



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 24 October 2019

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
General Manager

CONFLICT OF INTERESTS

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

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

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Code of Conduct for Councillors (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 the Code of Conduct for Councillors.

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.

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 of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

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

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under 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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2. APOLOGIES

3. REQUESTS FOR LEAVE OF ABSENCE

4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)

6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

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BYRON SHIRE COUNCIL

ORDINARY MEETING

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15. QUESTIONS WITH NOTICE

Questions with Notice: A response to Questions with Notice will be provided at the meeting if possible, that response will be included in the meeting minutes. If a response is unable to be provided the question will be taken on notice, with an answer to be provided to the person/organisation prior to the next Ordinary Meeting and placed on Councils website www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice

16. CONFIDENTIAL REPORTS

General Manager

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17. LATE REPORTS

17.1	Draft 2018-2019 Financial Statements
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The Draft 2018-2019 Financial Statements have been prepared and submitted for external audit.

At the time of preparing this Agenda, the external audit process is still being finalised and a Supplementary Agenda with this report will be distributed to Councillors and made available online at <https://www.byron.nsw.gov.au/Council/Council-meetings/Agendas-Minutes> prior to the meeting.

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 and Councillor Remuneration and Superannuation
File No: I2019/1611

I move that Council:

1. **Write to relevant Ministers lobbying for changes to the Local Government Act to delete s242A and include provisions (similar to those in the Queensland legislation) requiring compulsory superannuation for Mayors and Councillors at the rate equivalent to the rate set in the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.**
2. **Make a submission to the NSW Remuneration Tribunal for 2020 requesting maximum permissible increases, whilst the NSW Public Sector wages policy applies, along with creation of a new Regional Strategic category that adequately recognises impacts on Council business arising from high volume regional tourism or re-allocation of Byron Council into the existing Regional Strategic category.**
3. **Request LG NSW to support Council's request for a review of categories.**

Signed: Cr Sarah Ndiaye

Councillor's supporting information:

Councils individually and local government as an industry have been lobbying for improved remuneration and superannuation for Mayors and Councillors. See for example, LG NSW's submission to the Local Government Remuneration Tribunal's 2019 review of Mayors and Councillors remuneration – available at <https://www.lgnsw.org.au/member-services/nsw-local-government-remuneration-tribunal>

LGNSW have pointed out in their most recent submission to the Local Government Remuneration Tribunal's 2019 review that given the similarities between the work of MPs and councillors and the competence, skill and experience of local elected members, councillor and mayoral remuneration, as measured against that of MP's, is "woefully inadequate".

In addition, the LGNSW 2017 Annual Conference moved a motion to 'lobby the NSW Local Government Remuneration Tribunal to make it mandatory that councils make superannuation payments to mayors and councillors in addition to the stipend paid to elected officials'. The lobbying occurred but the NSW Local Government Remuneration Tribunal, in their 2017 determination, noted the current statutory provisions preventing the 'annual fee' paid to Mayors and Councillors being considered as a 'salary' that would otherwise be accompanied by superannuation.

We have seen first hand in the last year where the current conditions for councillors and mayors is woefully inadequate. When our Mayor needed to take leave to support his family during the sickness and passing of his partner Jane Fullerton, there were not adequate provisions to allow for the deputy to be remunerated throughout this period. The long term impacts of not providing superannuation to people serving their community will also be experienced in the longer term. What would now be approximately 20,000 dollars per year to be paid out by council would equate to much more for those serving councillors in years to come.

Reasonable remuneration for effort and removal of the current superannuation disadvantage are significant disincentives that make elected civic leadership at the local level unaffordable and unattractive. These conditions further go on to limit diversity of representation but making the roles more accessible to people who are independently wealthy, comfortably retired or people without dependents or any other challenge that would make working long hours for little remuneration not a possibility.

The State Government would not accept these sort of working conditions for themselves or any other workers and they need to be challenged about their legality and validity.

Staff comments by, Anna Vinfield, Manager Corporate Services:

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

This notice of motion is consistent with previous lobbying efforts of this Council to improve remuneration for mayors and councillors, including introducing compulsory superannuation guarantee payments, in recognition of the significant workload that mayors and councillors have, the invaluable contribution they make at local, regional and State levels and the benefits shown to flow from promoting diversity in leadership.

Actioning the motion (writing to relevant Ministers, making a submission to the NSW Remuneration Tribunal and requesting LGNSW's support) can be resourced from existing staff resources.

The proposed changes to Mayoral and Councillor remuneration, as noted in the motion, would require changes to State Government legislation.

Financial/Resource/Legal Implications:

Council's Budget for remuneration of the Mayor and Councillors is set each year to the maximum remuneration determined by the Local Government Remuneration Tribunal. This does not include any provision for superannuation. The 2019/20 Budget Estimates provides the following remuneration amounts for the Mayor and Councillors:

Mayor	\$44,300
Councillors	\$182,600
Total	\$226,900

The current Superannuation Guarantee rate is 9.50%. If Superannuation was to be paid in addition to the Mayor and Councillor fees, this would result in an additional cost to Council of approximately \$21,555 per annum at this point in time.

Aside from any potential remuneration increase, the additional cost for superannuation in the context of the overall Council budget is not significant. Should there be changes to improve the remuneration of the Mayor and Councillors, then this would become a necessary cost of doing business. Given the ever increasing expectations required of the Mayor and Councillors along with the complexity of Council business, any attempt to improve the remuneration levels of the Mayor and Councillors should be supported.

Is the proposal consistent with any Delivery Program tasks?

The motion is consistent with Council's 4-year Delivery Program Action to "Support Councillors to carry out their civic duties" and consistent with this year's Operational Plan action to provide support to Councillors including though provision of facilities and payment of expenses.

Notice of Motion No. 9.2 Making Council Submissions Public
File No: I2019/1616

I move that all future submissions to Council are to be treated as public documents unless requested otherwise by the submitter.

Signed: Cr Paul Spooner

Councillor's supporting information:

During my time on Council there have been a number of occasions when the issue of whether submissions should be made public has arisen.

The last occurrence of this was at the September Council Meeting when due to the non-publication of submissions the Draft Bike Plan and Draft PAMP was deferred for a decision until the October meeting.

This motion seeks Council endorsement to ensure this does not occur in the future.

I believe accountability and transparency are the corner stones of responsible decision making.

Simply put, if people want to make a submission to influence a Council decision transparency and accountability calls for that submission to be made public as a default position.

By adopting this motion I believe Council will function in a more accountable and open manner.

It will be clearer to the public why a particular decision has been made.

As elected representatives it will hold Councillors to account for the decisions made on behalf of residents.

A fact that should only strengthen the state of democracy in the Byron Shire.

Staff comments by Anna Vinfield, Manager Corporate Services and Ralph James Legal Counsel:

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

Cr Spooner's rationale is supported. The principles of accountability and transparency are reflected in Council's Community Strategic Plan, which includes a strategy (5.2) to "create a culture of trust with the community by being open, genuine and transparent".

The recent Byron Model deliberations (Res **19-488**) also referenced the need for greater transparency and identified a number of initiatives that are to be implemented over the next two years to enhance trust.

This Notice of Motion is consistent with these strategies and officers are supportive of ensuring submissions are included in business papers.

The example provided of the Draft Bike Plan and Draft PAMP was an administrative error. The submissions should have been available to the public and it is common practice to do so when presenting a report to Council that includes an element of community engagement and feedback.

While it is common practice, there are considerations in accordance with Council's Code of Meeting Practice (that applies to all meetings of Council) that are relevant in determining the confidentiality of a report and/or attachments.

- 5 Clause 2 "Meeting Principles" of the Code provides that Council meetings should be transparent in that decisions are made in a way that is open and accountable.

Clauses 3.17 and 3.18 of the Code provide for the General Manager to fix the agenda for a Council meeting.

10

Although the Code does not make specific reference to confidential attachments or submissions the General Manager must, beyond the terms of the resolution presently proposed by Cr Spooner, determine whether a submission should be included in an agenda as confidential.

- 15 In undertaking that exercise the General Manager must consider the applicable provisions of LGA section 10A(2). The most likely 10A(2) matters to arise in a submission would be:

- (a) personnel matters concerning particular individuals (other than councillors),
- (b) the personal hardship of any resident or ratepayer,
- 20 (i) alleged contraventions of any code of conduct requirements applicable under section 440.

In addition, a submission may contain material which is defamatory (or potentially so) which would need to be redacted.

- 25 There may be confidentiality issues when including personal details of submitters and where this is the case, personal information would be redacted if requested.

However, even if the General Manager included any submission in an agenda as "confidential" the continued confidential status of the submission would be a matter for Council.

30

LGA section 11 is relevant.

11 Public access to correspondence and reports

- 35 (1) A council and a committee of which all the members are councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.
- (2) This section does not apply if the correspondence or reports:
 - (a) relate to a matter that was received or discussed, or
 - 40 (b) were laid on the table at, or submitted to, the meeting, when the meeting was closed to the public.
- (3) This section does not apply if the council or committee resolves at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in section 10A (2), are to be treated as confidential.

45

Financial/Resource/Legal Implications:

The implementation of this Notice of Motion will be incorporated within existing resources.

- 50 Is the proposal consistent with any Delivery Program tasks?

Council's Community Strategic Plan includes a strategy (5.2) to "create a culture of trust with the community by being open, genuine and transparent".

- 55 This Notice of Motion is consistent with Council's Delivery Program.

Notice of Motion No. 9.3 Designing Specialist Homeless Services for Women Masterclass
File No: I2019/1617

I move that Council support Cr Spooner's attendance at the "*Designing Specialist Homeless Services for Women Masterclass*" to be held in Brisbane on 3-4 December 2019.

Attachments:

- 1 Designing Specialist Homeless Services for Women - 2019, E2019/74121 

Signed: Cr Paul Spooner

Councillor's supporting information:

Over the last couple of years Council has provided a special focus on the homeless crisis facing the Shire. This has involved a number of actions:

1. Rough Sleeper Street counts in 2018 & 2019
2. The employment of a Rough Sleeper Project Worker
3. A two years trial to engage two Public Space Liaison Officers

The above initiatives sought to understand and address the support needs of the rough sleeping population. Alarming, the 2019 Street Count recorded an 18% increase in rough sleepers in the Shire.

The clear message is that more needs to be done to provide housing for our most vulnerable, especially women.

While support services are always necessary providing housing is even more critical.

The "*Designing Specialist Homeless Services for Women Masterclass*" in Brisbane on 3-4 December seeks to address this reality. See attachment for full details.

Presented by the *Australian Alliance to End Homelessness* it's aimed at decreasing homelessness and transforming lives through collective impact and specialist homeless service delivery.

This masterclass will unpack the root causes of increased demand for specialist homeless services by women and other key demographics that are affected by the lack of affordable housing, increasing difficulties with cost of living, financial hardship, unemployment, gender pay gap, divorce, domestic and family violence and more.

It aims to assist participants:

- Unlock new strategies to identify hidden homelessness and help to alleviate stigma and shame;
- Reduce the incidence of homelessness by identifying effective early intervention strategies for the various complex drivers of homelessness;
- Foster collaboration amongst government, developers, and support agencies to build and design effective specialist homeless services and programmes;
- Learn about newly emerging models of intervention designed to permanently end homelessness; and

- Determine eligibility criteria for priority housing to boost provision of crisis accommodation, transitional accommodation and long-term accommodation

This motion supports the key objective of Council's Homelessness Policy:

5

"To strengthen Council's role in partnerships to address homelessness"

10 By attending the masterclass I hope to be better equipped to provide effective policy guidance in regards to Council's future responses to homelessness in the shire. This will be achieved by being involved in discussions at the masterclass regarding the most current national and international research and policy initiatives to this complicated social reality.

This motion seeks council endorsement for me to attend the masterclass.

15 **Staff comments by Sarah Ford, Manager Social and Cultural Planning, Corporate and Community Services :**

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

20 The attendance by Cr Spooner at the *"Designing Specialist Homeless Services for Women Masterclass"* in Brisbane on 3-4 December is a timely opportunity to deepen the knowledge and understanding of best practice national and international research and policy initiatives aimed at supporting women. Numbers of women and children sleeping rough are on the rise nationally and locally and require specific supports and interventions.

25 Council staff are in the process of reviewing the Homelessness Policy, for which Cr Spooner can provide effective policy guidance and capacity building with Councillor peers. Council's ongoing support and understanding of the current local, national and international context is key to staff's success at trialling innovative and collaborative responses to homelessness.

30 Financial/Resource/Legal Implications:

Cost of Masterclass is \$1,799 for two days, plus travel and per diems.

35 Council has an allocation of \$35,100 for conferences within the 2019/20 budget. There is \$29,755 remaining in the budget at the time of writing.

Is the proposal consistent with any Delivery Program tasks?

40 Yes

2.2.1 Develop and maintain collaborative relationships with government, sector and community

Notice of Motion No. 9.4 Review of the current Signage Policy
File No: I2019/1620

I move:

- 1. That given the huge impact lighting and signage can have on the look, feel and
 5 ambiance of our community, we request that Council staff conduct a review of the
 current signage policy looking at:**
 - a) The approval framework for signage including building and business
 identification signs, remote business and building identification signs and
 community event signs.**
 - b) The hierarchy of planning legislation in relation to the criteria and controls
 applicable to each sign type (i.e. SEPP, LEP, DCP) and how these controls
 interplay with the Town and Village ‘Character Statements’.**
 - c) The potential for the inclusion of stricter guidelines for the luminance of LED
 signage.**
 - d) A comparative study of other Local Government Areas that have a more recent
 signage policy.**
 - e) The enforcement options where buildings or businesses are non compliant for
 both current and retrospective DA’s in respect to signage.**
- 2. That a report be brought to Council responding to points A-E outlining options for a
 5 way forward before March 2020.**

Signed: Cr Sarah Ndiaye

Councillor’s supporting information:

The Byron Shire has grown and technology around lighting and signage has also. It seems that
 15 more illuminated signage is in our streetscapes and luminescence has reached a point where it
 detracts from the general ambiance of the area. In some places the streetscape looks cluttered
 with excessive and confusing advertising that undermines one of the very reason people come to
 the region. The need to allow businesses to let consumers know where their business is and what
 services they provide has to be balanced with the communities need to recapture and shape our
 own identity and not just become another place of perpetual bright lights and chain stores.

20 The recently completed Mercato centre is an example of where the lighting and advertising is not
 sympathetic to the local character of the town. The strength of the luminance of the illuminated
 signage is so bright, with cold and white light that it detracts from the surrounds. Having clear
 guidelines around this generally unregulated space could contribute in a very positive way to our
 25 local streetscapes. Due to the increasing availability of lighting and reduced cost, we are now also
 seeing illuminated signage turning up in residential streets to advertise holiday accommodation
 such as the recent appearance of one on South Beach Road in Brunswick Heads.

30 The affects of advertising are much broader than the visual pollution they create. The issues are
 not just around lighting though. Some businesses are painted in such a way that they detract from
 the general ambiance of the area they are in. This can also create an environment where, to try
 and compete with the surrounding business signage, business owners are constantly trying to
 ‘outshine’ each other in this space.

While we have an existing signage policy it seems that it is perhaps out of date and hard to enforce given the different layers of applicable legislation.

5 The removal of excessive signage and the acknowledgement that perpetual advertising can be damaging and help drive rampant consumerism is well documented across the globe and many cities and towns have taken upon themselves to address the issue (see link)
<https://www.rapidtransition.org/stories/adblocking-the-global-cities-clearing-streets-of-advertising-to-promote-human-and-environmental-health/>

10 The article offers some lessons for transition

1. Addressing advertising, one of the drivers of over-consumption, is key to the success of transitions towards a more sustainable society. Reducing demand means there is less pressure to continually increase supply.
- 15 2. Cleaning towns and cities of ubiquitous advertising is not just about cutting visual pollution and improving aesthetics: people welcome it for a range of other reasons, including safety and mental health.
3. Improving aesthetics is a process – if you just remove billboards, you will find yourself under pressure to improve the look of your city in other ways too.

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

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

Appropriate signs identify and promote businesses and buildings as well as communicate messages. Well designed signs contribute to streetscape character and assist people finding their way.

25 Inappropriate signs whether by way of location, poor quality design, excessive number or excessive size, can create visual and physical clutter, degrade the character of streetscapes and reduce the efficiency of other appropriate signs.

30 For new buildings, the location, type and total number of external signs should be considered at the development application stage so that signs can be integrated into the design of the buildings.

35 Proposals for new or substantially amended signs on existing buildings must be considered in relation to the buildings streetscape context, its architectural design and the cumulative impact of any other signs in the vicinity so as not to create visual or physical clutter.

There are different levels of planning control that apply to advertising and signage in Byron Shire.

40 State Environmental Planning Policy No 64 Advertising and Signage
 State Environmental Planning Policy Exempt and Complying Development Codes 2008
 Local Environmental Plan 1988
 Local Environmental Plan 2014
 Development Control Plan 2010
 Development Control Plan 2014

45 As a consequence there is a convoluted statutory hierarchy each with its own development standards and controls for the different types and forms of advertising and signage found in and around our towns and villages.

50 Some signs do not need approval from Council.

Because of the above councils can be somewhat limited in imposing more detailed signage requirements on certain signage through their local environment plan and or development control plan.

- 5 A review of the current suite of state and local planning policies will enable a clear approval and compliance pathway to be established and communicated to our community for what is an acceptable location, design and number of signs, for business, buildings and event signage in Byron Shire.

10 Financial/Resource/Legal Implications:

The review of the Signage Policy is not a specific action in the current adopted Operational Plan. To meet a March 2020 report deadline there may be resource implications.

15 Is the proposal consistent with any Delivery Program tasks?

Community Objective 4: We manage growth and change responsibly	4.1 Support the visions and aspirations of local communities through place-based planning and management	4.1.3 Manage development through a transparent and efficient assessment process	4.1.3.10 Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps
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specialist homelessness services providers, government agencies and community organisations including Byron Zero Homeless, in the development of evidence-based responses.

Financial/Resource/Legal Implications:

5 While it is acknowledged that traditional avenues of funding are unlikely to be sufficient to address the current barriers to secure housing and adequate service provision, we would prefer to afford Councillors the opportunity to understand the wider strategic approach through detailed discussion at the November SPW rather than commit to one-off funding on this occasion. In the meantime
10 staff resourcing will continue to support the Byron Zero Homelessness project's implementation goals.

15 However should Council wish to commit funding then it is recommended that Byron Zero be invited to submit an application through the S356 Grants process which is currently open, so that the application can be considered as part of the process, to allocate the 2019/20 S356 Community donations program .

Is the proposal consistent with any Delivery Program tasks?

20 Yes

2.2.2 Develop and maintain collaborative relationships with government, sector and community

PETITIONS

Petition No. 10.1 Request for sealing of Poplar Avenue Mullumbimby due to disability access issues

5 **Directorate:** Infrastructure Services
Report Author: Joshua Provis, Road and Bridge Engineer
File No: I2019/1524

10 At Council's Ordinary meeting held on 26 September 2019 the Mayor tabled a petition containing 34 signatures which states:

15 *"We, the undersigned are concerned citizens who urge the Council to take action on the state of the road and footpath on Poplar Avenue Mullumbimby and effect it has for a disabled person."*

Comments from Director Infrastructure Services:

20 The bitumen seal on Poplar Avenue from Coolamon Avenue to Eugena Street is poor condition and heavily pothole patched. Currently there are no existing potholes as the jet patcher has recently patched the street. Like many urban streets in the shire, potholes can form quickly on this section of road during rainfall events.

25 The remainder of the street, between Coolamon Avenue and Azalea Street is in better condition with no signs of potholing, however should be resealed soon before it starts to deteriorate.

Rehabilitation Options

30 The following rehabilitation treatments would be required to provide a smooth surface along the entirety of Poplar Avenue.

- A new asphalt surface between Eugena Street and Coolamon Avenue.
- A bitumen spray seal between Coolamon Avenue and Azalea Street.

Financial Considerations

The cost estimate of each section being:-

40 Eugena Street and Coolamon Avenue \$60,800 + GST
Coolamon Avenue and Azalea Street \$9,600 + GST

Therefore, the total cost for the rehabilitation of the street is \$70,400 + GST.

45 The project could be programmed for the 2020/2021 financial year and funded under the resurfacing program. Specific projects in this program are currently being determined.

To deliver the project in the current financial year would require a project to be cut from the current reseal program.

Council's responsibilities under the Disability Discrimination Act 1992

Council will:-

- 55
- Assess the state of Poplar Road;
 - Determine Poplar Road's priority in Council's current road works program;


- Respond to the authors regarding the claim that Poplar Avenue can be sealed for \$62,000;
- Note that the authors have the right to make a complaint about this matter to the Australian Human Rights Commission, and that it is ultimately for the Federal Court to determine if there has been a breach of the Disability Discrimination Act 1992.

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RECOMMENDATION:

1. That the petition regarding Poplar Avenue, Mullumbimby be noted.
2. That the petition be referred to the Director Infrastructure Services.
3. That staff:
 - a) Assess the state of Poplar Road;
 - b) Determine Poplar Road's priority with Council's current road works program for consideration in the 2020/21 financial year ;
 - c) Respond to the authors regarding the claim that Poplar Avenue can be sealed for \$62,000.

Attachments:

- | | |
|----|---|
| 10 | 1 Petition from Linda Kinchela and Felicity Gaze regarding the state of the road and footpath on Poplar Avenue Mullumbimby and effect it has for a disabled person (34 signatures) (cc ~ Lathouras) Redated copy, E2019/72126  |
|----|---|

SUBMISSIONS AND GRANTS

Report No. 11.1 Council Grants Report - 2 October 2019

Directorate: Corporate and Community Services

Report Author: Alexandra Keen, Grants Coordinator

File No: I2019/1605

Summary:

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

RECOMMENDATION:

That Council notes the report and Attachment 1 (E2019/73485) for the Byron Shire Council Submissions and Grants as at 2 October 2019.

Attachments:

1 Attachment 1 - Grants Submitted, E2019/73485 

REPORT

This report provides an update on grant submissions since the last report.

5 Successful applications

Nil. There are several applications which were lodged earlier in 2019 which were expected to have been announced during September 2019, but which remain unannounced.

10 Unsuccessful applications

Nil.

15 Applications submitted

Five applications were submitted by Council for funding under the NSW Government's Stronger Country Communities Fund Round 3, and an application was submitted for signage and line-marking improvements at Brunswick Heads Public School under Transport for New South Wales' Country Passenger Transport Infrastructure Scheme 2019-21.

20 Upcoming grant opportunities

There are four applications Council proposes submit for funding under the NSW Government's Fixing Country Roads 2019 program, including for upgrades/improvements to Bayshore Drive, Myocum Road, Booyong Road, and co-funding for Byron Creek Bridge replacement (currently partially funded from the Australian Government).

STRATEGIC CONSIDERATIONS

30 ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.6	Manage Council's resources sustainably	5.6.12	Implement strategic grants management systems to deliver priority projects for Byron's community (SP)	5.6.12.4	Provide governance for grants management

Legal/Statutory/Policy Considerations

Under Section 409 3(c) of the *Local Government Act 1993* Council is required 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.

40 ***Financial Considerations***

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.

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The potential funding and allocation is noted below:

Requested funds from funding bodies	\$10,352,301
Council cash contribution	\$1,333,708
Council in-kind contribution	\$181,032
Other contributions	\$162,360
Funding applications submitted and awaiting notification (total project value)	\$12,029,401

Consultation and Engagement

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Cross-organisational consultation has occurred in relation to the submission of relevant grants, and the communication of proposed grant applications.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **Submission from sea kayak sub-licensees for an additional 3rd tour on each day during NSW and QLD school holidays**

Directorate: General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2019/1422

Summary:

Council awarded two sea kayak sub-licenses to Go Sea Kayak Byron Bay Pty Ltd and Byron Sea Kayaks Pty Ltd as the Trustee for Livingston Family Trust the basis of a 2017 tender.

Prior to the 2017 Tender, Council amended Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('Policy 5.52') as a result of consultation with relevant external agencies, surf school and sea kayak operators and the general public. The adoption of Policy 5.52 established the terms of the 2017 tender.

Policy 5.52 sets out terms and conditions of sea kayak sub-licenses that provide for:

- 2 sea kayak tours in ocean waters of the Byron Coast per day; and
- 1 sea kayak tour in the flat waters of the Brunswick River per day.

The sea kayak sub-licensees have made a submission to Council to vary terms of the sub-license to allow for one additional 3rd sea kayak ocean tour each day of both NSW and QLD school holidays. The submission is supported by the Cape Byron Marine Park only if the additional tour is conducted outside the critical dolphin habitat zone in the Marine Park.



Sea kayak sub-licensee's already have the option to apply for Council approval for one additional 3rd sea kayak ocean tour on any one-off day.

Any variation to sea kayak sub-licenses would be inconsistent with terms of the 2017 Tender that established the sub-licenses. A sub-license variation would require public consultation to amend Policy 5.52 and would establish a precedent for surf-school and stand up paddleboard sub-licensees to seek the same sub-licence variation.

RECOMMENDATION:

1. **That Council not support the joint proposal by Go Sea Kayak Byron Bay Pty Ltd and Byron Sea Kayaks Pty Ltd as the Trustee for the Livingston Family Trust for a variation to the sub-license terms to allow for one additional 3rd sea kayak ocean tour on each day of both NSW and QLD school holidays for the following reasons:**
 - a) **sub-license terms were established by a 2017 Tender conducted in accordance with section 55 of the Local Government Act;**
 - b) **the proposal is inconsistent with Council Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves as determined by public consultation; and**
 - c) **the proposal would establish a precedent for surf-school and stand up paddleboard sub-licensees to apply for the same sub-licence variation.**
2. **That if Council supports the proposal by Go Sea Kayak Byron Bay Pty Ltd and Byron Sea Kayaks Pty Ltd as the Trustee for the Livingston Family Trust for a variation to the sub-license terms to allow for one additional 3rd sea kayak ocean tour on each day of both NSW and QLD school holidays that a report be tabled at the November 2019 meeting for authority to amend Policy 5.52.**

Attachments:

- 5 1 Joint submission Go Sea Kayak and Cape Byron Kayaks for an additional 3rd tour during NSW and
 2 QLD school holidays., E2019/66549 
 2 Letter of support Cape Byron Marine Park for additional 3rd tour by sea kayak sub-licenses.,
 E2019/66551 

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REPORT

In accordance with Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('Policy 5.52') Council tendered and awarded two sea kayak sub-licenses in 2017 to Go Sea Kayak Byron Bay Pty Ltd ('Go Sea Kayak') and Byron Sea Kayaks Pty Ltd as the Trustee for Livingston Family Trust ('Cape Byron Kayaks'). The awarded sub-licenses allow for:

- 2 sea kayak tours in ocean waters of the Byron Coast per day; and
- 1 sea kayak tour in the flat waters of the Brunswick River per day.

The rationale for this is set out below under the heading Amending Policy 5.52.

Council has received a joint submission from Go Sea Kayak and Cape Byron Kayaks to vary respective sub-licenses to allow for one additional 3rd sea kayak ocean tour on each day of both NSW and QLD school holidays.

The balance of the term remaining in sea kayak sub-license permits operators to run 3030 tours pending weather and other events. The joint proposal by sea kayak sub-licensees will add 340 tours or 11% additional tours to that currently authorised by the sub-license.

Any variation to a sea kayak sub-license would be inconsistent with the 2017 Tender that established the sub-licenses and would require a corresponding amendment to Policy 5.52.

The joint submission

The joint submission argues for an additional 3rd sea kayak ocean tour on each day of both NSW and QLD school holidays in the following terms:

- that both sea kayak operators cancel at least a quarter of tours per year due to bad weather conditions;
- the additional tour would allow for more people to enjoy the Cape Byron Marine Park in a clean green manner;
- that both sea kayak operators employ local residents and support the local community that is hugely appreciated;
- the additional tour would not impact on dolphins in the critical habitat zone of Wategoes; and
- the additional tour would be conducted outside peak day times hours so that visitors could connect to the real Byron Bay experience.

The submission is supported by a letter from the Cape Byron Marine Park on condition that the 3rd tour is not in the core dolphin habitat being east of a line from Spectators Rock at the Pass to Julian Rocks.

Precedent

Council has established a precedent for declining requests similar to that presently being considered if such requests are inconsistent with sub-license terms and conditions and Policy 5.52.

Go Sea Kayak and Cape Byron Kayaks lodged a submission on 18 November 2013 seeking 730 tours per year with no more than 3 sea kayak ocean tours per day on a six month trial period.

A report was tabled at Council's 20 March 2014 meeting and Council resolved (14-99)

1. *That Council not support the proposal outlined in Annexure 16(a) (#E2013/75165) noting the following reasons:*

- a) *the proposal is inconsistent with the sub-license holders sub-license terms and conditions.*
- b) *the sub-license terms and conditions were established by Tender conducted in 2012, under s55 of the Local Government Act.*
- 5 c) *NPWS and Cape Byron Marine Park are party to the 2012 Tender process and are not supportive of the request, as it is inconsistent with the 2012 Tender and subsequent permit/licence conditions.*
- d) *The proposal is inconsistent with Council Policy 5.52 Commercial Activities on Crown Reserves for commercial operation of Sea Kayaks on Crown Reserves.*
- 10 e) *The applications can still currently be made for one-off days.*

2. *That Council considers the frequency of tours/tour numbers for sea kayak operations as part of the stakeholder consultation and review to be conducted prior to the next tender process for commercial activities sub-licenses in 2017.*

3. *That Council note that the Policy Review is scheduled to commence in late 2014 or early 2015.*

Amending Policy 5.52

In accordance with resolution (14-99) Council, prior to running the Tender in 2017, ran a number meetings and workshops with relevant external agencies, surf school and sea kayak operators and the general public to amend Policy 5.52.

At that time Go Sea Kayak Pty Ltd and Cape Byron Kayaks lodged a joint submission on amendments to Policy 5.52. The submission sought authority for sea kayak operators to run a maximum of 14 ocean sea kayak tours per week with the option to run 3 tours per day in the 14 tours permitted each week. The submission also requested a significant reduction in sub-license fees to compensate for cancelled tours because of bad weather and to bring fees line with surf-school sub-license fees.

Cape Byron Marine Parks did not support the additional 3rd tour due to potential impacts to the dolphin breeding habitat zone in the Marine Park. Accordingly an additional tour in the Brunswick River was recommended.

Council subsequently adopted Policy 5.52 (17-128) that allowed of 2 sea kayak ocean tours and 1 sea kayak tour in the Brunswick River per day.

Additionally Council resolved (17-105) to significantly reduce the sea kayak sub-licence fee by more than 50% and to include the new fee in its annual fees and charges.

The adoption of Policy 5.52 established the terms of the 2017 tender. Sub-licenses granted to Go Sea Kayak and Cape Byron Kayaks were awarded on the basis of that tender.

Should Council resolve to vary the sea kayak sub-licenses as proposed, Council must undertake public consultation to amend Policy 5.52.

A sub-licence variation would set a new precedent and allow for surf-school and stand up paddleboard sub-licensees to seek a similar variation to their respective sub-licenses.

Authority to run an additional 3rd sea kayak ocean tour on any day:

Sea kayak sub-licensees already have the option to apply to Council for an additional 3rd sea kayak ocean tour on any one-off day in resolution 14-99.

“(e) that applications can still currently be made for one-off days”.

As a result both Go Sea Kayak and Cape Byron Kayaks routinely seek approval from the General Manager to operate a 3rd sea kayaks ocean tour on a specific one-off day in accordance with the resolution. The resolution excludes the sub-licensees from applying for approval for 3rd tours on consecutive days.

Conclusion

Sub-licenses held by Go Sea Kayak Pty Ltd and Cape Byron Kayaks awarded from a Tender in 2017 authorises only 2 sea kayak ocean tours per day. The 2 ocean tour rule was determined as a result of public consultation to amend Policy 5.52 and partly contributed to a significant reduction in annual sea kayak sub-license fees.

Go Sea Kayak Pty Ltd and Cape Byron Kayaks now seek a sub-license variation to operate a 3rd sea kayak ocean tour during NSW and QLD school holidays. The proposal has conditional support from Cape Byron Marine Parks. Sea kayak operators already have the option to apply to Council for approval for a 3rd sea kayak ocean tour on any one-off day.

Sea kayak sub-licenses were awarded by Council following a 2017 tender. Any sub-licence variation would depart from the awarded Tender and would require Policy 5.52 to be amended. A variation would also set a precedent for surf schools and stand up paddleboard sub-licensees to seek the same sub-license variation.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.4	Provide active and passive recreational Community space that is accessible and inclusive for all (SP)	1.2.4.1	Deliver adopted projects from the beach accessibility program

Legal/Statutory/Policy Considerations

Local Government (General) Regulations 2005

cl178 Acceptance of tenders

- (1) After considering the tenders submitted for a proposed contract, the council must either:
- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
 - (b) decline to accept any of the tenders.
- (1A) Without limiting subclause (1), in considering the tenders submitted for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of clause 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted.

- (2) A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in section 55 (2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.
- (3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:
- (a) postpone or cancel the proposal for the contract,
 - (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,
 - (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,
 - (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
 - (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
 - (f) carry out the requirements of the proposed contract itself.
- (4) If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:
- (a) the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),
 - (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).

Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves adopted 22 June 2017 resolution (17-262)

Clause 9.4

Council, as the Reserve Trust Manager, must determine any amendment to the number and/or type of Class 2 sub-licences issued. This determination is to be made after consultation with the Council Committee, if any, established to review the management of commercial activities on coastal crown reserves.

Schedule D terms of Sea Kayak sub-license

Clause 5 Sub-Licence conditions provide for a maximum of:

- 5.1 Eight (8) students to every one (1) instructor to a maximum of eighteen (18) students in any one tour; and
- 5.2 Two (2) Sea Kayak tours in open waters of reserve areas; and
- 5.3 One (1) Sea Kayak tour in the flat waters of the Brunswick River; and
- 5.4 One (1) Sea Kayak tour from each Sea Kayak operator is permitted in the reserve, in the lesson area at the same time.

Financial Considerations

The proposal by Go Sea Kayak Pty Ltd and Cape Byron Kayaks to vary terms of a sea kayak sub-licenses to include one additional 3rd sea kayak tour in ocean waters of the Byron Coast on each day of both NSW and QLD school holidays will not generate additional sub-license fees for Council.

The proposed additional tour during relevant school holidays is to overcome cancelled tours due because of bad weather and other events out of sub-licensee control.

- 5 In accordance with Council's 2019/2020 fees and charges, Council will generate \$51,868 inclusive of GST per annum from granted sea kayak sub-licences.

Consultation and Engagement

Nil.

Report No. 13.2 **Licence to Brunswick Valley Historical Society for Mullumbimby Museum**

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

File No: I2019/1453

Summary:

A condition of the Stronger Country Communities Grant Funding awarded to Byron Shire Council for the refurbishment of the Mullumbimby Museum, is that long-term tenure is held by the Brunswick Valley Historical Society Inc to operate the museum.

As a result, Council is proposing to grant a five year licence to the Brunswick Valley Historical Society Inc for the purpose of occupying Reserve R31910 for a museum.

RECOMMENDATION:

That Council, as the Crown Land Manager for Reserve R31910, delegate to the General Manager, the authority to enter into a new licence with the Brunswick Valley Historical Society Inc to occupy the Crown land on the following conditions:

- a) for a term of five years;
- b) for the purpose of occupying R31910 for a Museum ;
- c) rent to be subsidised;
 - i) the Licensee to pay annual rent commencing at the value of minimum Crown rent and thereafter increased by CPI all groups Sydney for the term of the licence, and
 - ii) the Licensor to subsidise annual rent to the value market rent less rent payable by the Licensee for the term of licence.
- d) Licensee outgoings includes:
 - i) user charges for water, sewerage, waste management and other services,
 - ii) building and contents insured for full replacement value.
- e) licensor outgoings include all fixed fees and charges for rates, water and sewerage;
- f) the Licensee to pay licence document preparation costs; and
- g) the Licensee, at its own cost, is responsible for all building maintenance, repairs and renewals and compliance with fire safety regulations.

REPORT

Council was awarded \$59,075 from the Stronger Country Community's Grant Funding for the refurbishment of the Mullumbimby Museum. A condition of the funding is that the Brunswick Valley Historical Society Inc ('Historical Society') holds long-term tenure to operate the Museum.

Land and tenure

The building used as the Mullumbimby Museum is located on Crown Reserve R31910, Lot 389 DP 728162 in Summers Park. Council is the Crown Land Manager for Reserve R31910. The building is owned by the Historical Society, being the former Mullumbimby Post Office that the Society relocated onto the land in 1984.

The Historical Society holds a five year licence over the land under holding over provisions of an expired five year licence. Council is proposing a new five year land only licence to commence in December 2019.

Implications

Council must comply with following legislation to offer the proposed licence:

a) Local Government Act 1993 (NSW):

Council must manage Reserve R31910 as community land under the *Local Government Act 1993* (NSW). The grant of a licence over community land must be expressly authorised by a Plan of Management.

Clause 70 of the *Crown Land Management Regulations 2018* (NSW) provides a limited exemption to the grant of a licence without a Plan of Management. The exemption will apply to the proposed licence because:

- i. the new licence will commence prior to 1 July 2021 being the date Council must have adopted a Plan of Management for Reserve R31910; and
- ii. a licence was in force over the land immediately before 1 July 2018 for the purpose of a museum and no additional uses of the land will be permitted under the new licence; and
- iii. the term of the licence is limited to five (5) years; and
- iv. consent from the Minister for Crown Lands is not required.

The exemption also removes the need for Council to advertise the proposed licence for public submissions.

b) Native Title 1993 (Cth):

Reserve R31910 is subject to Native Title. The grant of the proposed five year licence is a valid future act under s24JA of the *Native Title Act*. As the licence does not involve the construction of a public work there are no notification requirements.

However, Council may become liable for compensation under the *Native Title Act 1993* (Cth) and *Crown Land Management Act 2016* (NSW) for any impact on Native Title rights and interests as a result of granting the propose licence.

c) Aboriginal Lands Rights Act 1983 (NSW):

No aboriginal land claim has been lodged over Lot 389 DP 728162 at the time of writing this report.

Direct negotiations:

A proposed lease for a term of five (5) years or less need not be granted by a tender in accordance with section 46A(3) of the *Local Government Act 1993* (NSW). As a result, Council is authorised to directly negotiate with the Historical Society for the proposed licence.

Terms of the proposed licence

The Historical Society is a not-for-profit incorporation. This report recommends that:

- a) Rent;
 - market rent be set at \$4,700 per annum,
 - the Historical Society to pay annual rent set at the value of minimum Crown rent in clause 38 of the *Crown Lands Management Regulations 2018* (NSW) and thereafter rent is increased annually by CPI all Groups Sydney for the term, and
 - Council to subsidise annual rent to the value of market rent less minimum Crown Rent (exclusive of GST).
- b) Outgoings;
 - the Historical Society to fully insure the building and its contents for full replacement costs,
 - the Historical Society to pay for all user charges for water, sewerage, waste management and other services,
 - Council to subsidise all fixed rates and water charges in accordance with Council Policy 12/008 Section 356 Donations, Rates, Water and Sewerage Charges, and
 - the Historical Society, as the building owner, is entirely responsible for all building maintenance, repair and renewals and compliance with fire safety regulations at its own cost.
- c) Licence preparation costs;
 - the Historical Society pay the cost of licence preparation fee of \$527 as published in Councils 2019-2020 fees and charges.

STRATEGIC CONSIDERATIONS**Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.2	Support and facilitate accessible, high quality early childhood education and activities	2.2.2.1	Improve direct service provision and sector development to provide quality accredited early childhood education

Legal/Statutory/Policy Considerations

Crown Land Management Regulation 2018 (NSW)

- 5 **Clause 70** *Exemption from operation of section 3.22 of Act for granting licences and leases during initial period*
- (1) *This clause applies to a council manager of dedicated or reserved Crown land during the initial period referred to in section 3.23 of the Act (the **pre-POM Crown land**) until whichever of the following occurs first:*
- 10 (a) *the council adopts its first plan of management for the land for the purposes of section 3.23 of the Act,*
- (b) *the land is classified as operational land with Minister's consent under section 3.22 of the Act.*
- 15 (2) *The council manager is exempt from the operation of section 3.22 of the Act in respect of the following:*
- (a) *the granting of a short-term licence over pre-POM Crown land of a kind that can be granted by a Crown land manager under section 2.20 of the Act,*
- (b) *the renewal of an existing lease or licence over pre-POM Crown land for a term not exceeding the maximum term if there are no additional permitted uses of the land,*
- 20 (c) *the granting of a new lease or licence over pre-POM Crown land for a term not exceeding the maximum term if:*
- (i) *there was a lease or licence in force over the land immediately before 1 July 2018, and*
- (ii) *there are no additional permitted uses of the land,*
- 25 (d) *the granting of a new lease or licence over pre-POM Crown land for a term not exceeding the maximum term if:*
- (i) *the lessee or licensee is an emergency services organisation (within the meaning of the State Emergency and Rescue Management Act 1989), a not-for-profit organisation or a community group, and*
- 30 (ii) *the Minister consents to the granting of the lease or licence,*
- (e) *the granting of a new lease over pre-POM Crown land for a term not exceeding the maximum term if:*
- (i) *the negotiations between the council and the lessee in relation to the granting of the lease were commenced and, in the opinion of the Minister, substantially completed before 1 July 2018, and*
- 35 (ii) *the Minister consents to the granting of the lease,*
- (f) *the granting of a new lease or licence over pre-POM Crown land for a term not exceeding the maximum term if the lease or licence could, in the opinion of the Minister, have been granted immediately before 1 July 2018 under a plan of management in force immediately before that date.*
- 40 (3) *In this clause:*
- existing lease or licence** *means a lease or licence in force immediately before 1 July 2018.*
- maximum term** *of a lease or licence means a term (including any option for the grant of a further term) of:*
- 45 (a) *21 years in the case of the following:*
- (i) *the renewal of an existing lease as referred to in subclause (2) (b),*
- (ii) *the granting of a new lease as referred to in subclause (2) (c),*
- (iii) *the granting of a new lease or licence as referred to in subclause (2) (f), or*
- 50 (b) *5 years in any other case.*

Financial Considerations

Rental income from the proposed licence will be limited to the value of minimum Crown rent currently \$490 (exclusive of GST) per annum for the term.

Outgoings, the Historical Society must pay all user charges for water, sewerage and waste management with Council fully subsidising all fixed charges fees and charges.

The Historical Society to pay licence document preparation fees as set out in Councils 2019-2020 fees and charges.

Consultation and Engagement

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Nil.

Report No. 13.3 **Temporary re-location of Community and Farmers Markets**
Directorate: General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
 Claire McGarry, Place Manager - Byron Bay
5 **File No:** I2019/1523

Summary:

This Report has been prepared to request authorisation from Council to vary market licences granted to the Byron Bay Community Association Inc and Byron Farmers Market Inc for the relocation of markets during the Byron Bay Bypass project.

RECOMMENDATION:

1. That Council, authorise the continued suspension of the community and farmers market licences issued for the Butler Street Reserve with ongoing abatement of rent until both markets can be resumed at the Reserve.
2. That Council, delegate to the General Manager, the authority to vary temporary relocation market licences issued to:
 - a) Byron Bay Community Association Inc for community markets at the beachside to:
 - i) extend the term to 30 June 2020 with an addition option of six months; and
 - ii) the Licensor to pay the Licensee to its nominated bank account, within 30 days from the end of the term or any holding over, the amount of the bond held being an amount not exceeding \$1,000 (inclusive of GST).
 - b) Byron Farmers Market Inc for farmers markets at the Cavanbah Centre to:
 - i) extend the term to 30 June 2020 with an addition option of six months; and
 - ii) the Licensee to submit to the Licensor within 30 days from the end of the term or any holding over, all receipts detailing expenditure of \$20,000 and return by cheque made payable to Byron Shire Council the balance of all unspent monies.
3. That Council authorise the full subsidisation of rent under the varied licence term at a cost of \$6,689 (inclusive of GST) funded from the Byron Bay Bypass project. That Council continue to fully subsidised rent under the further six month option at a rate set by Councils 2020-2021 fees and charges.
4. That Council authorise the public exhibition of the variation of the farmers market to the Byron Farmers Market Inc for 28 days and should any submissions be received that a new report is brought back to Council.

REPORT

The Byron Bay Bypass project required the closure of the Butler Street Reserve and the relocation of the community and farmers markets from 7 July 2019 in accordance with resolution (19-062).

Council resolved (19-235):

1. *That Council acknowledge that construction of the Byron Bay Bypass requires the temporary suspension of the Byron Community Market's existing licence for Butler Street Reserve and rent shall abate under that licence for a period of six months.*
2. *That Council endorse the temporary relocation of the Byron Community Market to the foreshore at a reduced scale of 290 stalls.*
3. *That the conditions detailed in Table 3 be included in the market sub-licence to minimise environmental and community impacts.*
4. *That Council allocate \$60,000 from the Property Reserve to:*
 - a) *Provide financial support to market managers to assist with relocation;*
 - b) *Develop a Review of Environmental Factors, Traffic Impact Study, Traffic Management Plan and Traffic Control Plan required for the temporary relocation; and*
 - c) *Install required infrastructure on the Reserve to facilitate temporary relocation.*
5. *That Council allocate up to \$50,000 from the Property Reserve for implementation of traffic management plans and environmental controls and that any costs over and above this amount be borne by the Byron Community Markets.*
6. *That Council have discussions with the Byron Bay Railroad Company, Chamber of Commerce, Destination Byron and other stakeholders to develop a comprehensive movement strategy that includes a park and ride utilising the Solar Train and other possible active and shared transport options and experiences.*
7. *That Council work with market managers and other stakeholders to develop a comprehensive communications and promotional strategy aimed at encouraging a shift towards alternative transport options.*

Council also resolved (19-175):

1. *That Council apply for approval to amend the existing consent for The Cavanbah Centre to accommodate the Byron Farmers Market from July 2019.*
2. *That Council plan for and provide a dedicated bus lane on market days and that a further report be provided to Council.*
3. *That Council, subject to the approval referred to in, in principle:*
 - a) *provide administrative support as detailed in Table 1 to assist with market relocation including the waiving of stall fees at The Cav to the amount of \$4,914.00 (based on fees for 51-100 stalls once per week for six months).*
 - b) *acknowledge that construction of the Byron Bay Bypass requires the temporary suspension of the Byron Farmers Market exiting licence for Butler Street Reserve and shall abate rent payable for a period of six months.*

Byron Bay Bypass

The Byron Bay Bypass project has encountered some unknown delays at the start of the project relating to the protest action and the referral to the Department of Environment and Energy under the EPBC Act. Whilst the project in general is progressing well, these delays will result in Stage One of the project not being completed by Christmas as previously planned. Butler Street Reserve will remain closed to the public while this construction is being completed.

As a result Council must continue the suspension of the community and farmers licences granted at the Butler Street Reserve with continued abatement of rent until both markets can be resumed at the Reserve.

Council must additionally vary temporary market relocation licences.

The project team will have more certainty around the EPBC referral once the referral has been assessed in mid to late November 2019. The outcome of this referral will determine when Stage One can be completed and the Contractor can then remove all material and fencing from the Butler Street Reserve and open it back up to the public.

Variation of temporary market relocation licences

Council must vary temporary market relocation licences granted to:

1. Byron Bay Community Association Inc ('Community Association') for relocation of community markets to the beachside to:

- a) extend the term to 30 June 2020 with an option of a further six month; and
- b) the Licensor to pay the Licensee to its nominated bank account, within 30 days from the end of the term or any holding over, the amount of the bond held being an amount not exceeding \$1,000 (inclusive of GST).

2. Byron Famers Market Inc ('Farmers Market') for relocation of farmers markets to the Cavanbah Centre to:

- a) Extend the term to 30 June 2020 with an option of a further six month; and
- b) Licensee to submit to the Licensor within 30 days from the end of the term or any holding over, all receipts detailing expenditure of \$20,000 and return by cheque made payable to Byron Shire Council the balance of all unspent monies.

All remaining licence terms and conditions will continue unchanged to the end of the term or any holding over.

Council is required to advertise the proposed variation of the Farmers Market licence at the Cavanbah Centre for 28 days in accordance with s47A of the *Local Government Act 1993*. Council must duly consider all submissions received before authorising the licence variation.

Subsidised rent

In accordance with resolutions **19-235** and **19-175**, rent under the temporary relocation markets licences granted to the Community Association and Farmers Market is fully subsidised.

Variation of both temporary relocation market licences will require Council to fully subsidise the following rents:

- a) Temporary Community Market licence at beachside, rent for term 1 February to 30 June 2020 (5 markets) is subsidised at \$2,250 (inclusive of GST) with rent under the further option of six months to be set by Councils 2020-2021 fees and charges

- 5 b) Temporary Farmer Market licence at the Cavanbah Centre, rent for term 23 January to 30 June 2020 (23 markets) is subsidised at \$4,439 (inclusive of GST) with rent under the further option of six months to be set by Councils 2020-2021 fees and charges

Total rent subsidised for the term is \$6,689 to be funded from the Byron Bay Bypass project.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.1	Develop and maintain collaborative relationships with government, sector and community	2.2.1.2	Participate in and inform community planning

Legal/Statutory/Policy Considerations

s 47A Leases, licences and other estates in respect of community land—terms of 5 years or less

- (1) This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.
- (2) If a council proposes to grant a lease, licence or other estate to which this section applies:
- (a) the proposal must be notified and exhibited in the manner prescribed by section 47, and
- (b) the provisions of section 47 (3) and (4) apply to the proposal, and
- (c) on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47 (5)–(9) are to apply to the proposal.
- (3) If the Minister, under subsection (2) (c), determines that the provisions of section 47 (5)–(9) are to apply to the proposal:
- (a) the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47 (1)–(8), and
- (b) section 47 (9) has effect with respect to the Minister's consent.

Financial Considerations

Council resolved 19-235 and 19-175 to fully subsidise rent under the temporary relocation licences for community markets at the beachside and farmers markets at the Cavanbah Centre. Council must now vary both temporary relocation licences to 30 June 2020 with a further six month option.

Subsidised rent for the extended term will total \$6,689 to be funded from the Byron Bay Bypass project. Rent to be subsidised under the further six month option, will be at a rate in accordance with Council's adopted Fees and Charges for 2020/2021.

Consultation and Engagement

Nil.

Report No. 13.4 **The giving of notice to the Minister of persons employed as Native Title Managers**

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

File No: I2019/1589

Summary:

Council must resolve to give written notice to the Minister responsible for the *Crown Land Management Act 2016* (NSW) of details of persons Council has employed as certified Native Title Managers by 31 October each year.

RECOMMENDATION:

That Council give written notice to the Minister responsible for the *Crown Land Management Act 2016* (NSW) of the following employees of Council certified as native title managers:

- a) Ralph James (Legal Counsel)
- b) Matt Meir (Solicitor)
- c) Tracey Dousling (Records Management Coordinator)
- d) Paula Telford (Leasing Coordinator)
- e) Deanna Savage (Administration Officer Infrastructure Services)
- f) Alice Heasman (Events Support Officer)

REPORT

Section 8.8 of the *Crown Land Management Act 2016* (NSW) requires that Council give notice to the Minister responsible for the *Act*, of persons Council has employed as certified Native Title Managers by 31 October.

Section 377(1)(s) of the *Local Government Act 1993* (NSW), further requires that the giving of notice to the Minister is by a resolution of the Council.

Native Title Managers

Council must engage or employ at least one certified native title manager to ensure that all of Councils dealings on Crown land comply with provisions of the *Native Title Act 1993 (Cth)*.

The following persons are employed by Byron Shire Council as certified native title managers:

- Ralph James (Legal Counsel)
- Matt Meir (Solicitor)
- Tracey Dousling (Records Management Coordinator)
- Paula Telford (Leasing Coordinator)
- Deanna Savage (Administration Officer Infrastructure Services)
- Alice Heasman (Events Support Officer)

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.1	Develop and maintain collaborative relationships with government, sector and community	2.2.1.2	Participate in and inform community planning

Legal/Statutory/Policy Considerations

Crown Lands Managers Act 2016 (NSW)

s8.8 Notice of native title managers to be given to Minister

- (1) A responsible person for relevant land must give written notice to the Minister about:
- (a) whether any person is engaged or employed as a native title manager for the responsible person, and
 - (b) the name and contact details of that person.
- (2) The notice must be given as soon as practicable after 30 June (but not later than 31 October) of each year.

Local Government Act 1993 (NSW)

377 General power of the council to delegate

- (1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following..
- (s) the making of an application, or the giving of a notice, to the Governor or Minister,

Financial Considerations

Nil.

5 *Consultation and Engagement*

Nil.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.5 Report of the Public Art Panel meeting held on 12 September 2019

Directorate: Corporate and Community Services

Report Author: Joanne McMurtry, Community Project Officer

File No: I2019/1447

Theme: Corporate Management
Community Development

Summary:

A Public Art Panel meeting was held on 12 September 2019 to consider proposals put forward by Creative Mullumbimby for Mullumbimby Sculpture Walk and a first draft of the revised Public Art Guidelines. Panel recommendations are provided for Council's consideration.

RECOMMENDATION:

1. That Council:

- a) notes that the sculpture 'Germination' is loaned for a period of five years at the Mullumbimby Sculpture Walk location.
- b) donates a one-off amount of \$5,000 towards the Ingenuity Sculpture Festival 2019 for prize money with a preference that it supports a local artist and that at least one Public Art Panel member be on the judging panel.

2. That a report be prepared for the next Public Art Panel meeting regarding a proactive approach to encouraging and enabling public art across the Shire in line with the current public art strategy including strategic priorities, budget planning and decision making considerations.

3. That Council:

- a) notes that the Public Art Panel has considered the first draft of the revised Public Art Guidelines.
- b) purchases the Arts Law Centre of Australia Commissioning Agreement.
- c) notes that the final draft Public Art Guidelines will be brought back to the Public Art Panel.

Attachments:

- 1 Minutes 12/09/2019 Public Art Panel, I2019/1411 

REPORT

5 A Public Art Panel (PAP) meeting was held on 12 September 2019 to consider proposals put forward by Creative Mullumbimby for Mullumbimby Sculpture Walk, and a first draft of the revised Public Art Guidelines.

A copy of the Agenda for the Public Art Panel meeting of 24 June 2019 can be found at https://byron.infocouncil.biz/Open/2019/09/PAP_12092019_AGN_1039_AT_WEB.htm

10 The Panel made recommendations to Council as noted in the attached minutes of the meeting and as described in this report.

STRATEGIC CONSIDERATIONS15 ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.3	Enhance opportunities for interaction with art in public spaces	2.1.3.1	Implement Public Art Strategy

Legal / Statutory / Policy Considerations

20 Public Art Policy
Public Art Strategy
Public Art Guidelines and Criteria

Financial Considerations

25 The Panel have recommended a \$5,000 donation be made to the Creative Mullumbimby as a contribution towards the Ingenuity Sculpture Festival 2019.

30 The balance of the 2019/20 Public Art budget is \$27,600 noting that some costs for decommissioning *The Lighthouse* sculpture have been allocated to the budget and no income from sale of birds has yet been received to offset this expense.

Consultation and Engagement

35 This report provides the minutes of the Public Art Panel, made up of 6 community representatives, 2 invited members and 2 councillors.

Report No. 13.6 **Section 355 Management Committees - resignations**
Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Project Officer
File No: I2019/1449
5 **Theme:** Society and Culture
 Community Development

Summary:

10 This report updates Council on recent resignations to Section 355 Boards and committees.

RECOMMENDATION:

1. That the resignation of Beverley Rahill from the Brunswick Heads Memorial Hall Management Committee be accepted and a letter of thanks provided.
2. That Council accepts the resignation of Cr Cameron from the Mullumbimby Civic Hall Section 355 Board of Management, and elects Cr _____ as the replacement Councillor member on the Board.

Report

This report details two resignations from two different Section 355 Boards and committees.

5 Brunswick Heads Memorial Hall

A resignation has been received from Beverley Rahill.

Current members on this Management Committee are:

10

Councillors

- Cr Simon Richardson

Community Representatives

15

- Marj Trimble (Secretary)
- Ann Burnett
- Leah Schinagl
- Melinda Bennett (Bookings)
- Dianne Burke
- 20 • Trudy Ashworth (Chair)
- Paul Brennan (Treasurer)
- Tracey Woods

Management Recommendation

25

That the resignation received from Beverley Rahill from the Brunswick Heads Memorial Hall Management Committee be accepted and a letter of thanks provided.

Mullumbimby Civic Hall

30

Cr Cameron has indicated he can no longer attend Mullumbimby Civic Hall meetings and a replacement Councillor is sought for the Board of Management.

Current members on this Management Committee are:

35

Councillors

- Cr Basil Cameron
- Cr Jeannette Martin (alternate)

Community Representatives

40

- Glenn Wright (Chair)
- Sam Fell (Secretary)
- Maureen Lightfoot (Treasurer)
- Jennifer Parenteau

45

- John Dorczak
- Anthony Reardon

Management Recommendation

50

That Council selects an alternate Councillor to the Mullumbimby Civic Hall Section 355 Board of Management.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.9	Develop capital upgrades, renewal and enhancements works program for buildings- including community buildings, public toilets, emergency services, sports club facilities and Council operations buildings (SP)	1.2.9.1	Deliver program in consultation with community groups, s355 committees, Council asset managers and Plans of Management

5 **Legal / Statutory / Policy Considerations**

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

3.2 Committee Membership

10 *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*
 15 *includes office bearer committee members and Councillor members which are appointed by Council.*

20 *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.*

25 Further information on the operations and meeting minutes for these Committees and Boards can be found on Council's web site at <https://www.byron.nsw.gov.au/Council/Committees-and-groups/Section-355-Committees-and-Boards-of-Management>.

Financial Considerations

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

Consultation and Engagement

35 Section 355 Committee members are nominated in response to an open period of advertising calling for interest in filling a vacancy. To hold office and be responsible for the management of a Council facility, all community committee members are assessed against a set of criteria. Nominations are formally submitted in writing to Council for appointment.

Report No. 13.7 **Investments - 1 September 2019 to 30 September 2019**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2019/1495

5

Summary:

10 This report includes a list of investments and identifies Council's overall cash position for the period 1 September 2019 to 30 September 2019 for Council's information.

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

15

RECOMMENDATION:

That the report listing Council's investments and overall cash position as at 30 September 2019 be noted.

20

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

REPORT

Council has continued to maintain a diversified portfolio of investments. At 30 September 2019, the average 90 day bank bill rate (BBSW) for the month of September 2019 was 0.98%. Council's performance to 30 September 2019 is 2.09%. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits, bonds and purchasing floating rate notes with attractive interest rates. It should be noted that as investments mature, Council's % return will start to decrease due to the lower rates available in the current market.

The table below identifies the investments held by Council as at 30 September 2019.

Schedule of Investments held as at 30 September 2019

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
24/03/17	1,000,000	NAB Social Bond (Gender Equality)	Y	AA-	24/03/22	Y	B	3.25%	1,044,263.16
15/11/18	980,060	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	Y	B	3.00%	1,108,880.00
20/11/18	1,018,290	QLD Treasury Corp (Green Bond)	N	AA+	22/11/24	Y	B	3.00%	1,077,720.00
28/10/16	650,000	Teachers Mutual Bank	Y	BBB+	28/10/19	Y	FRN	3.51%	651,521.00
31/03/17	1,000,000	CBA Climate Bond	Y	AA-	31/03/22	Y	FRN	3.01%	1,008,850.00
16/11/17	750,000	Bank of Queensland	Y	BBB+	16/11/21	N	FRN	2.97%	753,667.50
30/08/18	500,000	Bank Australia Ltd (Sustainability Bond)	Y	BBB+	30/08/21	Y	FRN	3.17%	502,795.00
28/03/19	1,000,000	National Housing Finance & Investment Corporation	Y	AAA	28/03/29	Y	B	2.38%	1,062,980.00
07/12/18	2,000,000	Credit Union Australia	Y	BBB	07/12/20	Y	TD	3.02%	2,000,000.00
13/12/18	1,000,000	Summerland Credit Union	Y	NR	13/12/19	Y	TD	3.01%	1,000,000.00
05/01/19	2,000,000	NAB	N	AA-	06/01/20	N	TD	2.75%	2,000,000.00
18/01/19	1,000,000	Westpac	Y	AA-	16/01/20	N	TD	2.73%	1,000,000.00
30/01/19	1,000,000	Defence Bank	Y	BBB	30/01/20	Y	TD	2.85%	1,000,000.00
04/02/19	1,000,000	Summerland Credit Union	N	NR	04/02/20	Y	TD	2.95%	1,000,000.00
08/02/19	2,000,000	Suncorp	Y	A	08/11/19	Y	TD	2.75%	2,000,000.00
06/03/19	1,000,000	Bananacoast Credit Union	Y	NR	04/03/20	Y	TD	2.90%	1,000,000.00
30/04/19	1,000,000	ME Bank	Y	BBB	29/10/19	Y	TD	2.43%	1,000,000.00
27/05/19	1,000,000	AMP Bank	Y	BBB	25/11/19	N	TD	2.45%	1,000,000.00
04/06/19	2,000,000	Beyond Bank Australia	Y	NR	06/12/19	Y	TD	2.40%	2,000,000.00
04/06/19	1,000,000	AMP Bank	N	BBB	03/12/19	N	TD	2.45%	1,000,000.00
24/06/19	2,000,000	NAB	N	AA-	20/01/20	N	TD	1.90%	2,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
28/06/19	2,000,000	Bankwest	Y	AA-	27/12/19	N	TD	1.90%	2,000,000.00
28/06/19	2,000,000	Bank of Queensland	N	BBB+	24/01/20	N	TD	2.10%	2,000,000.00
28/06/19	2,000,000	Bankwest	N	AA-	02/10/19	N	TD	1.85%	2,000,000.00
01/07/19	1,000,000	Police Credit Union Limited (SA)	Y	NR	03/01/20	Y	TD	2.23%	1,000,000.00
03/07/19	1,000,000	Australian Military Bank	Y	NR	02/07/20	Y	TD	2.12%	1,000,000.00
04/07/19	1,000,000	NAB	N	AA-	30/03/20	N	TD	1.95%	1,000,000.00
09/07/19	1,000,000	NAB	N	AA-	08/10/19	N	TD	1.93%	1,000,000.00
09/07/19	1,000,000	Bankwest	N	AA-	09/10/19	N	TD	1.80%	1,000,000.00
22/07/19	2,000,000	NAB	N	AA-	22/10/19	N	TD	1.90%	2,000,000.00
24/07/19	1,000,000	Bankwest	N	AA-	24/01/20	N	TD	1.85%	1,000,000.00
27/07/19	2,000,000	NAB	N	AA-	25/10/19	N	TD	1.83%	2,000,000.00
30/07/19	2,000,000	AMP Bank	N	BBB	28/01/20	N	TD	2.20%	2,000,000.00
01/08/19	2,000,000	Bankwest	N	AA-	30/10/19	N	TD	1.70%	2,000,000.00
01/08/19	2,000,000	NAB	N	AA-	02/12/19	N	TD	1.80%	2,000,000.00
06/08/19	1,000,000	NAB	N	AA-	04/11/19	N	TD	1.83%	1,000,000.00
06/08/19	2,000,000	Bankwest	N	AA-	06/12/19	N	TD	1.70%	2,000,000.00
07/08/19	1,000,001	AMP Bank	N	BBB	06/11/19	N	TD	1.90%	1,000,001.00
09/08/19	2,000,000	NAB	N	AA-	07/11/19	N	TD	1.80%	2,000,000.00
12/08/19	1,000,000	Auswide Bank	Y	NR	12/11/19	N	TD	2.03%	1,000,000.00
14/08/19	1,000,000	ME Bank	N	BBB	13/11/19	Y	TD	1.78%	1,000,000.00
15/08/19	1,000,000	Maitland Mutual Building Society	Y	NR	12/02/20	Y	TD	1.78%	1,000,000.00
16/08/19	1,000,000	ME Bank	N	BBB	12/02/20	Y	TD	1.73%	1,000,000.00
26/08/19	1,000,000	Suncorp	N	A+	21/02/20	Y	TD	1.62%	1,000,000.00
27/08/19	2,000,000	Bank of Queensland	N	BBB+	27/02/20	N	TD	1.75%	2,000,000.00
27/08/19	1,000,000	AMP Bank	N	BBB	26/08/20	N	TD	1.80%	1,000,000.00
29/08/19	1,000,000	Macquarie Bank	Y	A	25/02/20	N	TD	1.80%	1,000,000.00
28/08/19	2,000,000	Macquarie Bank	N	A	26/11/19	N	TD	1.85%	2,000,000.00
02/09/19	1,000,000	Maitland Mutual Building Society	N	NR	02/12/19	Y	TD	1.75%	1,000,000.00
03/09/19	2,000,000	Macquarie Bank Ltd	N	A	02/03/20	N	TD	1.75%	2,000,000.00
04/09/19	1,000,000	Australian Military Bank	N	NR	02/03/20	Y	TD	1.70%	1,000,000.00
10/09/19	2,000,000	NAB	N	AA-	09/12/19	N	TD	1.72%	2,000,000.00
25/09/19	1,000,000	TCorp Green TD	N	AAA	25/03/20	N	TD	1.00%	1,000,000.00
25/09/19	2,000,000	NAB	N	AA-	24/09/20	N	TD	1.60%	2,000,000.00
30/09/19	1,000,000	NAB	N	AA-	28/01/20	N	TD	1.68%	1,000,000.00
N/A	705,016.42	CBA Business Online Saver	N	AA-	N/A	N	CALL	1.20%	705,016.42

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
12/01/18	3,559,767.21	NSW Treasury Corp	N	AAA	N/A	Y	CALL	3.12%	3,559,767.21
Total	78,163,134.63						AVG	2.09%	78,475,461.29

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

Note 2. No Fossil Fuel 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.

Environmental and Socially Responsible Investing (ESRI)

5

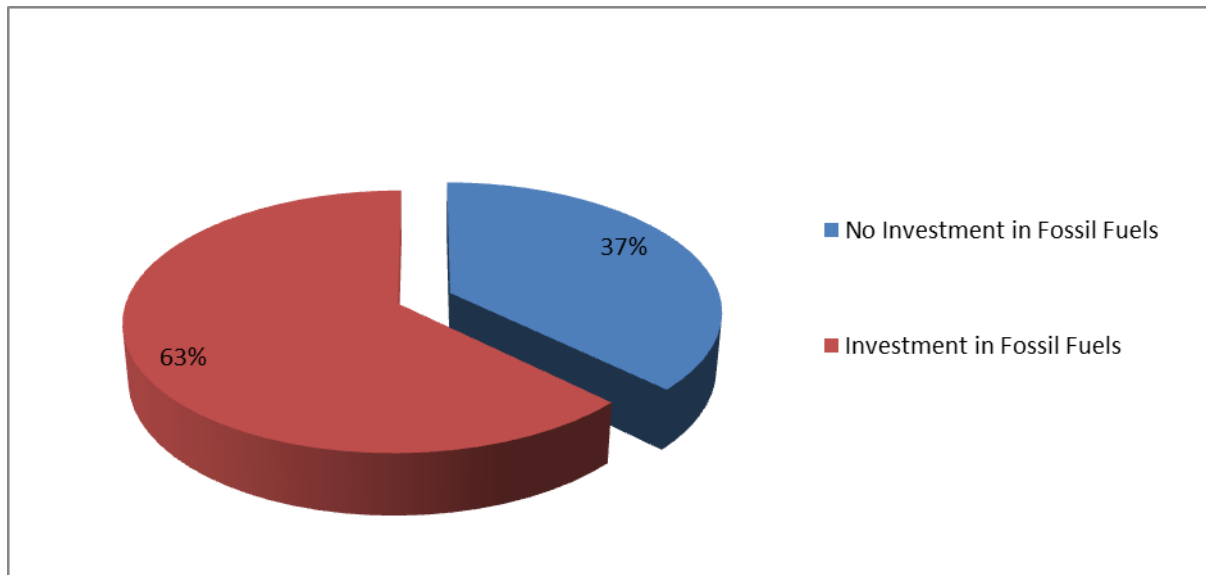
An additional column has been added to the schedule of Investments to identify if the financial institution holding the Council investment has been assessed as a 'No Fossil Fuel' investing institution. This information has been sourced through www.marketforces.org.au and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below

10

The notion of Environmental and Socially Responsible Investing is much broader than whether a financial institution as rated by 'marketforces.org.au' invests in fossil fuels or not. Council's current

15

Investment Policy defines Environmental and Socially Responsible Investing at Section 4.1 of the Policy which can be found on Council's [website](#).



Council has two investments with financial institutions that invest in fossil fuels but are nevertheless aligned with the broader definition of Environmental and Socially Responsible investments i.e.:

1. \$1,000,000 investment with the National Australia Bank maturing on 24 March 2022 known as a Social Bond that promotes Gender Equity.
2. \$1,000,000 investment with Commonwealth Bank maturing on 31 March 2022 known as a Climate Bond.

During September 2019 Council was able to participate in a new pilot 'Green' term deposit by NSW Treasury Corporation. Proceeds from the term deposit are being allocated to the same purposes as the NSW Treasury Corporation Green Bond. Council has been able to invest \$1,000,000 into this facility for a period of six months. Other Councils in NSW are also understood to have expressed interest in participating in this investment.

Investment Policy Compliance

Investment policy compliance			ACTUAL	Variance
% per institution should not exceed the following				
AAA to AA	A1+	100%	55%	Meets policy
A+ to A-	A1	60%	6%	Meets policy
BBB to NR	A2,NR	40%	37%	Meets policy

The above table identifies compliance with Council's Investment Policy by the proportion of the investment portfolio invested with financial institutions, along with their associated credit ratings compared to parameters in the Investment Policy. The parameters are designed to support prudent short and long-term management of credit risk and ensure diversification of the investment portfolio. Note that the financial institutions currently offering investments in the 'ethical' area are mainly those with lower credit ratings (being either BBB or not rated at all i.e. credit unions).

Associated Risk

Moving more of the investment portfolio into the 'ethical' space will lower the credit quality of the investment portfolio overall and continue to increase the organisation's credit risk (i.e. exposure to

potential default). To monitor this issue the 'Investment Policy Compliance' table is now produced for each monthly Investment Report to Council.

- 5 The investment portfolio is outlined in the table below by investment type for the period 1 September 2019 to 30 September 2019:

Dissection of Council Investment Portfolio as at 30 September 2019

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
67,000,001.00	Term Deposits	67,000,001.00	0.00
2,900,000.00	Floating Rate Note	2,916,833.50	16,833.50
705,016.42	Business On-Line Saver (At Call)	705,016.42	0.00
3,559,767.21	NSW Treasury Corp (T Corp)	3,559,767.21	0.00
3,998,350.00	Bonds	4,293,843.16	295,493.16
78,163,134.63		78,475,461.29	312,326.66

- 10 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.
- 15 The table below provides a reconciliation of investment purchases and maturities for the period of 1 September 2019 to 30 September 2019 on a current market value basis.

Movement in Investment Portfolio – 30 September 2019

Item	Current Market Value (at end of month) \$
Opening Balance at 1 September 2019	76,270,590.13
Add: New Investments Purchased	12,000,000.00
Add: Call Account Additions	0.00
Add: Interest from Call Account	1,023.12
Less: Investments Matured	10,000,000.00
Add: T Corp Additions	3,000,000.00
Add: Interest from T Corp	3,848.04
Less: Call Account Redemption	1,300,000.00
Less: T Corp Redemption	1,500,000.00
Add: Fair Value Movement for period	0.00
Closing Balance at 30 September 2019	78,475,461.29

Investments Maturities and Returns – 1 September 2019 to 30 September 2019

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
1,000,000.00	The Mutual Bank	TD	02/09/19	91	2.30%	5,734.25
1,000,000.00	Australian Military Bank	TD	04/09/19	183	2.82%	14,138.63
1,000,000.00	Summerland Credit Union	TD	09/09/19	90	2.35%	5,794.52
2,000,000.00	NAB	TD	10/09/19	91	2.10%	10,356.16
2,000,000.00	Illawarra Credit Union	TD	23/09/19	111	2.30%	13,989.04
2,000,000.00	NAB	TD	25/09/19	91	1.97%	9,715.07
1,000,000.00	NAB	TD	30/09/19	91	2.00%	4,986.30
10,000,000.00						64,713.97

- 5 Council's overall 'cash position' 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 for operational purposes. In this regard, for the month of September 2019 the table below identifies the overall cash position of Council as follows:

Dissection of Council Cash Position as at 30 September 2019

10

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	67,000,001.00	67,000,001.00	0.00
Floating Rate Note	2,900,000.00	2,916,833.50	16,833.50
Business On-Line Saver (At Call)	705,016.42	705,016.42	0.00
NSW Treasury Corp (T Corp)	3,559,767.21	3,559,767.21	0.00
Bonds	3,998,350.00	4,293,843.16	295,493.16
Total Investment Portfolio	78,163,134.63	78,475,461.29	312,326.66
Cash at Bank			
Consolidated Fund	1,744,365.86	1,744,365.86	0.00
Total Cash at Bank	1,744,365.86	1,744,365.86	0.00
Total Cash Position	79,907,500.49	80,219,827.15	312,326.66

STRATEGIC CONSIDERATIONS

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.5	Manage Council's finances sustainably	5.5.2	Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.5	Identification of ethical investment opportunities with environmental and social inclusion outcomes

Legal/Statutory/Policy Considerations

- 5 In accordance with Regulation 212 of the *Local Government (General) Regulation 2005*, the Responsible Accounting Officer of Council must provide Council with a monthly report detailing all monies Council has invested under section 625 of the *Local Government Act 1993*.
- 10 The Report must be presented at the next Ordinary Meeting of Council after the end of the month being reported. The current Council Meeting cycle does not always allow this to occur, especially as investment valuations required for the preparation of the report are often received after the deadline for the submission of reports. Endeavours are being made to achieve a better alignment and for some months this will require reporting for one or more months.
- 15 Council's investments are made 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 Minister's Order – Forms of Investment, last published in the Government Gazette on 11 February 2011.
- 20 Council's Investment Policy includes the objective of maximising earnings from authorised investments and ensuring the security of Council Funds.

Financial Considerations

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

Report No. 13.8 Annual Report 2018/19

Directorate: Corporate and Community Services
Report Author: Heather Sills, Corporate Governance Officer
File No: I2019/1688
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 a Council to provide feedback back to the community on how the Council has implemented its operational plan and delivered outcomes for the community.


Council is asked to note the Annual Report 2018/19 and its submission to the Minister for Local Government.

A separate report on the 2018/19 Financial Statements has been prepared and will be considered at this meeting of Council.

RECOMMENDATION:

That Council notes the Annual Report 2018/19 (#E2019/70724), included as Attachment 1 to this report and its submission to the Minister for Local Government.

Attachments:

- 1 Annual Report 2018/19, E2019/70724 

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.

The attached Annual Report has been prepared in accordance with the *Local Government Act 1993* and includes the information prescribed in the *Local Government (General) Regulation 2005*. Information that is required by the Local Government Act and Regulation, or any other legislative requirement is noted with reference to the relevant legislation in bold.

In addition to the prescribed information, this Annual Report is one of the key points of accountability between Council and our community. The Annual Report contains some of our achievements in implementing the Delivery Program over the last year and the effectiveness of each of the activities in achieving the overarching objectives in the Community Strategic Plan 2028 objectives:

- INFRASTRUCTURE - We have infrastructure, transport and services which meet our expectations
- COMMUNITY - We cultivate and celebrate our diverse cultures, lifestyle and sense of community
- ENVIRONMENT - We protect and enhance our natural environment
- GROWTH - We manage growth and change responsibly
- GOVERNANCE - We have community led decision making which is open and inclusive

Council achieved 81% of its actions during this period, compared to 52% the prior year. This is attributed to a number of factors including:

- Improved monitoring and measurement of activities
- More regular reporting on activities provided to Executive Team, Councillors and community
- More realistic planning and scheduling of activities
- Working better together
- Broader and improved community input

Achieved/completed	243 (80.7%)
Substantially Achieved	26 (8.6%)
Partially achieved	26 (8.6%) ³⁵
Deferred/delayed	6 (2.0%)
Not achieved	0 (0%)
Total	301

Highlights for the year include:

Key achievements include:

- Construction of Bayshore Drive/Ewingsdale Road roundabout completed
- Approved funding for the Byron Bay Bypass announced in December 2019 and tender awarded by May 2019
- Conducted laser assessment of condition of entire sealed road network to provide data on additional key parameters
- Delivered detailed asset inspection program of Council and community buildings through an innovative approach working with Southern Cross University which achieved high quality outcomes and cost significantly less than using consultants
- Engaged community on Bike Plan and Pedestrian and Access Mobility Plan (PAMP)
- Awarded tender for the supply and installation of solar the Sewerage Treatment Plans in Bangalow, Byron, and Brunswick Valley

- Commenced car share trial in Byron Bay and Mullumbimby
- Supported more than 280 events across the Shire and held three event workshops
- Completed the Mullumbimby Hospital project reference group (PRG) in November 2018
- Completed Rough Sleepers street count in August 2018
- 5 • Submitted proposal outlining Responses to 'Rough Sleeping' to Department of Premier and Cabinet
- Held successful Safe Summer in the Bay event
- Secured Crime Prevention grant funding and project commenced to complete lighting upgrade in Byron Bay
- 10 • Developed draft Community Resilience Plan
- Held Heritage Forum August 2018
- Undertook robust engagement to prepare Draft Integrated Pest Management Strategy including professional peer review and a quality document that uses diagrams and pictures and layered information to tell the story
- 15 • Awarded two grants to assist in implementing the Flying Fox Camp Management Plan
- Adopted Zero Emissions Strategy
- Adopted Recycled Water Strategy
- Received Gateway Determination public exhibition for EZone Planning Proposal (PP) #1
- Adopted Bangalow Village Plan
- 20 • Held Byron Housing Roundtable Forum in July 2018
- Identified various land parcels by landowners for the Accessible Housing Project through an EOI process
- Launched Byron Unfolded map in August 2018
- Held AusIndustry - Incubators Workshop in August 2018
- 25 • Conducted extensive community engagement to inform Sustainable Visitation Strategy – including Kitchen Table Book sessions, 1200 survey responses, and 30 participant Panel
- Developed draft Rural Function Centre planning controls and put on public exhibition
- Adopted Community Engagement Policy which incorporates community-led governance principles
- 30 • Developed "Byron Model" for democracy with panel of randomly selected citizens and stakeholders
- Improved quarterly reporting on Council's Delivery Program and Operational Plan
- Developed 'Customer Services Promises'
- Delivered staff training initiatives
- 35 • Implemented new online induction Learning Management System
- Installed new server hardware improving internal computing capability

40 The Annual Report will be submitted to the Minister for Local Government in accordance with regulations. It will also be published on Council's website as a flipbook and promoted via social media.

Financial Implications

45 The preparation of the document was funded within existing budget allocations.

Statutory and Policy Compliance Implications

50 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 Local Government (General) Regulation

- 5 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.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.9 Renaming of Old Pacific Highway (North)

Directorate: Infrastructure Services

5 **Report Author:** Renae Fegent, Roads and Property Officer

File No: I2019/1497

10 **Summary:**

The road name of Old Pacific Hwy (North) in Brunswick Heads does not comply with the Geographical Naming Board (GNB) regulations.

15 The process and consultation for renaming a road has been completed and this report seeks approval to rename and Gazette the road as Harbour Way.

RECOMMENDATION:

That Council approve the renaming and Gazettal of Old Pacific Highway (North) from Brunswick Valley Way to Tweed Street, Brunswick Heads, to Harbour Way.

20

REPORT

Land Registry Services (LRS) notified Council that Old Pacific Hwy (North) in Brunswick Heads does not comply with the GNB regulations. Issues include:

- 5 • The road name 'Old Pacific Highway' is not in accordance with current addressing standards. The use of the prefix 'Old' to rename a road does not comply. Furthermore, as the portion of road is no longer classified as a highway, the road type of 'Highway' does not comply.
- 10 • Possible confusion due to the numbering along Old Pacific Highway (North) running in the opposite direction to Tweed Street. In addition the numbering is on the wrong side of the road (odd numbers should run on the left hand side of the road - from the datum point - and even numbers on the right).

These issues may impede the delivery of emergency and other services.

Consultation and Engagement

- 15 Inline with the applicable legislation and guidelines, Council consulted with the GNB, residents and rate payers and advertised in Council Notices requesting submissions to rename and renumber Old Pacific Hwy (North).

First consultation:

- 20 • Council proposed Brunswick Heads Road.
- Not supported by the GNB.
- One submission received suggesting Harbour Way.

Second consultation:

- 25 • Council proposed Harbour Way.
- Supported by the GNB.
- One submission received suggesting Harbour View Way or Harbour View Road.

- 30 **Map:** The yellow line indicates the proposed section of road to be renamed from Old Pacific Highway to Harbour Way (from the Brunswick Valley Way round about to where it meets Tweed Street).



STRATEGIC CONSIDERATIONS***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.1	Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.1	Deliver road and drainage maintenance services in line with Community Solutions Panel values (SP)	1.1.1.2	Implement ongoing road planned maintenance programs

5 Legal/Statutory/Policy Considerations

Council is the authority to name this road and has done so in line with the below regulations:

10 Road Regulations 2018 - Part 2 - Division 1 - Section 7 – Procedure for naming roads

Roads Act 1993 - Division 4 - Section 162 - NAMING OF PUBLIC ROADS

NSW Addressing User Manual - 6.7 Principles of Road naming - 7 Addressing Procedures

15 Council Policy No.07/102 – Tourist, Street Name, Community Facility and Service Signs – Section 4.2f

Financial Considerations

20 Council will be required to pay for:

- Amendment to existing signage - approximately \$200.

Report No. 13.10 **Presentation of the Final Bike Plan and PAMP for adoption**
Directorate: Infrastructure Services
Report Author: Daniel Strzina, Project Engineer
File No: I2019/1529

5

Summary:

10 The Draft Bike Plan and Draft PAMP were placed on public exhibition for comment by formal submission for a period of 28 days from 28 June 2019 to 26 July 2019.

This report summarises the procedure and outcomes of the public exhibition process, and presents the revised plans as the final versions for adoption by Council.

15

A total of 62 public submissions were received.

Tabulated summaries of the submission comments and resulting amendments are included as non-confidential attachments to this report, as requested by Council at the 26 September 2019 Ordinary Meeting via Resolution **19-481**, in which Council resolved:-

20

1. *"That the report on the Draft Bike Plan and Draft PAMP be deferred until the next meeting of Council.*





25

2. *The report summarising the submissions and staff responses be added to the report."*

RECOMMENDATION:

1. **That the results of the public exhibition of the Draft Bike Plan and Draft PAMP be noted.**
2. **That the Final Bike Plan (E2019/67760) and Final PAMP (E2019/67758) be adopted.**
3. **That responses be sent to all those who made submissions or participated in consultation to thank them for their contribution and provide information on where they can find the Final Bike Plan and Final PAMP.**

30 **Attachments:**

- 1 24.2017.50.1 - Byron Shire Bike Plan - Final for Adoption - September 2019, E2019/67760 
- 2 24.2017.51.1 - Byron Shire PAMP - Final for Adoption - September 2019, E2019/67758 
- 3 Draft PAMP and Bike Plan - PE Submissions Sheet 1 - Actioned Changes, E2019/71009 
- 35 4 Draft PAMP and Bike Plan - PE Submissions Sheet 2 - No Action Required, E2019/71010 

REPORT

Background

5 In 2017, Byron Shire Council resolved to develop a new Bike Strategy and Action Plan (Bike Plan) for the entire local government area to supersede the dated Bike Plan which was adopted in August 2008. The new Bike Plan was to be prepared to better reflect the current situation as well as changes to legislation, design standards and guidelines. The Bike Plan will enable a
10 coordinated and strategic approach to delivering cycling infrastructure and promotional programs within Byron Shire Council and will require partnerships between State and Local Governments, developers, the community and other stakeholders.

15 In 2017, Byron Shire Council resolved to develop a Pedestrian Access and Mobility Plan (PAMP) for the entire local government area in order to coordinate investment in safe, convenient and connected pedestrian routes. The PAMP will provide a framework for developing pedestrian routes or areas identified by the community as important and will require partnerships between State and Local Governments, developers, the community and other stakeholders.

20 PSA Consulting was engaged in April 2018 to undertake the development of both plans concurrently, and regular updates have been provided to TIAC on the status and findings of each project at every ordinary Committee meeting during the course of development.

25 The Draft Bike Plan and Draft PAMP were developed by PSA Consulting in close collaboration with Staff, TIAC, and community members over a period of 12 months and are the product of the following:

- a summary of existing relevant plans, policies and initiatives on local, state and federal levels, and how they relate to each plan;
- a detailed analysis of the various cycling and pedestrian localities around the shire and the
30 demographics of the populations within;
- an extensive survey of the existing cycleway and pedestrian networks, including condition and suitability of the individual assets;
- a two-stage, 8-week community consultation process that involved:
 - a detailed survey using Council's *HaveYourSay* platform that engaged members of the
35 public by first educating them of the plans and the development processes involved, then inviting them to contribute their ideas on how we can best improve cycling and pedestrian facilities around the shire, and;
 - a series of location specific, facilitated design workshops at various locations around the
40 Shire that involved the collaboration of Council staff, stakeholders and community members to develop a priority list of cycling and pedestrian infrastructure projects for their area;
- the identification of a set of issues and opportunities for cycling and pedestrian infrastructure;
- the development of proposed future cycle and pedestrian networks that cater to users of all ages and abilities;
- 45 • the breakdown, costing and prioritisation of proposed pedestrian and cycling infrastructure;
- the development of suitable non-infrastructure actions to encourage active transport, and;
- a study into potential funding sources for the provision of infrastructure and non-infrastructure projects.

50 The draft plans were endorsed (subject to amendment) by TIAC for public exhibition at their meeting on 14 May 2019, and subsequently endorsed for public exhibition (subject to amendment) by Council at their meeting on 27 June 2019 (Res **19-311**).

Public Exhibition

The Draft Bike Plan and Draft PAMP were amended as requested and placed on public exhibition for comment by formal submission for a period of 28 days from 28 June 2019 to 26 July 2019.

5

Both draft plans can be viewed via the following link:-

<https://www.byron.nsw.gov.au/Home/Tabs/Public-notice/Bike-Plan-and-PAMP-Exhibition>

10 The purpose of placing these documents on public exhibition was:

- to present the draft plans for comment by formal submission;
- to educate the community on the findings and outcomes of the draft plans;
- to engage with the community and attract submissions for consideration during the development of the final plans, and;
- 15 • to promote the development of both plans.

Members of the public were invited to review the documents and make a formal submission by mail or email.

20 The Public Exhibition was promoted via:-

- Advertisements in the Echo and Byron Shire News
- Social media
- Emails to relevant stakeholder groups, including all involved in the previous stages of
- 25 • A dedicated page on Council's website that provided:
 - information about the plans and the process undertaken to develop them;
 - a link to the documents for download;
 - locations where hardcopies of the document can be accessed;
 - 30 ○ information on how to make a submission (mail, email), and;
 - a formal submission link.

Public Exhibition Results

35 A total of 62 public submissions were received from residents and representatives of community groups and organisations. The submissions varied greatly; from recommendations of strategic non-infrastructure initiatives through to detailed and specific recommended changes to the proposed infrastructure and associated priorities.

40 Some of the key statistics from the Public Exhibition:

- Public submissions were received for all towns and villages identified in the PAMP and the Bike Plan.
- Fourteen different community organisations reviewed and provided submissions on the PAMP and the Bike Plan.
- 45 • A total of 62 public submissions were received across the PAMP and the Bike Plan. Within these submissions, a total of 212 individual comments had implications for the plans.
- Roughly 82% (173 comments) of the 212 total individual comments related to the Bike Plan.
- Roughly 68% (144 comments) of the 212 total individual comments related to the PAMP.
- The greatest number of Bike Plan comments related to the cycle network and/or its
- 50 development ('Network development') as proposed in the Draft Bike Plan, followed by comments identifying possible future routes ('Potential future connectivity') and comments related to the priorities assigned to the proposed network ('Route prioritisation').

- The greatest number of PAMP comments related to the walk and roll network and/or its development ('Network development') as proposed in the Draft PAMP, followed by comments related to the priorities assigned to the proposed network ('Route prioritisation') and comments on the location and/or type of crossings proposed ('Crossings').
- 5 • Roughly 63% (109 comments) of the 173 comments related to the Bike Plan were actioned and incorporated in the Final Bike Plan.
- Roughly 70% (101 comments) of the 144 comments related to the PAMP were actioned and incorporated in the Final PAMP.

10 *Development of the Final Bike Plan and Final PAMP*

Following the Public Exhibition period, PSA Consulting summarised the submissions and provided a proposed a list of recommended changes to the draft plans.

- 15 These proposed changes were critically reviewed by Staff and were only accepted if the proposal was logical, suitable, and well justified. Due diligence was carried out in each case to ensure that changes did not result in undesirable impacts to the greater network, level of service or continuity of the developed strategic direction of the plans.
- 20 A tabulated summary of the submission comments and resulting amendments has been developed and split into two documents that are included as attachments to this report:
- Submissions resulting in actioned changes: E2019/71009
 - Submissions with no resulting action: E2019/71010

- 25 Searchable .pdf versions of these documents are publicly available at the following link:
<https://www.byron.nsw.gov.au/Services/Footpaths-and-cycleways/PAMP-Bike-Plan-Key-Documents>

- 30 It should be noted that in developing the final versions of the plans, some of the project numbers have been changed due to changes in priority or classification. Project numbers referred to in the submissions and the submission table relate only to those in the draft plans – not the final plans. To check the changes made in developing the final plans, the maps in the final plans can be used to find the new project number, which links to the project description in the Project Schedule Tables that follow the maps for each town.

- 35 One of the most significant changes was the separation and prioritisation of inter-town connections in the Bike Plan. This logical amendment came about as the result of multiple supporting submissions and personal discussions with community members on the matter, which highlights how important the community and consultation process has been to the success of these projects.

- 40 In addition to changes inspired by submissions, the quality of the mapping and readability of the plans has been significantly improved and additional information has been added throughout both documents.

- 45 The Final Bike Plan (E2019/67760) and Final PAMP (E2019/67758) are attached to this report for review and adoption.

- 50 High-resolution, searchable .pdf versions of these documents are publicly available at the following link: <https://www.byron.nsw.gov.au/Services/Footpaths-and-cycleways/PAMP-Bike-Plan-Key-Documents>

Next steps

Option 1: Adoption of the Final Bike Plan and Final PAMP. (Note: No financial implication.)

- 5 Option 2: Conditional adoption of the Final Bike Plan and Final PAMP with minor amendments specified within the resolution. (Note: No financial implication.)

Option 3: Revision of the Final Bike Plan and Final PAMP for resubmission to Council for adoption. (Note: Financial implication – budget must be allocated to undertake the work.)

10

STRATEGIC CONSIDERATIONS**Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.3	Support, through partnership, a network of integrated sustainable transport options	1.3.1	Ensure an integrated and accessible transport network (SP)	1.3.1.3	Update Bike Plan and Pedestrian and Access Mobility Plan (PAMP)

15 **Legal/Statutory/Policy Considerations**

There are no negative legal, statutory or policy implications at this time.

Relevant Policy:

- 20 Strategic Transport Statement (Transport Policy) - Policy No. 09/001 (Document No. DM861019)

Financial Considerations

- 25 The project budgets for the development of the PAMP and Bike Plan have been exhausted. Should significant amendments be required to the final plans, additional funds will need to be allocated to undertake this work.

- 30 There are no negative financial implications at this time; however, the Bike Plan and PAMP have been developed to provide a strategic basis for the provision of infrastructure and non-infrastructure initiatives throughout the Shire over the next 10 years, and as such should be considered in Council's long term financial strategy.

Report No. 13.11 **T2019-0052 - Arakwal Court Turn Around Renewal (Byron Bay High School)**
Directorate: Infrastructure Services
Report Author: Daniel Strzina, Project Engineer
5 **File No:** I2019/1584

Summary:

10 On 20 August 2019, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract T2019-0052 Arakwal Court Turn Around Renewal (Byron Bay High School).

15 The Request for Tender was advertised from 29 August 2019 to 24 September 2019. One tender was received. It was from the following organisation:

- GRC Civil (Civlec PTY LTD)

20 The tender was assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tender and provides a recommendation to award the tender for Contract T2019-0052.

RECOMMENDATION:

1. That Council award Tender T2019-0052 to GRC Civil (Civlec PTY LTD).
2. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005.

Attachments:

- 1 Confidential - 24.2019.32.1 - T2019-0052 Arakwal Court Turn Around (BBHS) - Tender Evaluation Report, E2019/72770

Report

On 20 August 2019, the General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract T2019-0052 Arakwal Court Turn Around Renewal (Byron Bay High School).

Council has been working closely with the Byron Bay High School and other stakeholders to address safety issues relating to traffic management, parking, cycle ways, student drop-off zones and pedestrian interactions in Arakwal Court.

Plans have been developed to undertake road renewal, road widening and upgrade works to pedestrian, cycling and parking infrastructure in the area to improve the safety and amenity of students, staff, pedestrians, cyclists and members of the public who use Arakwal Court and the adjacent facilities.

The plans have been approved for construction and are co-funded by Byron Shire Council, the Department of Education on behalf of Byron Bay High School and the Catholic Church Trustees on behalf of St Finbarr's Primary School.

The purpose of the RFT is to engage a suitably qualified Principal Contractor to undertake the works.

Scope

The Request for Tender sought responses from proponents to provide:

- Tree removal
- Demolition and disposal of existing infrastructure;
- Supply and construction of new drainage infrastructure;
- Supply and construction of fill and road pavements to the relevant standards;
- Supply and construction of new kerbing, kerb ramps, footpaths, shared paths and crossings;
- Supply and installation of splitter islands, wheel stops, road signage and line marking;
- Supply and installation of pedestrian and cyclist fencing, signage and line marking, and;
- All works specified in the attached design drawings or considered necessary to complete the works and make fit for purpose.

The total project scope has been divided into a Primary Scope and several optional separable portions for the purposes of procurement. This is to allow for cost allocation (to the Department of Education for works undertaken on their land) and maximisation of the quantity and quality of work that can be achieved with the available project budget.

The Contract is expected to commence on 28 November 2019 for a period of two months, with construction to be complete by 27 January 2020.

The Contract will be managed by Daniel Strzina, Project Manager.

Tenders

The tender was advertised as follows:

- Sydney Morning Herald – 27/08/2019
- Echo – 28/08/2019
- Tenders Online – 29/08/2019
- Council website – 27/08/2019

A mandatory briefing/site inspection was held at 10:30am on 10 September 2019 at 2 Arakwal Court, Byron Bay. The following organisations attended the briefing/site inspection:

- J+M Bashforths and Sons
- Hazell Bros
- GRC Civil (Civlec PTY LTD)

5 The purpose of the briefing/site inspection was to demonstrate the site restrictions and construction laydown areas, as well as field questions and queries to ensure all tenderers understood the project constraints well.

10 An Evaluation Panel comprising of three Council staff members was formed.

Tenders closed on 24 September 2019. A tender was received from the following proponent:

- GRC Civil (Civlec PTY LTD)

15 The tender was evaluated by the Evaluation Panel in accordance with the following evaluation criteria:

Mandatory criteria:

- a) Tender lodged on time, in accordance with the Conditions of Tender.
- 20 b) Respondent has a valid Australian Business Number.
- c) Respondent substantially complies with the Statement of Requirements.
- d) Respondent substantially complies with the Conditions of Contract.
- e) Workers Compensation Insurance for all employees
- f) Holds, or is able to obtain, the insurances as specified in the Statement of Requirements
- 25 g) Respondent has satisfactory work health and safety and environmental compliance
- h) Financial capacity to undertake the contract
- i) Commitment to ethical business practices
- j) Tenderer confirmed no ties to Adani.

Qualitative criteria:

Criteria	Elements	Schedule	Weighting
Profile and Relevant Experience	Tenderer Profile	4.1.1	30%
	Previous Relevant Experience	4.1.2	
	Environmental Practices	4.1.4	
	Opportunities for Disadvantaged People	4.1.5	
Quality and Availability of Resources	Proposed Key Personnel	4.2.1	30%
	Proposed Staff	4.2.3	
	Use of subcontractors	4.2.5	
Delivery Plan	Goods/services standards and methodology (low impact to schools and traffic is highly desirable)	4.3.1	40%
	Implementation Plan (low Impact to schools and traffic is highly desirable)	4.3.2	
	Supporting local business, social enterprise and Indigenous business, employment opportunities	4.3.3, 4.3.4	
	Sustainability	4.3.5	

Following the evaluation, the Evaluation Panel conducted referee and financial checks on the preferred tenderer. The results of these checks were deemed by the Evaluation Panel to be satisfactory as detailed in the attached Evaluation Report.

- 5 GRC Civil (Civlec PTY LTD) submitted a conforming tender with competitive unit rates (when compared to other similar projects) and a suitable delivery program. As a contractor they have demonstrated experience delivering similar and larger projects on time and within budget, and their personnel have demonstrated skills necessary to undertake the works.

10 **Financial Implications**

The price basis for the contract is lump sum.

- 15 There is currently \$700,000 in the budget for this project, which has been co-funded (50/50) between Council and the Department of Education to undertake:

- The Primary Scope (Separable Portion P)
- Separable Portion 1

- 20 Catholic Church Trustees have indicated their intention to contribute \$25,000 to this project on behalf of St Finbarr's Primary School, which will be used to partially fund a higher-quality finish (AC10) for Separable Portion 1.

The tendered price is within budget for these works.

- 25 The remaining separable Portions 2 and 3 are potential additions to the scope that lie on Byron Bay High School land and will only be completed as part of this contract if the Department of Education agrees to undertake and fully funds the works.

30 **Statutory and Policy Compliance Implications**

The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2005. The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.

35 Local Government (General) Regulation 2005 - Reg 178

Acceptance of tenders

40 *178 Acceptance of tenders*

- (1) *After considering the tenders submitted for a proposed contract, the council must either:*
- (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
 - 45 (b) *decline to accept any of the tenders.*
- (2) *A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any*
- 50 *contract in order to carry out the requirements of the proposed contract.*
- (3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*
- (a) *postpone or cancel the proposal for the contract,*

- (b) *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
 - (c) *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
 - 5 (d) *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
 - (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
 - (f) *carry out the requirements of the proposed contract itself.*
- 10 (4) *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*
 - (a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*
 - (b) *the council's reasons for determining to enter into negotiations with the person or*
- 15 *persons referred to in subclause (3) (e).*

Council's endorsement of the recommendation to award the tender as recommended in the attached Evaluation Report is sought.

Report No. 13.12 **Suffolk Park Pump Track**
Directorate: Infrastructure Services
Report Author: Michael Matthews, Manager Open Space and Resource Recovery
File No: I2019/1590

Summary:

The Suffolk Park Recreation ground was purchased from the Department of Education in June 2017. Council has had formal interest in this land that dates back to 2001 under a Licence agreement to construct and maintain a sports field and associated infrastructure on Part Lot 60 on DP 81788. Historically there has been ongoing interest from the community for the establishment of a BMX and or Pump track facilities within the site.

In April 2018, concept plans were developed and presented to the community in the form of a survey. This survey was posted on 30 May 2018 and closed 27 August 2018. The primary purpose of the survey was to gauge community preference for authorised development within the site and to inform the now adopted Plan of Management (refer attached E2019/63630). Significant support for a pump track was received in response to this survey (refer attached E2019/74439).

On the 11th of September 2019, the Suffolk Park Progress Association (SPPA) were advised that they have been successful in receipt of a \$156,300 contribution from *My Community Projects 2019* fund for the construction of a Pump Track with the total proposed project value being \$275,000. A contribution of \$118,700 is required from Council to meet the total budgeted amount for the project.





The Progress Association are currently finalising the Funding Deed and Contact Details, subject to the balance of the project being funded by a Council contribution.

It should be noted that in addition to support received in the above-mentioned survey, this project is an adopted action within the adopted *Open Space and Recreational Needs assessment action Plan* (Refer attachment E2018/110511).

RECOMMENDATION:

1. **That Council allocate \$150,000 from the Suffolk Park Open Spaces developer contributions reserve to contribute to the My Community Project Grant contribution of \$156,300 for construction of a Pump Track and associated works at Beech Drive Suffolk Park.**
2. **That the final positioning of the Pump Track is to be the subject of further community consultation, with a report to be brought back to Council recommending the final location.**

Attachments:

- 1 Survey_Responses_Report.pdf, E2019/74439 
- 2 Plan of Management Suffolk Park Recreation Grounds Adopted on 19 September 2019, E2019/63630 
- 3 Suffolk Park Community Park CONCEPT 180313 email.pdf, E2019/74458 
- 4 Open Space and Recreation Needs Assessment and Action Plan attachment to Council Report 13/12/2018, E2018/110511 

REPORT

History of Suffolk Park Recreation Grounds

Background to Sports Field and Associated Infrastructure Development

In 2001, Council undertook a feasibility study to provide much needed sporting fields for the Suffolk Park community. Through this study it became apparent that land available to Council to provide sporting fields within Suffolk Park was inadequate. In order to progress the provision of these much needed facilities, Council approached the Department of Education with a view to investigating whether it would be interested in making part or the whole of its land at Suffolk Park available to Council for the provision of sporting fields.

Representation from Council was made to the Department of Education in December 2001; this representation included securing licenced tenure to enable the construction of a sports field on part Lot 60 DP 817888.

A Deed of Licence was executed on 1 April 2004 for a term of five years with two (2) options of renewal. The Deed of Licence a terminated on 31 December 2018.

On 23 August 2012 Council received a proposal from the Suffolk Park Progress Association Inc to construct a community garden, children's bike course and mini sports field within the balance of Council's licensed area over part Lot 60 DP 817888.

On 6 December 2012 Council considered a report titled '12.3 Proposed Projects for Suffolk Park Section 94 funds', which included the abovementioned proposal. Council resolved:-

12-949 (in part):

That Council enter into negotiations with the Department of Education to secure an extension to the existing licence for part Lot 60 DP817888.

That Council enter into negotiations with the Department of Education to secure licence for the remainder of Lot 60 DP817888.

Negotiations between Council and the Department of Education failed to secure tenure over the balance of Lot 60 DP817888 with there being no option of extension to the Deed of Licence beyond 31 December 2018.

On 23 June 2017 Council successfully settled on purchase of the land.

A community survey was undertaken from 30 May to 27 August 2018 to inform Council of community preference for recreational embellishments for the land. The results of this survey informed the development of the current adopted Plan of Management.

On 13 December 2018, Council adopted the *Open Space and Recreational Needs assessment action Plan*. An action within this plan is the construction of a BMX/pump track within this reserve.

The current adopted Plan of management expressly authorises a Pump Track.



STRATEGIC CONSIDERATIONS

5 Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.8	Develop capital upgrades, renewal and enhancements works program for buildings-including community buildings, public toilets, emergency services, sports club facilities and Council operations buildings (SP)	1.2.8.2	Sporting Infrastructure Renewal (Shire wide)

Legal/Statutory/Policy Considerations

The development of a Pump track by or on behalf of Council can be constructed without consent under the Infrastructure SEPP 2007.

A Review of Environmental Factors will be completed during the planning stage of the project.

Financial Considerations

It is recommended that \$150,000 from the Suffolk Park Open Spaces developer contributions reserve be allocated to the project. This reserve has been identified as the appropriate source of funds for this project.

Consultation and Engagement

- 5 Consultation was undertaken as part of the Plan of Management development and additional consultation as part of the *Open Space and Recreational Needs assessment action Plan* sort community feedback on the development of a pump track within the land.

Report No. 13.13 **Request for new lease by Mullumbimby Tennis Association Inc.**
Directorate: Infrastructure Services
Report Author: Michael Matthews, Manager Open Space and Resource Recovery
File No: I2019/1615

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Report summary:

10 A Licence to Mullumbimby Tennis Association Inc over part Crown Reserve 31910 Mullumbimby Recreation Grounds has expired with an active request from the association for renewal.

15 The Mullumbimby Tennis Courts are on Reserve 30910 which is Crown Land under Council management, with native title interests acknowledged. Council is required to develop a new Plan of Management (PoM) for the Reserve, which with its interaction with the review of open space area demand for Mullumbimby, Lot 22, the community gardens and native title interest's, careful consideration and extensive consultation for this Plan of Management is necessary and is considered will take some time.

20 Under the Crown Lands Management Act transitional arrangements, pending adoption of a new PoM for the reserve, Council as Crown Land Management can:

"Grant new licences for a term not exceeding five years (including any options) if:

- a) *there was a licence in force over the land immediately before 1 July 2018*
b) *there are no permitted uses for the land under the new licence that are additional to those that were permitted under the previous licence"*
- 25




A copy of the Department of Industry Fact Sheet is included at Attachment 2.

30 A new 5 year licence to the Mullumbimby Tennis Association would satisfy these requirements, confirming that Council has the authority to issue a new licence.

RECOMMENDATION:

1. **That Council directly issue, without a competitive process, a new licence to Mullumbimby Tennis Association Inc for 5 years in accordance with the transition provisions of the Crown Lands Management Act; and**
2. **That the new licence include a mandatory requirement for services, particularly coaching services, to be inclusive and meet Disability Discrimination Act requirements, and that coaching services be scheduled so as to not unreasonably interfere with general use.**

Attachments:

- 35 1 Report to Reserve Trust Committee 21/11/13 Trust Licence to Mullumbimby Tennis Association Inc over part Crown Reserve 31910 Mullumbimby Recreation Grounds, E2013/57645 
- 2 Copy of Report to Reserve Trust Committee 21 November 2013 (E2013 57645) Licence to Mullumbimby Tennis Association Inc over part Crown Reserve 31910 Mullumbimby Recreation Grounds - Attachment to report to ET 25 September 2019, E2019/69496 
- 40 3 NSW Department of Industry Lease and Licence Crown Land Management Fact Sheet downloaded 18 September 2019, E2019/69459 

REPORT

Byron Bay Tennis Court is under a 10 year commercial lease arrangement where as the Mullumbimby Tennis Courts have been operated by a not for profit association on minimum Crown Rent. It should be noted that at Councils cost, the Byron Bay Tennis Courts were refurbished at the end of the previous Commercial lease Term, whereas the Mullumbimby Tennis Courts have been refurbished by the association, without cost to Council.

The recent history of reports on Byron and Mullumbimby Tennis Courts is:-

- 2009 Council resolved to review operation of tennis courts in the Shire [09-221]
- 2010 Report was provided (DM881247) and Council resolved to support Byron Bay Tennis Courts being established under a management practice similar to Mullumbimby Tennis Courts [10-270]
- 2010 Further report following discussions with then BB Tennis Club, when Council resolved to call for expressions of interest for Byron Bay Tennis Courts [10-893]
- 2012 Further report after EOI's called, Council resolved to decline to great a lease to any respondents and to call for fresh EOI's [12.350]
- 2012 Report after 2nd EOI's Council resolved to grant 5 year lease of Byron Bay Tennis Courts to current operator, Andrew Bates, for a rental of \$18,000 pa.
- 2013 Report re Mullumbimby Tennis Courts, Council resolved to grant a licence to Mullum Tennis Assoc Inc, without a competitive process for 5 years on minimum crown rent – Attachment 1.
- 2018 Crown Land Management Act changes came into effect.
- 2019 Lease to Mullumbimby Tennis Association expired and they have continued management on a month-to-month holding over basis. Council wrote to the Association telling them that due to the introduction of Crown Land Management Act Council is unable to offer a new lease. (With the subsequent legislative improvements that were made to the transitional provisions that is no longer the case).
- 2019 Mullumbimby Tennis Association have formalised their request for a new lease and have successfully sought the assistance of Tamara Smith, who has indicated she is 'prepared to lobby Crown Lands to fast track the categorisation application' on their behalf so they can get a lease. However, the decision whether or not to issue a lease is not related to the classification applications, rather it is a matter for Council. The Association has requested information to provide to Ms Smith. A response to that request is on hold pending consideration of this report.

The Mullumbimby Tennis Courts are on Reserve 30910 which is Crown Land under Council management, with native title interests acknowledged. Council is required to develop a new Plan of Management (PoM) for the Reserve which with its interaction with the review of open space area demand for Mullumbimby, Lot 22, the community gardens and native title interest's, careful consideration and extensive consultation for this Plan of Management is anticipated to take some time.



Preliminary review suggests that a new licence could be validated under the NT Act without notification or compensation but the Native Title Advice will be required to be certain.

5

Under the Crown Lands Management Act transitional arrangements, pending adoption of a new PoM for the reserve, Council as Crown Land Management can:

10

“Grant new licences for a term not exceeding five years (including any options) if:

- a) there was a licence in force over the land immediately before 1 July 2018*
- b) there are no permitted uses for the land under the new licence that are additional to those that were permitted under the previous licence”*

15

A copy of the Department of Industry Fact Sheet is included at Attachment 2.

A new 5 year licence to the Mullumbimby Tennis Association would satisfy these requirements, and as such Council has the authority to issue a new licence.

20

Further considerations from staff that would support re-issuing of a licence include:

25

- The Association has proved to be self-sustaining and capable of maintaining and providing high standard tennis facilities for community use.
- Issuing a further 5-year licence will ensure continuity of services to community prior to formally reviewing ‘tennis facility management’ more broadly.

ICAC Considerations

ICAC Guidelines on direct negotiations and whether a competitive process should be considered.

The 2013 Report at Attachment 2 included extracts from the ICAC Guidelines that remain relevant.

Council did attempt in 2012 to run a competitive process for 'community management' of the Byron Bay tennis facility through an EOI process but was unsuccessful. The first unsuccessful EOI process resulted in the former community association withdrawing from management and the second EOI process resulted in the current commercial operation which delivers a rental return to Council but does not deliver a self-funding facility with Council liable for capital costs.

In 2018 Council ran a tender for the management and operations of the Byron Bay Tennis Courts over ten years. Objecting submissions were received by Council. The predominant objection to the granting of the lease to Andrew Bates Tennis Pty Ltd was that membership fees, coaching fees and general court fees to use the Byron Bay tennis facility were substantially more than fees to use the Mullumbimby tennis facility.

Consistency in approach to management of tennis facilities in the Shire.

The commercial Lessee of the Byron Bay Tennis Courts has repeatedly raised with Council his concerns about a perceived lack of equity in the approach to management of Byron Bay compared with Mullumbimby Tennis Courts, who do not pay commercial rent or outgoings. As a result court usage charges at Mullumbimby are substantially less than use of the Byron Bay tennis facility. Both facilities are considered to provide similar levels of services.

Under the current terms of the licence to the Mullumbimby Tennis Association Inc, there is no requirement for the Association to submit its annual financial reports to Council.

A review of the history shows that it was Council's first preference for Byron Bay was a community-based licence management arrangement as still exists in Mullumbimby. However, the EOI process resulted in that community group withdrawing from future management of the facility, which meant that Council had no choice but to run a 2nd EOI process.

Some of the differences between the two are:

Location	Byron	Mullumbimby
Ownership	Council	Crown
Community club	Pulled out of management	Continuous Management
Current tenure	Lease	Licence
Capital & repairs/maintenance	Largely Council funded	Largely community funded
Rent	EOI-set, paid to Council	Minimum crown rent
Facilities	Courts & cafe	Courts
Outgoings fixed charges for land rates, water, sewerage and waste management.	Pay 100% of fixed charges	Pay 0% of fixed charges. (As Crown land not leased for private use the land is meets the exempt category for rates).

The Council decisions to run competitive processes for Byron Bay predated their decision to not run a competitive process for Mullumbimby. While the difference in approach is acknowledged, the

most recent decision was to support community management of this particular facility on basis that it is self-sustaining.

Manager Open Space and Resource Recovery and Leasing and Licensing Coordinator have engaged with Tennis NSW to encourage them to review the different 'models' of management tennis courts across the State with a view to providing some 'best practice models'. For example, Sydney City set in their annual fees and charges, tennis court usage charges for volunteer run facilities. However, at the moment this work is not a current or proposed OP action, given other Council-set priorities.

Private profits from coaching services run from a public facility

One concern that has been raised is the commerciality of coaching services offered from the facilities and 'private profits' being generated from a public facility.

A review of coaching services provided at Mullumbimby has not been done as the practice of providing coaching services is common across all tennis courts in the Shire and indeed in most local government areas. Also it is common for private 'for profit' services operating from community facilities, e.g. dance classes run from community halls, pro golf services or camping at the Mullumbimby Rugby Grounds.

To the extent that the concern may be that private coaching use negatively impacts general community use that can be managed through a term in the licence.

Disability access and inclusion

It is recommended that if a new licence is issued to the Association, a new requirement be included that any services offered from the facility, in particular coaching services, be inclusive and DDA compliant. This will be consistent with DIAP and OP Actions but also meet community requests and expectations. This is something that can be progressively introduced as licences, leases and user agreements for all types of sporting facilities come up for review/renewal.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.4	Provide active and passive recreational Community space that is accessible and inclusive for all (SP)	1.2.4.2	Develop Public Open Space accessibility program
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.8	Develop capital upgrades, renewal and enhancements works program for buildings-including community buildings, public toilets, emergency services, sports club facilities and Council operations buildings (SP)	1.2.8.1	Consult with user groups to establish user agreements, leases, licenses and Plans of Management

Legal/Statutory/Policy Considerations

Under the Crown Lands Management Act transitional arrangements, pending adoption of a new PoM for the reserve, Council as Crown Land Management can: -

- 5 *“Grant new licences for a term not exceeding five years (including any options) if:*
- a) there was a licence in force over the land immediately before 1 July 2018*
- 10 *b) there are no permitted uses for the land under the new licence that are additional to those*
 that were permitted under the previous licence”

A copy of the NSW Department of Industry Fact Sheet is included at Attachment 3.

- 15 A new 5 year licence to the Mullumbimby Tennis Association would satisfy these requirements, so
Council has the power to issue a new licence.

Financial Considerations

- 20 N/A

Consultation and Engagement

Legal Service Team

Report No. 13.14 **2019-0057 - Supply and delivery of Emulsion - Award of tender**
Directorate: Infrastructure Services
Report Author: Joshua Provis, Road and Bridge Engineer
File No: I2019/1362

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Summary:

10 The Request for Tender 2019-0057 for Supply and Delivery of Emulsion was advertised from 12 July 2019 to 6 August 2019. Tenders were received from the following organisations:

- Ashcroft Holdings Pty Ltd t/as Ashpave
- Bitupave LTD T/A Boral Asphalt
- 15 • Downer EDI Works Pty Ltd
- Fenworx P/L Trading as Newpave Asphalt
- Fulton Hogan Industries Pty Ltd
- Stateline Asphalt Pty Ltd


20 Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2019-0057.

RECOMMENDATION:

1. **That Council award Tender Supply and Delivery of Emulsion to Bitupave LTD T/A Boral Asphalt.**
2. **That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005.**

25

Attachments:

- 1 Confidential RFQ EX-1308 Recommendation Report -Supply & Delivery of Emulsion to NRJO..., E2019/74405 

30

Report

Last financial year Council spent approximately \$210,000 on the supply and delivery of bitumen emulsion for the jet patcher truck to carry out pot hole repairs on the shire's roads. The increasing costs of oil require Council to secure the best price for emulsion to optimise the area of roads that can be serviced.

The Request for Tender sought responses from proponents to provide emulsion to the Bayshore Drive, 20,000L emulsion tank and carry out annual internal cleaning of the tank.

The Contract is expected to commence in October 2019 for a period of two years, with the option of a further 1 + 1 year extensions.

The Contract will be managed by Council's Operations Coordinator at the Works Depot.

This tender process was run by Local Government Procurement NSW (LGP), on behalf of Tweed, Byron and Kyogle Shire Councils. LGP invited suppliers to submit tenders via their previously established panel of suppliers, which was set up in accordance with the Local Government Act and Tendering Regulation. Therefore this tender was not required to be advertised, other than to the established panel.

An Evaluation Panel was comprised with members from Local Government Procurement and each Council, forming a panel of four members.

Tenders closed on 6 August 2019 and tenders were received from the following proponents:

- Ashcroft Holdings Pty Ltd t/as Ashpave
- Bitupave LTD T/A Boral Asphalt
- Downer EDI Works Pty Ltd
- Fenworx P/L Trading as Newpave Asphalt
- Fulton Hogan Industries Pty Ltd
- Stateline Asphalt Pty Ltd

Tenders were evaluated by the Evaluation Panel in accordance with the following evaluation criteria:

Compliance criteria:

Compliance Criteria	Sub Section
Tenderer Details	Legal Business Name
	Trading Name
	CAN
	ABN
	Registered Office
	Principal Place of Business
Compliance Requirements	Completion & submission of all tender schedules: <ul style="list-style-type: none"> • Submission Form • Schedule of rates (excel format) • Schedule of Contract Information • Schedule of contractor's relevant experience • Schedule of Environmental Performance • Schedule of local content information
	• Conformance to the Specification
	Valid certificates of currency for Insurances:

	<ul style="list-style-type: none"> • Certificate of Currency for Public Liability Insurance • Certificate of Currency for Product Liability Insurance • Certificate of Currency for Workers Compensation Cover • Commitment to maintain Insurance coverage, licenses and accreditations • Conformance with BNG Conserve requirements
Schedule of rates	Schedule of rates (Completed and submitted in Excel format)
References	Reference contacts provided

Weighted criteria assessment

Criteria	Weighting
a) Evidence of satisfactory experience	30%
b) Environmental Performance	15%
c) Work Health & Safety (WHS) Requirements	15%
d) Local Content – Resources & Labour	10%
e) Pricing – value for money	30%
Total	100%

- 5 Following the evaluation, the Evaluation Panel conducted referee and financial checks on the preferred tenderer. The results of these checks were deemed by the Evaluation Panel to be satisfactory as detailed in the attached Evaluation Report.

Financial Implications

10

The price basis for the contract is a schedule of rates.

Council spends over \$210,000 per year on supply and delivery of emulsion.

- 15 There is sufficient funding for the proposed contract in the current budget.

Statutory and Policy Compliance Implications

The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2005.

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The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.

Local Government (General) Regulation 2005 - Reg 178

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Acceptance of tenders

178 Acceptance of tenders

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- (1) After considering the tenders submitted for a proposed contract, the council must either:
- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
- (b) decline to accept any of the tenders.

35

- (2) A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.

- (3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*
- 5 (a) *postpone or cancel the proposal for the contract,*
- (b) *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
- (c) *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
- (d) *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
- 10 (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
- (f) *carry out the requirements of the proposed contract itself.*
- (4) *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*
- 15 (a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*
- (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*
- 20 Council's endorsement of the recommendation to award the tender as recommended in the attached Evaluation Report is sought.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.1 **Report of the Byron Shire Floodplain Risk Management Committee Meeting held on 24 September 2019**

Directorate: Infrastructure Services
Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services
File No: I2019/1624

Summary:

The attachment to this report provides the minutes of the Byron Shire Floodplain Risk Management Committee Meeting of 24 September 2019 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Byron Shire Floodplain Risk Management Committee Meeting held on 24 September 2019.
2. That Council adopt the following Committee Recommendation(s):

Report No. 4.1 **North Byron Floodplain Risk Management Study and Plan Project Update**

File No: I2019/1446

Committee Recommendation 4.1.1

1. That the information provided within Hydraulic categories and Hazard Classifications section of Attachment 1 (E2019/68025) is supported for inclusion within the Draft Floodplain Risk Management Study document.
2. That the information provided within Information to Support Emergency Response section of Attachment 1 (E2019/68025) is supported for inclusion within the Draft Floodplain Risk Management Study document.
3. That four flood mitigation options proceed to detailed flood mitigation assessment stage; Billinudgel Levee (with and without supporting infrastructure improvements), Federation Bridge debris control measures, Avocado Court Overland Flow Path and Saltwater Creek Upgrade.
4. That small stormwater pumps be investigated as a mitigation option to resolve nuisances flooding to properties following flood events and smaller heavy rainfall events in areas that are not drained by the South Golden Beach flood pump.
5. That the proposed Assessment of Cumulative Impacts of Development is supported with the addition of the following considerations:
 - A. Assessment of increased impervious areas in South Golden Beach, Mullumbimby and Brunswick Heads be included in the proposed Assessment of Cumulative Impacts of Development. (Attachment 3 - Appendix B – E2019/68028).

Attachments:

- 1 Minutes 24/09/2019 Byron Shire Floodplain Risk Management Committee, I2019/1477 

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Report

5 The attachment to this report provides the minutes of the Byron Shire Floodplain Risk Management Committee Meeting of 24 September 2019 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2019/09/BSFRM_24092019_AGN_1098_AT.PDF

Committee Recommendation

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 Byron Shire Floodplain Risk Management Committee Meeting of 24 September 2019.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Byron Shire Floodplain Risk Management Committee Meeting of 24 September 2019.

**Report No. 14.2 Report of the Transport and Infrastructure Advisory Committee
Meeting held on 1 October 2019**

Directorate: Infrastructure Services

Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services

File No: I2019/1627

Summary:

The attachment to this report provides the minutes of the extraordinary Transport and Infrastructure Advisory Committee Meeting of 1 October 2019 for determination by Council

RECOMMENDATION:

1. That Council note the minutes of the Transport and Infrastructure Advisory Committee Meeting held on 1 October 2019.

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

Report No. 4.1 Integrated Transport Management Strategy - Workshop

File No: I2019/1502

Committee Recommendation 4.1.1

1. That the outcomes from the workshop be provided to Council via regular project update process.

2. That an extraordinary meeting to discuss Integrated Transport Management Strategy be organised in December 2019.

Attachments:

1 Minutes 01/10/2019 Transport and Infrastructure Advisory Committee Extraordinary, I2019/1528 

Report

The attachment to this report provides the minutes of the Transport and Infrastructure Advisory Committee Meeting of 1 October 2019 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2019/10/TIAC_10102019_AGN_1016_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 Transport and Infrastructure Advisory Committee Meeting of 1 October 2019.

Statutory and Policy Compliance Implications

As per the Reports listed within the Transport and Infrastructure Advisory Committee Meeting of 1 October 2019.

Report No. 14.3 **Report of the Water, Waste and Sewer Advisory Committee Meeting held on 10 October 2019**

Directorate: Infrastructure Services

Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services

File No: I2019/1689

Summary:

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 10 October 2019 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 10 October 2019.**

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

Report No. 4.1 Inflow and Infiltration

File No: I2019/1511

Committee Recommendation 4.1.1

That Council note the Report and note the progress on the Inflow and Infiltration Reduction Program.

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

Report No. 4.2 Byron Bay Integrated Management Reserve Update

File No: I2019/1588

Committee Recommendation 4.2.1

1. **That Council note the report**

2. **That Council acknowledge that Wetland cells at Byron Bay STP are lined as follows:**

- a) **Cells D, E, and I are lined;**
- b) **Cell H behaves as if its lined; and**
- c) **F and G are not lined**

3. **That Council contact relevant state authorities and Byron Bay Historical Society to search their archive for reports on the Sand mining activities around Byron Bay and Suffolk Park and especially near Byron Bay STP**


4. **When this information has been assembled, Council consider a site visit for committee members.**

5. **That listing for Byron Bay STP Catchment of sewage load resulting from Development Consents after 9 December 2002 (or similar) be brought to the next WWSAC.**

6. That Council note that Byron Bay STP capacity was reassessed in recent years.
7. That Council note that when ADWF reaches 80% of plant capacity (assessed in 2002 as 6.95 ML/day) Condition 6 requires action by Council.

Attachments:

5

- 1 Minutes 10/10/2019 Water, Waste and Sewer Advisory Committee, I2019/1601 

Report

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 10 October 2019 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2019/10/WW SAC_10102019_AGN_1019_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 2019.

Statutory and Policy Compliance Implications

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 10 October 2019.

CONFIDENTIAL REPORTS - GENERAL MANAGER

Report No. 16.1 CONFIDENTIAL - Annual Review of GM's performance

Directorate: General Manager

5 **Report Author:** Kylie Armstrong, Manager People and Culture

File No: I2019/1693

10 **Summary:**

On 16 September 2019, the General Manager's annual performance review for the 2018/19 financial year was conducted by a performance review panel, in accordance with the Guidelines for the Appointment and Oversight of General Managers issued by the Division of Local Government, Department of Premier and Cabinet (the 'Guidelines'). A mid-term performance review was conducted on 8 April 2019.

20 The performance review panel consisted of the Mayor Cr Simon Richardson, Deputy Mayor Cr Michael Lyon, Cr Basil Cameron, Cr Alan Hunter and Cr Jan Hackett and they were assisted by an external facilitator Mr Mark Anderson, Manager Local Government Management Solutions, LG NSW.

25 **RECOMMENDATION:**

1. That pursuant to Section 10A(2)(a) of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Annual Review of GM's performance.

30 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 a) personnel matters concerning particular individuals (other than councillors)

35 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:

 it relates to the annual performance review of GM

40 **Attachments:**

1 Confidential - GM Performance Annual Review 2019 (Confidential), E2019/75496