <li>2. <i>That Council report the possible lot yield result in the two zones within 3 months.</i></li> </ol>	22	<p>A separate report has been prepared for consideration at the 26 October council meeting, which found that:</p> <ul style="list-style-type: none"> <li>• Ewingsdale R5 investigation be deferred until Council has considered the findings of the Ewingsdale Road / McGettigans Lane intersection review in a future report</li> <li>• Left Bank Road (Mullumbimby) R5 would be appropriate for staff consult with affected residents to determine key issues and level of support for amending Byron LEP 2014 to allow smaller lot subdivision within this estate.</li> </ul>

### **Consultation on the RLUS**

As required by Res 17-126 Item 4, a public communication and engagement strategy was created in consultation with the Communications Panel to guide the exhibition process. The draft RLUS and supporting documents were exhibited for just over six weeks from 7 June to 24 July 2017. Community engagement during this period included stakeholder notification, advertisements, interactive website survey, information stalls at Mullumbimby Farmers Markets, community



briefings at Durrumbul, Federal and Bangalow and responding to phone/email enquiries. Relevant government agencies were also notified and staff held follow-up discussions with DPE.

- 5 Some 120 submissions were received raising a range of issues around the implementation of the Rural Land Use Strategy actions but generally focused on the rural economy, in particular working towards a prosperous agricultural sector and settlement aspects of the draft RLUS.

- 10 A Submission Summary Report has been prepared for Council's consideration in Attachment 1. The report presents key matters raised along with a corresponding planning response to these, including any recommended changes to the draft RLUS.

Copies of government agency submissions are contained in Attachments 2-4, while copies of all submissions have been provided to councillors electronically on the Councillors dashboard.

- 15 Submissions to the Draft Rural Land Use Strategy were the subject of a presentation to councillors at the 5 October 2017 Strategic Planning Workshop.

Key Amendments Arising from Submissions

- 20 The engagement program asked respondents to identify their priorities in regard implementation of certain actions. The following five actions received the strongest interest overall:

**Action 13** *Identify opportunities in our local planning framework to support agribusiness, rural enterprise and innovation*

**Action 14** *Reviewing guidelines for agricultural and non agricultural uses to better manage potential impacts*

**Action 16** *Investigate the potential for allowing 'wedding venues' (a type of function centre) in rural zones and, where appropriate, planning provisions to ensure their location, scale and operation are compatible with the rural setting.*

**Action 22** *Investigate capacity for re- subdivision within existing Large Lot Residential estates.*

**Action 18** *Develop a policy framework for unauthorised rural dwellings*

- 25 The interest in these actions was generally based on a view that finalising the Draft Rural Land Use Strategy may be premature in the absence of further analysis/resolution of specific issues (such as those above). On the other hand, there was general support for the Strategy's approach of identifying an 'action' that would be followed with an implementation measure involving focused discussion papers, further consultation and recommended outcomes. Submissions on a range of actions indicated the need for such consultation to consider:

- 30
- appropriateness of the land use to a rural area
  - best ways to mix land use and avoid conflicts
  - alternative ways to meet infrastructure demands
  - capacity to improve environmental outcomes
- 35
- greater attention to protecting the rural amenity and landscape – with one submitter stating '*this is a strong reason people come to live and work and visit the Shire*'
  - the views of landowners, surrounding landowners, local communities and industry sectors associated with the land use or activity when implementing the given action.

*Rural Economy* actions attracted the highest number of responses with priority given to strengthening actions that support the right to farm and businesses connected to agriculture, agricultural produce and related farming services. Actions to reduce existing and emerging rural land use conflicts and clarify the role of rural tourism were also given a high priority.

*Rural Community* actions also attracted a high number of responses, particularly in relation to: policy framework for unauthorised rural dwellings; affordable and sustainable rural housing; and capacity of existing village plans to manage change, accommodate growth, encourage housing choice and diversity. There was also support for encouraging community title in rural lifestyle and village locations, in order to provide opportunities for clustered housing, locally grown food, farmland access and environmental repair.

Submissions on both *Rural Environment* and *Rural Infrastructure* actions indicated a need to integrate these two aspects of our rural land into delivery of the above actions.

Table 2 details all proposed amendments to the RLUS and supporting documents in response to the submissions received. Further details supporting the recommendations are contained in the Submissions Summary Report (Attachment 1).

**Table 2: Proposed amendments to the RLUS**

<b>No.</b>	<b>Recommendation</b>
<b>1.</b>	That the Rural Land Use Strategy include an additional appendix titled 'Consistency with State Policy Framework', as contained in Attachment 5 of this report.
<b>2.</b>	That the following RLUS sections be updated to improve clarity:  (a) Section 3.3.3 criteria for rural lifestyle living opportunities: include in a Table for ease of reference; (b) Section 4.2 Process for implementing Land Release Program enabling future rural lifestyle living opportunities: illustrate using a flowchart.
<b>3.</b>	Amend RLUS Action 13 and Table 2 (Rural economy actions) by:  (a) adding the words 'and strengthen' to the end of the first sentence; (b) combining bullet points 5 and 8 to read: <ul style="list-style-type: none"> <li><i>'Low scale rural tourism opportunities, particularly those directly associated with primary production and/or improved conservation outcomes'</i></li> </ul>
<b>4.</b>	Remove the green dashed circles shown on RLUS Maps 4, 4a and 4b, to avoid confusion about spatial extent of priority areas.
<b>5.</b>	Amend RLUS Action 14 and Table 2 (Rural economy actions) to include a new dot point under 'Review guidelines for agricultural and non agricultural uses to better manage potential impacts relating to:'  <ul style="list-style-type: none"> <li><i>'rural amenity and visual impacts'</i></li> </ul>
<b>6.</b>	Amend RLUS Action 16 and Table 2 (Rural economy actions) to delete the words "(a type of function centre)" and replace with " <i>other types of function centres</i> ".

<b>No.</b>	<b>Recommendation</b>
<b>7.</b>	Amend second dot point in RLUS Action 10' and Table 1 (Rural environment actions: 'Planning Improvements') by replacing the word "allowing" with " <i>providing scope for</i> ".
<b>8.</b>	Insert the following new action in Table 3 (Rural community actions): <ul style="list-style-type: none"> <li><i>"review capacity of existing village plans to manage change, accommodate growth, encourage housing choice and diversity (including seniors housing) and better protect valued environments at a local level"</i></li> </ul>
<b>9.</b>	Amend second sentence in RLUS Section 4.3 (Process for enabling re-subdivision within existing Large Lot Residential estates) to read: " <i>.... Council will consult with affected residents within the relevant estates <u>and surrounding landowners</u> to determine ...</i> "
<b>10.</b>	For Site 3 in RLUS Maps 4 and 4b (Coopers Shoot Road, Coopers Shoot), reduce the extent of 'Potential R5 Large Lot Residential' expansion area to reflect the approved lot yield and clustered subdivision layout (DA 10.2009.94.1).

**Additional edits not associated with submissions**

In addition to the changes recommended above, the following amendments relating to road intersection capacity and function assessment are recommended in Table 3. These amendments provide greater clarity about the relevant intersections and nature of assessment required.

**Table 3: Recommended changes to clarify intersection capacity and function assessment**

<b>No.</b>	<b>Recommendation</b>										
<b>11.</b>	Insert in RLUS 'Table 9: Priority Sites for Rural Lifestyle Living Opportunities' an additional column identifying the intersection to be assessed as follows: <table border="1" data-bbox="300 1220 1481 1429"> <thead> <tr> <th><b>Map 4 Reference Site number:</b></th><th><b>Intersection requiring assessment</b></th></tr> </thead> <tbody> <tr> <td>1</td><td>Intersection of McAuleys Lane and Mullumbimby Road</td></tr> <tr> <td>2</td><td>Intersection of Alidenes Road and Wilsons Creek Road</td></tr> <tr> <td>3</td><td>Not applicable</td></tr> <tr> <td>4</td><td>Not applicable</td></tr> </tbody> </table>	<b>Map 4 Reference Site number:</b>	<b>Intersection requiring assessment</b>	1	Intersection of McAuleys Lane and Mullumbimby Road	2	Intersection of Alidenes Road and Wilsons Creek Road	3	Not applicable	4	Not applicable
<b>Map 4 Reference Site number:</b>	<b>Intersection requiring assessment</b>										
1	Intersection of McAuleys Lane and Mullumbimby Road										
2	Intersection of Alidenes Road and Wilsons Creek Road										
3	Not applicable										
4	Not applicable										
<b>12.</b>	In the <i>RLUS 'Key Terms' section</i> , rename 'Road Condition and Capacity Assessment' to " <i>Intersection capacity and function assessment</i> "										
<b>13.</b>	In the <i>RLUS 'Key Terms' section</i> , amend the last sentence in the term 'Road Condition and Capacity Assessment' to read " <i>...An intersection road asset may include road, stormwater drainage, <del>bridge and</del> culverts as well as signage dependant on the location.</i> "										

**Outstanding Planning Proposal to allow multiple occupancy development with consent at 74 Charltons Road, Federal**

Council is yet to consider the planning proposal for the above land and this matter is being reported now as it was considered in the development of the RLUS.

This land was one of a number of sites that council resolved (Res 13-388) to include in the draft LEP 2014 'Multiple Occupancy and Community Title' map. The site was subsequently removed by the Department of Planning & Environment when the Byron LEP 2014 was finalised, mainly because it had not been exhibited in the draft LEP 2012 and hence was not subject to any community consultation (ie. a statutory requirement of the LEP process). In response to the

Department's decision Council encouraged the affected landowner to submit a planning proposal ahead of completing a new rural strategy. The landowner subsequently lodged a planning proposal in 2014 (ref # 26.2014.10).

- 5 This land was excluded from the draft Rural Land Use Strategy (RLUS), as originally exhibited in 2016. At the time it did not satisfy the decision criteria for future rural lifestyle living opportunities of the draft Strategy, nor did the site attributes accord with the State government's policy position articulated in the Far North Coast Regional Strategy, draft North Coast Regional Plan and s117 Direction 5.3.

- 10 Since then, the Far North Coast Regional Strategy and draft North Coast Regional Plan have been replaced by the *North Coast Regional Plan 2036 (NCRP)*. The State government's policy position regarding state/regionally significant farmland, as articulated in the *NCRP*, remains the same in relation to future rural settlement (ie. regionally significant farmland is to be retained for
- 15 existing or future agricultural production).

The location of this land also does not meet the current infrastructure servicing criteria and related policy directions in the recently exhibited draft RLUS.

- 20 In light of the above information the inclusion of this land in the revised draft RLUS cannot be supported in the context of the criteria identified for future rural lifestyle living opportunities and the State/regional policy framework (namely the North Coast Regional Plan and s117 Ministerial Direction 5.3). It is therefore recommended that Council not proceed any further with this planning proposal.

25 **Financial Implications**

The cost of preparing the draft RLUS has been met by Council.

30 **Statutory and Policy Compliance Implications**

The Rural Land Use Strategy is consistent with the relevant Commonwealth, State and Regional policy frameworks.

**Report No. 13.18      PLANNING - 26.2016.6.1 - Existing Land Uses at The Farm, Ewingsdale Road, Ewingsdale**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Rob Van Iersel, Major Projects Planner

**File No:** I2017/1431

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

**Summary:**

At the meeting of 21 September 2017, Council considered a report relating to ongoing planning and compliance issues at The Farm. A previous resolution of Council (**16-465**, dated 25 August 2016) invited The Farm to lodge a Planning Proposal “*to regularise unauthorised activities and uses on the land*”.

A Planning Proposal application was submitted in late 2016, seeking an amendment to LEP 2014 by way of an additional permitted uses clause relating to a number of nominated uses at the site.

Following discussions with representatives of The Farm, and with NSW Roads and Maritime Services (RMS) regarding significant traffic issues in the locality, the applicants were advised that Council could not consider a Planning Proposal that included land uses additional to those currently operating at the site.

The proponents were therefore invited to amend the Planning Proposal application accordingly. The amended application was submitted on 23 August 2017.

This report outlines the land uses currently operating at The Farm, summarises the development consents previously issued, and presents the Planning Proposal application (as amended).

The purpose of this report is to determine whether Council will support continued assessment of Planning Proposal application, as an appropriate mechanism to regularise unauthorised activities and uses on the land.

If supported, the amended Planning Proposal application would provide for an amendment to Byron LEP to identify the nature and scale of land uses that could be approved at The Farm, in addition to those that are currently permissible in the RU1 zone. The LEP amendment would not alter the RU1 zoning of the land, but would specify additional uses that would be permissible with consent within a precinct around the existing cluster of buildings. The amendment would outline clear definitions of the nature and scale of those uses, to provide controls and limits for the future development and use of the site.

Those controls have not yet been drafted, and would be reported back to Council if there is support for the Planning Proposal process.

Two development consents have been issued for The Farm. The first – 10.2013.626.1 – approved a cheese making facility, a restaurant/ café (90 seats and 10 staff), a gelato/ coffee bar (6 seats), a roadside stall, plus sealed access and car parking (45 car spaces, 2 buses, 1 loading bay and 13 bicycles spaces). A Construction Certificate and Interim Occupation Certificate were issued by a private certifier for this development. The cheese making facility was not constructed.

The second consent – 10.2015.151.1 – approved use of a dwelling as an industrial training facility; a plant nursery, an extension to the “farm produce kitchen”, plus additional parking to create 199 car spaces, 2 bus bays, 20 bicycle spaces, and 1 loading bay. A Construction Certificate was

issued by a private certifier for this development, but no Occupation Certificate has yet been issued. As such, this approval has not yet been formally commenced.

5 In addition to these development consents, there have been a number of farm sheds erected on the site as exempt development.

10 Other existing uses, such as the bakery and administration use of an existing dwelling, have been commenced on the land without approval, and the nature of the existing plant nursery and roadside stall uses are not in accordance with the development approvals.

15 The proponents have previously been advised that Council staff are of the view that the current operation of The Farm falls within the definition of *tourism development* for the purposes of clause 6.8 of Byron LEP 2014, which specifies that rural tourism must be small scale (i.e. small enough to be managed and operated by the owner of the land).

20 Staff are of the view that the current operation cannot meet this small scale definition, and clause 6.8 would therefore prevent Council granting development consent to unauthorised uses at the site.

25 The Planning Proposal has therefore been submitted to provide a mechanism through which Council could approve the unauthorised land uses on the site.

If the LEP were amended as outlined above, the proponents could then seek development approval for the uses as nominated in the Schedule.

30 If the Planning Proposal were not supported, Council could take action to ensure that activities at the site are undertaken only in accordance with the approvals in place.

NOTE TO COUNCILLORS:



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

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**RECOMMENDATION:**

1. **That Council support the application for a Planning Proposal and authorise the Director Sustainable Environment and Economy to negotiate with the applicant to facilitate the preparation of a Planning Proposal at the applicants cost.**
2. **That the Planning Proposal deal only with existing uses on the site, and that it be reported back to Council at the meeting of December 2017 for further deliberation prior to it being forwarded to the NSW Department of Planning and Environment for a Gateway Determination.**

**Attachments:**

- 40
- 1 Attachment 1 Economic Impact Assessment, E2017/83364 
  - 2 Attachment 2 Social Impact Assessment, E2017/83362 
  - 3 Confidential - Attachment 3 - Submissions - Support, E2017/93889
  - 4 Confidential - Attachment 4 The Farm submission from Ewingsdale Progress Association, E2017/94335
- 45

**Report**

Activities at The Farm have been subject to a number of previous Council resolutions.

5 On 25 August 2016, Council resolved (in part):

**(16-465)**

- 10 • *That Council staff undertake a Compliance Audit of the existing operation, particularly in relation to compliance with conditions of approval for DA 10.2013.626.1, and, as a result of the audit, prepare a detailed Audit Action Plan.*
- *That Council invites The Farm to lodge a joint Planning Proposal, Master Plan and Development Application, within 60 days of the date of this resolution, to regularise unauthorised activities and uses on the land*

15 In accordance with this resolution, The Farm's planning consultants lodged a Development Application (10.2016.698.1) and a Planning Proposal (26.2016.6.1) in late October 2016.

DA 10.2016.698.1 proposed:

- 20 • Change of Use of the approved "cheese making facility" to agricultural produce industry and industrial retail outlet (bakers); and
- Change in use of the existing approved dwelling house for use as ancillary offices for the existing approved restaurant and farm.

25 The Planning Proposal (26.2016.6.1) sought "a site-specific amendment to Byron Local Environmental Plan 2014 (BLEP14) to update Schedule 1 to permit certain additional land uses on the subject land, including:

- retail premises - shop/ food and drink premises;
- information and education facility;
- recreation facility (indoor); and
- 30 • business premises".

Both applications were placed on hold, pending discussions between Council and NSW Roads and Maritime Services (RMS), to clarify significant traffic issues associated with the roundabout to the east of the Pacific Motorway. It was acknowledged that traffic from The Farm is not the key cause of existing traffic queuing issues at this roundabout, but is a significant contributor.

These applications, and progress on other parts of the August resolution, were reported to Council's meeting of 15 December 2016, where Council resolved (in part):

40 **(16-662)**

- *That Council continue to work collaboratively and as expeditiously as possible to either regularise or cease unauthorised activities and uses on the land to bring all activities into compliance*

45 RMS advised that they would not object to the traffic generation associated with the existing land uses at the Farm, but that they would oppose any proposal for additional or increased land use.

Council staff also advised The Farm that the whole of the existing operation is considered to be *tourism development* as defined in Clause 6.8 of Byron LEP 2014, which operates to ensure that tourism development on agricultural land remains *small scale*.

Staff further advised that the existing operation at The Farm is considered to be inconsistent with this definition of *small scale* and that it would therefore be difficult to support the development application.

- 5 Following discussions with The Farm, development application 10.2016.698.1 was withdrawn on 19 April 2017. The applicants also agreed to amend the Planning Proposal application such that it deals only with existing land uses at the site. The updated Planning Proposal application was submitted on 23 August 2017.
- 10 The amended Planning Proposal application seeks an amendment to Byron LEP 2014, to add provisions into Schedule 1 to permit the existing land uses at The Farm, subject to future development consent(s). This would be additional to the existing approved uses, which are summarised below:

**15 *Previous Development Approvals:***

**DA 10.2013.626.1 – Cheese Making Facility and Farm Café; Approved 22 May 2014**

Approved uses: Restaurant / café located in main building. Condition #47 specifies a limit of “90 patrons and 10 staff at any one time”.

Roadside stall located in main building [definition of roadside stall allows for *retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.*]

Gelato/ coffee bar, located in ‘bales’ adjacent to main building. Approved with seating for 6 people.

Cheese making facility located in main building. [this use was never commenced].

Car parking for 45 cars, 2 buses, 1 loading bay and 13 bicycles spaces, with new access from Woodford Lane. Access and parking areas required to be sealed.

On-site waste water system.

Hours of Operation (Condition #55):

The Gelato/coffee bar to operate between the hours:

7.00am – 4.00pm daily

The Café to operate between the hours:

7.00am to 4.00pm Monday to Thursday inclusive

7.00am to 10.00pm Friday, Saturday & Sunday

A Construction Certificate was issued by an external certifier on 19 December 2014.

- 20 An Interim Occupation Certificate was issued by an external certifier on 25 March 2015.

**DA 10.2015.151.1 – Agricultural Training Facility, Plant Nursery and Farm Produce Kitchen.**

Approved uses: Change of use of previously approved Rural Workers’ Dwelling to “agricultural training facility”.

The LEP definition is *a building or place used in connection with vocational training in an activity (such as forklift or truck driving, welding or carpentry) that is associated with an industry, rural industry, extractive industry or mining, but does not include an educational establishment, business premises or retail premises.*

Condition #2 specifies that “any training associated with the use of this facility must be related to vocational training in activities that are associated with a *rural industry*, and no other type of *industry*”



Change of use of a small existing shed and its curtilage to a plant nursery.

The LEP definition of plant nursery is *a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.*

An extension of the existing food preparation / kitchen area associated with the café/ restaurant partly into the area previously approved for cheese making.

Car parking to provide for a total of 199 cars, 2 buses, 1 loading bay and 20 bicycles spaces, with new access from Woodford Lane. Access and parking areas required to be sealed.

Upgrade to on-site wastewater system.

Condition #31:

*Approval is limited to no more than 100 persons (including patrons and staff) on the property (i.e. on Lot 1 DP 780234 and Lot 5 DP 848222) at any one time.*

Hours of operation (Condition #39)

The Gelato/coffee bar to operate between the hours:

7.00am – 4.00pm daily

The Café/ restaurant to operate between the hours:

7.00am to 10.00pm Monday to Sunday

The nursery to operate between the hours:

7.00am to 6.00pm Monday to Sunday

The industrial training facility to operate between the hours:

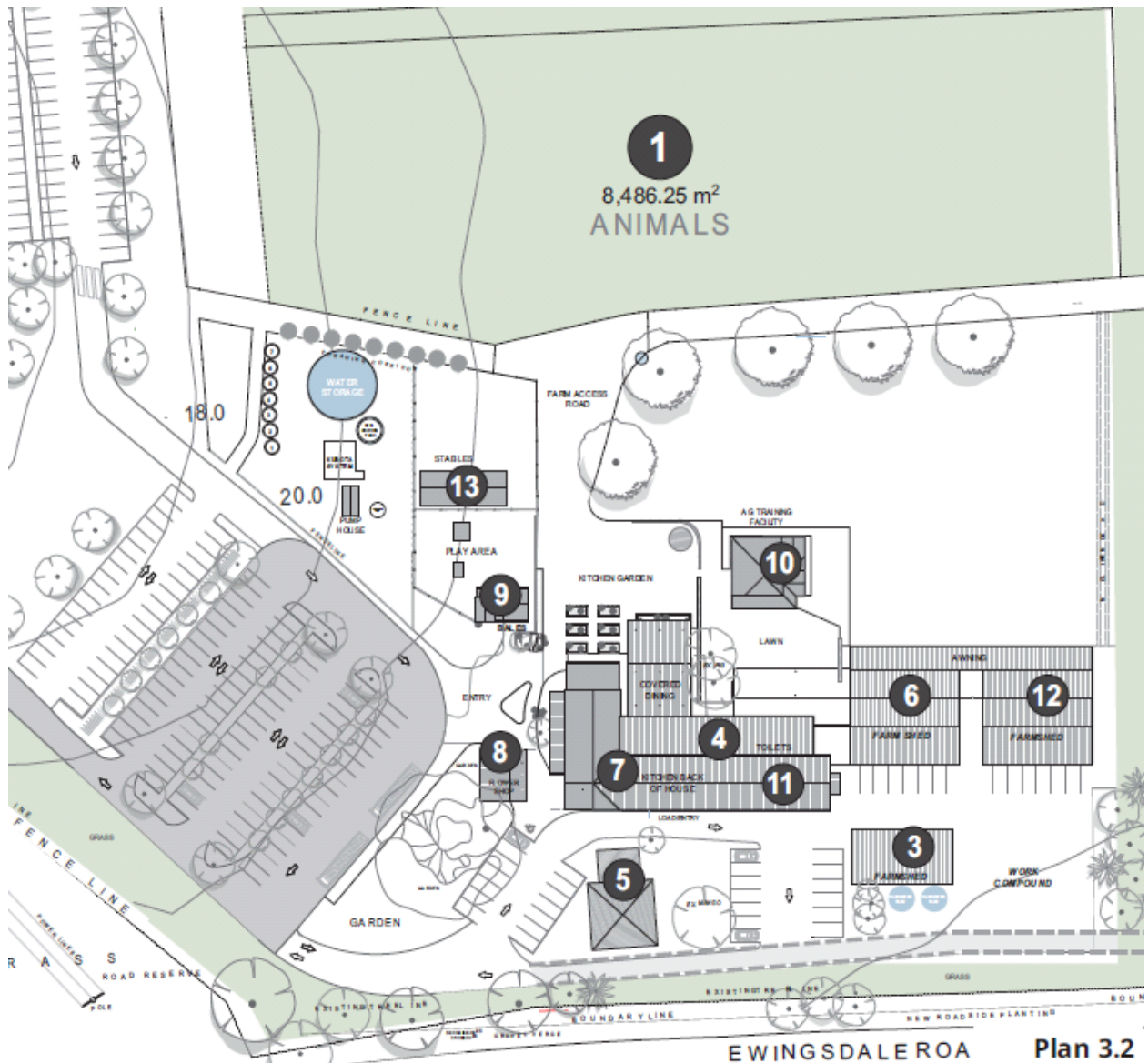
7.00am to 10.00pm Monday to Sunday

A Construction Certificate was issued by an external certifier on 10 May 2016. There are a number of discrepancies between the approved CC plans and the DA plans approved by Council. Notably, the internal configuration of the agricultural training facility shown on the CC plans, nominates the majority of the internal space as “Dining Seating”, with “Deck Seating” noted on the southern verandah, as well as an additional “Dining Deck” that was not on the DA plans;

As yet, Council has no record of an Occupation Certificate having been issued. As such, the approved use has not been formally commenced [Note: some works completed and uses commenced].

***Existing Uses:***

The plan below is an extract from the Planning Proposal application, showing the existing cluster of buildings/ uses associated with The Farm. The existing uses are described in the table below, with comments regarding permissibility and approval status.



Area	Description	Definitions/ Use	Comments/ Approvals
1	Animals (grazing)	<i>Extensive agriculture (the grazing of livestock for commercial purposes) or Intensive livestock agriculture (the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, horses, or other livestock that are fed wholly or substantially on externally-sourced feed)</i>	No previous approvals Permissibility depends on the applicable definition (i.e. do animals rely 'wholly or substantially on external feed'). <i>Intensive livestock agriculture</i> – permissible with consent. <i>Extensive agriculture</i> – can be done without consent. Alternately, if primary purpose of animals are as an 'attraction' for farm visits, there is no applicable LEP definition, and the use would be prohibited in RU1 zone.
2	Organic crops	<i>Extensive agriculture (the production of crops or fodder for commercial purposes) or</i>	No previous approvals <i>Extensive agriculture</i> – can be done without consent.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

Area	Description	Definitions/ Use	Comments/ Approvals
		<i>Horticulture (the cultivation of fruits, vegetables, mushroom, nuts, cut flowers and foliage and nursery products for commercial purposes) – a type of intensive plant agriculture</i>	<i>Intensive plant agriculture – permissible with consent. Horticulture – exempt (Sch 2 of LEP) unless within 20m of watercourse.</i>
<i>Question: primary purpose of agriculture – for commercial purposes or as tourism?</i>			
3	Farm Shed	<i>Farm building (a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling)</i>	No previous approvals Erected as exempt development – cl.2.31 of SEPP (Exempt and Complying Development) 2008 <i>The construction or installation of a farm building used for the purpose of an agricultural activity</i> Proposed to be retained as ancillary to on-site agriculture.
4	Bakery	<i>Shop (premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises or</i> <i>Agricultural produce industry (a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry. (a type of rural industry) &amp; industrial retail outlet (a building or place that:</i> <i>(a) is used in conjunction with an industry or rural industry, and</i> <i>(b) is situated on the land on which the industry or rural industry is located, and</i> <i>(c) is used for the display or sale (whether by retail or wholesale) of only those goods that have been manufactured on the land on which the industry or rural industry is located)</i>	No previous approvals. <i>Shop</i> is prohibited in RU1 zone, whereas <i>Rural Industry</i> (and therefore <i>agricultural produce industry</i> ) is permissible with consent. Previously refused – 10.2015.634.1 Legal advice previously submitted arguing that <i>agricultural produce industry</i> is appropriate definition in the circumstances.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

Area	Description	Definitions/ Use	Comments/ Approvals
5	Administration Building	Office premises	Previous approval as dwelling-house (original farm house). Change of use for administration previously refused – 10.2015.634.1 Office premises would only be permissible as ancillary to operation of The Farm.
6	Farm Shed	<i>Farm building (a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling)</i>	No previous approvals Erected as exempt development – cl.2.31 of SEPP (Exempt and Complying Development) 2008 <i>The construction or installation of a farm building used for the purpose of an agricultural activity</i> Proposed to be retained as ancillary to on-site agriculture.
7	Main Building - Restaurant	<i>Restaurant or café (a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided).</i>	Approved – 10.2013.626.1 Condition #47 – <i>Approval is for 90 patrons and 10 staff at any one time</i>
7	Main Building - Produce store	<i>Shop (premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like)</i>	Originally approved under 10.2013.626.1 as <i>roadside stall (a place or temporary structure used for the retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property).</i> Currently sells produce from on-site and from the wider region. No longer consistent with roadside stall definition
8	Flower shop	<i>Shop (premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like)</i>	Approval under DA 10.2015.151.1 as <i>plant nursery (a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items)</i> DA 10.2015.151.1 not formally 'commenced'. Current use not consistent with

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

Area	Description	Definitions/ Use	Comments/ Approvals
			<i>plant nursery</i> definition.
9	Bales	<i>Restaurant or café</i>	Approved under DA 10.2013.626.1 as gelato/ coffee bar. Approved for 6 seats. Not currently used for approved purpose. Proposed to re-establish gelato/ coffee bar use and also use as 'information booth' for farm tours.
10	Farm Cottage	Approved as <i>rural workers dwelling</i> (DA 5.1992.525.1). Approved under DA 10.2015.151.1 as industrial training facility ( <i>a building or place used in connection with vocational training in an activity (such as forklift or truck driving, welding or carpentry) that is associated with an industry, rural industry, extractive industry or mining, but does not include an educational establishment, business premises or retail premises</i> )	DA 10.2015.151.1 not formally 'commenced'. Use of the building has commenced; not clear that all use has been consistent with industrial training facility definition
11	Production kitchen	Approved under 10.2013.626.1 as <i>rural industry</i> (cheese making facility).	Cheese making facility never commenced. Space not currently used. Proposed to be expansion of kitchen for restaurant and bakery, and as a space for cooking classes.
12	Farm shed	<i>Farm building (a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling)</i>	No previous approvals Erected as exempt development – cl.2.31 of SEPP (Exempt and Complying Development) 2008 <i>The construction or installation of a farm building used for the purpose of an agricultural activity</i> Proposed to be retained as ancillary to on-site agriculture.
20	Stables	<i>Farm building (a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling)</i> Not currently used.	No previous approvals Part of original farm. Proposed to be used as shade structure for children's playground

As part of the current use, farm tours, either accompanied or unaccompanied, are undertaken at The Farm. This has not been authorised under either of the two existing development consents.

Also, the table above doesn't address the overall use of the site as a tourist destination. There is no relevant definition in BLEP 2014 relating to a tourist facility. The closest definition is:

**recreation facility (outdoor)** means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

It could be argued that the whole of The Farm, or at least the component that is available for the public to walk through, constitutes a *recreation facility (outdoor)*. This use is prohibited in the RU1 zone, and neither of the current approvals recognises this use.

### **Planning Proposal Application:**

The application proposes to amend Schedule 1 of BLEP14, to provide for additional land uses on the part of the site currently occupied by The Farm buildings. It does not propose to alter the existing zoning of any part of the site. The property would continue to be zoned RU1 Primary Production.

The clause to be added in to Schedule 1 would apply primarily to the part of the site shown hatched below. It will also, however, need to address the permissibility of 'farm tours' on parts of the site outside of the hatched area.



The clause to be added to Schedule 1 has not yet been drafted. The purpose of this report is to determine whether Council will support this as a mechanism to move forward.

If there is support for this process, the clause will be drafted to identify the specific land uses that would be permitted on this part of the land, additional to the uses permitted with consent in the RU1 zone and additional to those previously approved. It will also contain clear criteria and parameters that control the nature and scale of those uses. It would also be drafted to avoid broad definitions that would allow expansion of non-rural uses in the future.

An assessment of the proposal against relevant State and Local Strategies has also not yet been undertaken.

In accordance with the recommendation of this report, that work would be undertaken following support for the Planning Proposal as the appropriate mechanism to address existing land uses, and would be reported to the December meeting of Council.

**Support:**

There has not been any public exhibition or notification regarding a Planning Proposal for the property.

5 Nonetheless, Council has received 10 letters of support for The Farm, from community groups and individuals. The letters express support for the existing operations at The Farm and express the view that those operations provide both social and economic benefit to the wider community.

10 A number of the submissions also express the view that the activities at The Farm make agriculture accessible to the community, particularly to children, and are of the view that this is a very important community benefit.

The application is also supported by an Economic Assessment Report and a Social Impact Assessment report.

15 The economic assessment concludes:

- Visitors to The Farm have an annual direct expenditure of \$11.9m, with \$7.74M directed to Byron Shire businesses and individuals; and
- Taking into account direct employment, supply chain and household consumption, The Farm generates 181.9 FTE with an associated value of wages and salaries of \$7.9m.

The Social Impact assessment concludes:

25 *Overall, the benefits associated with the use of the land for farming, food production, restaurant, education, retail and a bakery appear to far outweigh issues or concerns associated with this subject to addressing the mitigating measures.*

**Objections:**

There have been ongoing discussions with adjoining and other land owners and the Ewingsdale Progress Association regarding land uses at The Farm.

30 These land owners and the Ewingsdale Progress Association all advise that they support the continuation of activities at The Farm that are consistent with and permissible in the RU1 zone. Significant concern has been expressed, however, for the expansion of uses outside of those consistent with the RU1 zone objectives.

35 An over-riding concern is that, notwithstanding the agricultural activities undertaken, the commercial activities at The Farm significantly erode the value and usefulness of prime agricultural land in the Shire.

40 Neighbours remain concerned that The Farm creates land use conflicts that impact on their continued farming practices, associated with potential complaints from visitors at The Farm regarding noise, spray drift and the like. They also note ongoing issues of trespass onto their property, and concern that effluent from The Farm's on-site disposal area might impact on their land.

45 There is a strong view that it is not appropriate for Council to amend its planning controls to legitimise development that has been commenced without approval and that this would set an undesirable and dangerous precedent in the Shire. Further concern is that this will be a first step in a number of future LEP amendments that would continue the expansion of no-agricultural uses at The Farm.

Other concerns include:

- A fear that amending the LEP would allow significant non-rural expansion of activities at the site; and



- Continued traffic impacts;

There is support for the 'small-scale' provisions within the LEP relating to rural tourist uses and concern that support for the Planning Proposal application effectively 'by-passes' that provision.

**Options:**

In relation to The Farm, the options for Council are:

1. Support the continued operation of existing land uses at The Farm and progress a Planning Proposal as a mechanism by which approval for currently unauthorised uses can be considered.

As outlined above, the Planning Proposal application has been submitted. However, further work is required to assess the proposal against relevant State and Local Strategies, leading to the drafting of a clause to be added to Schedule 1 of Byron LEP, to clearly define the nature and scale of uses that are potentially suitable at The Farm.

If this option were chosen, the intention would be to report to the December 2017 meeting of Council with details of this further assessment.

2. Not support the Planning Proposal; require compliance with existing approvals and undertake enforcement action to ensure such compliance is attained within a specified timeframe.

Enforcement action would include the serving of appropriate notices requiring specified actions to cease unauthorised uses. There would likely be significant resources required of Council's enforcement team to monitor actions undertaken at the Farm in compliance with those notices.

Ongoing compliance actions would also potentially require significant resources, particularly in relation to conditions restricting the number of people on-site at any one time.

**Recommendation:**

The LEP amendment can provide a mechanism to authorise existing land use at The farm in a way that addresses potential land use conflicts and community concerns.

It should be possible to craft an Additional Permitted Uses clause in such a way as to clearly define the nature and scale of acceptable land uses, particularly to ensure that the future scope of those land uses is limited.

This mechanism can also be used to ensure that appropriate buffers are put in place to protect adjoining farming practices.

It is recommended that Council support the Planning Proposal, allowing staff to move forward to craft an Additional Permitted Uses clause that will achieve positive outcomes for The Farm and for the community.

**Financial Implications**

Should Council resolve to progress the Planning Proposal application, the preparation and assessment of that Proposal would be at the cost of the developer.

**Statutory and Policy Compliance Implications**

The relevant policy considerations are addressed above and would be further assessed in consideration of the Planning Proposal should Council resolve to proceed with that option.



**Report No. 13.19      PLANNING - 10.2017.198.1 Mixed Use Development for Three (3) Commercial Tenancies (for use as Shop, Restaurant or Cafe or Office Premises) and Six (6) Shop Top Housing Dwellings at 9 Station Street Bangalow**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Luke Munro , Planner  
**File No:** I2017/1437  
**Theme:** Ecology  
 Development and Approvals

**Proposal:**

**Proposal description:** Mixed Use Development for Three (3) Commercial Tenancies (for use as Shop, Restaurant or Cafe or Office Premises) and Six (6) Shop Top Housing Dwellings

**Property description:** LOT: 334 DP: 755695, LOT: 1 DP: 123326, LOT: B DP: 327228  
 9 Station Street BANGALOW

**Parcel No/s:** 193400, 85390, 178620

**Applicant:** Northern Rivers Land Solutions Pty Ltd

**Owner:** Gordon Highlands Pty Ltd

**Zoning:** B2 Local Centre

**Date received:** 10 May 2017

**Integrated Development:** No

**Public notification or exhibition:**

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 1/6/17 to 21/6/17 (3 weeks per Chris Larkin)
- Submissions received: 22

**Planning Review Committee:** 20/06/2017

**Delegation to determination:** Council

**Issues:**

- Located in Bangalow Conservation Area
- Located adjacent to Heritage Items (A&I Hall and Bangalow Showground)
- Voluntary Planning Agreement for Car Parking

**Summary:**

In summary the application seeks development consent for erection of a three (3) storey mixed-use residential and commercial development including six (6) Shop Top Housing dwellings, three (3) commercial premises and car parking for fifteen (15) vehicles (inclusive of one (1) disabled parking bay) over 9 Station Street, Bangalow

The proposal is considered to satisfy the relevant provisions of Byron LEP 2014. The subject site falls within the boundaries of the Bangalow Conservation Area. The applicant has submitted a 'Statement of Heritage Impact' demonstrating the proposal will be contributory to the surrounding conservation area. The proposed building is considered to be compatible with the Bangalow Conservation Area and consistent with Council's DCP 2014 Part C Non-Indigenous Heritage. In addition, the proposed development is consistent with all relevant state planning instruments and with the provisions of the Byron Local Environmental Plan 2014 & Development Control Plan 2014. In terms of a previous development that was refused by Council, the proposal represents a significant reduction in building footprint, bulk and scale. Having regards to the Commercial Zoning

of the land (B2 Local Centre) the proposal is considered to be a suitable response to the site, is articulated and setback from the front boundary with small garden courtyard areas facing Station Street. The application is recommended for approval subject to Conditions of Consent.

5 NOTE TO COUNCILLORS:




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

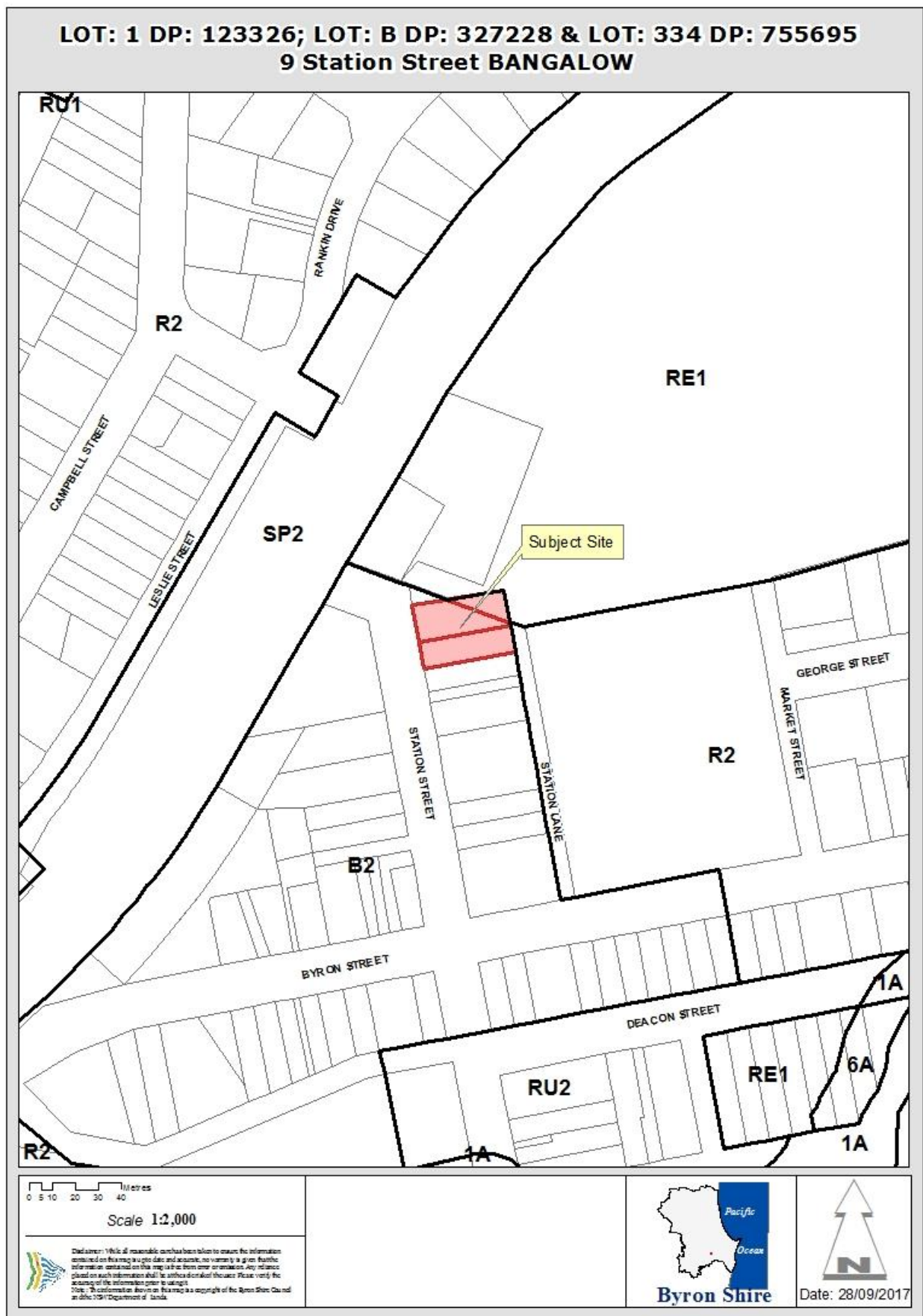
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**RECOMMENDATION:**

**That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2017.198.1 for mixed use development for three (3) commercial tenancies (for use as shop, restaurant or cafe or office premises) and six (6) shop top housing dwellings, be granted consent subject to conditions listed in Attachment 3 (#E2017/94032).**

15 **Attachments:**

- 1 Refusal photos(DA 10.2013.270.1) v current proposal redesign (DA 10.2017.198.1) 9 Station Street, Bangalow, E2017/93540 
- 2 Proposed Plans 10.2017.198.1 9 Station Street, Bangalow, E2017/93558 
- 20 3 Conditions of consent 10.2017.198.1 9 Station Street Bangalow, E2017/94032 
- 4 Confidential - submissions 10.2017.198.1 - 9 Station Street Bangalow , E2017/94077



**Assessment:**

**1. INTRODUCTION**

**1.1. History/Background**

The site has been subject to a number of development applications as shown below.

10	2016	686	1	Subdivision of Three (3) Lots into Three (3) Lots and Tree Removal (Three (3) Trees)	Approved	22/12/2016
10	2015	503	1	Subdivision to create 4 allotments	Withdrawn	17/11/2015
10	2014	714	1	Demolition of existing dwelling and garage and all other structures (S82A Review)	Approved	16/07/2015
10	2013	570	1	Partial demolition of existing dwelling and garage, consolidation of three lots and construction of a two storey mixed residential and commercial building with basement car park and attic roof spaces	Refused	20/03/2014
10	2012	555	1	Demolition of existing dwelling and garage. Erection of a four (4) storey mixed residential and commercial building including eight (8) dwellings (Residential flat building), three (3) shops and basement car parking for eighteen (18) vehicles.	Refused Council	18/04/2013
10	2012	482	1	Demolition of existing structures and construction of a mixed Residential/Commercial development	Rejected	23/10/2012
10	2012	448	1	Demolition of existing dwelling - house and four (4) car garage. Erection of a four (4) storey, mixed residential and commercial building including eight (8) dwellings (Residential flat building) three (3) shops and basement carparking for eighteen (18) v	Rejected	03/10/2012
10	2011	176	2	S96 - Removal of condition relating to consolidating lots, dwelling, hours of operation and residential occupation (Change of use - Dwelling to Shop)	Approved	27/10/2011
10	2011	176	1	Change of use - Dwelling to Shop	Approved	07/07/2011
10	2010	435	1	Tree Removal - One (1) Tree	Approved	03/09/2010

**10.2012.555.1** Development application seeking consent for Demolition of existing dwelling and garage. Erection of a four (4) storey mixed use residential and commercial building including eight (8) dwellings (Residential flat building), three (3) Shops and basement car parking for eighteen (18) vehicles. Council at its Ordinary Meeting held 18 April 2013 resolved to refuse the application. Refusal upheld by the Land And Environment Court on appeal.

**10.2013.570.1** Removal of existing dwelling, demolition of existing garage. Erection of a two-storey mixed residential and commercial building including eight (8) dwellings (residential flat building), three (3) shops with basement car park and attic.

**1.2. Description of the proposed development**

This application seeks approval for Mixed Use Development for Three (3) Commercial Tenancies (for use as Shop, Restaurant or Cafe or Office Premises) and Six (6) Shop Top Housing Dwellings.

The site has been previously cleared in accordance with development consent 10.2014.714.1 and has been further approved for a three (3) into three (3) subdivision in accordance with development consent 10.2016.686.1 setting up the lot layout for the current proposal.

The proposal will be comprise three (3) individual buildings constructed over each of the approved allotments under 10.2016.686.1 and will consists of the following:

<b>Building</b>	<b>Tenancies/Dwellings</b>
<b>Building 1</b>	1 Shop at Ground Level
	1 x 1 bedroom unit on first floor
	1 x 1 bedroom unit on second floor
<b>Building 2</b>	1 Shop at Ground Level
	1 x 3 bedroom unit on first floor
	1 x 2 bedroom unit on second floor
<b>Building 3</b>	1 Shop at Ground Level
	1 x 2 bedroom unit on first floor
	1 x 1 bedroom unit on second floor

5 The application specifically involves:

- Erection of three (3) storey mixed-use residential and commercial buildings (consisting of 3 individual buildings) which include:

- six (6) dwellings (Shop Top Housing) comprising 3 x 1 bedroom dwellings, 2 x 2 bedroom dwelling and 1 x 3 bedroom dwelling;
- three (3) ground floor shops comprising Shop 1 (floor area 78.5m<sup>2</sup>), Shop 2 (floor area 112m<sup>2</sup>) and Shop 3 (floor area 80.5m<sup>2</sup>), each tenancy will provide individual toilet facilities;
- rear at grade car parking for fifteen (15) vehicles inclusive one (1) disabled parking bay plus a single loading bay. Individual storage rooms for each of the dwelling units will be located at the rear of the commercial premises, with bin enclosures over each lot to service each building.
- Vehicular access to the site will be solely via Station Lane with footpaths adjacent to the side boundaries providing pedestrian access to Station Street.
- The development will consist of three (3) independent buildings over each of the existing allotments, but will present as a single structure when viewed from the street. The development will present as a two (2) storey structure from Station Street with the third storey stepped back from the street frontage by 9.5m and located 5m behind the parapet of the shops and first floor dwellings.
- a high-set pitched roof design for each building/site has been used to break up the bulk of the proposed development when viewed from the street. Balconies have also been incorporated at the front and rear of the development to further break up the bulk and scale of the development when viewed from the street.

The proposal is rendered masonry to the ground level with predominantly weatherboard to the first and second floors with colorbond metal roof sheeting. The building design incorporates balconies of varying width to the eastern and western elevations providing awnings to the commercial tenancies below.

For comparisons of the proposed development against the refused application DA10.2012.555.1, please refer to Attachment 1.



**1.3. Description of the site**

Land is legally described as LOT: 334 DP: 755695, LOT: 1 DP: 123326, LOT: B DP: 327228  
Property address is 9 Station Street BANGALOW

Land is zoned: B2 Local Centre

Land area is: 1,112.9m<sup>2</sup>

Property is constrained by:

- Bangalow Conservation Area
- Drinking Water catchment

The total area of the site is 1123m<sup>2</sup>. The site has a length of 40.55m with a frontage of 27.93m to Station Street. To the rear the site also has a frontage of approximately 15m to an unformed portion of Station Lane.

The level of the site generally falls from its north-western corner on the Station Street frontage (RL 50.17 highest point) to the south and east (RL 47.63 lowest point).

The site is located at the northern end of Station Street within the Bangalow Conservation Area. The Bangalow Showgrounds adjoin the property to the north and north-west, with an entry gate (and associated building) for the Showgrounds and Scout Hall located immediately to the north. The A & I Hall is located to the north-east of the site at the end of Station Street. To the rear of the site on the opposite side of Station Lane is the Bangalow Public School, the western side of the School grounds nearest the subject site are the location of a School Hall and a staff parking area. To the south the site is adjoining by an existing residential property containing a single storey dwelling of timber construction with iron roofing.



**2. SUMMARY OF REFERRALS**

The following comments are a summary of issues raised during the internal referral process by Staff and the Heritage Advisor.

**Environmental**

- 5 Preliminary Contaminated Land Assessment prepared by Melaleuca Group Pty Ltd dated 2<sup>nd</sup> August 2016 reports that lead levels in the soil profile that are above the Health Investigation Limits (HIL) for residential and commercial land uses recommended by NSW EPA (2011) Guidelines for Consultants Reporting on Contaminated Sites. Conditions of consent recommended requiring that a remedial action plan be submitted to Council for approval prior to the issue of a construction certificate for building works. It is further noted that the site contains an asbestos clad shed. Removal and disposal works must be undertaken in accordance with WorkCover Authority. Conditions to apply.

**Engineering**

**Station Lane Upgrade**

- 15 Plans have been submitted showing lane upgrade works. The laneway upgrade proposes a width of 5.9m. Given the natural constraints of the laneway and corresponding low speed environment the proposed upgrade is considered acceptable. A speed bump just north of the pedestrian gate into the school is recommended in the SEE and is to be conditioned. The laneway will need to be upgraded back to Byron Street

**Carparking**

- 25 The applicant has stated they are willing to enter into a voluntary planning agreement with council in regards to car parking short fall of eight spaces. Appropriate conditions to apply.

**S94 Officer**

Planning Agreement

- 30 Council had adopted the Byron Developer Contributions Plan 2012 in December 2012. This plan levies contributions for residential development under the terms of Section 94 of the Environmental Planning and Assessment Act 1979. Contributions for all other types of non residential development such as commercial and industrial are levied under section 94A of the Act. Section 94A levies are calculated at 1% of the cost of construction of the development. Section 94A (2) states: “A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 94.” As S94 contributions for parking cannot be levied on development for which a 94A levy is charged Council will accept a contribution for a shortfall in car parking in the form a planning agreement.

Under the terms of DCP 2014 contributions for car parking are only available for commercial development in town centres where Council has provided or will provide public car parking.

- 40 At the Meeting of 16 July 2015 Council resolved to grant delegation to the General Manager to exhibit and enter into planning agreements where the value per parking space is set as per the following table:

Proposed Contributions Rate Per Car Space for a VPA	
Locality	Per Space
Byron Bay CBD	38,000
Brunswick Heads CBD	61,690
Bangalow	5,600
Mullumbimby CBD	7,525

The cost per space in Bangalow indexed to July 2017 is now \$5775.81 per car space.

A planning agreement is made under the terms of section 93F of the Environmental Planning and Assessment Act 1979. The public purpose of this planning agreement is to pay for the provision of a public amenity being car parking.

- 5 Section 93I applies to the imposition of conditions of consent with respect to planning agreements. Section 93I (3) allows a consent authority to require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with a development application. It is reasonable to impose a condition on the consent to require the developer to enter into a planning agreement.

10

Eight (8) spaces are required for a total value of \$44,800.00.

### **Heritage**

- 15 The application was referred to Councils Heritage Advisor who has endorsed the current proposal and concluded the following:

20 *"I consider that the proposed development, through its scale, bulk, form, aesthetic character, detailing, external finishes and colours is a well-designed, infill development which is respectful of the heritage conservation area and the setting of heritage items within this streetscape. I consider that it would not have an adverse impact upon the historic and aesthetic significance of the Bangalow Conservation Area or the setting of heritage items in the vicinity of the site. I concur with the findings of the SOHI in Appendix A submitted by Everick Heritage Consultants Pty Ltd dated 31.08.16.*

- 25 *I also endorse the recommendations of the SOHI in relation to the detailed design phase of the future development and the archaeological excavation permit requirements."*

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

- 30 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**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
<b>State Environmental Planning Policy No 55— Remediation of Land</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Preliminary Contaminated Land Assessment prepared by Melaleuca Group Pty Ltd dated 2 <sup>nd</sup> August 2016 reports that lead levels in the soil profile that are above the Health Investigation Limits (HIL) for residential and commercial land uses recommended by NSW EPA (2011) Guidelines for Consultants Reporting on Contaminated Sites.  Therefore conditions have been imposed requiring that a detailed contaminated land assessment and remedial action plan be submitted to Council for approval prior to the issue of a construction certificate for subdivision works.		
<b>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comment: SEPP No.65 applies to 'residential flat building' development. <b>Residential flat building</b> means a building that comprises or includes:  (a) <b>3 or more storeys</b> (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and (b) <b>4 or more self-contained dwellings</b> (whether or not the building includes uses for other		



	<b>Satisfactory</b>	<b>Unsatisfactory</b>
<p>purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the <i>Building Code of Australia</i>.</p> <p><i>The proposed development comprises three (3) storeys and six (6) dwellings and therefore SEPP No.65 is applicable to the proposed development.</i></p> <p><i>The development has responded appropriately to the Design Principles contained within the Apartment Design Guide and the SEPP where relevant to a small rural town centre. The development has been designed by an Architect as required under the SEPP.</i></p>		
<b>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Consideration:</u> A valid BASIX certificate has been supplied. All relevant energy commitments have been shown on the plans.		

### **3.2 Byron Local Environmental Plan 2014 (LEP 2014)**

- 5 LEP 2014 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 it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input type="checkbox"/> 1.1  <input checked="" type="checkbox"/> 1.1AA  <input checked="" type="checkbox"/> 1.2  <input checked="" type="checkbox"/> 1.3  <input checked="" type="checkbox"/> 1.4  <input checked="" type="checkbox"/> Dictionary  <input type="checkbox"/> 1.5  <input checked="" type="checkbox"/> 1.6  <input checked="" type="checkbox"/> 1.7  <input checked="" type="checkbox"/> 1.8  <input type="checkbox"/> 1.8A  <input checked="" type="checkbox"/> 1.9  <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1  <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input type="checkbox"/> 2.4   <input type="checkbox"/> 2.5   <input type="checkbox"/> 2.6   <input type="checkbox"/> 2.7   <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1  <input type="checkbox"/> 3.2  <input type="checkbox"/> 3.3
Part 4	<input type="checkbox"/> 4.1  <input type="checkbox"/> 4.1A  <input type="checkbox"/> 4.1AA  <input type="checkbox"/> 4.1B   <input type="checkbox"/> 4.1C  <input type="checkbox"/> 4.1D  <input type="checkbox"/> 4.1E  <input type="checkbox"/> 4.2  <input type="checkbox"/> 4.2A  <input type="checkbox"/> 4.2B  <input type="checkbox"/> 4.2C  <input type="checkbox"/> 4.2  <input checked="" type="checkbox"/> 4.3  <input checked="" type="checkbox"/> 4.4   <input checked="" type="checkbox"/> 4.5   <input type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1  <input type="checkbox"/> 5.2  <input type="checkbox"/> 5.3  <input type="checkbox"/> 5.4  <input type="checkbox"/> 5.5  <input type="checkbox"/> 5.6  <input type="checkbox"/> 5.7  <input type="checkbox"/> 5.8  <input type="checkbox"/> 5.9  <input type="checkbox"/> 5.9AA  <input checked="" type="checkbox"/> 5.10  <input type="checkbox"/> 5.11  <input type="checkbox"/> 5.12  <input type="checkbox"/> 5.13
Part 6	<input type="checkbox"/> 6.1  <input type="checkbox"/> 6.2  <input type="checkbox"/> 6.3  <input type="checkbox"/> 6.4  <input checked="" type="checkbox"/> 6.5  <input checked="" type="checkbox"/> 6.6  <input type="checkbox"/> 6.7  <input type="checkbox"/> 6.8  <input type="checkbox"/> 6.9

- 10 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 Dictionary as Commercial Premises (Shop, Restaurant or Café and Office Premises), Shop Top Housing;
  - (b) The land is within the B2 Local Centre according to the Land Zoning Map;
  - (c) The proposed development is permitted with consent; and
- 15 (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.	The proposed development incorporates three (3) individual commercial tenancies which will enable a greater range of businesses to locate within the Bangalow Town Centre.
To encourage employment opportunities in accessible locations.	The development through the provision of three (3) commercial tenancies will provide for future employment opportunities within the centre of Bangalow. The site is considered to be in a highly accessible location within the town centre.

To maximise public transport patronage and encourage walking and cycling.	The development is located within the Bangalow town centre and will be easily accessible by both walking and cycling.
To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.	The development incorporates six (6) Shop Top Housing dwellings which will provide permanent accommodation above the ground floor commercial premises to encourage a vibrant centre after normal business hours.

The following comments are provided on specific LEP clauses.

<b>LEP Requirements</b>	<b>Comment</b>																						
<b>4.3 Height of Buildings</b>	<p>The proposed mixed use commercial and residential development will have a maximum height of 9.0m above natural ground level. The maximum allowable height limit for the site is 9.0m.</p> <p><i>The development will incorporate 3 separate buildings over with one (1) over each of the lots.</i></p> <table> <tr> <td><i>Building 1 (incorporating Shop 1, Unit 1 and Unit 4)</i></td><td align="right"><i>9.30m</i></td></tr> <tr> <td><i>Building 2 (incorporating Shop 2, Unit 2 and Unit 5)</i></td><td align="right"><i>9.50m</i></td></tr> <tr> <td><i>Building 3 (incorporating Shop 3, Unit 3 and Unit 6)</i></td><td align="right"><i>9.40m</i></td></tr> </table> <p><b>The site will incorporate an excavation of up to 1.5m to ensure the buildings are below the 9m height limit. The development complies with the 9m height limitation.</b></p>	<i>Building 1 (incorporating Shop 1, Unit 1 and Unit 4)</i>	<i>9.30m</i>	<i>Building 2 (incorporating Shop 2, Unit 2 and Unit 5)</i>	<i>9.50m</i>	<i>Building 3 (incorporating Shop 3, Unit 3 and Unit 6)</i>	<i>9.40m</i>																
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<b>4.4 Floor Space Ratio</b>	<p>The development will result in a total FSR of <b>0.72:1</b> which is below the allowable FSR of 1:1 based on the total site area of 1,112.9m<sup>2</sup>. <b>Therefore the development complies with the allowable FSR for the site.</b></p> <p>The proposed floor area of the proposed tenancies are listed below:</p> <table> <tr> <th><b>Tenancy/Unit</b></th><th><b>Area (m<sup>2</sup>)</b></th></tr> <tr><td>Shop 1</td><td align="right">78.5</td></tr> <tr><td>Shop 2</td><td align="right">112</td></tr> <tr><td>Shop 3</td><td align="right">80.5</td></tr> <tr><td>Unit 1</td><td align="right">75</td></tr> <tr><td>Unit 2</td><td align="right">118</td></tr> <tr><td>Unit 3</td><td align="right">91.5</td></tr> <tr><td>Unit 4</td><td align="right">65</td></tr> <tr><td>Unit 5</td><td align="right">111</td></tr> <tr><td>Unit 6</td><td align="right">65</td></tr> <tr><td><b>Total</b></td><td align="right"><b>796.5</b></td></tr> </table>	<b>Tenancy/Unit</b>	<b>Area (m<sup>2</sup>)</b>	Shop 1	78.5	Shop 2	112	Shop 3	80.5	Unit 1	75	Unit 2	118	Unit 3	91.5	Unit 4	65	Unit 5	111	Unit 6	65	<b>Total</b>	<b>796.5</b>
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Unit 4	65																						
Unit 5	111																						
Unit 6	65																						
<b>Total</b>	<b>796.5</b>																						
<b>5.10 Heritage conservation</b>	<p>The applicant has submitted a 'Statement of Heritage Impact' (SoHI) for the proposed development prepared by Everick Heritage Consultants dated 31 August 2016 which addresses Clause 5.10 of the Byron LEP 2014. <b>Following a review of the submitted SoHI it is considered that the proposal adequately addresses the above matters specified within Clause 5.10 of the Byron LEP 2014.</b></p> <p>The SoHI concludes:</p>																						

*"The proposal complies with planning controls and meets the performance criteria for infill development as set out in the Byron Shire Development Control Plan 2014. Whilst there are considered to be minor impacts on historical subdivision patterning as a result of the reconfiguration of a two-lot street frontage into three, this may also be considered effectively the 'next phase' in a succession of historical boundary adjustments.*

*The Proposal will sit across the three-lot street frontage but respect is paid to its heritage context in terms of scale, sympathetic form, fabric, setbacks. Design considerations such as adherence to the historical street frontage setback, 3m+ side setbacks, retention of street trees, retention of view lines within Station Street and between buildings are addressed by the Proposal. The Proposal will not visually dominate or compete with the A&I Hall. Specific mitigation measures have been implemented to ensure that the bulk and massing along the street frontage is restrained through the introduction of a single storey element on the southwest corner. The Proposal will not visually dominate or compete with the A&I Hall. Overall, the Proposal sits well within the site and green screening is conserved which goes some ways to minimise any detrimental impacts to the streetscape and visual amenity."*

The application and SoHI was assessed by Councils Heritage Advisor who provided the following assessment of the proposal:

*"The proposed development, through its scale, bulk, form, aesthetic character, detailing, external finishes and colours is a well-designed, infill development which is respectful of the heritage conservation area and the setting of heritage items within this streetscape. I consider that it would not have an adverse impact upon the historic and aesthetic significance of the Bangalow Conservation Area or the setting of heritage items in the vicinity of the site. I concur with the findings of the SOHI in Appendix A submitted by Everick Heritage Consultants Pty Ltd dated 31.08.16.*

*I also endorse the recommendations of the SOHI in relation to the detailed design phase of the future development and the archaeological excavation permit requirements."*

#### **Height/Bulk**

*The proposed development is two story with a third floor of accommodation within the roof space, which is set back approximately half way back along the roof line. The 9m apex height of the building is considered acceptable in principle and appears lower than the historic landmark buildings, however accurate comparative heights would be useful to assess this matter with details submitted at the formal stage. The previous court judgement outlined common agreement that a two storey form of development is anticipated by the planning controls for this site and is considered acceptable. The overall bulk of the building is broken up with two stepped levels of verandahs and a multi gabled roof.*

<b>6.6 Essential Services</b>	<p>The site has access to reticulated Sewage &amp; Water, road network, electricity: The development is able to connect to Council services subject to payment of contributions.</p> <p>A conceptual stormwater management plan has been submitted with the proposal.</p>
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### **Bangalow Settlement Strategy 2003**

- 5 *"The Bangalow Settlement Strategy provides a plan to conserve the identity and heritage of Bangalow. The Strategy outlines the constraints to development of the village. It proposes strategies to manage the village's growth over the next ten to twenty years so as to maintain the character, image, built form, heritage values, and to maximise the use of available land, infrastructure and natural resources to achieve the community's vision."*
- 10 Section 6 of the Strategy specifies how the Strategy is to be implemented. Section 6.1 specifies:
- "6.1 New Planning Controls*
- 15 *The Bangalow Settlement Strategy will be implemented through new planning controls. Council has resolved to prepare a new shire-wide place-based instrument that will address the outcomes of a number of Settlement Strategies and other matters. It will contain a specific section for the village of Bangalow.*
- 20 *The outcomes envisioned in this Strategy require immediate implementation through amendments to planning controls such as the Local Environmental Plan and Development Control Plans."*
- 25 **Assessment:** Council has adopted new planning controls in Bangalow under Byron LEP 2014. The DCP is yet to be amended to any extent for Bangalow, however new DCP provisions have been drafted under DCP 2014 Part C Non-Indigenous Heritage. Council is working with the Bangalow Community on a Masterplan and should this plan be adopted by Council then further amendments to the planning controls for Bangalow may eventuate. Not-with-standing this Council is required to assess and determine the application based on current applicable planning controls, not on controls yet to be drafted let alone formerly exhibited.

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

No draft EPI's affect the proposal

### **3.3 Byron Shire Development Control Plan 2014 (DCP 2014)**

- 40 DCP 2014 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 it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	
Part B Chapters:	<input type="checkbox"/> B2  <input checked="" type="checkbox"/> B3  <input checked="" type="checkbox"/> B4  <input checked="" type="checkbox"/> B5  <input type="checkbox"/> B6  <input type="checkbox"/> B7  <input checked="" type="checkbox"/> B8  <input checked="" type="checkbox"/> B9  <input checked="" type="checkbox"/> B10  <input type="checkbox"/> B11  <input type="checkbox"/> B12  <input checked="" type="checkbox"/> B13  <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C1  <input type="checkbox"/> C2  <input type="checkbox"/> C3  <input checked="" type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D1  <input type="checkbox"/> D2  <input type="checkbox"/> D3  <input checked="" type="checkbox"/> D4  <input type="checkbox"/> D5  <input type="checkbox"/> D6  <input type="checkbox"/> D7  <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1  <input checked="" type="checkbox"/> E2  <input type="checkbox"/> E3  <input type="checkbox"/> E4  <input type="checkbox"/> E5  <input type="checkbox"/> E6  <input type="checkbox"/> E7

These following comments are provided on specific DCP provisions

<b>What Section and prescriptive measure does the development not comply with?</b>	<b>Does the proposed development comply with the Objectives of this Section? Address.</b>	<b>Does the proposed development comply with the Performance Criteria of this Section? Address.</b>
<b>B4 Car Parking</b>	Yes – Given the site has a total of 15 parking spaces available there is a shortfall of 8 spaces which will be provided under a Voluntary Planning Agreement with Council or provided on an alternative land parcel to benefit Council and the development.	Yes – The development will generate a car parking requirement of: <ul style="list-style-type: none"> <li>• 8 spaces for residents plus 2 visitor spaces. Total required 9 spaces, these spaces are to be for the exclusive use of the resident's onsite.</li> <li>• The Commercial Tenancies generate a requirement for 14 parking spaces.</li> </ul> <p>A total of 15 spaces are provided onsite with a shortfall of 8 spaces.</p> <p>The applicant has agreed to enter into a Voluntary Planning Agreement for the provision of additional car parking off site. Or provided on an alternative land parcel to benefit Council and the development.</p>
<b>B4.2.9 Loading Bays</b>	Yes – The development provides one (1) Small Rigid Vehicle Loading Bay in accordance with Table B4.2 – Loading Bays	Yes – The development provides one (1) Small Rigid Vehicle Loading Bay in accordance with Table B4.2 – Loading Bays
<b>B4.2.10 Monetary Contributions</b>	Yes – The applicant has proposed a Voluntary Planning Agreement to provide a monetary contribution for the shortfall of 8 parking spaces.	Yes – The applicant has proposed a Voluntary Planning Agreement to provide a monetary contribution for the shortfall of 8 parking spaces.
<b>B14.2 Excavation and Fill in all Zones</b>	Yes – The development will maintain landscaping along the Station Street frontage which will make a positive	Council may consider accepting a monetary contribution in lieu of on-site car parking on land predominantly zoned B2 where there is a nexus between the development and the area in which public parking is or will be provided.
		In this instance the VPA has been accepted by Council's s94 contributions officer.
		Yes – Earthworks are proposed across the development site to create a relatively flat building pad for each lot. The maximum depth of excavation for the

	<p>contribution to the existing and desired future character of the locality and the surrounding area. The additional 0.5m of cut (above 1.0m) will not detrimentally impact on the streetscape as the development maintains landscaping along the full street frontage.</p>	<p>development is approximately 1.5m for a small area near the north-west corner of the site to ensure the building has a maximum height of 9m from natural ground level.</p> <p>The proposed non-compliance with the maximum depth of excavation Prescriptive Measure is considered to satisfy the Element Objectives in this instance in view of the following:</p> <ul style="list-style-type: none"> <li>• The level of the subject site generally descends from the Station Street frontage towards the rear of the site and the proposed cut adjacent to Station Street will allow the building to have a maximum height of 9m from natural ground level. As the land descends to the rear the depth of excavation decreases;</li> <li>• The subject site is located within Bangalow B2 Local Centre Zone;</li> <li>• Council's Development Engineer has raised no objection to the proposed earthworks; and</li> <li>• despite the numeric non-compliance the proposal should not have any unacceptable environmental impacts.</li> </ul>
<b>C1.3.3 Gardens and Landscape</b>	<p>Yes – Landscaping is shown to all site boundaries as part of the development, which will retain a green edge to the site in keeping with the 'garden' character of this streetscape precinct.</p>	<p>Yes – Landscaping is shown to all site boundaries as part of the development. Conditions to apply.</p>
<b>C1.4.1 Roof Form and Chimneys</b>	<p>Yes – The proposed roof retain the characteristic scale and massing of roof forms within the Conservation Area.</p>	<p>Yes - The development provides a roof form that is compatible with the surrounding Conservation area through the use of appropriate pitch, materials, size and form. The roof form has been broken up through the use of multiple gables and valleys to reduce the bulk and scale of the proposal.</p>
<b>C1.4.2 Verandahs</b>	<p>Yes The proposal incorporates verandahs and balconies to</p>	<p>Yes – The proposal incorporates verandahs and balconies to compliment the</p>

<b>C1.5.1 New Development in the Vicinity of a Heritage Item</b>	<p>compliment the existing character of commercial buildings within Bangalow.</p> <p>Yes – The proposed development would not have an adverse impact upon the historic and aesthetic significance of the Bangalow Conservation Area or the setting of heritage items in the vicinity of the site.</p>	<p>existing character of commercial buildings within Bangalow. The verandahs are formed through the use of simple skillion verandahs on the site frontage above the commercial tenancies.</p> <p>Yes – The proposed development has been located so as to not overshadow, or impede existing views of the A&amp;I Hall and will not visually dominate, or be incompatible with the heritage item. (Refer to Section 4.2A)</p>
<b>C1.6.9 New Development in Heritage Conservation Areas</b>	<p>Yes The proposed development, through its scale, bulk, form, aesthetic character, detailing, external finishes and colours is a well-designed, infill development which is respectful of the heritage conservation area and the setting of heritage items within this streetscape. The development is complimentary to the existing streetscape character of Station Street and further to the Bangalow Conservation Area.</p>	<p>Yes A SoHI has been provided with the development which demonstrates that the development will be complementary to the Bangalow Conservation Area. The SoHI has been assessed by Councils Heritage Advisor who has supported the proposal in terms of bulk and scale, character and impact on the streetscape.</p>
<b>D1.10.1 Density Control</b>	<p>Yes The dwelling density complies with both the FSR and the Density Control for the site (7 dwellings allowable) with only 6 dwellings proposed.</p>	<p>Yes – The site has a compliant FSR of 0.72:1. The Shop Top Housing dwelling density does not exceed one (1) dwelling per 150 square metres of site area. The allowable density for the site would equate to a maximum of 7 dwellings, only 6 dwellings are proposed.</p>
<b>D1.10.5 Clothes Drying Area</b>	<p>Yes – There is adequate area on the proposed balconies to provide external covered cloths drying facilities, further the laundries are large</p>	<p>Further the development consists of 34% commercial floor space and 66% residential floor space which complies with the minimum 25% commercial floor space requirement.</p> <p>Yes – Adequate balcony areas are proposed provided for clothes drying.</p>

<b>E2.3.2 Development within B2 Local Centre Zone</b>	<p>enough to accommodate a cloths dryer.</p> <p>Yes –</p> <p>The proposed development with its recessed and articulated facades will appears as a two storey commercial development when viewed from Station Street with the 3<sup>rd</sup> floor being well setback from the street frontage.</p> <p>The height and bulk of the development is discussed in further detail below, but is a suitable response to the site (<i>See Heritage Character and Built Form</i>).</p>
<b>Building Height</b>	<p>Yes –</p> <p>The proposed development is generally compatible with adjacent development and complies with the maximum building height of 9.0m which applies to all land in Bangalow.</p>
<b>Verandahs</b>	<p>Yes –</p> <p>The development has incorporated verandahs to the Station Street frontage and provided smaller balconies at the rear of the dwellings. The verandahs do not encroach into the street or across the footpath enable existing street vegetation to remain and embellished at a later time by Council.</p>
<b>Fencing and landscaping</b>	<p>Yes -</p> <p>The development has incorporated landscaping to all boundary setbacks and the development has been setback from the front boundary.</p> <p>The existing street trees will remain.</p>



The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

5

### **3.4 Any Planning Agreement or Draft Planning Agreement?**

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



**3.5 Environmental Planning & Assessment Regulation 2000 Considerations**

<i>Clause</i>	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
<b>92</b>	No	N/A	N/A
<b>93</b>	No	N/A	N/A
<b>94</b>	No	N/A	N/A
<b>94A</b>	No	N/A	N/A

\* Non-compliances and any other significant issues discussed below

**5 3.6 Any coastal zone management plan?**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>	<b>Not applicable</b>
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

10

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	<p>No. The proposal will not have a significantly adverse impact on the built environment of the locality.</p> <p>It is acknowledged that when viewed from the south the proposed building will be a comparatively larger scale building when compared with a number of older established residential buildings within Station Street (excluding the A&amp;I Hall). Notwithstanding, it is considered the proposed design is acceptable in this instance in view of the following:</p> <ul style="list-style-type: none"> <li>the form of the building adjacent to Station Street incorporates what should appear as sympathetic two-storey design, with a first floor balcony and street level awning which are features compatible with existing development in Byron Street and the desired future streetscape for Station Street;</li> <li>the pitched roof design is encourage by Council's DCP 2014;</li> <li>the commercial zoning of the site does not require front, rear or side setbacks;</li> <li>the proposed development complies with the current maximum height control of 9 metres contained within Clause 4.3 of Byron LEP;</li> </ul>
<b>Social Environment</b>	The proposed development is not considered likely to have any unacceptable social or economic impacts in the locality.
<b>Economic impact</b>	The proposal will have an overall positive economic impact on the locality, and will enable job creating businesses to locate within the three (3) commercial tenancies.

Are there any Council Policies that are applicable to the proposed development? None

### 3.8 The suitability of the site for the development

- 5 The site is considered to be suitable for the proposed development. As detailed above of this report the design and form of the proposed development is considered to be acceptable. The proposed development incorporates, at street level, three new commercial tenancies to contribute the commercial floor space within the existing town centre. In principle the development provides for a mixed-use development which includes an alternative form of residential accommodation located conveniently for access to the services of the commercial centre.

### 10 3.9 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited. There were a total of 22 submissions (21 individual submissions and 1 petition with 69 signatures) made on the development application:

Submission	Consideration
<b>Height, Bulk and Scale</b> The proposed building would be detrimental to the streetscape and would set a precedent of large bulk developments within Station Street, which does not comply with the DCP or LEP which describe "Station Street is very different from Byron Street being largely low key residential with houses of historic design and plenty of green space".	The proposed development is considered to be of a design which is not incompatible with the heritage characteristics of the Bangalow Heritage Precinct, satisfying the height controls for the area under Byron LEP 2014, as discussed above in the body of the report.
<b>Building Design</b> The buildings design is not compatible with the character of the street or Bangalow CBD and has 3 lot frontage which no other building in this area has.  The building gives the impression of a modern structure that makes a token effort to address heritage requirements. The proposed cladding, colours, verandahs and roofline just dress up the building which is a modern shopping centre.	The Bangalow Local Centre is typified by 2 storey commercial buildings with a number of heritage items located in Byron Street (eg The Strand Shops) being constructed across the full frontage of lots and built to boundaries.  The proposed development is considered to be of a design which is not incompatible with the heritage characteristics of the Bangalow Conservation Area, is articulated, setback from the street boundary and side boundaries, maintain a garden setting and provides a suitable response to the sites constraints and planning controls.
<b>Exceeding the Height Limits</b>  The proposed third storey is not in keeping with the DCP 2014, previous Land and Environment Court judgements over previous 3 storey proposals. Station Street – all other commercial buildings are low-rise.  In addition the height of the building is above the 9m height restriction in the Byron LEP 2014 as identified in the consultant report: <ul style="list-style-type: none"> <li>• Building 1 – 9.3m</li> <li>• Building 2 – 9.5m</li> <li>• Building 3 – 9.4m</li> </ul>	There is no limit to the number of storeys however the site is restricted to a 9m height in accordance with the LEP 2014. The development complies with Byron LEP 2014. "  The site is not limited to a single storey. The Byron DCP 2014 under Chapter C1 Section 1.6.1 – General Policy states: Development in all areas must remain single storey ( <b>apart from land zoned B2 in Bangalow Heritage Conservation Area</b> ) in height to maintain the visual character and unity of the streetscape.  Further DCP controls cannot override planning

	controls and development standards as established in an LEP.
<p><b>Proposed 3<sup>rd</sup> Storey</b></p> <p>The development of a third storey is not in keeping with the DCP 2014 or in keeping with the streetscape character of Station Street. In addition the 3<sup>rd</sup> storey will be dominate within the streetscape and will detract from the A&amp;I Hall and will impact on the vistas and look over adjoining cottages.</p> <p>By excavating the building down it is a slight of hand by complying with the height limit but not the number of storeys.</p>	<p>Councils heritage advisor has provided an assessment of the proposal in Section 2 and has concluded that the proposed development being two storey with a third floor of accommodation within the roof space, is considered acceptable in this instance.</p> <p>The proposed development is expected to take the appearance of a two-storey building when viewed from the Station Street frontage. The development is considered to be consistent with the future character for the Bangalow commercial centre as currently envisaged under the applicable planning controls.</p>
<p><b>Heritage</b></p> <p>The design is not in keeping with the heritage feel of Bangalow. And will have an undesirable impact on the Conservation Area including four (4) heritage items in close proximity to the site.</p> <p>The building set from boundary to boundary over 3 lots will have a bulk and scale that will detract from the visual impact of the A&amp;I Hall and would diminish its primacy within the streetscape.</p>	<p>A SoHI has been provided with the development which demonstrates that the development will be complementary to the Bangalow Conservation Area. The SoHI has been assessed by Councils Heritage Advisor who has supported the proposal in terms of bulk and scale, character and impact on the streetscape concluding that:</p> <p><i>“The proposed development would not have an adverse impact upon the historic and aesthetic significance of the Bangalow Conservation Area or the setting of heritage items in the vicinity of the site.”</i></p>
<p><b>Residential Amenity</b></p> <p>The location the A&amp;I Hall in relation to proposed residential dwellings will negatively impact on the amenity of future residents due to the events conducted in the areas surrounding the site.</p>	<p>The subject site is located within the B2 Local Centre Zone, a Zone in which commercial activities are encouraged. It is considered that residents living within the Local Centre Zone should not have the same expectations for residential amenity as those living within the R2 Low Density Residential Zone.</p>
<p><b>Shop Top Housing</b></p> <p>The concept of Shop Top Housing has been stretched beyond the original definition as understood by the committee members of the original Settlement Strategy.</p> <p>The term Shop Top Housing was intended to reflect 1 residence above 1 shop as typified in Byron Street.</p>	<p>The term Shop Top Housing is defined under the Byron LEP 2014 as:</p> <p><b><i>‘shop top housing means one or more dwellings located above ground floor retail premises or business premises.’</i></b></p> <p>The proposed development complies with the definition as the proposal consists of one or more dwellings located above a ground floor of Commercial Premises.</p>

<p><b>Lack of green space</b></p> <p>The lack of green space does not conform with the existing streetscape, and the DCP recommends trees on both sides of the street.</p> <p>The building is built from boundary to boundary and does not conform with the existing heritage items and interesting buildings in Station Street which have attractive landscaping surrounding them.</p> <p>Further the site should incorporate street trees in accordance with the conservation area.</p>	<p>Landscaping is shown to all site boundaries as part of the development concept, which will retain a green edge to the site in keeping with the 'garden' character of this streetscape precinct.</p>
<p><b>Inadequate car parking provided</b></p> <p>The proposal only provides 71% of the parking generated by this development and is short by at least 6 spaces. Given parking is already at a premium in Station Street this is not appropriate.</p> <p>Station Street is currently heavily used for parking and deliveries and to development should provide adequate parking onsite.</p>	<p>The applicant has provided a total of 15 parking spaces onsite (inclusive of a single disabled parking bay) with a shortfall of 8 spaces. The developer has agreed to enter into a Voluntary Planning Agreement to make up for the shortfall of parking spaces onsite. This has been assessed by Councils Engineers and s94 Officer who have concluded that the VPA is appropriate for the provision of the 8 spaces in this instance.</p>
<p><b>Access to Station Lane</b></p> <p>School children need to be able to safely access Station Lane from Station Street and the development will result in heavy traffic making walking along Station Lane dangerous for school children.</p> <p>Station Lane is the main entry and exit point for all children who live to the west and north of the school. Station Lane is narrow and not wide enough to accommodate 2 way traffic. The lane is too narrow for vehicles to turn around and trucks and larger vehicles will be forced to reverse down the laneway. This has created a potential for a major safety concern for conflict between school children and vehicles.</p>	<p>There is currently no access at the northern end of Station Lane for children to walk along/through to link up to Station Street. The development does not incorporate a dedicated pedestrian link other than to the rear car park area.</p> <p>The use of Station Lane and the interaction of school children using the lane leaving and entering Bangalow Public School. The concern was that children may be in danger due to vehicles using the rear lane.</p> <p>Children do cross the Laneway and walk down the Laneway towards Byron Street. The laneways are important in commercial areas to allow for unloading rather than on Streets, for access to parking and for servicing. The lane is used by school children however, the predominant use for the lane should be for vehicles.</p> <p>It is noted that Station Lane at the rear of the site is required to be upgraded to a full width sealed pavement construction with kerb &amp; gutter and controlled drainage along the site's frontage to the Lane, south of the site through to the existing fully constructed pavement. The lane is</p>

	not a high speed environment and vehicles will be able to enter and leave in a forward direction.
<b>Public Thoroughfare</b> The development needs to provide a gazetted public thoroughfare from Station Street to Station Lane – not controlled by gates.	The development is not required to provide a dedicated public thoroughfare. Access from the car parking area at the rear of the site to Station Street is provided but this will not be dedicated to Council.
<b>Loading and Unloading</b> Large vehicles will be required to load and unload to service the shops creating an unacceptable risk to children walking along Station Lane.	The development will provide a suitable loading bay for the proposed tenancies.
<b>Bangalow Master Plan</b> The development will prejudice the future planning of the area currently being undertaken.	The applicant has applied under the Byron LEP 2014 and Byron DCP 2014 which are the applicable statutory instruments governing development of the site.  The development of the Bangalow Master Plan is ongoing and is yet to be finalised. Council is required to consider the application against current planning controls, not future controls which are yet to be drafted or exhibited.
<b>Contrary to Public Interest</b> Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the built form and environmental impacts of the proposed development are considered to be contrary to the public interest.	The proposal has been assessed and is not contrary to the public interest.
<b>High Density Precedent</b> The development is creating a precedent for high density development.  The development is totally out of character with the town and we are opposed to any development that could create a precedent for greater density that is inconsistent with the towns character and specifically so close to the school.	The development complies with the outcomes sought for the Bangalow Conservation Area and further is significantly below the allowable FSR. The allowable FSR is 1:1 and the proposal seeks a FSR of 0.72:1.  The application also complies with the Dwelling Density of 1 dwelling per 150m <sup>2</sup> of site area for Shop Top Housing.
<b>Similar to Previously Refused Proposal</b> The development is insufficiently different to previous proposals previously refused over the site.  The Commissioner in the Land & Environment Court said NO to building in the street should dominate our recognised historic buildings.	The proposal has significantly reduced the overall bulk and scale of the development (as shown in Attachment 1 and is in no way similar to the development that was refused.  The proposal has incorporated appropriate setbacks to ensure the development does not dominate the A&I Hall.
<b>Privacy of Adjoining Dwellings</b> Lack of privacy to the rear yards of adjoining	The design of the dwellings and rear balconies

residence.  Balconies on the eastern elevation and windows on the southern elevation should incorporate screening.	incorporate solid balustrading and in addition the roof line falls significantly adjacent to 11 Station Street restricting views to the south of the site and acting as a 'screen' to neighbouring dwellings. .
<b>Security</b> Loss of security from pathway adjacent to neighbouring dwellings	The application states there will be a fence along the side and rear boundaries of the site with gates restricting access to the rear of the site after hours.
<b>Overshadowing</b> Shadowing of adjoining dwellings	The subject land is within the commercial precinct of Bangalow, development within this commercial precinct is not required to provide side or front setbacks and in this context it is considered the proposed development should not result in any unacceptable overshadowing.
<b>Soil Contamination</b> Testing of soils has shown elevated levels of lead near the proposed landscaped garden areas.	A Preliminary Contaminated Land Assessment prepared by Melaleuca Group Pty Ltd dated 2 <sup>nd</sup> August 2016 was submitted with the application. This was assessed by Councils EHO, refer to Section 2 of this report.  Conditions have been imposed requiring that the site be remediated. Should the application be refused the site will remain in its limited contaminated state.
<b>Fireplaces</b> Existing dwellings and use of seasonal fireplaces impacting on the amenity of future residents.	The use of fireplaces on adjoining sites will not preclude the development of parcels of land.
<b>Bangalow Settlement Strategy 2003</b> The proposal is inconsistent with the Bangalow Settlement Strategy 2003 – 'to maintain the character, image, built form, heritage values...to achieve the communities vision'	The development is considered to comply with the intent of the Bangalow Settlement Strategy, please refer to discussion above. .
<b>Impact on Learning</b> During the construction of the development this will create significant noise and dust during construction and will impede the learning for the school children.	Potential for noise impacts on occupants of adjoining / nearby buildings given the large scale of this development (ie. demolition, excavation and construction). Conditions will be attached requiring preparation of a Noise Management Plan to identify noise sources during construction and to nominate mitigation measures (to be submitted prior to issuing of the Construction Certificate).
<b>Noise Complaints</b> The school is concerned that given the proximity of residential dwellings, to the school which is inherently a noisy environment That there will likely be ongoing complaints about noise.	The SEE has indicated " <i>Sound proofing of each of the Units would be required in accordance with the Building Codes of Australia, to ensure an adequate acoustic environment. The units</i>

	<p><i>have been designed to have their living areas open onto the Station Street frontage of the site, whilst bedrooms have been located towards the Station Lane frontage of the site". The school will not be operating during the evening when residents are likely to be sleeping.</i></p> <p>Councils Environmental Health Officer has assessed the proposal and recommended relevant conditions.</p> <p>Further, night time events operated in the Showgrounds, A&amp;I Hall and other venues are covered by the POEO Noise Control Regulation.</p>
<p><b>Privacy</b> Any highset apartments looking onto the school grounds is highly inappropriate and a major concern as a child protection issue.</p>	<p>The school hall is located in the north western corner with additional landscape buffer between the hall and Station Lane. The hall and existing landscaping will block out any potential view of the school from the proposed units.</p>

### **3.10 Public interest**

- 5 The proposed development is unlikely to prejudice or compromise the public interest or create a dangerous precedent

### **3.11 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.

### **3.12 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**

### **5.1 Water & Sewer Levies**

- 20 Section 64 levies will be payable.
- Council requires Payment of Developer Servicing Charges (prior to issue of a construction certificate) of:
- 25
- **1.01 ET** for Water &
  - **1.01 ET** Bulk Water; and
  - **1.81 ET** for Sewer.

### **5.2 Section 94 Contributions**

- 30 Section 94 Contributions will be payable.

The section 94 plan and the S94A plan applies to mixed use developments. The plan states that Council will impose whichever condition generates the greater contribution. 1% of the estimated

construction cost of \$1,000,000 is a contribution of \$10,000. It is extremely doubtful that this development could be constructed for \$1,000,000. Regardless of the validity of the applicants cost estimate the S94 charge will be the greater amount. It is appropriate to levy the S94 charge on the consent.

- 5 It should be noted that whilst Council is waiving the S94A charge and imposing the S94 charge Council will still require a VPA for the shortfall in parking as there is no other available mechanism to levy a parking contribution.

10 **5 CONCLUSION**

15 The proposal is considered to satisfy the relevant provisions of Byron LEP 2014. The subject site falls within the boundaries of the Bangalow Conservation Area. The applicant has submitted a 'Statement of Heritage Impact' demonstrating the proposal will be contributory to the surrounding conservation area. The proposed building is considered to be compatible with the Bangalow Conservation Area and consistent with Council's DCP 2014 Part C Non-Indigenous Heritage. The proposal raises no significant issues in terms of environmental impacts or impacts on the Bangalow Heritage Conservation Area and surrounding Heritage Items which cannot be managed and the site is considered suitable for the development.

20 In addition, the proposed development is consistent with all relevant state planning instruments and with the provisions of the Byron Local Environmental Plan 2014 & Development Control Plan 2014. The application is recommended for approval and subject to conditions of consent.

25 **6 DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

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

Provide Disclosure Statement register details here: Not applicable



**Report No. 13.20**      **Response to DPE Short Term Holiday Letting Options Paper**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Shannon Burt, Director Sustainable Environment and Economy  
**File No:**      I2017/1440  
**Theme:**      Ecology  
                  Planning Policy and Natural Environment

### Summary:

The Short Term Holiday Letting (STHL) industry in NSW has expanded significantly in recent years and in response to this, in 2016, the NSW Government conducted a public inquiry on the Adequacy of Regulation of Short Term Holiday Letting in NSW (the Inquiry). The Options Paper now released by the NSW Department of Planning and Environment responds to the 12 recommendations made in the Inquiry's final report (published on 19 October 2016).

The Options Paper includes options on greater industry self-regulation, registration or licensing of STHL operators, changes to strata laws and regulation through the planning system. These options may be considered individually or in combination.

Submissions on the Options Paper will be received by the NSW Department of Planning and Environment up until 31 October 2017.

The purpose of this report is to seek Council support for the preparation of a submission to the Options Paper. This submission will advise the NSW State Government that Council does not accept a standard State wide approach to this issue, given our circumstances to that of other local government areas in NSW in relation to short term holiday letting. That as such, a multi faceted regulatory framework response as detailed in the report is sought by Council to address this issue locally.

To achieve this, legislative change and industry reform is required. As such, Council should also seek an undertaking from the NSW State Government that further engagement with Byron Shire Council and its community will occur subsequent to this consultation, to ensure that the above changes needed to deliver a Byron Shire specific regulation framework can be progressed expeditiously.

### RECOMMENDATION:

1. That Council support the preparation of a submission to the 'Options Paper for Short Term Holiday Letting in NSW' by staff that recommends a multi faceted framework response including greater industry self-regulation, registration / licensing of operators, changes to strata laws and regulation through the planning system, acceptable and appropriate to the Byron Shire for the purposes of regulating short term holiday letting.
2. That Council seek an undertaking by the NSW State Government that further engagement with local government will occur subsequent to this consultation, to ensure that the legislative changes and industry reform needed to deliver the preferred local regulation framework sought by Council and the Byron community can be progressed expeditiously.

### Attachments:

- 1 Short Term Holiday Letting Powerpoint, E2017/95552 

## Report

Short-term Holiday Letting (STHL) is no longer confined to holiday making, but is now commonly used throughout NSW for corporate and business trips, annual community events, family reunions, temporary accommodation while looking for long-term rental, and emergency accommodation.

STHL generally takes four forms in NSW:

- rental of one or more rooms (including room sharing) with the host present;
- rental of a whole dwelling (principal residence) with the host away;
- rental of a holiday dwelling (non-principal residence) with the host away; and
- rental of a dwelling solely reserved for STHL.

Currently STHL in NSW is regulated through the NSW planning system in an inconsistent manner. Some councils have controls and some do not.

Thrown into the mix also are recent Land and Environment Court decisions like: *Dobrohotoff v Bennic* [2013] NSWLEC 61. Details of this case are provided below.

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### 5. *Dobrohotoff v Bennic* [2013] NSWSC 61

This case concerned the use of a property in Terrigal for short term holiday rental accommodation. Justice Pepper held that the use was prohibited, principally because the use of the property was not sufficiently permanent to comprise a 'dwelling house' for the purposes of the relevant zoning in the planning instrument.

In reaching this decision, Justice Pepper was highly critical of Gosford City Council's handling of the issue and also acknowledged that the decision may cause a degree of inconvenience and financial disruption for other property owners who provide short term holiday rental accommodation throughout Gosford.

#### Background

Ms Bennic owned a property in Terrigal which was used for short term holiday rental accommodation (the property). Ms Bennic had bought the property in March 2011 and the previous owners of the property had also used it as a self-contained short term holiday rental. Ms Bennic continued that use when she bought the property, however by the time of the hearing, Ms Bennic had listed the property for sale.

The property had six bedrooms and could accommodate a maximum of 12 or 13 people. It was typically rented out for up to a week at a time.

The Dobrohotoff family lived next door to the property owned by Ms Bennic and were permanent residents of Terrigal.

The Dobrohotoffs had experienced years of noisy and disruptive tenants at the property, both before and after its sale to Ms Bennic. The antisocial behaviour engaged in by the tenants had significant adverse impacts on the amenity of the Dobrohotoffs. Loud music, flashing lights, bucks' and hens' nights and frequent parties extending into the early hours of the morning had caused the Dobrohotoffs a significant amount of stress and anxiety and resulted in them making arrangements to vacate their house during school holidays and weekends in order to avoid the disturbance.

The Dobrohotoffs complained to Gosford City Council about the use of the property in this way but the Council refused to get involved. The Dobrohotoffs brought proceedings against Ms Bennic seeking, among other things, a declaration that the use of the property for short term holiday rental accommodation was in breach of section 78B of the EP&A Act and an injunction to restrain Ms Bennic from using the property for that purpose.

### Was the use of the property for short term holiday rental accommodation a permissible use within the 2(a) Residential zone?

The property was zoned 2(a) Residential under the Gosford Planning Scheme Ordinance (GPSO). The only relevant development permissible with consent in the zone was a 'dwelling house'. The term 'dwelling house' was defined to mean 'a building containing 1, but not more than 1, dwelling'. The term 'dwelling' was defined to mean 'a room or number of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile'.

Justice Pepper referred to cases in which the definition of 'dwelling house' had been held to refer to a building designed for use as a dwelling by a single family. Her Honour noted that whether a building was a 'dwelling house' was a question of fact or degree. In the present case, Her Honour held that it could not be fairly said that the property was being occupied in the same way that a family or other household group in the ordinary way of life would occupy it, as it was rented for short term holiday accommodation and used for bucks' and hens' parties and the like. Therefore the property was not a 'dwelling house', as defined in the GPSO.

Furthermore, Justice Pepper noted that the first limb of the definition of 'dwelling' contained the notion of 'domicile'. Inherent within the term 'domicile' was the notion of a permanent home or, at the very least, a significant degree of permanence of habitation or occupancy. Her Honour held that the present facts disclosed an absence of any permanent habitation or occupation.

Justice Pepper rejected Ms Bennic's submissions on the second limb of the definition of 'dwelling' (the hypothetical test of 'capable of being occupied or used') as those submissions ignored the actual use of the property, which was not as a separate domicile and not as a dwelling house. The actual use of the property constituted 'development' and that was what was at issue.

Justice Pepper held that the rental of the property as holiday accommodation for periods of a week or less to persons using or occupying it other than in the ordinary family or household way, did not constitute a 'domicile', did not constitute a 'dwelling', and therefore, did not constitute a 'dwelling-house' under the GPSO. Her Honour held that as the use of the property was not otherwise permissible, it was prohibited within the Zone and it constituted development in breach the EP&A Act.

In response to growing concerns about STHL the State Government launched the NSW Government a public inquiry on the Adequacy of Regulation of Short Term Holiday Letting in NSW (the Inquiry) in 2016.

Some of the issues the Inquiry identified with the current regulation of STHL through the planning system were that:

- few Local Environmental Plans (LEPs) specifically refer to STHL;
- there is no standardised definition of STHL in the LEPs that do refer to it; and
- those LEPs that do refer to STHL have different thresholds for when STHL requires development consent.

For these reasons, the Inquiry concluded that there would be value in creating a standardised regulatory approach throughout NSW whilst also providing enough flexibility to have variations in an area's specific circumstances taken into account.

The NSW Government has now invited feedback on the 'Options Paper for Short Term Holiday Letting in NSW'. This paper is in response to the Inquiry. There are a number of options outlined in the Options Paper including greater industry self-regulation, registration or licensing of STHL operators, changes to strata laws and regulation through the planning system. These options may be considered individually or in combination. See table below.

Themes	INDUSTRY SELF REGULATION	STRATA REGULATION	PLANNING REGULATION	REGISTRATION
	Refer Section 4	Refer Section 5	Refer Section 6	Refer Section 7
Multiple Options	Code of conduct	By-laws to manage visitor behaviour	Development approval - exempt/ complying	Registration to manage safety and amenity issues
	Complaints management	By-laws to receive compensation for adverse effects	Development approval - development consent	
	Education	By-laws to prohibit STHL	Limit the length of stay	Registration to monitor that other regulatory approaches (e.g. number of days, number of properties) are being met
	Monitoring and reporting		Limit the number of days per year	
			Limit the number of bedrooms	
			Regulate by whether the host is present when STHL takes place	

Note: The policy options for STHL could include regulatory or non-regulatory approaches, or a combination of both. A combination of options from any rows or columns (or/and other options not covered in the paper) can be chosen to suggest a policy framework for the STHL in the submission form.

Submissions on the Options Paper will be received by the NSW Department of Planning and Environment up until 31 October 2017.

It is proposed that Council's submission will advise the NSW State Government that Council does not accept a standard State wide approach to this issue, given our circumstances to that of other local government areas in NSW in relation to short term holiday letting. That as such, a multi faceted regulation framework as detailed below is sought by Council to address this issue locally.

The Byron regulation framework supports and enhances the planning, registration and self regulation themes in the options paper. By way of general comment Council supports the changes proposed to the Strata Laws, as such no further comment on these have been made.

Attachment 1 contains further information about Byron Shire in terms of its profile, the current impact that STHL is having on the area, and the recommendations below.

These recommendations were presented to Councillors at a Strategic Planning Workshop on 5 October 2017, and will form the basis of the staff submission to the DPE.

## Planning

- Opt in /out option for councils in certain zones or defined precincts (overlay in LEP) to protect local character and amenity

An example of this is to include host only accommodation in the residential zones. This could take the form of a bed and breakfast or home stay.

- 5 Accommodation offer without a host would need to comply with the definition of short term holiday let or other tourist and visitor accommodation in the standard LEP instrument and could be excluded from zones or locations.

- New definitions of 'home stay', 'short term holiday let' in standard LEP instrument

10 It is important to include clear definitions of the above; and also differentiate these from a house swap, house sitting arrangement where no money is exchanged for the period of stay. These arrangements have been traditional for families where friends or other family members stay at a home when the permanent/residing family are away on holiday to look after the property and or

- New Development controls / model provisions to address: numbers of rooms/people, number of nights, presence of a host, compliance with fire safety requirements, noise, waste management and carparking

20 These controls would assist the above.

25 Using the planning system to manage STHL will enable investigation, compliance and enforcement powers which presently exist under the Environmental Planning and Assessment Act 1979 to be utilised to manage the impacts of STHL.

### **Registration**

- Mandatory registration scheme rolled out and administrated by councils via e portal for operators viz. Western Australia
- Initial registration and annual renewal fee collected by council to regulate operators
- Council to have the ability to refuse to register non compliant operators

35 A registration process will provide greater information for potential users, help manage safety and amenity issues and also help monitor the management of the industry.

40 Licensing will be used to address issues that would not be addressed through the planning framework (such as by limiting the number of STHL properties run by a single operator) and could work within the existing planning system as other licensing schemes work (such as child care and liquor licensing).

Incentives for improved industry self-regulation could also be explored via licensing exemptions.

### **Self Regulation**

- Code of Conduct to be mandatory for operators
- 'Scores on Rooms' program – rating to be included on registration list and council and operator web pages
- Education – 'be a local and respect the locals' this should be linked to 'Scores on Rooms' program

- Good will to community - % of local host fee where collected by booking service could be returned to the local council and invested back into local community projects necessary due to tourist demands – council could develop a tourist levy plan

5 To achieve this, legislative change and industry reform is required. As such, Council should seek an undertaking from the NSW State Government that further engagement with Byron Shire Council and its community will occur subsequent to this consultation, to ensure that the above changes needed to deliver a Byron specific regulation framework can be progressed expeditiously.

10 **Other**

- Introduction of a Tourism Accommodation Levy (Bed Tax)

15 State government legislation does not currently enable Council to impose a tourism accommodation levy (bed tax).

Council resolution 17-363 – sees Byron Council support for a tourism accommodation levy (bed tax) to form part of the submission on STHL to DPE.

- 20
- Rating – levy a business rate on properties used as holiday lets

Will be dependent on how STHL is defined and then any consequential changes to rating categories that may result to provide a differential rating category

25 **Financial Implications**

N/A

**Statutory and Policy Compliance Implications**

30

N/A

**Report No. 13.21      Update Council Resolution 17-191 Secondary Dwelling Conditions**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Kylie Grainey, Project Officer  
Christopher Soulsby, Development Planning Officer S94 & S64

5    **File No:** I2017/1444

**Theme:** Ecology  
Development and Approvals

10    **Summary:**

Council considered Notice of Motion No. 9.5 Secondary dwelling conditions at the Ordinary Meeting 25 May 2017 and resolved as follows:

15    **17-191 Resolved:**

- 20    1. *That Council recognises community concerns regarding the lack of affordable housing in Byron Shire and concerns that secondary dwellings, as defined and facilitated by the NSW State Environmental Planning Policy (Affordable Rental Housing) 2009, are being used for tourism purposes via short term letting, holiday letting Air Bnb and similar online platforms.*
- 25    2. *That Council responds to concerns and compliance issues by:*
  - 30    a) *contacting all property owners with a secondary dwelling (granny flat) approved since the passage of Council Resolution 11-268 and seek property owners' confirmation that they are complying with their approval and/or conditions of consent with the regard to the Environmental Planning Assessment Act and to Byron Shire Council Resolution 11-268.*
  - 35    b) *developing a form that seeks the owners signature regarding compliance with consent and Resolution 11-268 for inclusion with the correspondence to be returned to council within 30 days.*
- 40    3. *That a report be received from staff informing Council as to the outcome of 2(a) and (b).*
- 45    4. *Request staff to commence the process to amend clause 2.14 in the 2012 Byron Developer Contributions Plan to provide that the clause does not apply to secondary dwellings used for tourism purposes.*
- 50    5. *Request staff to commence an evaluation of Council's policy of waiving Council S64 and S94 contributions for secondary dwellings as a means to support affordable housing and provide recommendations to strengthen affordability outcomes of secondary dwellings.*
- 55    6. *Request staff to identify how the Affordability Housing SEPP 2009 could be applied to establish an exception from Council S64 and S94 for 'affordable rental accommodation'.*
- 60    7. *That a further report be furnished to Council on points 5 and 6 above.*


This report provides an update on actions undertaken by staff following that resolution.

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**RECOMMENDATION:**

**That Council note the report.**

**Attachments:**

- 1    Form letter sent re secondary dwelling approval, E2017/95666 

**Report**

Council considered Notice of Motion No. 9.5 Secondary dwelling conditions at the Ordinary Meeting 25 May 2017. This report presents an update on actions undertaken following that resolution, as discussed below:

1. That Council recognises community concerns regarding the lack of affordable housing in Byron Shire and concerns that secondary dwellings, as defined and facilitated by the NSW State Environmental Planning Policy (Affordable Rental Housing) 2009, are being used for tourism purposes via short term letting, holiday letting Air Bnb and similar online platforms.

Staff note this concern of Council. No further action has been necessary at this time.

2. That Council responds to concerns and compliance issues by:

- a) contacting all property owners with a secondary dwelling (granny flat) approved since the passage of Council Resolution 11-268 and seek property owners' confirmation that they are complying with their approval and/or conditions of consent with the regard to the Environmental Planning Assessment Act and to Byron Shire Council Resolution 11-268.
- b) developing a form that seeks the owners signature regarding compliance with consent and Resolution 11-268 for inclusion with the correspondence to be returned to council within 30 days.

Letters and form sent to 598 property owners on 13 September 2017. Only 105 have been returned as of 9 October 2017. Copy of letter and form attached.

3. That a report be received from staff informing Council as to the outcome of 2(a) and (b).

A further update on 2(a) and (b) will presented to Council before the end of year.

4. Request staff to commence the process to amend clause 2.14 in the 2012 Byron Developer Contributions Plan to provide that the clause does not apply to secondary dwellings used for tourism purposes.

Clause 2.14 is set out as follows:

**2.14 Secondary Dwellings**

*Development for the purposes of a secondary dwelling as defined in State Environmental Planning Policy will be exempted from the obligation to pay a contribution under this Contributions Plan where the secondary dwelling is integral and subordinate to the primary dwelling. Where the secondary dwelling is subject to the following requirements*

- a. *That the maximum size of the secondary dwelling does not exceed 60m<sup>2</sup>.*
- b. *That the floor space ratio for the whole development of the site does not extend beyond 0.5:1 and that 25% of the site must be covered by absorbent surfaces such as lawn or landscaping.*
- c. *That the secondary dwelling does not increase the overall number of bedrooms on the site to greater than 5.*
- d. *That the applicant has an approval for a secondary dwelling subject to a condition of consent that the development is not to be used for tourism purposes.*

*Note: There are strict criteria for secondary dwellings to distinguish them from dual occupancies*

The SEPP and the standard instrument define a secondary dwelling as follows:

**secondary dwelling** means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

The LEP 2014 defines tourist and visitor accommodation as follows:

**tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,
- but does not include:
- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

Secondary dwellings are a distinct and separate use from tourist and visitor accommodation. To lawfully convert a secondary dwelling to tourist and visitor accommodation requires development consent (where it is a permissible use).

The Byron Developer Contributions Plan 2012 is split into two parts, Part A being the Byron Section 94 plan that applies to all residential development and Part B being the Bryon Section 94A plan that applies to all non residential development. Part A is based on the provision of public services and facilities for the permanent residential population of the LGA. All the growth projections in the plan are based on the ABS place of usual residence data. The ABS defines place of usual residence as follows:

*This is the place where a person usually lives. It may, or may not be the place where the person was counted on Census night. Each person is required to state his/her address of usual residence in a question on the Census form (e.g. Question 8 on the paper Census Household Form).*

A tourist does not meet this definition. All development that does not generate a residential population is caught by part B of the plan and is subject to the S94A levy. Clause 2.14 by definition already does not apply to tourist accommodation. If a development application were made to convert a secondary dwelling to tourist accommodation then the S94A levy would be imposed (if applicable).

5. Request staff to commence an evaluation of Council's policy of waiving Council S64 and S94 contributions for secondary dwellings as a means to support affordable housing and provide recommendations to strengthen affordability outcomes of secondary dwellings.

This is being undertaken as part of the preparation of a new contributions plan. The areas identified for population growth and the facilities required are dependent on the outcomes of the Urban Housing Strategy.



6. Request staff to identify how the Affordability Housing SEPP 2009 could be applied to establish an exception from Council S64 and S94 for 'affordable rental accommodation'.

All of the development as defined in the SEPP Affordable Rental Housing is covered by clause 2.14 or 2.15 of the contributions plan. Clause 2.15 is set out as follows:

**2.15 Exemptions for Private Boarding Houses, Group Homes and Affordable Housing**

*Unless superseded by legislation or direction, in the case of private developments such as hostels, group homes and boarding houses, this type of development may be able to justify a case for an exemption so long as it meets State Government criteria for a tax exemption for low-cost residential accommodation.*

*An applicant may as part of their development application make application for the suspension of contributions. An applicant must comprehensively argue the case for suspension including the specific circumstances that would distinguish the subject proposal's merit case from others.*

*Applications for merit suspension will be referred to Council for formal determination and accompanying submissions will be made public as part of that process.*

*Applicants should liaise with Byron Shire Council in relation to Development Applications of this nature.*

There may be other uses that contain a residential component associated with their primary use that warrant an exemption from contributions. These uses are covered by clause 2.16.

**2.16 Other Public Benefit Exemptions from the Contributions Plan**

*It is not always possible to identify in advance all developments which may be able to make a meritorious case for an exemption from the obligation to pay some or all of the applicable contributions. On the principle of ensuring public accountability, transparency and equity between all developers, this section specifies the limited opportunity for making a merit-based case for exemption.*

*Council may formally consider, on the individual merits, a case for exempting the following types of development from the levying of contributions:*

- *Developments which provide a distinct community benefit on a not-for-profit basis including but not necessarily limited to: accommodation associated with fire stations, police stations or police shop fronts, ambulance stations, rescue services, State Emergency Service (SES) and Rural Fire Services (RFS) operational bases and the like. This provision is not intended to include corporate headquarters of any type; and*
- *Development by or for non-profit or cooperative organisations which provide a distinct community benefit including but not limited to: the provision of childcare services (especially for under-2s and/or special needs children) including kindergartens and pre-schools; outreach services, community services or the like, on a cooperative or not-for-profit basis.*

*Full details of any case for exemption must be included as part of the Development Application to enable the Council to make a merit-based assessment of the unique circumstances of the specific case in question concurrent with the consideration of the Development Application as a whole.*

It is considered that these existing clauses adequately address point 6.

7. That a further report be furnished to Council on points 5 and 6 above.

Covered above.

5

**Financial Implications**

As discussed in the report.

10

**Statutory and Policy Compliance Implications**

As discussed in the report.

**Report No. 13.22      Update on Resolution 17-263 Short Term Rental Accommodation Enforcement Options**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

Ralph James, Legal Services Coordinator

**File No:** I2017/1445

**Theme:** Ecology

Development and Approvals

**Summary:**

Council considered Report No. 13.17 Short Term Rental Accommodation - Enforcement Options at the Ordinary Meeting 22 June 2017 and resolved as follows:

**17-263 Resolved** that Council:

1. *Note the report.*
2. *Authorise the General Manager, in cases where a reasonable suspicion of unauthorised short term rental accommodation and unauthorised tourist and visitor accommodation is taking place, to issue Notices to the following to provide information and answer questions about property use:*
  - *Real Estate agents*
  - *Letting Agents*
  - *Website Hosts*
  - *Tenants*
3. *That Council confirms that:*
  - a) *in order to preserve the availability of long-term letting in the shire for long-term residents that the moratorium on prosecutions has been lifted.*
  - b) *it now intends to prosecute in the most effective manner where merit exists any and all instances of unauthorised short term rental accommodation occurring in the shire.*
4. *That a media release be shared on this resolution.*
5. *Compile a confidential list of properties against which it may commence legal proceedings based on the establishment of a prima-facie case of unauthorised short term rental accommodation and unauthorised tourist and visitor accommodation, and that this list is compiled as soon as possible.*

This report provides an update on actions undertaken by staff following that resolution.

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**RECOMMENDATION:**

**That Council note the report.**

## Report

Council considered Report No. 13.17 Short Term Rental Accommodation - Enforcement Options at the Ordinary Meeting 22 June 2017. This report presents an update on actions undertaken following that resolution, as discussed below:

### 1. Note the report.

Staff noted the report.

**2. Authorise the General Manager, in cases where a reasonable suspicion of unauthorised short term rental accommodation and unauthorised tourist and visitor accommodation is taking place, to issue Notices to the following to provide information and answer questions about property use:**

**Real Estate agents  
Letting Agents  
Website Hosts  
Tenants**

The minimum statutory trigger for the use of councils' coercive information-gathering powers for monitoring should be that the powers can be used only to gather information for the purposes of the relevant legislation. If a coercive information-gathering power is used in connection with a specific investigation, the minimum statutory trigger for using the power should be that the person exercising it has 'reasonable grounds' for the belief or suspicion that is required before the power can be exercised.

Council's resolution and Council's Enforcement Policy recognise the statutory trigger.

An accepted definition of "reasonably suspects" is "a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable".

There are two elements to be considered:

First is suspicion, the Macquarie Dictionary defines suspicion as "imagination of the existence of guilt, fault, falsity, defect or the like on slight evidence or without evidence"  
In *Hussein* (1970) the court described suspicion as being "a state of conjecture or surmise where proof is lacking,

"It must be remembered that whilst suspicion falls short of actual proof, there must still be some factual basis upon which the suspicion is grounded" *George v Rockett* (1990)

In *Dumbrell v Roberts* (1971) it was stated, "the... officer must satisfy himself that there are in fact, reasonable grounds to suspect guilt but this does not have to amount to evidence of a prima facie case".

A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a "slight opinion", but without sufficient evidence...Consequently, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence.' *Queensland Bacon Pty Ltd v Rees* (1966)

Second is what amounts to a suspicion being reasonable? "Reasonable" means not immoderate, not excessive, not unjust, tolerable".

There is no standard or fixed rule as to what are reasonable grounds for suspicion which can be laid down as applicable to all cases.

5 The test is "What would a reasonable person acting without passion or prejudice fairly suspect from the *circumstances*?"

*Hughes v Dempsey*, held that: "Reasonable suspicion means that there must be something more than imagination or conjecture.

10 It must be the suspicion of a reasonable man warranted by facts from which inference can be drawn, but it is something which falls short of legal proof. "

15 The officer need not have a concluded belief nor must there be sufficient evidence to prove a prima facie case.

Section 119J of the *Environmental Planning and Assessment Act 1979* (EPA Act) gives council investigation officers powerful tools to obtain information and or records in respect of matters they are investigating.

20 Section 119J of the EPA Act provides that:

*'(1) An investigation officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the notice requires in connection with an investigation purpose.'*

25 Section 119J Notices must be issued in '*connection with an investigation purpose*', which includes a council investigation officer exercising its functions under the EPA Act, such as:

- gathering information which may lead to the issuing of orders under Division 2A of Part 6 of the EPA Act; or
- 30 ▪ investigating potential breaches of the EPA Act which may lead to civil or criminal enforcement action being taken.

"investigation purpose" means a purpose for which a power may be exercised under Division 1C of the EPA Act.

35 Section 119J Notices can be given to any person, including individuals or corporations and can be given to any person who the officer suspects of committing a breach of the EPA Act, as well as an innocent third parties including contractors, suppliers or transporters who may hold relevant information or records.

40 A natural person must be warned that they can object to the provision of information on the basis that it will incriminate them. If the person objects, they are still required to provide the information but it is not admissible in evidence against them in criminal proceedings (s119S(3)). Any records provided are admissible in evidence.

45 Corporate entities do not have this same protection as they are not entitled to the privilege against self-incrimination (*Environment Protection Authority v Caltex Refining Co Pty Ltd* (1993) 118 ALR 392).

It is an offence for a person to fail to comply, without reasonable excuse, with a s119J Notice (s119M) and a notice must include that warning

To ensure that a s119J Notice is valid it must also sufficiently specify the ‘*investigation purpose*’ for which it is issued.

5 This matter arose in *D’Anastasi v the Environment Protection Authority and anor* 2011 which considered the validity of a notice issued by the EPA under s193J of the POEO Act.

10 This provision empowered the EPA to require a person to provide information and/or records in ‘*connection with any matter within the responsibilities and functions of the regulatory authority that appointed the officer*’.

15 The Court found that the EPA notice was invalid as it did not properly define the ‘*matter*’ for which it was issued. In making this finding it followed a long-applied standard for statutory notices that the notice must make it clear that the information or documents sought were information or documents “relating” to one or more “matters” of a kind described in the legislation about which the giver was entitled to serve the notice.

20 This principle will apply to a s119J Notice, and to ensure it is valid it must clearly state the ‘*investigation purpose*’ for which it is issued. This primarily should include a description of the acts or omissions that are being investigated, as well as the location and period in which the acts or omissions occurred.

25 The information and records that are sought must properly relate to the investigation purpose that is stated in the notice (*D’Anastasi*). Any fishing expeditions or general requests for information and records that do not relate to a function under the EPA Act may be challenged on the basis that the notice that is issued is beyond power.

A claim that a Notice to a "fishing" expedition is found in the analogous imagery of a fisherman who casts his fishing line into the wide-open sea in the hope of catching fish, ie. something that is relevant.

30 Fishing is the use of pre-trial investigation discovery in an unfocused attempt to uncover damaging evidence to be used against an adversary.

35 Council could not engage in a scattergun approach by forwarding Notices to all Real Estate agents, Letting Agents, Website Hosts or Tenants. A reasonable suspicion relating to a specific matter must exist.

To date no Notices have been sent to the entities named in the resolution.

40 **3. That Council confirms that:**

**a) in order to preserve the availability of long-term letting in the shire for long-term residents that the moratorium on prosecutions has been lifted.**

45 **b) it now intends to prosecute in the most effective manner where merit exists any and all instances of unauthorised short term rental accommodation occurring in the shire.**

**4. That a media release be shared on this resolution.**

In response to 3 and 4, a media release was issued by Council 31 July 2017.

50 ***Byron Shire Council responds to unauthorised holiday letting***

*Byron Shire Council estimates there are more than 1000 dwellings available for short-term holiday rental across tourist and visitor accommodation websites.*

55 *Byron Shire Council’s Director Sustainable Environment and Economy, Shannon Burt, said that while short term rental accommodation is an important part of Byron’s tourism industry, unauthorised holiday letting has a negative impact on many people living in residential areas.*

**5. Compile a confidential list of properties against which it may commence legal proceedings**

***based on the establishment of a prima-facie case of unauthorised short term rental accommodation and unauthorised tourist and visitor accommodation, and that this list is compiled as soon as possible.***

- 5 Council enforcement staff are presently collecting and collating evidence to support legal proceedings against unauthorised short term rental accommodation and unauthorised tourist and visitor accommodation in the Shire.

- 10 So as not to prejudice any proceedings, further information will be only be reported to Council once an investigation has established the existence of a prima facie case.

- 15 All such reports will be confidential pursuant to the provisions of Section 10A(2)(g) of the Local Government Act being advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

**Financial Implications**

As discussed in the report.

- 20 **Statutory and Policy Compliance Implications**

As discussed in the report.

**Report No. 13.23**      **Update Draft Coastal Zone Management Plan - Byron Bay Embayment**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Shannon Burt, Director Sustainable Environment and Economy  
                                Ralph James, Legal Services Coordinator  
5    **File No:**      I2017/1446  
         **Theme:**      Ecology  
                                Planning Policy and Natural Environment

10    **Summary:**

15    This report provides an update on the status of the *Coastal Zone Management Plan for the Byron Bay Embayment* through the Ministerial certification process, and outlines the potential options for consideration by Council to move forward with the plan.

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**RECOMMENDATION:**

1. That Council note the report.
2. That any response from the Minister be reported to the Ordinary Meeting immediately after the response is received.
3. That Council receive an updated report on the Draft Coastal Zone Management Plan for the Byron Bay Embayment should the Coastal Management Act and related instruments commence before the receipt of the Minister's response.

20    **Attachments:**

- 1      Letter of response from Minister Hon G Upton, E2017/86112 



**Report**

The draft CZMP BBE was submitted to the former Minister for Planning, the Hon Rob Stokes MP on 30 June 2016 for certification under the *Coastal Protection Act 1979* (the Act).

On 20 April 2017 Council resolved 17-133:

*1. That Council acknowledges the draft CZMP does not have the endorsement or backing of the Byron Shire community and council does not have the financial capability to implement the plan as currently proposed.*

*2. That Council immediately ask the current Minister to: a) Stop considering the current draft CZMP for certification; and b) Return it to Council for further consideration under either previous or current legislation*

On 26 April 2017, the Mayor wrote to the Hon Gabrielle Upton MP (the Minister) in accordance with resolution 17-133.

Council received a response (addressed to the Mayor) from the Minister on 28 August 2017, along with advice from the NSW Coastal Panel (the letter).

The letter acknowledges the complexity and range of issues associated with preparing a CZMP for this coastal hazard hotspot and urges Council to consider the NSW Coastal Panel's most recent advice (E2017/86114) in amending the draft CZMP BBE.

The main detail of the letter includes:

- The plan in its present state does not meet the requirements for certification under the *Coastal Protection Act 1979*.
- The plan does not adequately address the impact that the seawall structure will have on the adjacent and adjoining coastline.
- The plan does not account for the numerous issues raised by the Department of Industry – Lands which are pivotal to implementing the preferred seawall option.
- The plan proposes actions or activities to be carried out by public authorities, or on land managed by a public authority without the agreement of these authorities.

The statutory context.

Section 55 (3) of the Act is in the following terms:

*(3) Before certifying the draft coastal zone management plan submitted to the Minister under subsection (1), the Minister may refer the plan to the Coastal Panel for advice.*

It is clear from the opening sentence of paragraph 2 of the letter that this occurred.

Section 55 (4)(b) of the Act is in the following terms:

*(4) The Minister may:*

*(b) if the Minister has referred the plan to the Coastal Panel for advice under subsection (3) and the Coastal Panel has recommended changes to the plan--return the plan to the council and direct the council to amend and resubmit the plan with the recommended changes.*

Section 55 (5) of the Act is in the following terms:

*(5) A council required to amend and resubmit a plan with recommended changes must do so:  
 (a) within 90 days after being directed to do so by the Minister, or  
 (b) within such longer period as may be agreed to by the Minister.*

**5     The directions/recommendations**

The Minister has returned the plan to Council in accordance with the subsection. However, Council is uncertain of any direction which the Minister has made or, if so, the nature and extent of that direction.

10     The ultimate sentence of paragraph 4 of the letter is cast in the nature of a recommendation that Council consider advice in amending the draft CZMP.

15     The third full paragraph on page 2 of the letter refers to key issues which “must be resolved”.

The use of the words “must be resolved” equates to a direction. Council treat the two dot point appearing on page 2 of the letter as such.

20     It remains unclear as to whether the dot points on page 2 are the only matters which are subject to a subsection (4) (b) direction.

By the penultimate paragraph on page 2 of the letter is it a safe assumption that if Council took the action referred to, the subsection (4) (b) directions would fall away insofar as the present CZMP with the Belongil Spit excluded is concerned?

25     There remains confusion as to what is meant by “as long as all other parts of the Coastal Panel’s advice is considered and recommended changes incorporated into the draft CZMP”. This is because pages 4 and 5 of the Coastal Panel’s advice is titled “Recommendations” and “Next Steps”. The recommendations to which the Minister refers are those included under that heading on page 4 of the Coastal Panel’s advice. The “Next Steps” are advice merely to the Minister.

30     It appears that, in interpreting the Minister’s invitation to resubmit the CZMP if the Belongil Spit is excised requires Council to address dot points 1, 2 and 5 of the Coastal Panel’s recommendations given that dot points 3 and 4 appear to relate to the Belongil Spit.

35     Options for later consideration

**Exclude Belongil Spit Precinct from the plan and resubmit (for certification of the CZMP under the existing legislation)**

40     The Minister’s recommendation is to effectively exclude the Belongil Spit Precinct area from the plan. This would entail “splitting” the plan into two precincts by the making of two new plans, such as one plan for the Cape Byron to Main Beach (includes JSPW) section (‘Eastern Precinct CZMP’), and one plan for the Cavvanbah to Tyagarah section (‘Western Precinct CZMP’).

45     The merit in the Minister’s recommendation of resubmitting the plan, “excluding” any proposed actions for the Belongil Spit Precinct may allow Council to move forward with projects such as the upgrade of Jonson St Protection Works (JSPW) once the amended plan (for the ‘Eastern Precinct CZMP’) is certified. The Coastal Panel has provided comments that as a matter of urgency discussions should be made with the Department of Industry – Lands on improvements to the JSPW.

50     An amended plan will need to be resubmitted and (potentially) certified within 6 months of the repeal date of the legislation (in up to 7 months time). As per Schedule 3 of the *Coastal Management Act 2016*, Section 6 – Certification of Pending Coastal Zone Management Plans:

55

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

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

The letter requests clarification on the timeframe for resubmission of the amended plan, and also confirmation that the Minister may continue to deal with the plan for as long as required/necessary to gain a satisfactory outcome. Hence, asking that the 6 month time limit in section 55 (5) be extended.

**Seek to address all comments of the entire plan and resubmit (for certification of the CZMP under the existing legislation)**

Council would need to address the impact of the seawall and all comments provided by the Coastal Panel for the entirety of the plan. In general, this includes finding a potential sand source for mitigating impacts of the seawall, and refining landowner jurisdiction at the Belongil Spit Precinct as per Department of Industry - Lands submission.

Again section 55(5) timeframes apply. This option may only be achievable if Council is given an extended timeframe to complete the work and resubmit the plan and that the Minister guarantees that she will deal with the plan under the existing legislation as a CZMP for as long as required/necessary.

**Embark on a Coastal Management Program under the new legislation – as a whole or exclude Belongil Spit Precinct until a later date (Eastern/Western Precinct CMPs)**

This would effectively entail embarking on preparation of a whole new plan (either including the Belongil Spit Precinct or excluding) under the new legislation. The existing studies would compliment the preparation of a CMP/s, however, the process is likely to involve more technical studies, higher costs and a longer timeframe.

Primary differences between a CZMP and a CMP:

- CMP will require more consultation as there are new implications for Council to include consulting with other Councils in the same sediment compartment. For Cape Byron to Point Danger, consultation will be with Tweed Shire Council.
- The 'Western Precinct' CMP (which includes the Belongil beach area) will most likely need to include the Belongil Estuary, i.e not just based on coastal hazards affecting the 'Open Coast' area as the present CZMP BBE is. This will require a more comprehensive detailed analysis of the big picture and commission of further studies.
- Councils must give effect to their CMPs through their local environmental plans and development control plans, and in preparation of their plans under Chapter 13 of the *Local Government Act 1993*. Council is required to integrate the CMP with its integrated planning and reporting framework obligations under the LG Act.
- Council is to prepare a realistic and well-costed CMP for implementation and will be held accountable for implementing the actions i.e. will have to evaluate and report on why the actions were not implemented and outcome of actions that were implemented.
- Minister for Planning be given the power to report a failure to implement the CMP to the Minister for Local Government who may consider the report in determining whether to take performance management action against the Council.

This is a new process and not many councils have embarked on this planning pathway yet, therefore, there are likely to be challenges along the way. Council is already committed to preparing a CMP for the Northern Shire Coastline (New Brighton and South Golden Beach) this FY2017/18.

5

This process is a lot more involved and comprehensive, and may 2 years or more to complete.

**Financial Implications**

- 10 Unknown until a response from the Minister is received, but likely to be substantial. Grant funding may be available to Council.

**Statutory and Policy Compliance Implication**

- 15 As set out in the body of the report.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.24

**Report No. 13.24**      **Report of the Planning Review Committee Meeting held on 28 September, 2017**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Chris Larkin, Manager Sustainable Development

**File No:** I2017/1459

**Theme:** Ecology  
Development and Approvals

### Summary:

This report provides the outcome of the Planning Review Committee Meeting held on 28 September, 2017.

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### RECOMMENDATION:

**That Council note the report.**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.24

### Report:

The meeting commenced at 4:00pm and concluded at 5:00pm.

- 5 Present: Crs, Cameron, Martin, Ndiaye, Hunter, Lyon  
Staff: Chris Larkin (Manager Sustainable Development).  
Apologies: Crs Spooner, Hackett

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

10

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2017.360.1	Balanced Systems Planning Consultants	75 Rifle Range Road Bangalow	Rural Tourist Accommodation Comprising Four (4) Cabins	Level 2 Exhibition 27/7/17 to 9/8/17  19 submissions	The number of public submissions  Council to determine
10.2017.367.1	Mrs E L Bartz	29 Station Street Mullumbimby	Secondary dwelling	Level 1 Exhibition 27/7/17 to 9/8/17  1 submission	Staff Delegated Authority
10.2017.512.1	Mr P Johnstone	10 Acacia Street Byron Bay	Boundary Adjustment: Two (2) Lots	Level 0	Staff Delegated Authority
10.2017.270.1	Ardill Payne & Partners	6-6A Canowindra Court South Golden Beach	Multi Dwelling housing comprising 8 Dwellings and Strata Title Subdivision	Level 2 Exhibition 15/6/17 to 28/6/17  11 submissions	The extent of variation to Council policies proposed  Council to determine

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

15

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2012.360.3	Chris Lonergan	126 Goremans Road Eureka	S96 to Provide Alternate Dwelling Site for Approved Lot 2	Level 1 Exhibition 27/7/17 to 9/8/17  No submissions	Delegated Authority
10.2015.686.5	Bayview Land Development Pty Ltd	77 Tuckerroo Avenue Mullumbimby	S96 to Provide Temporary Turnaround Area for Future Extension of Lorikeet Lane to Service Stage 6	Level 0	Delegated Authority

**Report No. 13.25      Heritage and Environmental Assessment Reports - Coastal Cypress Pines at Terrace Reserve Brunswick Heads**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

**File No:** I2017/1474

**Theme:** Ecology  
Development and Approvals

**Summary:**



The purpose of this report is to update Council on the recommendations of heritage and environmental assessment reports of the Coastal Cypress Pines at The Terrace Reserve, Brunswick Heads.

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**RECOMMENDATION:**

1. That Council note the report.
2. That Council staff formally discuss the recommendations (1-6) of the Heritage Assessment report with NSW Crown Holiday Parks Trust as land manager with a view to achieving their agreement to implement them.

**Attachments:**

- 1 Heritage Assessment prepared August 2017, E2017/95599 
- 2 Ecologist Report dated 3 Aug 2017, E2017/95604 

**Report**

At the Ordinary Council meeting 11 December 2014, Council considered an urgency motion regarding Coastal Cypress Pines situated on The Terrace Reserve Caravan Park at Brunswick Heads.

Council resolved as follows:

**14-658 Resolved:**

*1. That Council make urgent submissions to the Minister for Heritage, the Hon Rob Stokes requesting that he makes an Interim Heritage Order over the Coastal Cypress Trees that were planted by the local Community in what was known at that time as " Brunswick Heads World War 1 Memorial Park" and is now The Terrace Caravan Park.*

*2. That Council staff work with community members to identify and map these trees which were originally planted in rows in order to assist the Minister in making the IHO.*

At the time Council and the community expressed concern about the operation of the Caravan Park and camping area by North Coast Holiday Parks as not respecting the significance of the Coastal Cypress Pines on site.

The then Executive Manager of Environment and Planning wrote to the then Minister for Heritage and Environment, Rob Stokes, requesting the making of an Interim Heritage Order for the protection of the Coastal Cypress Pines.

The Minister wrote back to Council 5 March 2015, "... I have determined not to grant an IHO at this time. In my view, there is no imminent threat to the stand of trees but it is desirable that the heritage value be managed..."

As a result of the above, staff undertook to include the assessment of the heritage significance of the Coastal Cypress Pines into the forward works programme of the Council's Heritage Advisor.

A heritage assessment of the Coastal Cypress Pines, Terrace Reserve, Brunswick Heads has now been completed by Council's Heritage Advisor. Also completed to inform the above, is an environmental assessment of the extent and condition of the Coastal Cypress Pine community by an independent ecologist/botanist. Both reports are attached in full.

The heritage assessment acknowledges that the subject trees have community recognition in non-statutory heritage lists of the National Trust, NSW War Memorial Register and the Australian Garden History Society list of memorial plantings.

However, from an extensive review of available material, the heritage assessment on page 27 finds in summary:

*The Coastal Cypress Pines within the reserve may be associated with a WW1 Memorial, however there is currently insufficient historical evidence to verify creation of a planted memorial within the Reserve. However the natural forest and glades created within the reserve may have been recognised as a place of remembrance.*

The environmental assessment in summary finds:

The Coastal Cypress Pines form part of a naturally occurring Endangered Ecological Community (Coastal Cypress Pine Forest in the NSW North Coast Bioregion under the NSW Threatened Species Conservation Act 1995 (now NSW Biodiversity Conservation Act 2016).



Further, an estimate of the age of the largest Pines on the Terrace Reserve indicates an age of circa 400 years; and those in the suggested rows of circa 200 years. This suggests the Pines were not planted as their age exceeds that of European settlement. This is further supported in the report by a review of relevant historical photos and information in the archives.

Notwithstanding the above, the following recommendations are made based on the findings of the heritage assessment report:

1. *The Coastal Cypress Pines demonstrate historical, aesthetic and social significance and should be included on Schedule 5 of the Byron Shire LEP 2014 as an item of environmental heritage.*
2. *The subject trees should be carefully conserved in accordance with the advice of a professional ecologist and arborist.*
3. *The subject trees should be given thorough assessment and due protection in the management of current and any planned future land uses on the site.*
4. *Any trees which are substantially damaged, or dying should be replaced with the same species in the same locations.*
5. *That the community is encouraged to carry out further research in relation to WWI memorial plantings in Brunswick Heads.*
6. *That interpretation of the significance of the trees is encouraged through signage, a heritage trail, and other mediums such as digital platforms.*

It is recommended that Council now formally engage with the NSW Crown Holiday Parks Trust as land manager about the heritage assessment report with a view to achieving their agreement to implement the six recommendations made about the Coastal Cypress Pines on The Terrace Reserve.

### **Financial Implications**

N/A

### **Statutory and Policy Compliance Implications**

Heritage Listings on a Local Environmental Plan are made under the provisions of the Environmental Planning and Assessment Act 1979.

The Coastal Cypress Pines form part of a naturally occurring Endangered Ecological Community (Coastal Cypress Pine Forest in the NSW North Coast Bioregion. This endangered ecological community is protected under the provisions of the under the NSW Biodiversity Conservation Act 2016. The NSW Office of Environment and Heritage is responsible for the protection of this endangered ecological community.

**Report No. 13.26      Manfred Street - Update Reclassification Planning Proposal**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
Ralph James, Legal Services Coordinator

5    **File No:** I2017/1443

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

10    **Summary:**

Council resolved at its Ordinary Meeting 22 June 2017 as follows:

15    ***17-271 Resolved*** that this item be deferred until Councillors have received a workshop on the matters, which will include legal advice.

The workshop took place on 7 September 2017.

20    The purpose of this report is to present options arising out of the planning proposal discussed at the workshop for Council consideration and determination on whether to continue to progress the planning proposal or not.

25    In regularising the existing building encroachment over Lot 6 Section 3 DP 1623 by way of a boundary adjustment, it is anticipated that the extent of the boundary adjustment will accommodate the building encroachment and the minimum required setback.

30    Reclassification of the land from 'community' to 'operational' will bring about the option for Council to either dispose of the land or pursue commercial realisation of the land. It is open to Council to pursue either commercial realisation or disposal of the residual of Lot 6 Section 3 DP 1623 following a boundary adjustment to rectify the current building encroachment.

Reclassification of Lot 2 Section 3 DP 1623 to 'operational' is to appropriately reflect the current service function of the lot as an access easement for properties to the north of Manfred Street.

35    The outcome described above for Lot 2 differs slightly from Council Resolution **15-230** which seeks reclassification of Lot 2 for the purposes of creating a public road. Creation of a public road is no longer supported due to liability risks associated with the lot's proximity to Belongil Creek. This difference is reflected in the first recommendation below.

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**RECOMMENDATION:**

1.    That Council proceed with preparing an amended Planning Proposal to reclassify the land identified in:

- a) Part Lot 6 Section 3 DP 1623 for the purposes of regularising the existing building encroachment over Lot 6 Section 3 DP 1623.
- b) Lot 2 Section 3 DP 1623 to appropriately reflect the current function of the lot as an access easement





from Community Land to Operational Land.

2.    That it be noted that it is the intent of Council that this resolution is to replace resolution 15-230.

**OR, IN THE ALTERNATIVE**

1. That Council NOT proceed with preparing any Planning Proposal to reclassify any of the land identified referred to in resolution 15-230.
2. That it be noted that it is the intent of Council that this resolution is to replace resolution 15-230.

**Attachments:**

- 1 26.2016.3.1 - Locality Plans, E2016/96922 
  - 5 2 Email from DPE re. partial lot reclassification Manfred Street Planning Proposal, E2017/97459 
  - 3 26.2016.3.1 - Court Orders (Manfred St Building Encroachment Lot 6), E2016/108364 
  - 4 Confidential - Manfred Street Planning Proposal - Suite of Options, E2017/97427
  - 5 26.2016.3.1 Court Orders - Lot 2 Easement, E2017/28508 
- 10

## Report

Council at its Ordinary Meeting held on 21 May 2015, adopted Resolution **15-230** which read as follows:

### **15-230 Resolved:**

*That Council authorise the General Manager to proceed with the next stage of the statutory process to consider the re-classification of the parcels of land identified below from Community to Operational Land, by preparing a Planning Proposal for the Minister of Planning's determination through the Gateway process, for the reasons identified for each parcel of land:*

- a) Lot B DP 371044, Lot 7 Section 3 DP 1623 and Lot 6 Section 3 DP 1623 for the purposes of regularising the existing building encroachment over Lot 6 Section 3 DP 1623.
- b) Lot 2 Section 3 DP 1623 for the purposes of creating a public road.

In accordance with Resolution **15-230**, a planning proposal was prepared and, on 7 November 2016 submitted to the Department of Planning for a Gateway determination.

Figure 1 below shows the subject lots to which this planning proposal applies, while detailed locality plans and a survey plan prepared following Resolution **15-230** are appended to this report as Attachment 1.



**Figure 1 – Plan showing subject lots affected by Resolution 15-230**

In their assessment of the planning proposal, the Department recommended that Council consider pursuing a partial lot reclassification to that portion of land necessary to regularise the existing building encroachment and to create a public road. Attachment 2.

The advice received from the Department of Planning and Environment was in anticipation of public feedback that Council and the Department may receive during the Planning Proposal



process based on the previous attempt to reclassify this land, and to determine whether Council has considered all options to regularise the encroachment. Therefore, it was recommended that Council pursue a partial reclassification of Lot 6 Section 3 DP 1623 for the purpose of regularising the existing building encroachment over Lot 6 Section 3 DP 1623.

- 5 Figure 2 below provides an indicative plan showing the area of land proposed to be reclassified in this report (in accordance with the Department's recommendation):



10 The matter was again reported to Council on 22 June 2017. Council resolved as follows:

**17-271 Resolved** that this item be deferred until Councillors have received a workshop on the matters, which will include legal advice.

15 The workshop took place on 7 September 2017.

#### Partial Reclassification of Lot 6 Section 3 DP 1623

20 Following Court Orders impacting on Lot 6 Section 3 DP 1623, Council is precluded from asserting any claim pursuant to the *Encroachment of Buildings Act 1922* in relation to any existing building encroachment over Lot 6 (building encroachment). Court Orders impacting on Lot 6 are appended to this report as Attachment 3.

It was therefore proposed that a boundary adjustment between Lot 5 and Lot 6 Section 3 DP 1623 would provide an appropriate means for Council to regularise the building encroachment. The extent of the proposed boundary adjustment would accommodate only the building footprint and the minimum required setback.

The current community land classification of Lot 6 Section 3 DP 1623 places restrictions on how the land can be used, including the ability to regularise the building encroachment by way of a boundary adjustment. Operational land, by contrast, has no special restrictions other than those that may apply to any piece of land. A partial lot reclassification, encompassing only the portion of land necessary to regularise the building encroachment, would allow for the proposed boundary adjustment to be made possible.

Resolution **15-230** sought the reclassification of Lot B DP 371044, Lot 7 Section 3 DP 1623 and Lot 6 Section 3 DP 1623 for the purposes of regularising the existing building encroachment over Lot 6 Section 3 DP 1623. The partial lot reclassification suggested by the Department of Planning and Environment would leave the remainder of the above land still classified as Community Land and provide certainty that another dwelling would not be built on this land. It should be noted that much of the land in resolution 15-230 is compromised by its proximity to the Belongil erosion escarpment, which runs through Lot B DP 371044.

For completeness, options available should Council determine that a reclassification of Lot B DP 371044, Lot 7 Section 3 DP 1623 and Lot 6 Section 3 DP 1623 be proposed are canvassed in confidential annexure 4.

#### Reclassification of Lot 2 Section 3 DP 1623

Lot 2 Section 3 DP 1623 contains a sealed road which provides access to a number of properties to the north of Manfred Street. These properties lost their original access many years ago due to the loss of 'The Esplanade', a road that had frontage to the ocean. A right of carriageway over Lot 2 was granted in 1999 under Court Order, allowing an alternative access to properties situated north of Manfred Street. Court Orders impacting on Lot 2 are appended to this report as Attachment 5.

Following Resolution **15-230**, Council staff identified that creation of a public road over Lot 2 Section 3 DP 1623 may introduce liability risks associated with the lot's proximity to Belongil Creek. The view taken was that Lot 2 Section 3 DP 1623 be reclassified to Operational Land to appropriately reflect the current function of the lot as an access easement for properties north of Manfred Street.

#### **Legal and Policy implications**

In the event that Council determined that it should not proceed with progressing any Planning Proposal there is no need to formally rescind resolution 15-230.

Councils are able to change their decisions by way of a later decision. A motion to rescind or alter a resolution is the usual means of changing a Council resolution.

However, the courts have held that it is not always essential that a Council expressly alter or rescind a resolution prior to passing a later resolution which is inconsistent or is in conflict with the earlier resolution. In other words, alterations or rescission can be implied. See *Everall V Ku-ring-gai Municipal Council* (1991) 72 LGRA 369.

To make sure that Council's intention is clear, it is considered best practice to expressly state that a later resolution is to replace an earlier one. In this way, the public, Council staff and subsequent councillors can understand and act with certainty on Council decisions.

Any proposed development of the land, should a planning proposal proceed, would be required to comply with Byron DCP 2010 Chapter 1, Part J2.1

**5 Financial Implications**

10 With regard to the appropriation of funds, Council in its adopted Financial Sustainability Plan has identified that any proceeds from land disposal or commercial realisation will be transferred to the Infrastructure Renewal Reserve and used to fund Infrastructure renewal works to reduce the infrastructure backlog. The renewal works are funded based on the priority placed on the works and assessed according to risk and community benefit.

15 Financial implications associated with the full planning proposal are discussed in the body of the confidential annexure.

**Statutory and Policy Compliance Implications**

As discussed in the report.

20

**Report No. 13.27**      **Proposed Strategic Business Panel**  
**Directorate:**        Sustainable Environment and Economy  
**Report Author:**     Shannon Burt, Director Sustainable Environment and Economy  
                              Tania Crosbie , Economy and Sustainability Coordinator  
5   **File No:**            I2017/1486  
         **Theme:**         Economy  
                              Economic Development

10   **Summary:**

Council received a Notice of Motion Notice No. 9.2 Business Advisory Group at the Ordinary Meeting 3 August 2017, and resolved as follows:

15   **Resolved** that Council receive a report from staff within three months regarding the establishment of a  
Business Advisory Group comprising of distinguished local business leaders from various fields of  
endeavour, including commerce, agriculture, creative enterprises and others as appropriate, to work with  
Council in identifying business growth opportunities for the Byron region, including those potentially  
20   developed on Council owned properties. The staff report needs to also recommend the structure, cost and  
management support for the group.

In response to this resolution staff have prepared a report for Council's consideration on the  
establishment of a new 'Strategic Business Panel' having regard to the existing Business  
Roundtable and Sustainable Economy Panel memberships and structure.

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**RECOMMENDATION:**

1.    That Council agree to retain the Business Roundtable in its current format.
2.    That Council merge the Sustainable Economy Panel into a new Strategic Business Panel (name to be confirmed).
3.    That Council agree to the overarching concept of a new Strategic Business Panel, so that the model and terms of reference and membership can be finalised with the existing nominated Councillors Richardson, Spooner, Hunter.
4.    That the first meeting of the new Strategic Business Panel be scheduled for February 2018 if not able to meet beforehand.

30



**Report**

Byron Shire currently has two business engagement groups

- 5     1.     The Sustainable Economy Panel – currently all positions are vacant.
2.     Business Roundtable – comprised of Councillors, Business Chambers and Destination Byron.

10     The **Sustainable Economy Panel** (Panel) purpose is to work with Council and Economic Development & Tourism unit to generate and sustain employment and business investment in the Byron Shire that will strengthen the Byron Shire local economy in a sustainable manner. Four key areas are:

- 15         1.     Emerging industries
2.     Public Private Partnerships
3.     Enabling infrastructure
4.     Planning and Design.

20     This Panel has recently called for new members and these are yet to be appointed. The review of this Panel and its membership, is the result of a need to reinvigorate interest in this space to ensure strategic direction and input is received from key stakeholders in the business community.

25     The **Business Advisory Roundtable** (Roundtable) on the other hand provides a place for strategic discussion between Council and the Business Chambers and Destination Byron, around issues impacting on business. This Roundtable has just had in influx of new Chamber Presidents and has dealt with such issues as flood recovery, employment land use strategy and engagement. The roundtable presents as an organic quarterly meeting of benefit for updates and networking for those attending.

30     **Resolution 17-300** has requested the establishment of a new Business Advisory Group comprising of distinguished local business leaders from various fields of endeavour, including commerce, agriculture, tourism, creative enterprises and so on to work with Council in identifying business growth opportunities for the Byron region, including those potentially developed on Council owned properties.

35     The establishment of a new Business Advisory Group and how this group is differentiated or not from the existing Sustainable Economy Panel is provided below.

40     New Strategic Business Panel concept

To respond to the above, a meeting was held on the 31 August 2017 between key staff and the nominated Councillors to the Sustainable Economy Panel being Mayor Simon Richardson, Cr. Paul Spooner and Cr. Alan Hunter.

45     The purpose of this meeting was to discuss the opportunities of establishing a group that best meets the emerging, and future strategic needs of the business community and Council.

50     It was agreed that the current Sustainable Economy Panel is not being challenged with strategic issues and therefore has lost momentum and members interest. To address this, the opportunity to design a strategically focussed business group, set the terms of reference and select those who would add value to Council and business now exists. This new group could be a combination of the Sustainable Economy Panel and the proposed Business Advisory Group concept to minimise duplication of groups and to maximise leverage off any membership.

It was also discussed that the group could meet quarterly and discuss various themes or strategic topics relevant the business community in the Byron Shire Council. Examples of themes discussed included:

- 5
  - Ensuring the Future of Agriculture in BSC
  - Pitching your Start Up – Byron Incubator ‘Shark Tank’ (refer paper on Business Incubator program in Byron Bay)
  - Connectivity, IT and Tech Hub in Byron
  - Publishing Leaders in the Hinterland – support, growth and expansion
- 10
  - Attracting the next breed of entrepreneur to Byron Bay
  - Tourism - Ensuing the long-term viability of tourism in Byron Shire
  - Sports Tourism – Does the Business Case Stack Up?
  - Education– Attraction and Niche Opportunities
  - Turning our Arts Culture into Global Brands
- 15
  - Investment Opportunities – Pitchfest to Funding Angels
  - Business Opportunities on BSC Land – aims, options and ROI
  - Health and Well- Being Industry – Be the Leader
  - Mentoring and Coaching – Transferring the Knowledge and Sharing in the Success.
- 20 To do this, different formats could be used such as field days, workshops with guest speakers, industry leaders, experts from outside of Byron for perspective or comment, pitching competitions and so on.

25 It was proposed that a small core group of Councillors and Council staff set the theme and invite the leading business people, relevant speakers, experts and attendees. This Group would be supported by the Economy and Sustainability Coordinator.

30 To move this new Panel proposal forward, staff recommend that Council agree to the overarching concept of a new Strategic Business Panel (being a combination of the Sustainable Economy Panel and the proposed Business Advisory Group concept), so that the model and terms of reference and membership can be finalised with the existing nominated Councillors Richardson, Spooner, Hunter by years end.

### 35 **Financial Implications**

Costs associated with the new Panel would need to be met within the existing operational budget and staff resources.

### 40 **Statutory and Policy Compliance Implications**

Delivery Program - EC1.1.1 Support innovative pathways to social enterprise and sustainable business development

**Report No. 13.28**      **Update on Resolution 17-283 Innovative Business Incubation Program**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Shannon Burt, Director Sustainable Environment and Economy  
                                  Tania Crosbie , Economy and Sustainability Coordinator  
 5    **File No:**              I2017/1487  
       **Theme:**             Economy  
                                  Economic Development

**Summary:**

Council considered a matter of urgency No. 18.2 Matter of Urgency - Innovative Business Incubation Program at its Ordinary Meeting 22 June 2017 and resolved as follows:

**17-283 Resolved:**

1. *That council prepare a report to outline the establishment of an Innovative Business Incubation Program.*
2. *That this report consider the following:*
  - i. *Providing set term leases for start ups, with no capacity to extend or double up or repeat*
  - ii. *The business required to front up all establishment and infrastructure costs that need to be relocatable, or possibly Council purchasing a temporary space charge a low rate to pay back purchase costs*
  - iii. *The advertising for expressions of interest on a cyclical basis for projects and businesses to utilise council spaces to develop their innovative businesses*
  - iv. *Creation of a criteria to adjudicate on applications, possibly including sustainability, innovation, potential for scalability or employment growth*
  - v. *Identification of possible sites for incubation spaces*
  - vi. *Possible mentoring and incubation support*
  - vii. *Liaisons and relationships with permanent businesses*
  - viii. *Levels of subsidisation*
3. *That the current business utilising the Council space at First Sun Holiday park continue its operation until the program commences and the next recipient of support takes its place and that the General Manager receives delegated authority to negotiate a temporary lease.*
4. *That the report authors consult mentoring and business incubation groups and chambers to assist the formulation of the program.*

The purpose of this report is to update Council on progress against item 1, having regard to the specifics of items 2 & 4 Resolution 17-283. Item 3 is under separate staff review to this report.

**RECOMMENDATION:**

1. **That Council support the progression of a Byron Innovation Incubation Program including the models and list of potential sites identified in the report for further investigation.**
2. **That Council agree to the Byron Innovation Incubation Program proposal being shaped, guided and progressed by the new Strategic Business Panel (or equivalent) in**

**consultation with the local business community.**

- 3. That Council agree that as part of their work the Strategic Business Panel (or equivalent) further:**
  - i. scope the ‘types’ of businesses that would fit this model and research their needs**
  - ii. Develop the financial business case for the models.**
  - iii. Develop project plan and budget to deliver the BIIP.**
- 4. That staff present a further report to Council on 2 & 3 above early 2018.**

**Attachments:**

- 1 Renew Australia , E2017/95887 **

## Report

### Background

5 This report provides a number of options to Council to establish a Byron Innovative Incubation Program (BIIP) in response to item 1 of Resolution 17-283. In particular:

1. Best-practice models
2. Pop up logistics and options
- 10 3. Program design
4. Engagement

Once a program model is adopted by Council, the program specifics including objectives can be finalised around funding, locations and business selection preferences. Otherwise the scope and options are limitless for reporting purposes.

It is proposed that BIIP proposal be shaped and guided by the new Strategic Business Panel (or equivalent) discussed in a separate report to this meeting – *Proposed Strategic Business Panel* (#2017/1486). This will ensure Council and business stakeholder buy in and support.

For the purposes of this report the following terms as used:

- **Business incubators** are organisations that provide support to start-up and early stage businesses through the provision of facilities, mentoring and coaching, training, networking and seed capital financing.
- **Start-up accelerators** focus on moving technology-based firms rapidly from establishment to early stage venture funding and growth. They are an education and mentoring centric model with start-up teams working through as a cohort over several months against a structured training program. The program typically takes an equity stake in the venture and uses experienced entrepreneurs as mentors and coaches.
- **Co-working facilities** offer physical space where nascent and novice entrepreneurs or individual freelancers can operate in a supportive environment and where they may potentially expand their networks.
- **A maker space or hacker space** offers a similar environment but is focused on specific technologies such as software or online digital.

### 1. Best Practice Incubator Programs

Much has been written about incubator programs and 'best-practice' examples are highlighted all over the world.

The Council as the incubator owner is common in large metro Councils such as Darebin in Victoria, with its creative, general business and creative co-working space. This program has a General Manager, and staff to manage and run the business support model.

45 <http://www.businessincubatormelbourne.com/>

These are the services they offer under the program:



Most successful incubators run industry specific programs i.e.: IT and creative arts, where the owners of the program are imparting their knowledge on the newer businesses such as York Butter Factory in Melbourne <http://yorkbutterfactory.com/>.

Key to their success is the link between focusing on IT start ups, links into big business (partners include banks, EY, Qantas etc.), links into Silicon Valley, co-working space and full-time hands on support. However most incubators have a services focus rather than a retail focus – this will require clear guidelines to be established.

Other examples include:

- <https://www.nviflinders.com.au/>
- <http://www.slingshotters.com/>
- <http://www.thestudio.org.au/>

There is government funding for incubator programs and the guidelines have been re-written to be more sensitive to regional needs <https://www.business.gov.au/assistance/incubator-support> . Funding opportunities present at different times of the year.

### So what is the best formula for an innovation incubator?

Based on research, for the best chance of success an incubator will contain:

1. A concise program with clear policies and procedures
2. On-site learning and leveraging of resources
3. Access to financing and capitalisation
4. Tie/links to a university
5. Transparent selection process for tenants
6. Perception of success – ie: robust publicity campaign
7. Entrepreneurial Education
8. In-kind professional support from staff, other small businesses and professionals
9. Community support and buy-in
10. Entrepreneurial networks within the region, Australia and internationally.

Of interest, poor performing incubators had the following in common:

1. Low-motivating environmental that does not stimulate the start up
2. Government funded
3. Based on providing space with very little other support
4. Lacked a 'rapid to commercialisation' process

5. Not protected from commercial forces
6. Did not have strong network of mentors and university embedded
7. Avoid the 'real estate' model if a virtual incubator can be just as effective
8. Did not have public support

5

As such the above 10 points of success should be included for consideration where relevant as criteria for the BIIP.

## 2. Pop up logistics and options

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There are a number of ways in which business incubators can be physically accommodated.

### a. Containers – locally sourced

15

- i. The container build group in Lismore is the national supply for most pop up container retailers. <https://www.containerbuildgroup.com.au/>. This provider is doing the Commonwealth Games, Airport, BCC and also sent some to Christchurch.
- ii. 20ft conversion approx. \$25,000 (high-end) includes toilet and basin
- iii. Solar off-grid system approx. \$15,000
- iv. To have initial drawings developed the cost is \$5,500

20



25

Above: Christchurch pop up mall examples



**b. Timber pre-fab pop ups – bought in space**

- i. **Arkit** develop and build tiny timber homes and are used to doing installations in public spaces – refer the Nano house built in Circular Quay in 2015  
<https://vimeo.com/134168000>
- 5 ii. They just built a tiny house and it cost \$39,600 plus trailer plus PV. This price included the fit-out of the kitchenette and small bathroom, and would be cheaper without it.
- iii. They have not built pop up shops but are keen to look at this as an option.



10 Example of a pre-fab style of pop up house - portable and sustainable.

**c. Recycled Plastic Pop Ups – locally sourced**

**Encounter Byron** is developing a recycled plastic tiny house and is interested in developing a pop-up design that may be suitable as part of the incubator program.

15

**d. Include tiny pop ups shops as part of the sustainable house day competition in 2018. (Locally designed and constructed)**

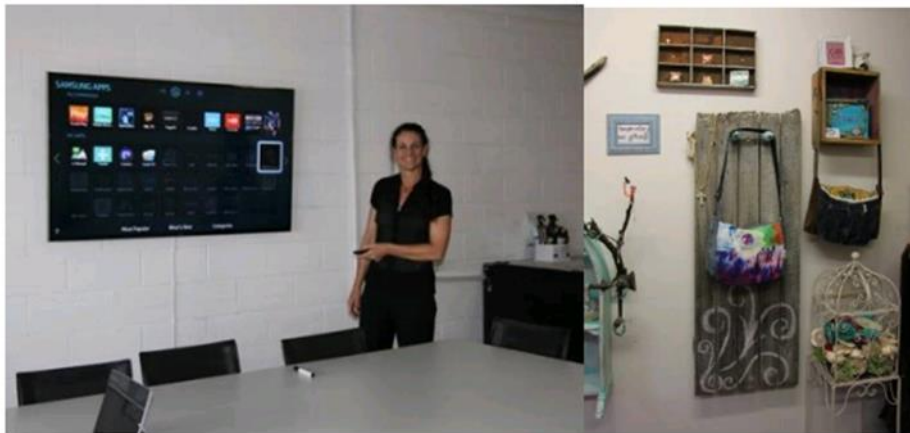
- i. This would allow for local designers to develop a location specific design.
- 20 ii. The winning design could then be built and be part of the pop up incubator program.

20

**e. Use of local space (unused shop-fronts in and around Byron Shire)** so that start up business can be supported across all Shire locations. There are a number of options in Byron Bay and Mullumbimby. This allows for example local creative producers to try a business idea to help develop it to take on a commercial lease, helps landlords find permanent tenants, and brings vibrancy back to our towns.

25





It is recommended that Council trial both options – use of vacant business premises and pop ups on Council land. Costing estimates of both options follow.

### 3 Incubator Management Options

#### 1. Basic – innovation start-up accommodation

- Council provided container office on Council approved land
- Establish an incubator selection committee, establish guidelines and consult with relevant groups like Byron Bay Town Centre Leadership Team
- Call for 'EOI' and select tenants
- Council acts as landlord
- Mentoring from business association such as Chamber of Commerce – at the expense of the Chamber
- Potential costs to Council:
  - Pop up retail space
  - Fit out
  - Subsidising rents
  - Establishing selection committee
  - Engaging with community
  - Coordination of selection criteria and advertising for tenants
  - Managing the tenancy and any conflict resolutions
  - Publicising program.

Pros	Cons
Able to control the program and select the right type of tenant	Based on 'real estate' model
Able to manage any issues as they arise with the program or tenant	Lack of Council expertise to establish and run the incubator
Be 'seen' by community as supporting new businesses and innovation	Backlash from existing local incubator operators and those paying commercial rates
Great relationship with new businesses	Core business for the Council
Enthusiasm for the project	Cost
Innovative business community	Financial and reputational risks
Capable business chambers and successful businesses	Need to establish from the ground up
Access to education – Community College, SAE and SCU	Isolated model with limited benefits for those to collaborate
Green field sites and model design	Is there experience to mentor the tenants
Opportunity to develop a self-funding model	
Collaborative model	

Costs – approximately:

- \$25,000 - \$30,000 per pop up – depending on whether it needs a bathroom, off-grid, air conditioning etc.
- 5      • Land
- Energy
- Toilet facilities
- Cost of employing staff to run the program or to re-direct staff
- Leasing
- 10     • Publicising program.

## 2. Partnering with existing incubator programs

There are a number of options available to Council here including Renew Australia (Attachment 1).

- 15      Renew Australia works with local communities by leveraging underutilised spaces and transforming them into creative hubs. They provide support, project management and have a suite of tools to do this.

- 20      Renew Australia has offered to work with Byron Shire for a membership fee of around \$3,000 to kick start a Renew model with local framework for creative space activities in Byron Shire.



Above: Renew Australia in Melbourne

- 25      The program could provide:
- Council provided container office on Council approved land
  - Competitive EOI process through the incubator partner that links to clear program guidelines and links program to period of time in the incubator space
  - Experienced incubator management and in-kind support
  - 30      • Existing entrepreneurship education
  - Experienced mentors in existing programs
  - Access to finance and 'investment angels'
  - Entrepreneurial networks
  - Recognition from local industry on 'graduation' from program
  - 35      • Connection with Business Chamber, national and international incubator organisation and alumni
  - Potential costs to Council:
    - Pop up space
    - Fit out

- Coordination of MOU and tenancy arrangements
- Partner management and overseeing the program – renew Australia \$30K to \$60K annually
- Publicising program

Pros	Cons
More reflective of successful models nationally	Loss of control
Less day-to-day running of program	Do those running current programs require more space – that we want to provide
Supportive of current incubators from within the region or use existing start up professionals	Space led solution rather than needs based
Plugs into existing models	
Existing relationships with mentors and business	
Existing relationships with education providers	

5

### **Locations**

Options exist for incubators on either Council land and or vacant business premises (Renew Model).

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Some possible Council locations that have been identified for 'pop ups' follow:

- Wategos Beach (one road reserve location);
- Denning Park road reserve (two locations);
- Brunswick Heads road reserve (three locations);
- Various car-parks, Byron Bay;
- The current location of Sunrise Cycles (Lot 7 Jonson Street, Byron Bay);
- The Byron Bay Library (where a previous coffee cart operated from);
- Suffolk Park community land (Suffolk Park sporting fields);
- The Myocum tip;
- The Bangalow Weir park;
- The park in Federal;
- The Byron Bay rail corridor (once Council takes over management of the area).

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An expression of interest process for use of the Council locations for incubators needs to occur next. It can include specific criteria relating to sustainability, scale, innovation, employment potential and length of tenancy. Details of this to be scoped out as part of the BIIP.

### **Engagement**

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It is proposed that the BIIP proposal be shaped and guided by the new Strategic Business Panel (or equivalent) discussed in separate report.

### **Financial Implications**

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As discussed in the report

### **Statutory and Policy Compliance Implications**

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Local Government Act  
Environmental Planning and Assessment Act  
Related legislation

STAFF REPORTS - INFRASTRUCTURE SERVICES

**Report No. 13.29**      **Status Report on Road Safety Funding Applications 2014-2017 (Black Spot)**

**Directorate:**      Infrastructure Services  
**Report Author:**      Evan Elford, Team Leader Infrastructure Planning  
**File No:**      I2017/1283  
**Theme:**      Community Infrastructure  
                 Roads and Maritime Services

**Summary:**

This report provides an update on road safety funding applications that have been submitted to the Roads and Maritime Services (RMS) between 2014 and 2017 (inclusive).

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**RECOMMENDATION:**

**That Council note the report in relation to the road safety funding applications made to the NSW Roads and Maritime Services (RMS), between 2014 and 2017 (inclusive).**

**Report**

Each year Councils can seek funding for treatment of black spots and other targeted treatments from either the Australian Government's Black Spot Programme or the NSW Government's Safer Roads Program.

The RMS administers (on behalf of the Australian Government) the Australian Government Black Spot Programme in NSW. This programme targets road locations where crashes are occurring by funding traffic facilities and other measures such as traffic signals, roundabouts, signage, line marking and road pavement improvements at dangerous locations to reduce the risk of crashes occurring. The Black Spot Programme makes an important contribution in reducing the national road toll under the National Road Safety Strategy and Action Plan.

The NSW Government's Safer Roads Program is a key initiative of the NSW Road Safety Strategy, which aims to make state roads safer and reduce crashes on the road network. This program provides treatments where there are clusters of casualty crashes on local and regional roads. This is achieved by implementing low cost engineering treatments and countermeasures. The program is split into several sub-programs, all targeting high severity crash types, locations and/or vulnerable road users. Nominations for the Black Spot Programme will be automatically considered for the Safer Roads Program.

When a funding application submission is being reviewed a key consideration is the Benefit-Cost Ratio (BCR) of the treatment that has been proposed. Typically a BCR of at least 2 is required before a submission will be considered further by the funding body. A BCR is improved by aligning proposed treatments that address a crash trend, noting that the funding body assigns a greater weighting to a fatality or injury crash than a non-casualty/tow-away incident.

Council has been successful with funding applications (either with a first or second submission) for the following projects:

- Coolamon Scenic Drive 1344 (Skyfarm) - For delivery in 2017/18 (further detail below)
- Ewingsdale Road and Sunrise Boulevard roundabout - Delivered 2016/17
- Tweed Valley Way & Brunswick Valley Way roundabout - Completed 2015/16
- Tyagarah Road and Benloro Lane – Delivered in 2016/17
- Wilsons Creek Road – Completed 2015/16

Coolamon Scenic 1344 (Skyfarm) - the most recent funding offer is for the provision of a sealed shoulder and guard rail on a 900m length between 1390 and 1431 Coolamon Scenic Drive to address the main problem of vehicles leaving the road. The subject site was identified as the priority site along Coolamon Scenic Drive following a broader review between Mullumbimby and Hinterland Way (ex- Pacific Highway) at St Helena that identified five (5) subject sites in total.

Council has been active, yet unsuccessful, in seeking funding under the road safety funding programmes for roundabouts at the intersections of:

- Clifford Street and Broken Head Road, Suffolk Park
- Bayshore Drive and Ewingsdale Road, Byron Bay Arts & Industrial Estate
- Kendall Street and Ewingsdale Road, Byron Bay
- McGettigans Lane and Ewingsdale Road, Ewingsdale

While a roundabout is Council's preferred treatment at these locations, the cost of such a treatment is not resulting in an eligible BCR.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.29

**Table 1: road safety funding applications made to RMS (2014-2017 inclusive)**

	2014	2015	2016	2017	Comments
Bayshore Drive and Ewingsdale Road					
Proposal	2-lane RAB	2-lane RAB	Does not meet grant application criteria	Does not meet funding criteria	The est. cost of the preferred solution of a roundabout (RAB) does not meet the min. BCR..
Est \$	\$3M	\$3M			
BCR	0.3	0.62			
Crashes	5	7			
Broken Head Road and Clifford Street					
Proposal	1-lane RAB	1-lane RAB	Islands/lights	Does not meet funding criteria	Vehicles making RH turns from Clifford St factor in majority of crashes. Given preferred treatment of RAB does not meet min. BCR alt. options have/are to be considered.
Est \$	\$1.2M	\$1.545M	\$316,000		
BCR	1.36	0.81	3.76		
Crashes	11	11	12		
Coolamon Scenic Drive 1390-1431 (Skyfarm)					
Proposal	N/A	N/A	clear zone		2016 bid is to provide sealed shoulder & guard rail to address main problem (namely vehicles leaving road). <b>Will be delivered in 2017/18.</b>
Est \$			\$217,000		
BCR			9.83		
Crashes			4		
Ewingsdale Road and Sunrise Boulevard					
Proposal	1-lane RAB	1-lane RAB		Application successful and was finished in 2017/18	2015 bid successful, incl. reducing speed limit by 20kph,traffic islands, guideposts & lane separation.
Est \$	\$2M	\$2M			
BCR	1.14	6.72			
Crashes	14	7			
Jonson Street 95 (Ped Xing)					
Proposal	N/A	N/A	Rehab 80m	Raised Xing	2016 bid incl. new lighting & full rehabilitation for 40m on approaches to the ped. crossing. <b>Current bid (2017, for 2018/19 funds) is for a 'wombat' (raised) crossing.</b>
Est \$			\$312,000	\$85,000	
BCR			2.7	15.28	
Crashes			3	3	
Kendall Street and Ewingsdale Road					
Proposal	1-lane RAB	1-lane RAB	1-lane RAB	Does not meet funding criteria	2016 bid reduced cost est. based on design, method of delivery & construction as used at other similar intersections.
Est \$	\$1.5M	\$1.5M	\$610,00		
BCR	1.24	0.8	2.12		
Crashes	15	9	9		
McGettigans Lane & Ewingsdale Road					
Proposal	1-lane RAB	Does not meet funding criteria	Does not meet funding criteria	Does not meet funding criteria	The preferred treatment does not meet min. BCR requirements. Cost est. requires reviewing before it is considered further.
Est \$	\$1M				
BCR	1.09				
Crashes	4				
Tweed Valley Way & Brunswick Valley Way Intersection					
Proposal	1-lane RAB		Application successful and was finished in 2015/16		Cost of project was more than estimated. However the design and method of delivery & construction does offer cost savings to other projects.
Est \$	\$300,000				
BCR	7.46				
Crashes	7				
Tyagarah Road and Benloro Lane					
Proposal	N/A	Shoulder seal		Application successful and was finished in 2016/17	\$175,000 received to provide sealed shoulder, a wet (non skid) seal & improved delineation, CAMS for corners and Reflective Raised Pavement Markers for night driving
Est \$		\$150,000			
BCR		10.59			
Crashes		5			
Wilsons Creek Road					
Proposal	Delineation		Application successful and was		Large benefit for cost. Delineation improvements made include advanced signs & CAMS (curve advisory/alignment markers)
Est \$	\$50,000				
BCR	43.66				

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.29

Crashes	7		finished in 2015/16		and guideposts and edge lines.
Bangalow Road 622 (CH 5450 - CH 6150) - Guardrail					
Proposal	N/A	N/A	N/A	Guardrail	Two private driveways flank the railway crossing bridge. Vehicles approach the bridge at high speed and run off the road. <b>Consideration of application is still underway by RMS.</b>
Est \$				<\$100,000	
BCR				>2	
Crashes				unknown	
Coolamon Scenic Drive (South Mullumbimby) - safety improvements					
Proposal	N/A	N/A	N/A	Lines / signs	This proposal covers 16km of Coolamon Scenic Drive South of Mullumbimby with safety improvements including line marking, signs and guardrails. <b>Consideration of application is still underway by RMS.</b>
Est \$				<\$100,000	
BCR				<2	
Crashes				unknown	

### Key Points:

1. The Benefit-Cost Ratio of the treatment must be of a minimum level before a project will be considered for funding.
2. The process of preparing and submit funding applications via the RMS online is very time consuming, especially as the full process must be followed before the project's BCR becomes known. This does not take into consideration the weeks of engineering investigation required to develop the treatments.
3. Not all projects are suited to this type of funding stream.
4. All Councils within NSW are competing for the same limit funding streams.

### Financial Implications

- 15 No implications as this report is for information purposes only.

### Statutory and Policy Compliance Implications

- 20 No implications as this report is for information purposes only.

**Report No. 13.30**      **Settlement Road Proposed Actions**  
**Directorate:**      Infrastructure Services  
**Report Author:**      Joshua Winter, Civil Engineer  
**File No:**      I2017/1316  
5 **Theme:**      Community Infrastructure  
                 Local Roads and Drainage

**Summary:**

10 Staff presented to the Councillors at the Strategic Planning Workshop on 7 September 2017 regarding Settlement Road and the actions undertaken to date and yet to be undertaken (presentation attached). The presentation addressed the location of Settlement Road, background to date including history on the Settlement Road Action Group, project constraints, design standard  
15 for consideration and the implications of the design standard adopted.




Councillors requested that further information be provided at the next Council meeting including traffic count data, number of properties and an estimate of costs if the RFS standard was utilised  
20 along the full length of Settlement Road.

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**RECOMMENDATION:**

1. That the Rural Fire Service standard be adopted for the design of Settlement Road.
2. That the remainder of the 2017/18 budget for Settlement Road (approximately \$9,000) be used to complete the design works.
3. That a report be prepared for the first appropriate 2018 Council meeting with more accurate costing information after the design work is completed.

**Attachments:**

- 25 1 24.2016.38.1 - Settlement Road SPW Presentation, E2017/94174   
2 24.2016.38.1 - Settlement Road - Traffic Counts, E2017/94164   
3 24.2016.38.1 - Settlement Road Property Export, E2017/94175 



**Summary**

Staff presented to the Councillors at the Strategic Planning Workshop on 7 September 2017 regarding Settlement Road and the actions undertaken to date and yet to be undertaken (presentation attached). The presentation addressed the location of Settlement Road, background to date including history on the Settlement Road Action Group, project constraints, design standard for consideration and the implications of the design standard adopted.

Councillors requested that further information be provided at the next Council meeting including traffic count data, number of properties and an estimate of costs if the RFS standard was utilised along the full length of Settlement Road.

**Traffic Count**

A traffic counter was installed 70 metres from the intersection of Main Arm Road, to collect data from Thursday 14<sup>th</sup> September 2017 to 1:30PM Wednesday 20<sup>th</sup> September 2017. This report is attached and found the following traffic counts, shown as total traffic movements each day (including both directions);

• Thursday 14 <sup>th</sup> September –	111
• Friday 15 <sup>th</sup> September –	156
• Saturday 16 <sup>th</sup> September –	142
• Sunday 17 <sup>th</sup> September –	124
• Monday 18 <sup>th</sup> September –	139
• Tuesday 19 <sup>th</sup> September –	151
• Wednesday 20 <sup>th</sup> September –	172
Average	142

**Number of Properties**

There are 21 land parcels located on Settlement Road, however, this does not account for the multiple occupancies located on this length of road. The number of visible buildings from an aerial image desktop inspection totalled approximately 50 properties.

**Preliminary Estimate**

Design staff used the Rural Fire Service (RFS) design standard as presented in the SPW workshop to estimate the amount of work to be done to bring the full length of Settlement Road up to RFS standard. This preliminary estimate has indicated that it would be in the order of \$1.2M. It is noted that this estimate is based purely on preliminary quantities and may change as the design progresses.

**Report No. 13.31**      **Draft Plan Of Management - Byron Bay Recreation Grounds**  
**Directorate:**      Infrastructure Services  
**Report Author:**      Nikki Bourke, Project Officer  
**File No:**      I2017/1330  
5 **Theme:**      Community Infrastructure  
                 Open Space and Recreation

**Summary:**

10 The purpose of this report is to gain Council approval to advertise the draft Plan of Management for the Byron Bay Recreation Ground for a period of no less than 28 days to enable Community submissions.


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**RECOMMENDATION:**

That in relation to the draft Plan of Management for Byron Bay Recreation Ground:

- a) It be advertised for 28 days and if any submissions are received be brought back to Council for further consideration
- b) That if no submissions are received, that the Plan of Management be adopted as exhibited.

**Attachments:**

- 1      PDF Draft Plan of Management Byron Bay Recreation Grounds V5, E2017/80412 

**Report**

A draft Plan of Management has been prepared for the Byron Bay Recreation Ground. If adopted, this plan would supersede the Plan of Management for Byron Bay Recreation Ground that was adopted on 20 May 2003 (DM403354).

The draft Plan of Management was reported to Council on 24 August 2017 and the resolution is as follows:

*“That this matter be deferred so that information be shared at the next available Strategic Planning Workshop and at this workshop other Plans of Management in the Byron Shire areas and examples of other shire’s plans are shared. (Ndiaye/Richardson)”*

The material requested in the resolution, in addition to records of consultation activities, were presented to Council in the Strategic Planning Workshop on 7 September 2017.

The purpose of this report is to gain Council approval to advertise the draft Plan of Management for the Byron Bay Recreation Ground to enable Community submissions.

**Financial Implications**

There are no financial implications from the development and adoption of the Byron Bay Recreation Ground Plan of Management.

Proposed actions consistent with an adopted plan of management may generate income and expenditure opportunities that Council will have to consider when they are presented.

**Statutory and Policy Compliance Implications**

Local Government Act 1993

*38 Public notice of draft plans of management*

- (1) A council must give public notice of a draft plan of management.
- (2) The period of public exhibition of the draft plan must be not less than 28 days.
- (3) The public notice must also specify a period of not less than 42 days after the date on which the draft plan is placed on public exhibition during which submissions may be made to the council.
- (4) The council must, in accordance with its notice, publicly exhibit the draft plan together with any other matter which it considers appropriate or necessary to better enable the draft plan and its implications to be understood

*40 Adoption of plans of management*

- (1) After considering all submissions received by it concerning the draft plan of management, the council may decide to amend the draft plan or to adopt it without amendment as the plan of management for the community land concerned.
- (2) If the council decides to amend the draft plan it must either:
  - (a) publicly exhibit the amended draft plan in accordance with the provisions of this Division relating to the public exhibition of draft plans, or
  - (b) if it is of the opinion that the amendments are not substantial, adopt the amended draft plan without public exhibition as the plan of management for the community land concerned.
- (2A) If a council adopts an amended plan without public exhibition of the amended draft plan, it must give public notice of that adoption, and of the terms of the amended plan of management, as soon as practicable after the adoption.
- (3) The council may not, however, proceed to adopt the plan until any public hearing required under section 40A has been held in accordance with section 40A.

*40A Public hearing in relation to proposed plans of management*

- 5 (1) The council must hold a public hearing in respect of a proposed plan of management (including a plan of management that amends another plan of management) if the proposed plan would have the effect of categorising, or altering the categorisation of, community land under section 36 (4).
- (2) However, a public hearing is not required if the proposed plan would merely have the effect of altering the categorisation of the land under section 36 (5).
- 10 (3) A council must hold a further public hearing in respect of the proposed plan of management if:
- (a) the council decides to amend the proposed plan after a public hearing has been held in accordance with this section, and
- (b) the amendment of the plan would have the effect of altering the categorisation of community land under section 36 (4) from the categorisation of that land in the proposed plan that was considered at the previous public hearing.
- 15

*41 Amendment of plans of management*

A council may amend a plan of management adopted under this Division by means only of a plan of management so adopted.

20 *42 Revocation and cessation of plans of management*

- (1) A plan of management for community land may be revoked by a plan of management adopted under this Division by the council.
- (2) A plan of management ceases to apply to land if:
- 25 (a) the land is reclassified as operational land, or
- (b) in the case of land that is not owned by the council—the land ceases to be controlled by the council.

**Report No. 13.32**      **Proposed Installation of Telecommunications Equipment for Telstra Corporation Limited**

**Bangalow Sportsground Lot 5 DP 1039596**

**Directorate:**           Infrastructure Services

5    **Report Author:**      Darren McAllister, Acting Open Space and Facilities Coordinator

**File No:**                I2017/1429

**Theme:**                Community Infrastructure  
Open Space and Recreation

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**Summary:**

This report has been withdrawn at Telstra's request.

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**Report**

This report has been withdrawn at Telstra's request.

This report has been withdrawn at Telstra's request.

This report has been withdrawn at Telstra's request.

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**Report No. 13.33**      **Vallances Road Management Plan**  
**Directorate:**      Infrastructure Services  
**Report Author:**      Peter Rees, Manager Utilities  
**File No:**      I2017/1473  
5 **Theme:**      Community Infrastructure  
                 Sewerage Services

**Summary:**

10 At the 23 February 2017 Ordinary Meeting Council resolved to prepare a Plan of Management (POM) for the 108 hectare Vallances Road site encompassing a suite of sustainability initiatives that demonstrate a virtuous cycle that would be a showcase for the area and our community's values.

15 The attached draft document presents the proposed Plan of Management for the site. It should be noted, as discussed at the February 2017 Strategic Planning Workshop, it is proposed to undertake extensive community consultation to identify activities to be undertaken on the Affordable Housing and Community Initiatives project area.

20 The document was reported to the 14 September 2017 meeting of the Water Sewer and Waste Advisory Committee meeting. The meeting did not discuss the plan and an extraordinary meeting has been scheduled for the 10 October 2017.

25 The document was also presented to the 5 October 2017 Councillor Strategic Planning Workshop.

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**RECOMMENDATION:**

1. That the Draft Vallances Road Plan of Management be adopted subject to:
  - a) Being renamed "Brunswick Valley Sustainability Centre Management Plan"; and
  - b) References in the document referring to "POM" or "Plan of Management" be modified to "MP" or "Management Plan" respectively.
2. That Council approve the initiation of a Community consultation programme for the area identified for possible Affordable Housing / Community Gardens / Eco tourism / Educational.
3. That Council endorse the commencement of the procurement process for the designated solar farms on the site.

**Attachments:**

- 30 1 Vallances Road Plan of Management - Rev 1, E2017/86476 

**Report**

At the 23 February 2017 meeting, Council resolution 17-054 resolved:

- 5           1.     *That Council note the report.*
2.     *That the proposed POM be prepared in conjunction with the Waste Water and Sewerage Committee.*
3.     *That the terms of reference for the POM include the following:*
  - 10           a)     *Estimated costing for the initiatives and their budgetary feasibility in light of related projects in water and sewerage.*
  - b)     *Possible timeframes for their implementation.*
  - c)     *Financial viability of the potentially positive fiscal options.*
  - d)     *Environmental advantages and costs.*
  - 15           e)     *The implications of not including the replacement of the Mullumbimby sewer system.*
  - f)     *The marginal utility of improving the quality of current treatment (without wetland polishing) and utilising it in an effective reuse system.*
  - g)     *considers options for agricultural enterprises that utilises effluent reuse on the property.*
  - 20           4.     *The POM should clearly examine and advise on all and each of the initiatives in the staff report in a holistic manner as they are part of a much bigger system with increasing demands.*
  5.     *That the Vallances Road Agistment contract review include eligibility criteria which seeks to ensure that appointed contractors are of good character and have acted lawfully and appropriately in previous contract activities*
  - 25

30     The attached document is the draft Plan of Management (POM) for the Vallances Road site as per item 4 of Res 17-054. This document has essentially added more detail to the original proposal presented to Council in February this year. The draft document also complies with the State Government requirements for development of a Plan of Management for Community Land.

The draft Plan has divided the area into 7 key activity areas as follows

- 35     1. Brunswick Valley STP Project areas – this includes the process plant and proposed wetlands and effluent storage areas
2. Solar Farms – this is actually 2 areas with one for the BVSTP solar farm and the other for a community solar farm
3. Biomass project areas – for growing of biomass crops utilising biosolids and recycled water and using the crops for power generation
- 40     4. Environmental land use project areas – this will be a combination of revegetation areas; rehabilitation of mangroves and billabongs; river bank stabilisation works
5. Affordable Housing and Community Initiatives project area – it is recommended this area be put out for public consultation to determine the best use alternatives. Some immediate land use options that are available are eco tourism; educational/interpretative centres; and community gardens. It has not as yet been determined if the existing structures on the site including the 2
- 45     existing dwellings are a benefit or a hindrance at this stage.
6. Community access – possibly somewhat controversially, the POM has identified the main access thoroughfare to the site as being via the existing rail line and bridge that connects to an inactive road reserve into the western boundary. This would require significant will on the part
- 50     of Council to bring to fruition. Parking would be at Lot 4 at the end of Station Street with access along the rail / road corridor by foot / bicycle / electric cars.
7. Throughout the site would be a network of walkways and information portals explaining the “virtuous cycle” of waste conversion to energy; solar power; carbon sequestration; environmental habitat; mangroves and riparian protection.
- 55

The site has real potential to be both a showcase for the area and our community's values.

A catalyst to bringing the project alive is the proposed closing of the Ocean Shores STP and transferring the effluent to the Brunswick Valley site. The will initiate a \$10 million plus spend that, given the healthy financial position of the Sewer Fund, can be expanded to include many of the ancillary projects identified in the draft POM.

In relation to Item 3(e) it should also be noted the issue of reducing stormwater entering the gravity sewer system in Mullumbimby is a separate project and has no impact on this proposed Plan of Management.

In relation to Item 3(f) there is considered to be no marginal utility in removing wetlands and in lieu upgrading the BVSTP recycled water system to include dual reticulation standard. These effluent streams can happen in parallel as occurs at the Byron Bay STP.

### **Financial Implications**

The implementation of the draft Plan of Management for Vallances Road could occur under the umbrella of the OSSTP transfer project with little material impact on the sewer reserve funds. Depending on the final configuration of the Affordable Housing and Community Initiatives project area; and the power generation projects, the site could in effect generate income that would be beneficial to the sewer reserve funds.

### **Statutory and Policy Compliance Implications**

The draft Vallances Road Plan of Management document has attempted to embody Council's strategic objectives embodied in

- Biodiversity Conservation Strategy
- Sustainable Agriculture Strategy
- Low Carbon Strategy 2014
- Climate Change Strategic Planning Policy
- Community Gardens Policy
- Corporate Sustainability Policy

**REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES****Report No. 14.1      Report of the Audit, Risk and Improvement Committee Meeting held on 12 October 2017**

**Directorate:** Corporate and Community Services  
**Report Author:** Jessica Orr, Strategic Risk and Improvement Coordinator  
**File No:** I2017/1509  
**Theme:** Corporate Management  
Governance Services

**Summary:**

This report provides the minutes and recommendations of the Extraordinary Audit, Risk and Improvement Committee Meeting held on 12 October 2017 for determination by Council.

**RECOMMENDATION:**

1. That Council note the minutes of the Audit, Risk and Improvement Committee Meeting held on 12 October 2017.
2. That Council resolve to move the next meeting of the Audit, Risk and Improvement Committee from 16 November 2017 to 30 November 2017.
3. That Council adopt the following Committee Recommendation(s):

**Report No.** Draft 2016/2017 Financial Statements  
**File No:** I2017/1475

**Committee Recommendation .1**

**That the Audit, Risk and Improvement Committee recommend to Council:**

1. That Council approve the signing of the “Statement by Councillors and Management” in accordance with Section 413(2)(c) of the Local Government Act 1993 and Regulation 215 of the Local Government (General) Regulation 2005 in relation to the 2016/2017 Draft Financial Statements.
2. That Council exhibit the Financial Statements and Auditor’s Report and call for public submissions on those documents with submissions closing on 30 November 2017 in accordance with Section 420 of the Local Government Act 1993.
3. That the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 23 November 2017 in accordance with Section 418(1) of the Local Government Act 1993.

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

**Report No.** Audit, Risk & Improvement Delivery Program and Strategy for 2017 - 2021  
**File No:** I2017/1345

**Committee Recommendation .1**

**That the Audit, Risk and Improvement Committee:**

- 1. Endorse the 2017-2021 Internal Audit Plan with minor amendments to the terms of reference for the Buildings and Property Management audit review and Fraud and Corruption Control audit review, noting that the reviews for year two onwards will be presented to the Audit, Risk and Improvement Committee at the commencement of each audit year.**
- 2. Note the 2017/18 audit program will include:**
  - a) Corporate Compliance and Policy Management**
  - b) Buildings and Property Management**
  - c) Fraud and Corruption Control**
  - d) IT User Access**

**Attachments:**

5

- 1 Audit, Risk and Improvement Committee Minutes 12 October 2017, E2017/96937 

**Report**

The attachment to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 12 October 2017 for determination by Council – they are available on Council's website at:

[http://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2017/10/ARIC\\_12102017\\_MIN\\_624\\_EXTRA\\_WEB.htm](http://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2017/10/ARIC_12102017_MIN_624_EXTRA_WEB.htm)

**Management Comments**

In addition to the Committee Recommendations above, Management request that Council resolve to move the next meeting of the Audit, Risk and Improvement Committee from 16 November 2017 to 30 November 2017 at 9.00am to allow sufficient time for a thorough audit to be undertaken and presented to the Committee following Council endorsement of the Audit Plan.

**Financial Implications**

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 12 October 2017.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 12 October 2017.

**Report No. 14.2      Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 22 September 2017**

**Directorate:** Corporate and Community Services  
**Report Author:** Belle Arnold, Community Project Officer  
**File No:** I2017/1436  
**Theme:** Society and Culture  
Community Development

**Summary:**

This report presents the minutes of the Arakwal Memorandum of Understanding Advisory Committee held at the Byron Bay Library on 22 September 2017.

This meeting discussed the Byron Shire Aboriginal Stakeholder Consultation Document, the Ti Tree Lake Plan of Management, Signage at Broken Heads Caravan Park, Ironbark Housing Revegetation, Australia Day, Brunswick Heads Foreshore Midden Protection and other matters.

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**RECOMMENDATION:**

1. That Council note the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 22 September 2017.
2. That Council adopt the following Committee Recommendation :

**Report No. 4.1   Byron Shire Aboriginal Stakeholder Consultation Document**  
File No: I2017/1251

**Committee Recommendation 4.1.1**

That the Arakwal Memorandum of Understanding Advisory Committee reviews the "Byron Shire Council and Indigenous Stakeholders" document (E2016/98166) and that Council seek feedback from the Bundjalung of Byron Bay, Arakwal Corporation.

3. That Council adopt the following Committee Recommendation:

**Report No. 4.2   Ti Tree Lake PoM**  
File No: I2017/1233

**Committee Recommendation 4.2.1**

1. That the Arakwal Memorandum of Understanding Advisory Committee note the progress of this project.
2. That the Arakwal Memorandum of Understanding Advisory Committee seek comment on the closure of a section of Taylors Lake Road and the establishment of an easement, to protect the Aboriginal Cultural Principles of the Aboriginal Area and Aboriginal Place of the lake precinct, from the National Parks and Wildlife Service.
3. That the Arakwal Memorandum of Understanding Advisory Committee refer the schedule of water quality testing and the erection of signage to the National Parks and Wildlife Service for their recommendation under the terms of the Ti Tree Lake PoM.

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

**Report No. 4.3 Broken Head Beach Caravan Park signage**

File No: I2017/1256

**Committee Recommendation 4.3.1**

- 1. That the Broken Head Beach Caravan Park sign be replaced with option A as outlined in the report and that Council fund the first \$2,000, with the balance being funded by the Broken Head Caravan Park.**
- 2. That the erection of new Welcome to Country signage be taken back to the board of the Arakwal Corporation and reported to the next meeting of the Arakwal MoU.**

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

**Report No. 4.4 Ironbark Housing Revegetation**

File No: I2017/1241

**Committee Recommendation 4.4.1**

- 1. That the Arakwal Memorandum of Understanding Advisory Committee consider the request from the Bundjalung of Byron Bay, Arakwal Corporation regarding revegetation and works to restrict public access at the Ironbark Avenue Housing Development.**
- 2. That Council's Infrastructure Planning Staff and Manager Open Space and Resource Recovery liaise with relevant Arakwal members to investigate and cost options for consideration.**

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

**Report No. 4.5 Australia Day Report**

File No: I2017/1223

**Committee Recommendation 4.5.1**

- 1. That the Arakwal Memorandum of Understanding Advisory Committee support further discussion about the possible change of date for 2019 Australia Day events and seek further consultation on changing the date with the Arakwal Corporation.**
- 2. That the Arakwal Memorandum of Understanding Advisory Committee invite input from the Sisters for Reconciliation Group and the Cavanbah Reconciliation Group.**

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

**Report No. 4.6 Brunswick River Foreshore Midden System Protection**

File No: I2017/1255

**Committee Recommendation 4.6.1**

**That Council write to Crown Lands as a matter of urgency with regards to requesting**



that a barrier be erected to protect the aboriginal cultural heritage site in the precinct (maps to be provided) with letters of support sought from Brunswick Valley Landcare, Tweed-Byron Land Council and the Arakwal Corporation.

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

**Report No. 4.7 Bangalow and Mullumbimby Master Plan Guidance Group Cultural Heritage**

File No: I2017/1224

**Committee Recommendation 4.7.1**

- 1. That the Arakwal Memorandum of Understanding Advisory Committee note the Bangalow and Mullumbimby Master Plan guidance presentation and provide feedback on the consultation process to Council.**
- 2. That the Arakwal Memorandum of Understanding Advisory Committee demand that Council projects engage consultation with aboriginal stakeholders from the commencement of the project.**

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

**Report No. 4.8 Byron Shire Aboriginal Cultural Heritage Study - Stage 1 Progress Report**

File No: I2017/1239

**Committee Recommendation 4.8.1**

**That the representatives of the Bundajung of Byron Bay Aboriginal Corporation (Arakwal) note that the Draft Study is being reviewed in consultation with Aboriginal Stakeholders.**

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

**Report No. 4.9 Aboriginal Services in the Byron Shire**

File No: I2017/1240

**Committee Recommendation 4.9.1**

- 1. That the Arakwal Memorandum of Understanding Advisory Committee note the development of this project and employment of a worker to continue to develop this project.**
- 2. That Council commend the work in progress on this project.**

5

**Attachments:**

- 1 Minutes 22 09 2017 Arakwal Memorandum of Understanding Advisory Committee, E2017/97439** 

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**Report**

5 The attachment to this report provides the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting of 22 September 2017 for determination by Council. The agenda for this meeting can be located on Council's website at:

[http://byron.infocouncil.biz/Open/2017/09/AMUAC\\_22092017\\_AGN\\_616\\_AT.PDF](http://byron.infocouncil.biz/Open/2017/09/AMUAC_22092017_AGN_616_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 Arakwal Memorandum of Understanding Advisory Committee Meeting of 22 September 2017.

**Statutory and Policy Compliance Implications**

20 As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 22 September 2017.

**REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES**

**Report No. 14.3**      **Report of the Local Traffic Committee Meeting held on 19 September 2017**

**Directorate:**      Infrastructure Services  
**Report Author:**      Stephanie Tucker, Traffic and Transport Assistant  
**File No:**      I2017/1434  
**Theme:**      Community Infrastructure  
                         Local Roads and Drainage

**Summary:**

This report contains the recommendations of the Local Traffic Committee from the meeting as held on 19 September 2017.

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**RECOMMENDATION:**

1.    **That Council note the minutes of the Local Traffic Committee Meeting held on 19 September 2017.**
2.    **That Council adopt the following Committee Recommendation(s):**

**Report No. 6.1    Event Road Closures - Mullum2Bruns Paddle 2018**  
**File No: I2017/1036**

**Committee Recommendation 6.1.1**

1.    **That Council approve the Traffic Management Plan and Traffic Control Plans for the Mullum2Bruns Paddle 2018 to be held Sunday 27 May 2018, that includes the temporary road closure below:**
  - a)    **Brunswick Terrace, Mullumbimby, between Tincogan Street and Tyagarah Street (to become one-way traffic), between 06:00am and 10:00am on Sunday 27 May 2018.**
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.**

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

**Report No. 6.2 Event Road Closures - Falls Festival 2017/18**

**File No: I2017/1146**

**Committee Recommendation 6.2.1**

**That Council approve the Traffic Management Plan, which includes Traffic Control Plans, for the Falls Festival 2017/18 to be held at the North Byron Parklands site, Yelgun Sunday 31 December 2017 to Tuesday 2 January 2018 inclusive, subject to the following conditions:**

- a) Separate approvals by NSW Police and RMS being obtained;**
- b) Implementation of the approved Traffic Management Plan and Traffic Control Plan by those with appropriate RMS accreditation and the holding of current and appropriate levels of insurance and liability cover;**
- c) The approved event size being sufficient (20,000 patrons) to trigger use of the south car park as per the DA Condition for its use;**
- d) The temporary 'No Stopping' where applied, including on Brunswick Valley Way (between Shara Boulevard and Tweed Valley Way) and on Tweed Valley Way (between Brunswick Valley Way and the Shire boundary), is implemented prior to the event and in accordance with relevant state requirements and Australian Standards;**
- e) A communications protocol be developed and maintained by those involved in the implementation of traffic management including monitoring and ability to implement contingency plans as and when directed;**
- f) Monitoring of vehicle volumes that arrive and depart the festival site and on the local road network;**
- g) The holding of an event debrief within the month following the festival which includes but not limited to Council, RMS and Police;**
- h) As a committee, request council to consider additional rangers patrol the Yelgun Rest Area during the Falls Event.**
- i) The event organiser:**
  - i) advertising the impact of the event 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;

- ii) providing a copy of the advert for Council's web page;
- iii) give consideration of any submissions received;
- iv) informing community and businesses that are directly impacted (e.g. adjacent to the event) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
- v) arranging for private property access and egress affected by the event;
- vi) liaising with bus and taxi operators and ensuring arrangements are made for provision of services during conduct of the event;
- vii) consulting with emergency services and any identified issues be addressed;
- viii) holding \$20m public liability insurance cover which is valid for the event.
- ix) paying of Council's Road Event Application Fee prior to the event.
- x) That the event organiser be required to install a VMS board at the Yelgun Rest Area with appropriate message restricting or prohibiting parking in the rest area, such as "No Special Event Parking".

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

**Report No. 6.3 Capital Works - Coolamon Scenic Drive (South Mullumbimby) -  
Regulatory Signage and Line Marking**

File No: I2017/1236

**Committee Recommendation 6.3.1**

That Council approve the use of curve and advisory speed signs, chevron alignment markers, unidirectional hazard markers and a white double barrier line marking along Coolamon Scenic Drive from Azalea Street to Hinterland Way as required.

**5. Note that Council adopted the following Committee Recommendation(s) at Council meeting 21 September 2017:**

**Report No. 6.4 Event Road Closures - 50th Anniversary NSW National Parks and  
Wildlife Service**

File No: I2017/1244

**Committee Recommendation 6.4.1**

- 1. That Council endorse the Traffic Management Plan for the 50<sup>th</sup> Anniversary of the NSW National Parks and Wildlife Service to be held on Sunday 8 October 2017 that includes:

- a) the temporary road closure of Lighthouse Road (between Palm Valley Drive

and the Cape Byron Lighthouse) between 5:00am and 4:00pm;

- b) the use of the Clarkes Beach bus stop for the operation of the free shuttle bus service.

**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) Due to the event being held at the end of the school holidays, the applicant be required to supply a VMS board notifying of the road closures for the event on Sunday 8 October. VMS board to be placed on the corner Tallows Beach Drive from 9am Friday the 6th October advising of the road closure;
- e) the event be notified on Council's webpage;
- f) 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) paying Council's Road Event Application Fee prior to the event.

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

**Report No. 6.5 Event Road Closures - Bangalow Christmas Eve Carnival 2017**  
File No: I2017/1245

**Committee Recommendation 6.5.1**

- 1. That Council approve the Traffic Management Plan (TMP) and Traffic Control Plan (TCP) for the Bangalow Christmas Eve Carnival 2017 to be held Sunday 24 December 2017, that includes the temporary road closure below:
  - a) Byron Street, Bangalow between Ashton Street and Granuaille, between 3:30pm and 10:00pm.

**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 address any identified issues;
  - 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.

**7. That Council adopt the following Committee Recommendations:**

**Report No. 6.6 Event Road Closures - Brunswick Woodchop Twilight Markets 2017**  
File No: I2017/1246

**Committee Recommendation 6.6.1**

1. That the Twilight Markets to be held on Wednesday 13 December 2017, which includes the temporary road closure/s below, be endorsed between these times:
  - a) Mullumbimbi Street Brunswick Heads, between The Terrace and Park Street on Wednesday 13 December 2017, as per the following:
    - i) Closure of the area bounded by the nose-in parking and centre parking bay from 7:00am until 11:00pm. This is the u-shaped provision for parking that is adjacent Banner Park in the vicinity of the children's play area;
    - ii) Two (2) temporary designated 'Disability Parking' spaces be created outside of the hotel during the morning, with signage to be installed by appropriately accredited persons in conjunction with the implementation of the TCP. The existing 2 spots will have been closed off;
    - iii) Closure of the remaining section of 'through road' between The Terrace and Park Street from 12:00noon until 11:00pm.
  - b) Opening of Memorial Park for parking on Wednesday, 13 December 2017 from 12:00noon to allow stallholders to get their vehicles off the street before the markets start at 3:00pm.

- c) The event organisers ensure clear access to the river is maintained at all times for Emergency Services through the temporary parking areas.
- 2. That the Fireworks Night to be held on Saturday 13 January 2018, which includes the opening of Memorial Park for parking from 6:00pm be endorsed.
- 3. That the approval provided in Part 1 and Part 2 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 by those with appropriate RMS accreditation and the holding of current and appropriate levels of insurance and liability cover;
  - c) the impact of the event be advertised, and charged at cost to the organisers, 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 organisers ensure clear access to the river is maintained at all times for Emergency Services through the temporary parking areas.
  - e) the event be notified on Council's web page;
  - f) the event organiser:
    - i) informing community and businesses that are directly impacted (eg adjacent to the event) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
    - ii) arranging for private property access and egress affected by the event;
    - iii) liaising with bus and taxi operators and ensuring arrangements are made for provision of services during conduct of the event;
    - iv) consulting with emergency services and any identified issues be addressed;
    - v) holding \$20m public liability insurance cover which is valid for the event;
    - vi) paying of Council's Road Event Application Fee prior to the event.
- 8. Note that Council adopted the following Committee Recommendation(s) at Council meeting 21 September 2017:

**Report No. 6.7 Event Road Closures - Byron Lighthouse Run 2017**  
File No: I2017/1250

**Committee Recommendation 6.7.1**

- 1. That the Traffic Management Plan and Traffic Control Plan/s that relate to the Byron Lighthouse Run 2017, to be held Sunday 22 October 2017, which includes the



temporary road closures below, be endorsed between these times:

- a) **Lawson Street, between Massinger Street and Lighthouse Road, between 6:30am and 10:00am;**
- b) **Tallow Beach Road, between Lighthouse Road and Tallow Beach Car Park, between 6:30am and 10:00am;**
- c) **Lighthouse Road, between Lawson Street and the Cape Byron Lighthouse, between 6:30am and 10:00am; and**
- d) **Brooke Drive, between Lighthouse Road and the Pass, between 6:30am and 10:00am.**

**2. That the approval provided in Part 1 is subject to:**

- a) **separate approvals by NSW Police, RMS and Cape Byron Headland Trust being obtained;**
- b) **implementation of the approved Traffic Management Plan and Traffic Control Plan/s by those with appropriate RMS accreditation and the holding of current and appropriate levels of insurance and liability cover; and**
- c) **The event organiser:**
  - i) **advertising the impact of the event 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;**
  - ii) **providing copy of the advert for Council's web page;**
  - iii) **informing community and businesses that are directly impacted (e.g. adjacent to the event), including the Beach Byron Bay Café and North Coast Holiday Park Clarkes Beach, via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;**
  - iv) **arranging for private property access and egress affected by the event;**
  - v) **liaising with bus and taxi operators and ensuring arrangements are made for provision of services during conduct of the event;**
  - vi) **consulting with emergency services with any identified issues being addressed;**
  - vii) **holding \$20m public liability insurance cover which is valid for the event; and**
  - viii) **payment of Council's Road Event application fee prior to the event.**

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

**Report No. 6.8 Event Road Closures - Mullumbimby Music Festival 2017**

File No: I2017/1267

**Committee Recommendation 6.8.1**

1. That the Traffic Management Plan and Traffic Control Plan/s as relates to the Mullumbimby Music Festival 2017, to be held between Thursday 16 November 2017 and Monday 20 November 2017, which includes the temporary road closures below, be endorsed between these times:
  - a) Dalley Street, between Tincogan Street and Burringbar Street, between 11:00am and 12:00noon on Sunday 19 November 2017 - Street Parade;
  - b) Burringbar Street, between Station Street and Dalley Street, effective between 10:45am and 11:15am on Sunday 19 November 2017 - Street Parade;
  - c) Cenotaph Lane, between Dalley Street and east of the fire station driveway and Murphys Lane, effective from 4:00pm Thursday 16 November 2017 through to 8am Monday 20 November 2017; and
  - d) Murphys Lane, between Cenotaph Lane and Tincogan Street, effective from 4:00pm Thursday 16 November 2017 through to 8am Monday 20 November 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/s by those with appropriate RMS accreditation and the holding of current and appropriate levels of insurance and liability cover;
  - c) that each temporary bus stop, as required by the event, be established in accordance with the accredited Traffic Control Plan/s;
  - d) the event organiser:
    - i) advertising the impact of the event 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;
    - ii) providing a copy of the advert for Council's web page;
    - iii) the written concurrence of the Fire Stations on both Gordon Street and Dalley Street, be obtained and copies provided to Council;
    - iv) informing community and businesses that are directly impacted (eg adjacent to the event) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
    - v) arranging for private property access and egress affected by the event;

- vi) liaising with bus and taxi operators and ensuring arrangements are made for provision of services during conduct of the event;
- vii) consulting with emergency services and any identified issues be addressed;
- viii) holding \$20m public liability insurance cover which is valid for the event;
- ix) paying of Council's Road Event Application Fee prior to the event.

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

**Report No. 6.9 Event Road Closures - Chincogan Charge 2017 (out of session)**

File No: I2017/794

**Committee Recommendation 6.9.1**

- 1. That Council note that the Local Traffic Committee reviewed the Traffic Management Plan and Traffic Control Plan for the Chincogan Charge 2017 out of session and concur with the event road closures.
- 2. That Council note the Committee comments regarding the timelines for submission of applications for on-road events, and provides advice (including on Council's website) to event organisers that submissions of applications with less than four months notice cannot guarantee approval.

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

**Report No. 7.1 Shared Zone - Seven Mile Beach Road, Broken Head**

File No: I2017/1079

**Committee Recommendation 7.1.1**

- 1. That the concerns of the local residents and their request for a shared zone within Seven Mile Beach Road, Broken Head be noted.
- 2. That Council does not support any further consideration or review into the request for a shared zone within Seven Mile Beach Road, Broken Head.

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

**Report No. 7.2 Event Road Closures - Byron Bay Triathlon 2018 (for comment only)**

File No: I2017/1248

**Committee Recommendation 7.2.1**

That the comments from the Local Traffic Committee, as relates to the proposed options for the Byron Bay Triathlon 2018, be provided to the event organisers.

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

**Report No. 8.1 DA 10.2016.632.1 - Subdivision of One Lot into Two Lots - 103 Paterson Street, Byron Bay**

File No: I2017/1147

**Committee Recommendation 8.1.1**

**That the Local Traffic Committee's comments relating to DA 10.2016.632.1 be provided to the Council Planning Team.**

**Report**

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 19 September 2017 for determination by Council. The agenda for this meeting can be located on Council's website at:

5

[http://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2017/09/LTC\\_19092017\\_AGN\\_712\\_AT\\_SUP.PDF](http://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2017/09/LTC_19092017_AGN_712_AT_SUP.PDF)

**Committee Recommendation**

- 10 That Council note the Committee comments regarding the timelines for submission of applications for on-road events, and provides advice (including on Council's website) to event organisers that submissions of applications with less than four months notice cannot guarantee approval.

**Management Comments**

15

Management supports the committee recommendations.

**Financial Implications**

- 20 As per the Reports listed within the Local Traffic Committee Meeting of 19 September 2017.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Local Traffic Committee Meeting of 19 September 2017.

25

**Report No. 14.4      Report of the Water, Waste and Sewer Advisory Committee Meeting held on 14 September 2017****Directorate:** Infrastructure Services**Report Author:** Dominika Tomanek, Executive Assistant Infrastructure Services  
Peter Rees, Manager Utilities**File No:** I2017/1456**Theme:** Community Infrastructure  
Water Supplies**Summary:**

The attachment to this report provides the minutes of Water, Waste and Sewer Advisory Committee Meeting of 14 September for determination by Council.

**RECOMMENDATION:**

1. That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 14 September 2017.

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

**Report No. 4.1 Water and Sewer Strategic Business Plan**

File No: I2017/679

**Committee Recommendation 4.1.1**

1. That Council note:

- a) the report on the Water and Sewer Strategic Business Plan;
- b) that while the original design for Brunswick Valley Sewerage Treatment Plant included effluent storage to enable reuse, it did not include storage of untreated sewerage.

2. That the business plan be amended so that construction of a storage for untreated sewerage at Brunswick Valley Sewerage Treatment Plant not proceed until inflow/infiltration options have been considered.

3. That Council map its sewer pump station catchments in Mullumbimby and list the number of connections versus dry weather flow and then peak daily wet weather flow, so that worst areas can be identified for inflow/infiltration.

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

**Report No. 4.2 Urban Recycled Water Commercial Connections Policy**

File No: I2017/841

**Committee Recommendation 4.2.1**

That Council note the Water, Waste and Sewer Advisory Committee considered the draft Urban Recycled Water Commercial Connections Policy.

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

**Report No. 4.3 Water and Sewer Equivalent Tenement Policy Review**

File No: I2017/1232

**Committee Recommendation 4.3.1**

1. That Council note the report on the Water and Sewer Equivalent Tenement Policy Review.
  2. That the reduction amount for waterless composting toilets, in the table under section 4.4 of Attachment 1 to the Water and Sewer Equivalent Tenement Policy Review report, be changed from 16% to 25%.
  3. That the Draft Water and Sewer Equivalent Policy 2017 be placed on public exhibition.
  4. That Council receive a report investigating whether local effects give water and sewer Equivalent Tenement rates different from those listed under sections 6 and 9 in Appendix A of Attachment 1 to the Water and Sewer Equivalent Tenement Policy Review report.
5. That Council adopt the following Committee Recommendation(s):

**Report No. 4.6 Update on the Container Deposit Legislation**

File No: I2017/1254

**Committee Recommendation 4.6.1**

1. That Council note the report on the update of the Container Deposit Legislation and the legislative limitations for Council to nominate the number and location of collection points.
2. That Council receive a report with options for the allocation of revenue received from the Materials Recycling Facility for eligible containers collected within the kerbside recycling stream, including options for litter reduction or other resource recovery programs.

**5 Attachments:**

- 1 Water, Waste and Sewer Advisory Committee 10 October 2017 Minutes, E2017/96920 

**Report**

5 The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 14 September 2017 for determination by Council. The agenda for this meeting can be located on Council's website at:

[http://byron.infocouncil.biz/Open/2017/09/WW SAC\\_14092017\\_AGN\\_632\\_AT.PDF](http://byron.infocouncil.biz/Open/2017/09/WW SAC_14092017_AGN_632_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 14 September 2017.

**Statutory and Policy Compliance Implications**

20 As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 14 September 2017.



**Report No. 14.5      Report of the Water, Waste and Sewer Advisory Committee Meeting held on 10 October 2017****Directorate:** Infrastructure Services**Report Author:** Dominika Tomanek, Executive Assistant Infrastructure Services  
Peter Rees, Manager Utilities**File No:** I2017/1500**Theme:** Community Infrastructure  
Water Supplies**Summary:**

The attachment to this report provides the minutes of Water, Waste and Sewer Advisory Committee Meeting of 10 October for determination by Council.

**RECOMMENDATION:**

1. That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 10 October 2017.

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

**Report No. 4.1 State Government Water and Sewerage Performance Reports**  
File No: I2017/1234

**Committee Recommendation 4.1.1**

1. The Water Waste and Sewer Advisory Committee recommends that Council notes the continuing improving performance in both cost and service delivery for the Water and Sewer services.
  2. That a report comes to one of the next committee meetings on options to reduce odour sewage Pump Station number 3001 and 3023.
3. That Council adopt the following Committee Recommendation(s):

**Report No. 4.2 Byron Shire Effluent Management Strategy (Draft)**  
File No: I2017/1235

**Committee Recommendation 4.2.1**

1. The Water Waste and Sewer Advisory Committee notes the draft of the Byron Shire Effluent Management Strategy.
  2. That Committee members provide feedback within 2 weeks including questions and information concerning the effectiveness and performance of the current reuse practices at Byron Bay Golf Course.
  3. That the earlier report on Urban and Rural Water Reuse (circa 2003) prepared by John Murtagh be distributed to committee members.
4. That Council adopt the following Committee Recommendation(s):

**Report No. 4.3 Vallances Road Plan of Management**  
File No: I2017/1259

**Committee Recommendation 4.3.1**

The Water Waste and Sewer Advisory Committee recommends that Council notes the Vallances Road Plan of Management.

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

**Report No. 4.4 Update on the review of Council's Integrated Waste Management and Resource Recovery Strategy**

File No: I2017/1262

**Committee Recommendation 4.4.1**

That the update of the review of Council's Integrated Waste Management and Resource Recovery Strategy be noted.

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

**Report No. 4.5 Response to Alan Dickens Questions**

File No: I2017/1268

**Committee Recommendation 4.5.1**

That the Water Waste and Sewer Advisory Committee notes the report.

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

**Report No. 4.6 Items For the Committee Requested by Duncan Dey**

File No: I2017/1269

**Committee Recommendation 4.6.1**

That Council notes that report number *4.6 Items For the Committee Requested by Duncan Dey*, was not discussed and has been referred to the next committee meeting.

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**Report**

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 10 October 2017 for determination by Council. The agenda for this meeting can be located on Council's website at:

[http://byron.infocouncil.biz/Open/2017/10/WW SAC\\_10102017\\_AGN\\_742\\_AT.PDF](http://byron.infocouncil.biz/Open/2017/10/WW SAC_10102017_AGN_742_AT.PDF)

**Committee Recommendation**

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 Water, Waste and Sewer Advisory Committee Meeting of 10 October 2017.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 10 October 2017.

## QUESTIONS WITH NOTICE

**Question with Notice No. 15.1**      **Works in Protected Areas**  
**File No:**                                      I2017/1164

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At Council's Ordinary Meeting held on 24 August 2017, Matthew O'Reilly asked the following question which was taken on notice:

Is Byron Council still implementing motion 12-560 "works in protected areas" and is it still being complied with?

**Response Manager Works:**

Works in Protected Areas

**Res 12-560**

1. *That where Council proposes to utilise the provisions of the State Government Infrastructure SEPP for works located in environmental protection zones, Council require a report for these matters to Council prior to any approval with consideration and assessment of Council's geographical information system High Conservation Value data layers and consultation with Natural Resource Management staff.*
2. *That Council develop a policy/procedure that clearly defines the appropriate measures for the disposal of vegetation in relation to the works and the awarding of contracts and that this be reported to Council and to consider:*
  - a) *contracts for tree removal not including ownership of logs; and*
  - b) *trees/logs or other infrastructure eg timber bridges, removed for infrastructure works on public land be assessed for appropriate use to determine the value of leaving on site for habitat or to be used for the provision of public purposes eg outdoor furniture, public art, fencing or for sale with proceeds returned to Council.*
3. *That the PRG consideration of road management be deemed a priority.*

Staff do not have an option to utilise or not utilise the provisions of the SEPP Infrastructure as it applies to works under the SEPP. The SEPP applies to all types of development listed in the SEPP and the SEPP will prevail over the provisions of the LEP. The provisions of the Infrastructure SEPP must be applied to all works unless an alternate environmental planning instrument (SEPP 14 for example) prevails.

The SEPP Infrastructure has three categories of development. Development is defined in the Environmental Planning and Assessment Act 1979 as follows:

**development means:**

- (a) *the use of land, and*
- (b) *the subdivision of land, and*
- (c) *the erection of a building, and*
- (d) *the carrying out of a work, and*
- (e) *the demolition of a building or work, and*
- (f) *any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument,*

This means that all works are development including road work.

The three categories of development in the SEPP are:

- 1 Exempt development does not require a Review of Environmental Factors (REF) or a Development Application (DA);
- 2 Development without consent ( requires a REF);
- 3 Development with consent ( requires a DA);

The current resolution refers to all environmental protection zones. Clause 8 of LEP 1988 lists the following zones as environmental protection:

### **Environmental Protection**

Zone No 7 (a)—(Wetlands Zone)—black edging, lettered “7 (a)” and coloured orange.

Zone No 7 (b)—(Coastal Habitat Zone)—black edging, lettered “7 (b)” and coloured orange.

Zone No 7 (c)—(Water Catchment Zone)—black edging, lettered “7 (c)” and coloured orange.

Zone No 7 (d)—(Scenic/Escarpment Zone)—black edging, lettered “7 (d)” and coloured orange.

Zone No 7 (f1)—(Coastal Lands (f1) Zone)—black edging, lettered “7 (f1)” and coloured orange.

Zone No 7 (f2)—(Urban Coastal Lands (f2) Zone)—black edging, lettered “7 (f2)” and coloured orange.

Zone No 7 (j)—(Scientific Zone)—black edging, lettered “7 (j)” and coloured orange.

Zone No 7 (k)—(Habitat Zone)—black edging, lettered “7 (k)” and coloured orange.

Zone No 8 (a)—(National Parks and Nature Reserve Zone)—black edging, lettered “8 (a)” and uncoloured with dark green edging.

As an example relating only to road maintenance activities for the Works Section, this resolution as it relates to Clause 97 of the SEPP is that works such as, pothole patching, bitumen resealing, asphalt resheets, line marking, replacement of signs and emergency works that do not need a REF should be reported to Council. This resolution does in fact prevent the Works Section from undertaking these activities without investigation of Council’s GIS to assess High Conservation Value data layers, consultation with Natural Resource Management staff and reporting to Council.

The following is an example of how this resolution restricts the operations of the Works Section of the Infrastructure Services Directorate:



1 Council's Works Section would not be able to patch potholes in this section of Coolamon Scenic Drive that is mapped as Zoned 7D without an REF and report to Council.

This activity is currently exempt development under the SEPP and does not require an REF and is currently not reported to Council.

Clause 94 of the SEPP relates to road infrastructure facilities that are permissible without consent. Development without consent requires a REF. An REF is required by Section 111 of the Environmental Planning and Assessment Act 1979. Section 111 required an authority (Council) proposing to carry out an activity to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity. Road work and work is considered to be an activity under the terms of the Act. Clause 94 relates to activities that may have an impact on the environment.

REFs are already required for development without consent. The section 111A of the act and clause 228 of the regulations set out the factors to be taken into account concerning the impact of an activity on the environment. These factors, where relevant, must be incorporated into the REF.

In 2014 Council engaged an experienced environmental planning consultant to:

- Investigate and review the current approvals processes used by Council Infrastructure Services staff (including document the review and interview staff)
- Provide a report of findings and detail where and how Council can improve and streamline processes.
- Meet with staff and train staff on the use of the SEPP Infrastructure, Roads Act, Local Government Act, Environmental planning and Assessment Act, 1979 and Byron LEP 2014. Help staff to understand when a work is subject to Part 4 of the EPA Act 1979 (a DA is

required) and when it is subject to Part 5 of the EPA Act 1979 (an REF is required) or when it is exempt development (no assessment is required).

- Prepare draft templates to enable staff to prepare a Conservation Risk Assessment (CRA) for small scale projects (that are otherwise exempt development) ; or a Review of Environmental Factors (REF) for small to medium scale projects that are assessable pursuant to Part 5 of the EPA Act 1979.

Staff have been implementing this training since this time. New staff have also been given training and existing staff have had refresher training.

When preparing an REF staff generally use a consultant ecologist to assess any vegetation or habitat that will be impacted. This ensures that threatened species and EEC's are not impacted without proper assessment. It is Councils goal to avoid any impacts on threatened species, EEC's and native vegetation generally. Where vegetation impacts are unavoidable then Council applies its Byron Biodiversity Conservation Strategy (2004) and compensation plantings are required. The Aboriginal heritage due diligence approach is applied to Council works and staff have been trained in accessing the AHIMs web site to check for sites and places of cultural significance. It is Councils goal to avoid any impacts on Aboriginal heritage. Council uses its Aboriginal Project Officer as a point of contact for the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal ) and Tweed Byron LALC.

Staff are aware of the socio-economic impacts of works in certain locations and undertake early liaison with affected parties ( e.g. shop owners, residents or neighbours to a work area) to ensure that works cause minimal disruption. Works are timed to avoid peak periods (where possible) such as Easter and Christmas. Where works involve Crown land or National Park / Nature Reserve / Marine Park then the relevant government authority is involved. In some projects they become a Determining Authority as well. In others they are required to issue a licence for the work to take place.

Staff have the option of using an external consultant to either prepare or review REFs (budget permitting). All REFs are internally checked by Sustainable Environment and Economy (SEE) staff as well. All REFs and CRAs are signed off by a senior staff person as a final check. The package for roads projects, including approval of the REF or CRA, is considered and approved by the Director of Infrastructure Services before any works proceed.

The above comments are provided from a roads perspective in relation to RES 12-560. Some of the areas impacted will be, stormwater works and maintenance, water and sewer works, parks and reserves works and maintenance. There may be other types of work not addressed above that are caught by this resolution.



**Question with Notice No. 15.2**      **Expert Witnesses for Myocum Property Appeal**  
**File No:**                                      I2017/1426

At Council's Ordinary Meeting held on 21 September 2017, John Anderson submitted the following question:

Why did Council spend \$31,000 on expert witnesses in the Butler Street Bypass appeal, but offer no expert witnesses in Cr Hunter's appeal over his Myocum property?

**Response Director Corporate and Community Services:**

Council engaged experts in three fields, namely:

1. traffic and safety;
2. drainage, flooding and effluent disposal; and
3. zone objectives.

As the judgement shows agreement was reached between the expert witnesses on many of the points.

The role of the expert witness is to assist the Court. Their overriding duty is to the Court and not to his or her client. Expert witnesses must advise their client (or the party engaging them) that their views may change depending on the information provided to them. Importantly, the expert witness is not to be an advocate for a party. The expert witness' duty is to work cooperatively with other experts and to endeavour to reach agreement with other experts.

Notwithstanding that there were agreements between the experts on a number of matters there remained a number of conditions which were in dispute between the parties. They are summarised below, with the Court's findings below in *italics*:

### Transport Terminal

- 12 month operation period sought to be imposed by Council in condition 1A

*The Court imposed 12 month restriction on operation of the transport terminal (as sought by Council), unless Roads Act approval is obtained.*

- Requirement for consent of Council in capacity as roads authority to be obtained within 6 months of approval of modification application

*The Applicant's conditions were rejected.  
Council's wording of conditions 1B and 1C were generally accepted (minor change to timing to be within 6 months of roads act approval being granted, rather than within 6 months of approval to modification application as sought by Council)*

## Storage Premises

- Wording of condition 9b which relates to vegetation clearing  
*Council's wording accepted*
- Inclusion of condition 28 which requires the Applicant to keep a weekly record of the trucks using the facility



*Condition 28 imposed, with additional wording prepared by Court.*  
Throughout the history of the matter it was reported monthly to Councillors through the Legal Services Status Reports.

In addition the matter was reported to Council by way of a confidential report on 3 August 2017. Council resolved as follows:

*Resolved:*

- 1. That the General Manager be authorised to enter into consent orders or a s34 Conciliation Agreement approving development application 10.2016.486.1, subject to appropriate conditions to be finalised under delegation.*
- 2. That the General Manager be authorised to enter into consent orders or a s34 Conciliation Agreement modifying development application 10.2013.559.1, subject to appropriate conditions to be finalised under delegation.*

Notwithstanding that delegation, the General Manager did not “settle” the matter as appropriate conditions could not be agreed upon.

As such, the matter proceeded to a hearing.

**Question with Notice No. 15.3**      **Butler Street Bypass Development Application**  
**File No:**                                      **I2017/1427**

At Council's Ordinary Meeting held on 21 September 2017, John Anderson submitted the following question:

How much did Council pay GHD Pty Ltd for its work in preparing Council's DA for the Butler Street Bypass and did Council seek substantial discounts for the fact that GHD stuffed up its initial DA and had to redo it, and for the fact that the DA turned out to be 70% irrelevant and unnecessary as it applied to the Butler Street Road part of the bypass in terms that Council did not need to lodge a DA for the modification of an existing road, as later successfully argued by Council in the Land and Environment Court?

**Response Director Infrastructure Services:**

The cost for GHD completing investigations, assessments, EIS and DA is \$354,000 (GST exclusive). The work has proved relevant in all aspects of the project delivery process including the Joint Regional Planning Panel assessment and approval and the NSW Land Environment Court (LEC) proceedings.

**Question with Notice No. 15.4**      **Community input into expenditure of section 94 monies**  
**File No:**                                      I2017/1428

At Council's Ordinary Meeting held on 21 September 2017, Matthew O'Reilly submitted the following question:

Can Council please advise on the process by which local communities can establish a mechanism to provide recommendations to Council on the expenditure of section 94 monies in their community; similar to the existing process with Suffolk park community?

**Response Developer Contributions Officer:**

The Byron Developer Contributions Plan 2012 was adopted by Council after 3 rounds of community consultation. Staff conducted surveys, public meetings, presentations to Chambers of Commerce and various ratepayer organisations to gain feedback on the draft plan. The community was consulted on the type of works and the priorities for expenditure. The contributions plan has been amended 3 times and some of the priorities for expenditure and the type of work proposed have been amended after further community consultation.

A contributions plan should generally require review and updating every 5 years to match up with the release of the census data. A review of the contributions plan is scheduled and will be undertaken upon completion of the Urban Strategy. Community consultation will be undertaken as part of this process. Consultation during the preparation of the associated plans that underpin the preparation of a new contributions plan also afford the community input into the priorities in the plan. An example of this is the recreation needs study that will form the basis for an updated open space works schedule in the next iteration of the contributions plan.

The reason that Suffolk Park has had separate consultation outside of the scope regular community consultation for plan preparation is that there was a significant amount of Open Space funds collected under the terms of previous contributions plans in the Suffolk Park catchment that was not allocated to a particular project. The plan reserved these funds for expenditure on open space works in that catchment by creating a specific line item in the works program under the heading:

*“Open Space Embellishment Works in Suffolk Park Further works to be determined after community consultation. Expenditure from old plan.”*

As a result of line item staff have engaged with the Suffolk Park community to determine how best to spend these funds held over from previous contributions plans.

The regulations and the departmental guidelines do not allow such flexibility when collecting funds for new projects. New collections must be in accordance with identified projects and cost of works specified in the contributions plan. Council cannot simply state that it will collect funds for open space in a given catchment and then leave it up to the community to determine what it will be spent on. The items for expenditure need to be identified in the plan.

The appropriate mechanism is for the community to be consulted on the proposed works schedules for inclusion in the preparation of the next iteration of the contributions plan as required by the regulations.

**CONFIDENTIAL REPORTS - CORPORATE AND COMMUNITY SERVICES**

**Report No. 16.1**      **CONFIDENTIAL - Grant 6-year sub-licences for Surf Schools, Personalised Surf Schools, Sea Kayaks and Stand Up Paddleboards as Preferred Tenderers**

**Directorate:**      Corporate and Community Services  
**Report Author:**      Paula Telford, Leasing and Licensing Coordinator  
**File No:**      I2017/1312  
**Theme:**      Corporate Management  
                  Governance Services

**Summary:**

Policy 5.52 Commercial Activities on Coastal & Riparian Crown Reserves, ('Policy 5.52') requires that all Class 2 commercial sub-licences must be awarded by an open and competitive tender process.

Council issued a Tender (2017-0002) to grant six (6) year sub-licences for the following low impact commercial activities:

1. Surf schools four (4) sub-licences;
2. Personalised surf schools two (2) sub-licences;
3. Sea Kayak two (2) sub-licences;
4. Stand Up Paddleboards two (2) sub-licences.

Tender 2017-0002 was publically advertised between 11 July and 7 August 2017, with tenders closing at 2pm on 8 August 2017.

Tender submissions were assessed by an independent evaluation panel between 14 August and 22 September 2017 in accordance with the Tender 2017-0002 Evaluation Plan. This report recommends that the panel's preferred tender respondents are granted new 6-year commercial activities sub-licences.

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**RECOMMENDATION:**

1. That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Grant 6-year sub-licences for Surf Schools, Personalised Surf Schools, Sea Kayaks and Stand Up Paddleboards as Preferred Tenderers.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
  - a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:
  - (a) disclosure could prejudice the Council's position in litigation; and (b) disclosure could adversely impact Council's position in the upcoming negotiations.

**Attachments:**

- 1 Confidential - BSC Commercial Activities Sublicences - Probity Report, E2017/96654
- 2 Confidential - Surf School Tender Evaluation Recommendation Report , E2017/96652

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**CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES**

**Report No. 16.2      CONFIDENTIAL - Council Tender for the Multi Use of Byron Shire Rail Corridor**

**Directorate:** Infrastructure Services  
**Report Author:** Joshua Winter, Civil Engineer  
**File No:** I2017/1264  
**Theme:** Community Infrastructure  
               Local Roads and Drainage

**Summary:**

At the Ordinary meeting on 20 April 2017, Council resolved **17-142** to endorse proceeding to tender and to allocate a budget to complete the works identified in the Request for Tender document presented at the meeting. The Request for Tender document was later refined as per the resolution, in consultation with the Mayor and Deputy Mayor. An extract from the RFT document containing the final consultant requirements is attached to this report (E2017/95905). The memo approving proceeding to invite Tenders is E2017/85995.

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

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**RECOMMENDATION:**

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

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

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

**RECOMMENDATION:**

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Council Tender for the Multi Use of Byron Shire Rail Corridor 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:**

- 5      1      Confidential - 2017-0037 - RFT Request for Tender - Multi Use Byron Shire Rail - Panel  
Recommendation Report SIGNED, E2017/95814
- 2      2      2017-0037 - Multi Use Byron Shire Rail Corridor – RFT – Extract Part A4, E2017/95905