

Agenda Ordinary Meeting

Thursday, 29 September 2022



BYRON
SHIRE
COUNCIL

Agenda Ordinary Meeting

held at Conference Room, Station Street, Mullumbimby
commencing at 9:00am

Public access relating to items on this agenda can be made between 9:00 and 10:30 am 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.

A handwritten signature in black ink, appearing to read 'Mark Arnold'.

Mark Arnold
General Manager

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.

OATH AND AFFIRMATION FOR COUNCILLORS

Councillors are reminded of the oath of office or affirmation of office made at or before their first meeting of the council in accordance with Clause 233A of the Local Government Act 1993. This includes undertaking the duties of the office of councillor in the best interests of the people of Byron Shire and the Byron Shire Council and faithfully and impartially carrying out the functions, powers, authorities and discretions vested under the Act or any other Act to the best of one's ability and judgment.

BYRON SHIRE COUNCIL

BUSINESS OF ORDINARY MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. ATTENDANCE BY AUDIO-VISUAL LINK / 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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Sustainable Environment and Economy

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Infrastructure Services

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15. QUESTIONS WITH NOTICE

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 Data on flood impacted homes and businesses

5 **File No:** I2022/1206

I move that Council:

- 10 1. Surveys affected landholders or obtains the same information from other sources (such State Emergency Services, Recovery NSW, Mullumbimby Residents Association, etc) to quantify the needs of landholders to future-proof residential and commercial premises throughout the Shire where the approved floor level:
- 15 a) was flooded in 2022, or
- b) would be flooded by a predicted 1-in-100-year (1% AEP) 2050 flood, or
- c) is in danger of inundation, i.e. where 2022 water came within 300mm or where 2050 level is within 500mm of inundating the approved floor level.
- 20 2. Quantifies those needs by identifying premises as either raisable (house-raising) or not and, in the latter case, whether wet-proofing would be feasible (half a metre of inundation) or not. If neither is feasible, buy-back is necessary.
3. Recognises that this information is required so that Council can advise state and federal funding agencies of needs within the Shire for house-raising, wet-proofing and buy-back.
- 25 4. Liaises with neighbouring Shires to align our information if possible with the forms in which their information is presented.

Signed: Cr Duncan Dey

Councillor's supporting information:

We are over six months out from the Shire's first flood and coming up for six months from its second. Each impacted different parts of the Shire.

- 5 There is a huge number of landholders whose premises and / or access to them were impacted by erosion and landslip. The quantification of those needs is more complex and funding channels are not as clear.

For flood impacts however, there is an existing approach created and adopted under the state's Floodplain Development Manual:

<https://www.environment.nsw.gov.au/topics/water/floodplains/floodplain-manual>

- 10 We can be grateful that government over the decades had the foresight to recognise that development on floodplains would cause grief when the weather performed as predicted.

- 15 The Manual points towards schemes that are recognised in the Shire's Floodplain Management Plans. Actions include house-raising, wet-proofing and buy-back. The actions are supported. What's missing is the funding. The purpose of this Motion is to provide data for us to seek that funding.

Landholders will also need assistance to comprehend their flood-proofing options and to negotiate the red tape around works on their properties.

The following screenshot indicates amounts of funding that might get the ball rolling - \$741 million in Queensland.



Staff comments

by James Flockton, Infrastructure Planning Coordinator, Infrastructure Planning:

- 5 Infrastructure Planning are experiencing significant resourcing issues from many angles at this time. The team is missing three engineering roles and the current recruitment climate is making it hard to fill these roles. Further consultancies are seeing rapid turnover in staff and high volumes of work as people move around while seeking higher incomes due to the flood recovery work demands across the state.
- 10 The proposed actions would likely need to be completed by a consultant, however, our consultants are already struggling to deliver current tasks in a timely manner due to resource issues. Therefore, Council may not be able to resource the Notice of Motion as it is proposed because we do not have the staff to manage the process or a budget
- 15 allocation to pay for consultancy time.

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.1

It is proposed that an alternate recommendation be considered that works toward the same goals while allowing the methodology and resourcing to be resolved first. The proposed recommendation wording is as follows:

That Council's Floodplain Management Advisory Committee receive a report that considers and discusses flood resilience options and the needed further investigation for property's impacted by the 2022 floods and potential future floods in the face of climate change. The report should consider:

- Quantify residential and commercial properties suitable for House Raising, Buy Back, Wet Proofing or Flood Protection
- Consideration of various flood levels beyond the 100 year event to ensure all property risks are understood in the shire
- How Climate Change may impact resilience and the number of properties needing protection measures
- Existing supporting data sources that maybe available from State Emergency Service Rapid Assessments, Recovery NSW and Mullumbimby Resident Association
- Data gaps and data collection needs to ensure all properties are suitably considered
- Resourcing options for further investigations
- Funding options for further investigations
- Documentation that will support Council successfully lobbying government to increase funding support to increase property resilience

Financial/Resource/Legal Implications:

Infrastructure Services cannot resource the recommendation in its proposed form. Alternate recommendation can be resourced.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
3: Nurtured Environment We nurture and enhance the natural environment	3.3: Protect the health of our coastline, estuaries, waterways, and catchments	3.3.2: Floodplain management - Mitigate the impact of flooding on private and public property	3.3.2.3	Floodplain Risk Management Committee coordination

PETITIONS

Petition No. 10.1 Petition regarding the upgrade of Manns Road and one way trial for Towers Drive/Smith Street

Directorate: Infrastructure Services

Report Author: Joshua Provis, Road and Bridge Engineer

File No: I2022/919

Council is in receipt of a petition containing 105 signatures which seeks the *Upgrade of Mullumbimby Industrial Estate*. The redacted petition is provided at attachment 1.

Comments from Director Infrastructure Services:

Council has previously applied twice for grant funding under the Fixing Country Roads program to upgrade and widen Manns Road however has been unsuccessful in both attempts.


Council has a well funded 2022/23 asphalt overlay program as well as a Fixing Local Roads grant for resurfacing streets in Mullumbimby. It is therefore proposed Manns Road be included in the Mullumbimby resurfacing projects this financial year.

The request for Towers Drive and Smith Street to become a one-way clockwise circuit to improve safety, accident prevention and visibility should be considered as part of the same project. It is therefore proposed that funding of \$30,000 be allocated out of the asphalt overlay program either in accordance with part 3 of the staff recommendation or through the September Budget Review to design and implement a trial of the one-way circuit.

RECOMMENDATION:

1. That the petition regarding Upgrading Mullumbimby Industrial Estate be noted.
2. That Council allocate a budget of \$30,000 from the asphalt overlay program to resurface Manns Road and for the design and implementation of a one-way trial at Towers Drive and Smith Street.

Attachments:

- 1 Letter and petition regarding upgrade of Manns Rd and one way trial at Towers Drive - Redacted, E2022/85090 

SUBMISSIONS AND GRANTS

Report No. 11.1 Grants August 2022

Directorate: Corporate and Community Services

5 **Report Author:** Donna Johnston, Grants Coordinator

File No: I2022/1252


Summary:

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

RECOMMENDATION:

15 **That Council notes the report and Attachment 1 (#E2022/88612) for Byron Shire Council's grant submissions as at 31 August 2022.**

Attachments:

20 1 Grant submissions as at 31 August 2022, E2022/88612 

Report

Currently Council has 12 grant submissions awaiting determination (refer Grants Report August 2022 Attachment 1 E2022/88612).

Successful applications

5 Stronger Country Communities Fund Round 4

Cavanbah Centre; new sports sheds for equipment storage - \$70,000

Unsuccessful / withdrawn applications

Fixing Country Roads R3

- 10 No funding was awarded under 2020 Round 3 and consequently the following \$3.1 million applications are no longer valid:
- Byron Arts and Industry Estate side roads
 - Manns Road
 - Midgen Flat Road
 - 15 • Springvale Road

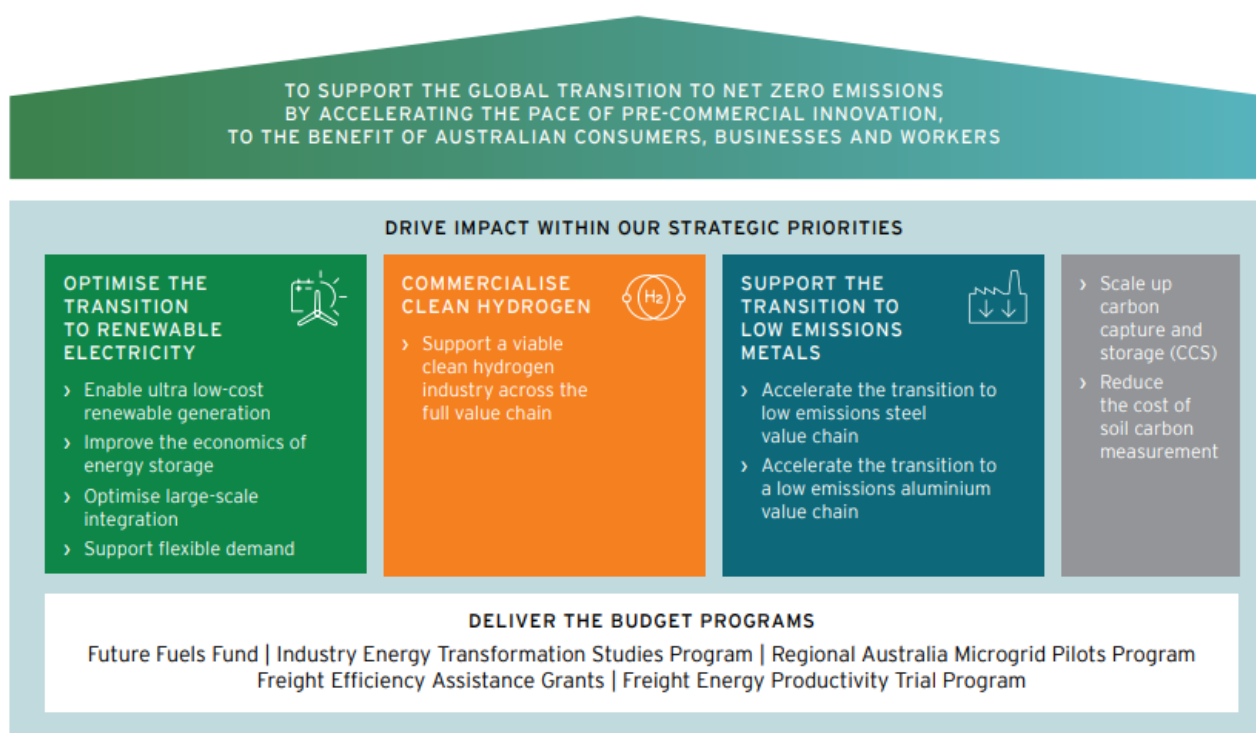
Round 4 is currently open.

Habitat Action Grant

- 20 Marshall's Creek \$80,000 application has been withdrawn due to staff resourcing at capacity; staff are currently delivering flood recovery projects and completing prior grant funded projects.

ARENA has advised that it is not progressing with Council's Bioenergy application. Feedback received: *"The ARENA Board does not endorse continuing the 'Byron Shire Council Bioenergy Facility' project through the ARENA approval process."*

FIGURE 3 ARENA'S STRATEGIC PLAN



(Source: [2021-arena-investment-plan.pdf](#) p.7)

Applications submitted

The following applications were submitted during August 2022, and were the subject of other Council reports:

5

No	Funding scheme	Project name	Total project value \$	Amount requested \$	Council co-contribution \$
Regional NSW	Reconnecting Regional NSW Community Event Fund	6 events in Byron Shire	\$362,050	\$362,050	\$0
NSW Government	Local Government Recovery Grants	Program of Works	\$2.375 M	\$2.375 M	\$0

Upcoming grant opportunities

[Fixing Local Roads Round 4 – Transport for NSW](#)

- 5 Councils can apply for funding to complete vital works to improve journeys on local roads which are used by regional communities every day, making journeys for locals, farmers and freight safer, more efficient and more reliable.

The benefits and connections need to stimulate the economy and promote the social wellbeing of communities. Better roads mean improved access to schools, towns, hospitals and jobs, increased efficiencies for our primary producers, easier movement of freight and better outcomes for road safety in regional and rural communities.

- 10 Staff are currently prioritising a program of works to submit. Three applications to be submitted – Left Bank Road (Mullumbimby Creek), Suffolk Park reseal program and Bangalow reseal program.

[Stronger Country Communities Fund - Round 5 | NSW Government](#)

- 15 The Stronger Country Communities Fund (SCCF) Round 5 will see a further \$160 million in funding for community projects that increase the wellbeing of regional NSW communities, including up to \$50 million for projects delivered by community organisations. Council staff will be submitting an application for the Byron Community Hub to support the cost escalation due to Covid-19 building boom and supplier increases.

Closes 23 September.

- 20 [Sport Infrastructure Recovery Fund | NSW Government](#)

Under the 2022 Sport Infrastructure Recovery Fund announced by the NSW Government in May 2022 up to \$12 million has been allocated to the Sport Priority Needs Program. The Program has been specifically designed to support highly impacted Local Government Areas (LGAs) that have suffered significant damage to critical sport infrastructure.

- 25 The Program will see an allocation up to \$12 million in funding for eligible community sport infrastructure projects in eight (8) eligible LGAs; this includes Byron Shire with a notional funding allocation of \$1.5 million.

Applications are currently being prepared for submission on 23 September.

[Regional Housing Strategic Planning Fund - \(nsw.gov.au\)](#)

- 30 In August 2022 the NSW Government launched a new competitive grant program to support regional councils plan for the delivery of new housing to meet community needs.

The Regional Housing Strategic Planning Fund will make up to \$12 million available over four financial years from 2022-23 through a competitive grants process. All regional councils are eligible to apply.

The fund is part of the NSW Government's comprehensive response to recommendations made by the [Regional Housing Taskforce](#), and the broader [\\$2.8 billion 2022 Housing Package](#).

- 5 It responds to the Taskforce's recommendation to support councils' upfront strategic planning to help deliver housing and provide greater certainty about where, when and what types of homes will be built.

Grants of up to \$250,000 are available per project.

Eligible projects include:

- 10
- housing strategies
 - contributions schemes
 - LEP amendments
 - infrastructure planning
 - technical studies
 - structure plans and
- 15
- projects that identify solutions to broader housing issues.

Closes 30 September. Staff are currently preparing an application for the former Mullumbimby Hospital site.

[Accelerated Infrastructure Fund - \(nsw.gov.au\)](#)

- 20 The Accelerated Infrastructure Fund (AIF) is aimed at cutting red tape and fast-track planning processes to keep people in jobs and the construction industry moving throughout the COVID-19 crisis.

The objectives of the fund are to:

- 25
- Fund infrastructure that unblocks development approvals and enables development activity and speed up the delivery of housing supply.
 - Stimulate construction activity by investing in infrastructure projects that can be brought forward quickly.
 - Encourage developers to enact development approvals and invest in construction.
 - Encourage local councils to bring forward expenditure of local developer
- 30
- contributions to accelerate infrastructure delivery.

The first two rounds were only available to metropolitan Councils. Round 3 is open to high-growth regional LGAs including Byron Shire. Staff are currently preparing an application for the progression of the old Mullumbimby Hospital site to support site access.

Closes 30 September.

- 35 [Fixing Country Roads | Transport for NSW](#)

This round will target ready projects that can begin construction within 18 months of the receipt of a successful project letter to deliver immediate benefits to freight operators, farmers and producers and local economies. Closes 14 October 2022.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.9	Coordinate grant applications to support the delivery of Council projects and services within management plans, masterplans, strategic plans, council resolutions and high priority actions from feasibility studies; and support the management of successful grants

Legal/Statutory/Policy Considerations

- 5 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.

Financial Considerations

- 10 If Council is successful in obtaining the identified grants, this would bring funding sought to approximately \$26.6 million which would provide significant funding for Council projects. Some of the grants require a contribution from Council (either cash or in-kind) and others do not. Council's contribution is funded.

The potential funding is detailed below:

15	Requested funds from funding bodies	\$26,655,269
	Council Contribution Cash	\$15,194,214
	Council Contribution In-Kind	\$0
	Other contributions	\$0
	Funding applications submitted and awaiting notification (total value)	\$11,461,055

20 Consultation and Engagement

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 Lease for Massenger Street Byron Bay treehouse

5 **Directorate:** General Manager

Report Author: James Flockton, Infrastructure Planning Coordinator
 Paula Telford, Leasing and Licensing Coordinator

File No: I2022/741

Summary:

10 Ms Mell Coppin (the Applicant) requests a further one-year lease over a portion of the road reserve adjacent to 77 Massinger Street Byron Bay for the purpose of children's treehouse landmark (artwork).

 This report recommends that Council decline to grant a further lease.

15

RECOMMENDATION:

20 That Council, in accordance with s153(1) of the *Roads Act 1993* (NSW), decline to grant a lease to the Applicant for a children's treehouse landmark (artwork) on the public road adjacent to 77 Massinger Street Byron Bay, and

- a) in accordance with s140 of the *Roads Act 1993* (NSW), revoke any current approval for the children's treehouse
- 25 b) direct the Applicant, at her cost, to remove the children's treehouse within six-months of the date of this resolution, and
- c) during the six-month period referred to in b) above the Applicant to hold valid public liability insurance cover over the children's treehouse landmark (artwork) for the minimum value of \$20,000,000 noting Byron Shire Council as an interested party.
- 30

Attachments:

- 1 Confidential - Attachment 1: Confidential Submission from Ms Mell Coppin, E2022/79977

35

Report

Ms Mell Coppin (The Applicant) holds a lease over the road reserve adjacent to 77 Massinger Street Byron Bay for the purpose of a children's treehouse. The lease is due for renewal and the Applicant requests a new twelve-month lease.

- 5 In support of a new lease the Applicant provided an arborist report stating that on visual inspection both eucalyptus species trees located in front of 77 Massinger Street Byron Bay are in good health and free of major defects. Remedial pruning works and root plate injections to improve the health and life expectancy of both trees has been undertaken.

- 10 The Applicant further provided a statement that the access ropes to the treehouse have been removed and that the treehouse now sits as private landmark rather than being accessible by children for play.

Background:

- 15 In 2018 Council became aware of an unauthorised children's treehouse built by he Applicant on public road reserve in front of 77 Massinger Street Byron Bay and commenced enforcement action. The Applicant approached Council for approval for the children's treehouse with Council resolving (18-271) that:

1. *by close of business on Thursday, 31 May 2018 Ms Coppin of 77 Massinger Street Byron Bay provide Council with the following:*
 - 20 a. *evidence by way of a Certificate of Currency that Public Liability Insurance coverage to the value of \$20 million has been affected in respect of the structure.*
 - b. *evidence by way of an engineering certificate attesting to the structural integrity of the structure.*
 - 25 c. *evidence by way of an arborist report attesting to the health of the trees where the structure is located.*
2. *That on compliance with all components of 1 above Council, for a period of 28 days, advertise its intention to grant Ms Coppin a 12-month lease over the unused public road being that part of the public road adjoining the property at 77 Massinger Street Byron Bay at a rental of \$1 per annum.*
- 30 3. *In the event that there are no submissions Council delegate to the General Manager authority to enter into the lease referred to in 2 above, or in the event that submissions are made all submissions received be reported to Council for consideration.*
- 35 4. *That when approval is granted Council withdraw all directions to remove the structure.*
5. *That enforcement action in respect directions presently issued be stayed until the happening of either of the events in 3 above, whichever shall first occur.*

BYRON SHIRE COUNCIL

STAFF REPORTS - GENERAL MANAGER

13.1

Council subsequently granted further leases by resolutions (**18-574**, **19-224**, and **19-423**) for a term of twelve-month to The Applicant for the children's treehouse on the road reserve adjacent to 77 Massinger Street Byron Bay.

- 5 The Applicant has informed Council that the treehouse structure is no longer used by children that all access to the treehouse has been removed and the structure is to become a privately owned children's treehouse landmark (artwork).

Structures on public road reserves:

Council has a duty to the community to ensure that private encroachments on public roads do not compromise current and future community needs.

- 10 In response to that duty and Council's obligation under the *Roads Act 1993* (NSW), Council supports only minimal use of public roads for private encroachments being generally limited to driveway access.

- 15 Limiting private encroachment on public roads serves to mitigate Council's liability for private encroachments that fall into disrepair whereby Council is likely to become liable to fund repairs or remove the offending structure. Council holds the opinion that a public road is used by the public and therefore not available for leasing in accordance with s 153(1) of the *Roads Act 1993*.

- 20 Although Council has previously supported a lease over the road reserve adjoining 77 Massinger Street Byron Bay for a children's treehouse, a lease for this purpose is no longer supported by Council Staff. Further, as the private encroachment is no longer used as a children's play structure, Staff do not support the setting of a precedent by the granting of a lease for private encroachment on a public road for the purpose of a private landmark (artwork).

- 25 This report recommends that Council decline a further lease to The Applicant for a children's treehouse landmark (artwork) on the public road adjacent to 77 Massinger Street Byron Bay.

- 30 That as a consequence of Council declining to grant a further lease, Council should revoke approval for the children's treehouse on the public road in accordance with s140 of the *Roads Act* and require the Applicant, at her cost, to remove the children's treehouse structure from the public road within six-months of the date of the resolution.

That during the six-months removal period, the Applicant must retain \$20,000,000 public liability insurance over the private structure noting Byron Shire as an interested party.

Procedural fairness

- 35 Council afforded the Applicant procedural fairness and a reasonable opportunity to put her case or to show cause why Council should not refuse to grant a further lease for the children's treehouse.

Council wrote to the Applicant on 29 July 2022 detailing its position, in general terms as set out above, and requested that the Applicant provide written comment on or before 19 August 2022. The Applicant's submission is confidential attachment 1.

5 The Applicant seeks to retain the treehouse on Massinger Street as a sculpture of art in the trees to be donated to Council. The treehouse is considered by many as a thing of beauty and often photographed. The proposal is to board up the treehouse to create a rustic box in the trees as work of art thereby reducing Council's risk and eliminating the Applicants need for insurance cover.

10 The Applicant was advised of her opportunity to speak at the public access session at the commencement of the ordinary meeting.

Public Notice:

Should Council resolve that a further lease is to be granted, Staff will undertake mandatory 28-days public consultation in accordance with the Roads Act.

15 A further report will be brought to Council to consider submissions, if any, received before resolving whether to grant a new lease.

Strategic Considerations

Community Strategic Plan and Operational Plan

There are no activities in the Operational Plan that support the provision of this lease.

Recent Resolutions

- 20 • Resolution (18-271), (19-224), and (19-423).

Legal/Statutory/Policy Considerations

Roads Act 1993 (NSW)

153 Short-term leases of unused public roads

- 25 (1) *A roads authority may lease land comprising a public road (other than a Crown road) to the owner or lessee of land adjoining the public road if, in its opinion, the road is not being used by the public.*
- (2) *However, a lease may not be granted under this Division with respect to land that has been acquired by RMS under Division 3 of Part 12 (being land that forms part of a classified road) except by RMS.*
- 30 (3) *A lease granted under this Division may be terminated by the roads authority at any time and for any reason.*

154 Public notice to be given of proposed lease

- (1) *Before granting a lease under this Division, the roads authority must cause notice of the proposed lease:*
- (a) *to be published in a local newspaper, and*
- (b) *to be served on the owner of each parcel of land adjoining the length of public road concerned.*
- (2) *The notice:*
- (a) *must identify the public road concerned, and*
- (b) *must state that any person is entitled to make submissions to the roads authority with respect to the proposed lease, and*
- (c) *must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.*

156 Decision on proposed lease

- (1) *After considering any submissions that have been duly made with respect to the proposed lease, the roads authority may grant the lease, either with or without alteration, or may refuse to grant the lease.*
- (2) *If the roads authority grants a lease, the roads authority must cause notice of that fact to be published in a local newspaper.*

157 Special provisions with respect to short-term leases

- (1) *The term of a lease, together with any option to renew, must not exceed:*
- (a) *except as provided by paragraph (b), 5 years, or*
- (b) *in the case of a lease of land that has been acquired by the roads authority under Division 3 of Part 12, 10 years.*
- (2) *A person must not erect any structure on land the subject of a lease under this Division otherwise than in accordance with the consent of the roads authority.*
- Maximum penalty: 10 penalty units.*
- (3) *Such a consent may not be given unless the roads authority is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can easily be demolished or removed.*

Financial Considerations

In accordance with resolution **18-271** the twelve-month lease is provided at \$1 per annum rent.

Consultation and Engagement

Procedural fairness was afforded to The Applicant.

Report No. 13.2 Lease to Katia Project Incorporated

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

File No: I2022/736

5 Summary:

Katia Project Incorporated (A.B.N 69 379 739 388) t/as Byron Bay Herb Nursery requests a new lease over part Folio's 2/706286 and 4/1004514, 45 Wallum Place Byron Bay for the purpose of a vocational training centre in conjunction with a plant nursery.

This report recommends that a new lease is granted.

10

RECOMMENDATION:

15 That Council delegate to the General Manager, the authority to grant a lease to Katia Project Incorporated (A.B.N 69 379 739 388) t/as Byron Bay Herb Nursery under the following terms:

- a) over part Folio's 2/706286 and 4/1004514, 45 Wallum Place, Byron Bay,
- b) purpose of a vocational training centre in conjunction with a plant nursery,
- c) term three-years with option of further five-years with holding over,
- 20 d) Lessor to subsidise rent in accordance with Councils Leasing and Councils Licencing Policy 2022 via a section 356 of the *Local Government Act* donation to the value of \$64,510 (ex GST),
- e) Lessee to pay base rent of \$490 (ex GST) for year one of the lease, with annual
25 rent increased thereafter by Consumer Price Index All Groups Sydney for the term and any option,
- e) Lessee to be eligible for fully subsidised fixed rates and charges in accordance with Councils Policy Section 356 Donations Rates and Charges 2021,
- f) Lessee to pay all other outgoings for occupation of the premises including but
30 not limited to public liability and contents insurance, annual fire safety inspections, annual pest inspections and control together with all structural repairs, renewals, and replacements to improvements on the land, and
- g) Council to waive document preparation fees as set by Councils 2022-2023 Fees and Charges.

Report

Katia Project Incorporated (A.B.N 69 379 739 388) t/as Byron Bay Herb Nursery ('Katia Project') holds development consent 92/141 over part Folio's 2/706286 and 4/1004514 for the purpose of a vocational training centre in conjunction with a plant nursery comprising offices, workers sick room and general-purpose space.

Consent 92/141 was granted conditional on Katia Project holding a lease over part Folio's 2/706286 and 4/1004514. Katia Project holds its current lease under holding over provisions and seeks a new lease for security over the site.

Land

Folio's 2/706286 and 4/1004514, 45 Wallum Place Byron Bay is Council owned land classified as operational ('the Land'). The Land is located between the West Byron Sewerage Treatment Plant and the railway line.

Background

Katia Project is a medium sized not-for-profit organisation providing paid employment and vocational training opportunities to persons with a disability who require training and support to work.

Katia Project is managed by a community-based board of four and currently employs 1 full-time, 8 part-time and 16 casuals with approximately 3 volunteers.

Katia Project began in 1984 as an activity therapy centre on land adjacent to the Mullumbimby Memorial Hospital. By 1986 the centre had expanded into a vocational training and nursery site. In 1991 Katia Project relocated its operations to the West Byron Bay site occupying approximately 4,844sqm of the Land.

In 2001 Council resolved (**01-816**) to grant a five-year lease to Katia Project at nominal rent of \$100 per annum. A further five-year lease was granted in 2005 by resolution (**05-218**) with annual rent set at \$115 p/a. During the second leased term, Katia Project made significant improvements to the land including:

- upgrade to existing production shed and new shade house,
- use of recycled water and installation of water tanks,
- expansion to the growing area,
- refurbishment of training rooms and amenities, and
- biodiversity plantings and plantings of native windbreak.

In 2010 Council called for Expression of Interest ('EOI') to lease 9,500 sqm of the Land for a period of five-years. The EOI was called to remove any perceived preferential dealings with a single proponent occupying the Land.

The EOI was awarded to Katia Project by resolution (**12-167**). Katia Project was granted a new five-year lease at annual rent of \$135 p/a. A further lease was granted to Katia Projects to 30 April 2022 at annual rent of \$149. That lease is currently held on holding over provisions.

On 16 January 2020 Katia Project entered into a five-year Agreement for the Supply of Recycled Water from Byron Bay Urban Recycled Water Scheme ('Recycled Water Agreement') with Council. This report recommends the term of the proposed new lease coincide with the term of the Recycled Water Agreement to ensure that Katia Project holds tenure over the Land for the purpose of the Recycled Water Agreement.

Direct Negotiation

Section 55(3)(e) of the *LGA* authorises Council to directly negotiate a new lease with Katia Project over land classified as operational.

Rent

An independent market rent valuation report from Valuers Australia Pty Ltd established market rent for the land only at \$65,000 (ex GST).

In accordance with Councils Leasing and Licensing Policy 2021, Katia Project as a not-for-profit entity is eligible for subsidised rent. This report recommends that base rent is set at the value of minimum Crown rent being \$490 p/a (ex GST) with Council subsidising the remaining \$64,510 (ex GST) of rent via a s356 of the *Local Government Act* donation.

Terms and conditions of proposed lease

In accordance with Councils Leasing and Licensing Policy, terms and conditions of the proposed lease will include:

- a) over part's Folio 2/706286 and 4/1004514, 45 Wallum Place, Byron Bay,
- b) purpose of a vocational training centre in conjunction with a plant nursery,
- c) term three-years with option of further five-years with holding over,
- d) Lessor to subsidise rent in accordance with Councils Leasing and Councils Licencing Policy 2022 via a section 356 of the *Local Government Act* donation to the value of \$64,510 (ex GST),
- e) Lessee to pay base rent of \$490 (ex GST) for year one of the lease, with annual rent increased thereafter by Consumer Price Index All Groups Sydney for the term and any option,
- e) Lessee to be eligible for fully subsidised fixed rates and charges in accordance with Councils Policy Section 356 Donations Rates and Charges 2021,
- f) Lessee to pay all other outgoings for occupation of the premises including but not limited to public liability and contents insurance, annual fire safety inspections, annual pest inspections and control together with all structural repairs, renewals, and replacements to improvements on the land, and
- g) Council to waive document preparation fees as set by Councils 2022-2023 Fees and Charges.

Public Notice

Council was not required by legislation to publicly advertise the proposed new lease for public comment.

Strategic Considerations

5 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	N/A	The relevant Operational Plan activity had been inadvertently omitted from the 2022/23 Operational Plan. This will be rectified in the upcoming quarter 1 amendments

Recent Resolutions

Nil.

Legal/Statutory/Policy Considerations

Nil.

10 Financial Considerations

This report recommends that the lease is offered at subsidised rent to the value of \$490 p/a (exclusive GST) for year one and increased annually thereafter by Consumer Price Index All Groups Sydney.

15 That rent is subsidised via a s356 of the *Local Government Act* donation of Council to the value of \$64,510 (ex GST).

Consultation and Engagement

Council was not required to publicly advertise the proposed lease for public comment.

Report No. 13.3 Council lease to Catholic Healthcare Ltd proposed Lot 50 in unregistered plan of subdivision (presently part Lot 188 DP 728535).

5 **Directorate:** General Manager
Report Author: Ralph James, Legal Counsel
File No: I2022/737

Summary:

10 On 11 December 2018 Council completed its purchase from Health Administration Corporation (Health) of the former Mullumbimby Hospital site.

The contract for sale and purchase binds Council to a Deed regarding that part of the land presently occupied by Catholic Healthcare Ltd (CHL). The Deed binds Council to:

- 15
- Honour CHL's existing leases (which expire on 14 November 2022);
 - Subdivide the land and register the CHL leases at Council's cost; and
 - Negotiate in good faith with CHL for a lease extension over a wider area of the site.

20 **RECOMMENDATION:**

- 25
1. That Council notes the contents of this Report and its attachments.
 2. That Council determines whether (including terms) or not to lease operational land in proposed Lot 50 in a presently unregistered plan of subdivision (currently forming part of Lot 188 DP728535) being the land presently occupied by Catholic Healthcare Limited (A.C.N 064 946 318) and located at Azalea Street Mullumbimby, to Catholic Healthcare Limited (A.C.N 064 946 318).



30

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Attachments:

- 1 Confidential - Catholic Healthcare Ltd Lease Proposal to Council, E2022/73972
- 2 Byron Shire Council - 10.2021.557.1 Cover Page Notice of Determination and Statement of
5 Reasons - Approval, E2022/84729 
- 3 Confidential - Letter - Mark Arnold to Michael Lockwood - Valuation Mullumbimby Hospital
Site, E2020/3492
- 4 Confidential - Letter - Catholic Healthcare to Byron Shire Council - Purchase of Mullumbimby
Hospital, E2020/35054
- 10 5 Confidential - Letter from General Manager to Catholic Healthcare, E2022/66457
- 6 Extract from sale and rental valuation Catholic Healthcare Ltd site 3 September 2022.,
E2022/86161 
- 15

Report

Catholic Healthcare Offer

Council has received an offer from CHL to lease part of the former Mullumbimby Hospital site. The offer is set out Confidential Attachment 1.

If Council determines to grant a lease and accept the CHL offer the words of a motion would be:

1. That Council leases operational land in proposed Lot 50 in a presently unregistered plan of subdivision (currently forming part of Lot 188 DP728535) being the land presently occupied by Catholic Healthcare Limited (A.C.N 064 946 318) and located at Azalea Street Mullumbimby, to Catholic Healthcare Limited (A.C.N 064 946 318) on the following terms:
 - a) for the purpose of Residential Aged Care Service and any ancillary use,
 - b) term of ten-years with an option of two further five-years totalling twenty years,
 - c) base Rent \$25,000 (ex GST) per annum with rent increased annually by Consumer Price Index All Groups Sydney for the September Quarter for the term,
 - d) Lessee to pay outgoings payable on the land and for use of the land, and
 - e) All improvements on the land will vest in Council on expiry or termination of the lease.
2. That Council authorises the General Manager to execute the lease and any other associated document associated with the lease.

If Council determines not to grant a lease and reject the CHL offer the words of a motion would be:

1. That Council declines to lease operational land in proposed Lot 50 in a presently unregistered plan of subdivision (currently forming part of Lot 188 DP728535) being the land presently occupied by Catholic Healthcare Limited (A.C.N 064 946 318) and located at Azalea Street Mullumbimby, to Catholic Healthcare Limited (A.C.N 064 946 318) for the following reasons:
(Insert reasons)

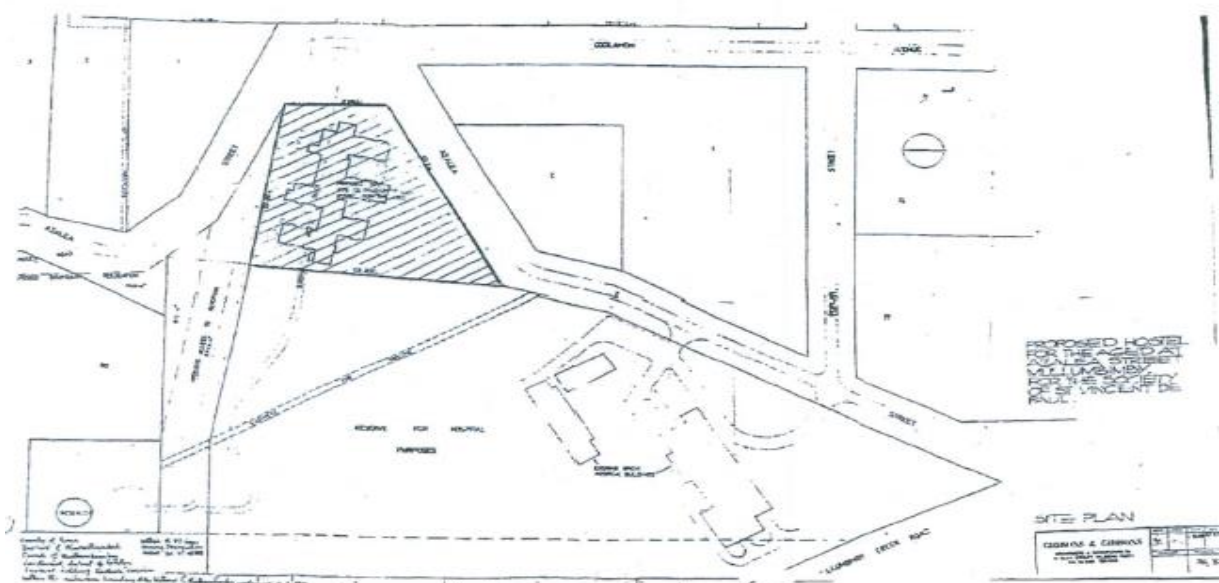
History of Catholic Healthcare occupation of part of the former Mullumbimby Hospital site

CHL occupy part of present Lot 188 DP 728535 (the Land) being that part of the site outlined in red below.



On 13 December 1982, the Trustees of the Mullumbimby Reserve Trust number 31705 ("Mullumbimby Trustees") leased part of the Land to the Trustees of the Society of St Vincent De Paul (NSW) ("SVDP") (the 1982 lease). The lease was for a term of 40 years
 5 expiring on the 14 November 2022.

This lease was in respect of the area on which the buildings are located.



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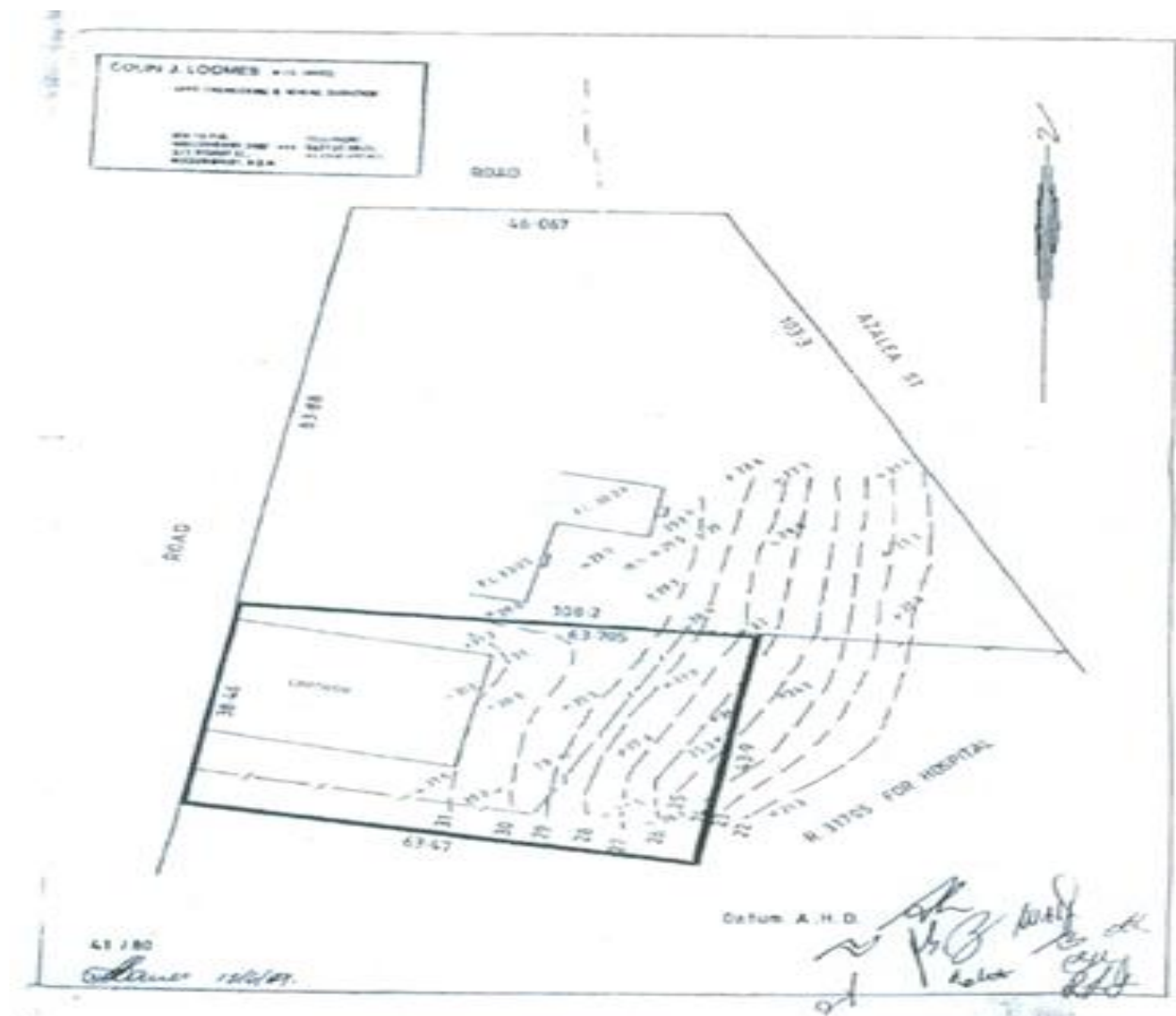
13.3

The annual rental for the full term of the lease is \$1.

The lease provides for a holding over after the expiration of the term of the lease with the consent of the Lessor whereby the Lessee shall become a three monthly tenant. The three monthly tenancy may be terminated by three months notice to quit in writing expiring at any time.

The lease provides that all building structures erections and improvements on the land at the commencement of the lease or constructed or erected on the land after the commencement and before the expiration of the lease shall become the absolute property of the Lessor (Council) and no compensation shall be payable by the Lessor to the Lessee in respect hereof.

On 23 October 1990, a subsequent lease was granted by the Mullumbimby Trustees to SVDP of that part of the land which comprises the carpark (dark outline box below). This Lease is said to run for a term of 33 years commencing on 15 November 1989 and terminating on 14 November 2022.



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13.3

The annual rent for the first 5 years of the term of this subsequent lease was \$5,000.00 payable quarterly in advance and after the expiration of the first 5 years of the term and at the expiration of each ensuing five years of the term a sum calculated at the rate of five per cent of the then current unimproved value (as determined pursuant to the valuation of Land Act 1916 or any act amending or in substitution of the same) of the freehold of the premises.

The most recent rent invoice issued by Council was in the sum of \$13,100 (incl GST)

The lease also provides that all building structures erections and improvements on the land at the commencement of the lease or constructed or erected on the land after the commencement and before the expiration of the lease shall become the absolute property of the Lessor and no compensation shall be payable by the Lessor to the Lessee in respect hereof.

Pursuant to a Deed of Transfer dated 1 May 2007, SVDP agreed to transfer its interest in both the 1982 Lease and the 1990 Lease to CHL.

In approximately 2009, SVDP, CHL and the Mullumbimby Trustees entered into Deeds of Consent to Assignment of Lease which effected the transfer of SVDP's interest in the Leases to CHL.

Subsequently, the ownership of the Land was transferred from the Mullumbimby Trustees to Health.

Council's purchase from Health

Following a community campaign over several years the Minister for Health wrote to Council on 10 May 2017 supporting the acquisition of the former Mullumbimby Hospital site by Council for \$1.

On 23 August 2018 Council resolved to purchase the Mullumbimby War Memorial Hospital site from Health.

The sale was completed on 11 December 2018.

The contract for sale and purchase bound Council to a Deed with CHL regarding CHL's continued occupation of part of the site.

Deed between Council and CHL

Clause 4.1 (a) of the Deed requires Council, upon acquisition of the land, to promptly arrange for the land to be subdivided to create a separate lot for the part of the land which is subject to the leases to CHL. Once subdivision is complete Council is required to register the current leases to CHL. This has not yet occurred – see subdivision section below.

Clause 5.1 of the Deed requires Council and CHL to continue to meet regularly to negotiate in good faith proposals to extend the term of the leases to CHL or otherwise secure CHL's occupancy of the land which is the subject of the leases.

5 Land classification

On 20 September 2018 Council resolved in the following terms:

- 10 *that Council, having resolved to acquire Lots 188 DP 728535, Lot 1 DP 1159861 and Lot 138 DP 755722, (the former Mullumbimby Hospital site), by purchase from Health Administration Corporation, classify the land comprising Lots 188 DP 728535, Lot 1 DP 1159861 and Lot 138 DP 755722 as "operational land" under the Byron Local Environmental Plan.*

15 Subdivision

On 23 February 2022 development consent was granted to Council to subdivide lot 188 DP728535 to create a separate lot in respect of the Land.

- 20 The Land will become Lot 50 in a new Deposited Plan.

Attachment 2 is a copy of the first page of the Notice of Determination.

- 25 The aerial on page 3 of this report shows, in red outline, the area of the subdivision.
Steps are currently being taken to register the plan of subdivision.

Negotiations with CHL

- 30 Negotiations relate to the whole of the site occupied by CHL ie the area presently subject to both current leases.

- 35 In accordance with the provisions of the Deed, Council has held face to face and telephone meetings with CHL.

On 16 January 2020 Council made an offer to CHL for it to the purchase that part of the site which CHL occupied.

- 40 On 12 May 2020 Council received a response from CHL indicating that it accepted Councils offer. Confidential attachments 3 and 4 are copies of that correspondence.

On 20 May 2020 the elected Council received a report which recommended the sale to CHL of the land presently occupied by CHL.

- 45 Council resolved to defer consideration of the sale until after a Strategic Planning Workshop was held which would consider the results of the consultant's work outlining potential activities on the whole site.

After the Workshop there was a hiatus in discussions between Council and CHL.

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Discussions were revived in September 2021. The General Manager wrote to CHL. A copy of that letter is Confidential attachment 5.

- 5 CHL advised Council that it was undertaking a review of all of its properties and that it would re-engage with Council once that review had been completed.

In October/November 2021 CHL requested Council to obtain information as to the rental which Council might look to should CHL seek to explore that option.

On 12 November 2021 Council received a valuation to determine the current market rent for a proposed lease. The rental valuation was conveyed to CHL on 23 November 2022.

- 10 Thereafter CHL sought meetings with Council.

On 27 May 2022 the General Manager and Legal Counsel met via Teams with the Chairman of the Board of CHL and with its Chief Executive Officer.

- 15 On 17 June 2022 the General Manager and Legal Counsel had a face to face meeting at Council with the CHL Chief Executive Officer.

Councillors have had a workshop presentation from the CHL's General Manager, Property, and have had an escorted site inspection.

20 **Valuations**

Council has obtained current valuations of the site occupied by CHL for both the potential sale of the site to CHL and for a lease to CHL. An extract of those valuations are attachment 6.

25

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	N/A	The relevant Operational Plan activity had been inadvertently omitted from the 2022/23 Operational Plan. This will be rectified in the upcoming quarter 1 amendments

Legal/Statutory/Policy Considerations

On 23 August 2018 Council resolved to authorise borrowings through an Expression of Interest (EOI) process prior to 30 June 2019 to fund demolition and other associated costs. Council has needed to borrow again on 30 June 2022 to supplement the borrowings of 2019 due to the greater cost of site remediation.

Council also resolved that Council should endeavour to recover its costs of demolition and any other associated costs as soon as possible to retire the loan borrowings and mitigate the financial risk of the project.

Council, in resolving as it did on 23 August 2018, considered that Council ought be free to:

- (a) Earn income from the property to pay for the property's remediation;
- (b) Earn any other income from the property, provided this income is reinvested into the property; or
- (c) Sell or lease some or all of the property.

Any additional Legal/Statutory/Policy Considerations are as set out in the body of this report.

Financial considerations

Remediation of the site

The contract for sale/purchase provided that Council remediates the site.

In that regard, on 27 June 2019 Council borrowed \$3,334,000 to remediate the site. This loan is due to be repaid in full on 27 June 2024. Council also resolved at the Ordinary Meeting held on 29 October 2021 (Resolution **21-469**) to borrow a further \$1,500,000 to finalise the remediation. This loan is also repayable by 30 June 2024. The loan subject to resolution **21-469** was borrowed on 30 June 2022.

On or before 30 June 2024, Council will need to repay a total of \$4,834,000 in loan principal which will need to be funded or alternatively refinance these loans as an amortising loan. Council has also incurred holding costs for the site and been required to pay interest on the loan borrowings in addition to the need to eventually retire the debt currently outstanding.

Inclusive of all costs both holding and remediation but excluding subdivision implementation, as at the date this report has been prepared Council has expended or committed a total of \$4.883million since the 2017/2018 financial year.

Valuations

Council has been advised that current market rent applicable to that part of the site presently occupied by Catholic Healthcare is \$135,000 (GST exclusive). Council is also advised that the current valuation of that part of the site, if it were sold to Catholic Healthcare, is \$2,700,000 (GST exclusive).

Financial comparisons

Council has undertaken some financial comparisons. They are:

1. On the basis that Council took up the option to lease part of the former Mullumbimby Hospital site to Catholic Healthcare instead of selling the land to them and refinanced the existing loans. Council produced a comparison of the proposed rental from the Catholic Healthcare offer to indicative loan repayments over 10 years.
2. On the basis that Council did not lease to Catholic Healthcare but sold the land to them at current market value and refinanced the remaining debt after applying the land sale proceeds accepting this is not a current option being offered.

It is acknowledged it may not be a fair proposition that the financial comparison should expect that any outcome in regard to Catholic Healthcare should cover all costs Council has incurred to date but at this stage in the evolution of the site, it is the only potential revenue sources available to minimise Council financial exposure. The analysis therefore is valid to the extent if Council did remediate the site and either sold part of the site to Catholic Healthcare or offered a lease and did no further work to develop the remediated site. Simply, it projects over time the financial cost Council will need to absorb as at now.

Assumptions used in Council's comparisons are:

- Consumer Price Index at 3.0% per annum (assuming the lease will be indexed by CPI annually and will stabilise from current levels over the lease term)
- Existing loan 70 for \$3,334,000 borrowed at 1.86%pa and new loan 74 \$1,500,000 borrowed at 4.53% continue interest only repayments until 30 June 2024.
- Interest rate on a 10 year loan refinancing loan 70 and loan 74 for \$4,834,000 at 4.54% per annum at 30 June 2024 as advised by NSW Treasury Corporation as indicative borrowing rates as at 29 August 2022.
- Lease offer expires after 10 years and is not renewed.
- Net Present Value Discount Factor set at 4.00% per annum (representing the time value of money and trying to equate things in today's dollars). Rate used is an assumed interest rate for investments over the time period.

Given the above assumptions, the following two options were modelled with their respective outcomes over 12 years to match the current lease offer from Catholic Healthcare. Whilst Option 2 was not offered, it shows the difference in the outcome if the site was sold at market value equivalent to the most recent valuation. Achieving a sale at market value would reduce Council's financial exposure by 50% compared to the lease offer on a Net Present Value (NPV) basis:

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- Option 1: Lease for 10 years with loan refinanced after 30 June 2024 and then repaid over following 10 years - outcome= -\$4,747,530 (NPV) unfavourable
- Option 2: with loan refinanced after 30 June 2024 and then repaid over following 10 years assuming sale at market value - outcome = -\$2,343,821 (NPV) unfavourable

Financially for Council, the extent of remediation required of the site from its former use is substantially more than ever expected. Council has needed to borrow extensively (\$4.834million) to resolve the remediation and the consequential settlement of the debt is creating a financial burden upon Council that could be further reduced based on Council's current analysis if the current restrictions/covenants on the site were removed. If there was more flexibility in regard to the site in terms of permitted use, that could further enhance its value thereby assisting Council financially if part of the site was sold or retained for lease at market value.

Notwithstanding other considerations but purely on a financial basis, the lease offer provided by Catholic Healthcare does little to mitigate Council's financial exposure to the former Mullumbimby Hospital site.

Next Steps in planning for the Old Mullumbimby Hospital Site

With remediation of the site nearing completion, Council's planning staff are turning their attention to the future of the site. Recommendations from the Former Mullumbimby Hospital Site Project Reference Group and conversations with Councillors and community will form the basis of these next steps coming in late 2022-early 2023.

Report No. 13.4 Land Acquisition of Folio 1/932719 and Folio 2/929377 for the purpose of the Bangalow Cemetery

Directorate: General Manager

5 **Report Author:** Paula Telford, Leasing and Licensing Coordinator

File No: I2022/1034

Summary:

This report recommends that Council acquires by agreement, two privately owned land parcels in the historical section of the Bangalow Cemetery.

10

RECOMMENDATION:

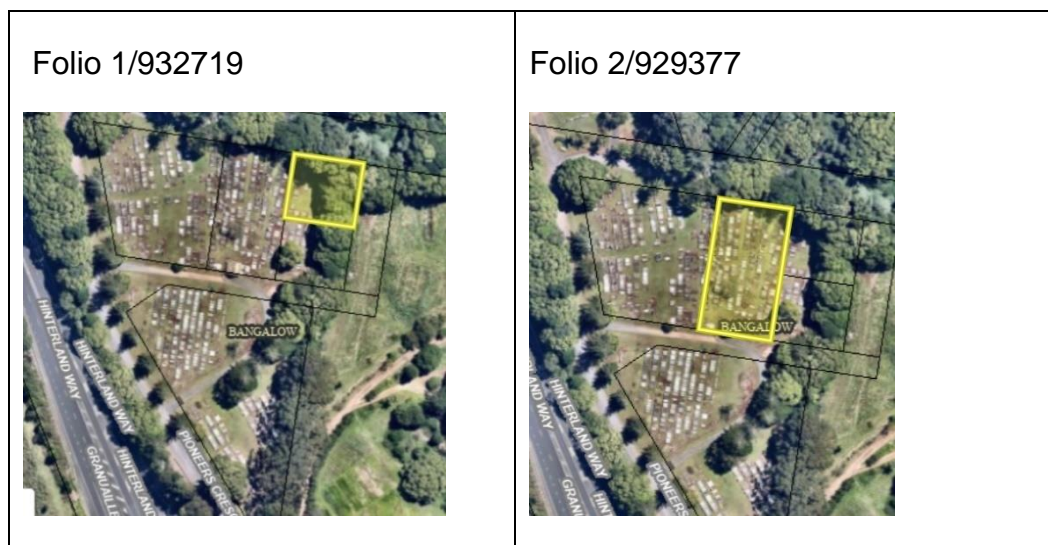
That Council:

- 15 1. endorses the land transfer by agreement of each of Folio 1/932719 and Folio 2/929377 for \$1 for the purpose of providing facilities and services at the Bangalow Cemetery,
- 20 2. authorises the acquisition and the execution of all documents necessary to affect the land acquisition and land transfer between the Uniting Church in Australia Property Trust (N.S.W.) (AP AC970574) and the Corporate Trustee of the Diocese of Grafton (Anglican), and
- 25 3. approves the classification of Folio 1/932719 and Folio 2/929377 as operational land on completion of the land transfer.

Report

The historical section of the Bangalow Cemetery, 16 Pioneers Crescent Bangalow, includes two privately owned land parcels being:

- 5 i) Folio 1/932719 is owned by the Uniting Church in Australia Property Trust (N.S.W.) (AP AC970574), and
- ii) Folio 2/929377 is owned by The Corporate Trustee of the Diocese of Grafton (Anglican).



All land included in the historical section of the Bangalow Cemetery is zoned SP2 Infrastructure by the Byron LEP 2014 for a cemetery.

- 10 The historical section of the Bangalow Cemetery is considered to be full and closed, however Council does receive requests for decedent internments and refurbishments of existing graves.

- 15 With no contractual agreement and no legislative powers in either the *Local Government Act* or the *Cemeteries and Crematoria Act 2013* (NSW), Council as a cemetery operator, has no legal right to administer the private land as a public cemetery.

Council, however, has traditionally managed and administered the entire Bangalow Cemetery as a landowner. With the knowledge that Folio 1/932719, and Folio 2/929377 are privately owned, Council sought advice from its insurer regarding Council's liability for personal and property damage on the private land. Councils' insurer provided:

- 20 *'The insurer would respond in the first instance to a public liability claim but would seek to recover all costs from the landowner.'*

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13.4

Council sought submissions from both private landowners regarding the future administration and use of private land as a public cemetery with landowners replying:

- a) The Uniting Church in Australia Synod Office of NSW and ACT confirmed the Church intention to transfer ownership of Folio 1/932719 to Council, and
- 5 b) The Anglican Dioceses of Grafton confirmed its intention to transfer Folio 2/929377 to Council with parties paying own legal costs.

Acquisition of private land:

Acquisition of land by agreement falls outside of terms of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

- 10 Council may only acquire land for the purpose of exercising a function under the *Local Government Act 1993* (NSW). Council seeks to acquire Folio 1/932719 and Folio 2/929377 for the purpose of providing services and facilities at the Bangalow Cemetery in accordance with Chapter 6 of the *Local Government Act*.

Parties have agreed in writing that:

- 15 a) The Uniting Church in Australia Synod Office of NSW and ACT will transfer Folio 1/932719 to Council for Nil value, and
- b) The Anglican Dioceses of Grafton agree to transfer Folio 2/929377 to Council at Nil value, and
- c) all parties to pay its own legal costs relating to the land transfer.
- 20 This report recommends that Council endorses the land transfer as agreed save for the Nil value aspect. Land transfers must be for a value, even if it is a nominal value.

Classification of land transferred to Council:

Land acquired by Council must be classified as operational or community either before or within three-months of acquiring the land.

- 25 This report recommends that Folio 1/932719 and Folio 2/929377 are classified as operational land being consistent with other land parcel classifications in the Bangalow Cemetery.

Neither land parcel is suitable for classification as community land because core objectives of community land are unsuitable for use of land as a cemetery.

30

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.4: Provide accessible community facilities and open spaces	5.4.2: Parks and open spaces - Provide and maintain active and passive recreational community space that is accessible and inclusive for all	5.4.2.2	Operate and Maintain Cemeteries across the Shire

Recent Resolutions

Nil.

5 Legal/Statutory/Policy Considerations

Local Government Act 1993 (NSW) – Division 1

s25 All public land must be classified

All public land must be classified in accordance with this Part.

s26 What are the classifications?

10 There are 2 classifications for public land— “community” and “operational”.

Note—

On the commencement of this Part, certain land that is vested in or under the control of a council is taken to have been classified as community land by the operation of clause 6 of Schedule 7.

15 s27 How are the classifications made?

- (1) The classification or reclassification of public land may be made by a local environmental plan.
- (2) The classification or reclassification of public land may also be made by a resolution of the council under section 31, 32 or 33.

20 s31 Classification of land acquired after 1 July 1993

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- (1) This section applies to land that is acquired by a council after the commencement of this Division, other than—
- (a) land to which the *Crown Lands Act 1989* or the *Crown Land Management Act 2016* applied before the acquisition and continues to apply after the acquisition, and
- (b) land that is acquired for the purpose of a road.
- (2) Before a council acquires land, or within 3 months after it acquires land, a council may resolve (in accordance with this Part) that the land be classified as community land or operational land.
- (2A) Any land acquired by a council that is not classified under subsection (2) is, at the end of the period of 3 months referred to in that subsection, taken to have been classified under a local environmental plan as community land.
- (2B) While the land remains unclassified—
- (a) the land may not be used for any purpose other than that for which it was being used immediately before it was acquired, and
- (b) the council may not dispose of any interest in the land.
- (3) A council must not resolve under this section that land be classified as operational land if—
- (a) the land is classified as community land immediately before its acquisition, or
- (b) the resolution would be inconsistent with any other Act, the terms of any trust applying to the land, or the terms of any instrument executed by the donor or transferor of the land.

Financial Considerations

This report recommends that Council acquires both Folio 1/932719 and Folio 2/929377 for Nil value, with all parties paying its own legal costs for the land transfer.

Consultation and Engagement

Council consulted with both the Uniting Church in Australia Synod Office of NSW and ACT and the Anglican Dioceses of Grafton on the acquisition of private land in the Bangalow Cemetery.

**Report No. 13.5 Sub-licence to Zephyr Equine Pty Ltd
(A.C.N. 638 961 850) and Cape Byron
Seahorses Riding Centre for access through
Crown Land.**

5 **Directorate:** General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

File No: I2022/1189

Summary:

10 Zephyr Equine Pty Ltd and Cape Byron Seahorses Riding Centre seek to renew sub-
licences held for access through Crown Land required to conduct guided horse-riding tours
on Tyagarah Beach on a commercial basis.

15 This report recommends that Council grant new twelve-month sub-licences to Zephyr
Equine Pty Ltd and Cape Byron Seahorses Riding Centre in accordance with previous
Council resolution **(21-512)**.

RECOMMENDATION:

- 20 1. **That Council authorises the General Manager, under delegation, to grant a sub-
licence to Zephyr Equine Pty Ltd (A.C.N. 638 961 850) for a term of 12 -months
for the purpose of access through Lot 407 DP 729057 being Crown Reserve
R755695 on condition that Zephyr Equine Pty Ltd:**
- 25 a) **holds a current permit with Cape Byron Marine Park for the term of the
sub-licence, and**
- b) **takes all steps necessary to ensure that all horse droppings are removed
from the sub-licenced area during and at the end of each access session,
and**
- c) **holds valid public liability insurance cover for a minimum value of
\$20million, and**
- 30 d) **handles all horse in a public area in a safe manner, and**
- e) **not exceed the number of horses permitted by the Cape Byron Marine
Park Permit in any guided horse tour.**

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2. That Council authorises the General Manager to grant a sub-licence to Cape Byron Seahorses Riding Centre for a term of 12-months for the purpose of access through Lot 428 DP 729272 being Crown Reserve R81780 on condition that Cape Byron Seahorses Riding Centre:

- 5 a) holds a current permit with Cape Byron Marine Park for the term of the sub-licence; and
- b) takes all steps necessary to ensure that all horse droppings are removed from the sub-licenced area during and at the end of each access session; and
- 10 c) holds valid public liability insurance cover for a minimum value of \$20million, and
- d) handles all horse in a public area in a safe manner, and
- e) not exceed the number of horses permitted by the Cape Byron Marine Park Permit in any guided horse tour, and
- 15 f) loads and unloads horses at the designated site on Crown Land adjacent to South Beach Road Brunswick Heads and must collect all horse droppings from the designated site before and after guided horse tours.
3. That each sub-licence fee is set in accordance with Councils current Fees and Charges.

20

Report

Council resolved (21-512) at the 25 November 2021 meeting:

- 5 1. *That Council authorises the General Manager, under delegation, to grant a sub-licence to Zephyr Equine Pty Ltd (A.C.N. 638 961 850) for a term of 12 -months for the purpose of access through Lot 407 DP 729057 being Crown Reserve R755695 on condition that:*
 - a) *Zephyr Equine Pty Ltd holds a current permit with Cape Byron Marine Park for the term of the sub-licence; and*
 - 10 b) *Zephyr Equine Pty Ltd take all steps necessary to ensure that all horse droppings are removed from the sub-licensed area during and at the end of each access session.*
- 15 2. *That Council authorises the General Manager to grant a sub-licence to Cape Byron Seahorses Riding Centre for a term of 12-months for the purpose of access through Lot 428 DP 729272 being Crown Reserve R81780 on condition that:*
 - a) *Cape Byron Seahorses Riding Centre holds a current permit with Cape Byron Marine Park for the term of the sub-licence; and*
 - b) *Cape Byron Seahorses Riding Centre takes all steps necessary to ensure that all horse droppings are removed from the sub-licensed area during and at the end of each access session.*
- 20 3. *That each sub-licence fee is set in accordance with Councils current Fees and Charges.*

Zephyr Equine Pty Ltd requests a new twelve-month sub-licence for access through Lot 407 DP729057 located at the northern end of Belongil Beach, to conduct guided horse-riding tours below the mean high tide on Tyagarah Beach.

- 25 Cape Byron Seahorses Riding Centre also requests a new twelve-month sub-licence for access through Lot 428 DP 729272 located at the southern end of Brunswick Heads Beach, to conduct guided horse-riding tours below the mean high tide on Tyagarah Beach.

Renewed sub-licences would commence 2 January 2023.

Authority to sub-licence

- 30 Council holds Crown licence RI 564194 for the purpose of low impact commercial recreational activities on certain Crown lands including both Lot 407 DP729057 and Lot 428 DP 729272.

- 35 All impacts on Native Title Holders rights and interests in Crown lands from the grant of sub-licences in accordance with head licence RI 564194 was considered by the relevant Department prior to grant of the licence RI 564194 to Council.

Sub-licences granted in accordance with head licence RI 564194 must be granted by a resolution of Council in accordance with Council Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves.

- 5 Equestrian activities of a commercial nature are prohibited under the Byron LEP 1988 in the 7(f1) (Coastal Zone) zone. Clause 48(1) of the LEP permits temporary use of the land for development, not being designated development, for a maximum period of 7 days on any one occasion, up to a maximum of 60 days in any calendar year when the land is vested in the Crown and the activity does not involve the erection of any permanent structures.

10 **Proposed terms and conditions of sub-licences:**

Council proposes to grant sub-licences in accordance with head licence RI 564194 with the following terms and conditions:

1. Term 12-months with no options or holding over,
- 15 2. Sub-licensees must hold valid Cape Byron Marine Park permits for the term of the sub-licence,
3. Rent must be set in accordance with Councils adopted fees and charges,
4. Essential conditions of the sub-licence to include:
 - a) Sub-licensees must hold and produce to Council valid public liability insurance cover for a minimum value of \$20,000,000, and
 - 20 b) Sub-licensees must collect all horse dropping during and at the end of each access through Crown land being Lot 407 DP 729057 and Lot 428 DP 729272, and
 - c) Sub-licensees must handle all horses in public areas in a safe manner, and
 - 25 d) Sub-licensees must not exceed the number of horses, as stated in its Cape Byron Marine Park Permit, in its guide horse tours.
5. Cape Byron Seahorses Riding Centre must unload horses at the designated site on Crown land adjacent to South Beach Road Brunswick Heads and must collect all horse droppings from the designated site before and after guided horse tours.

Planned works to South Beach Road Brunswick Heads:

- 30 Scheduled road works to South Beach Road Brunswick Heads have been delayed. Council staff will work with Cape Byron Seahorses Riding Centre, should the road works commence during the sub-licence term, to provide parking for the horse float/truck and a safe area to hand horses on Crown land adjacent to South Beach Road.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	N/A	The relevant Operational Plan activity had been inadvertently omitted from the 2022/23 Operational Plan. This will be rectified in the upcoming quarter 1 amendments

Recent Resolutions

Resolutions (18-443), (19-224), (19-612), (20-696), and (21-512).

5 Legal/Statutory/Policy Considerations

Zone No 7 (f1) (Coastal Land Zone)

1. Objectives of zone

The objectives of the zone are:

- (a) *to identify and protect environmentally sensitive coastal land,*
- 10 (b) *to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality,*
- (c) *to prevent development which would adversely affect, or be adversely affected by, coastal processes, and*
- 15 (d) *to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.*

2. Without development consent

Nil.

3. Only with development consent

- 20 *Agriculture (other than animal establishments); beach and coastal restoration works; building of levees, drains or clearing of land; bushfire hazard reduction; clearing of land; community buildings; drainage; environmental facilities; forestry; home industries; markets; roads; primitive camping grounds; surf lifesaving facilities; utility installations.*

4. Temporary use of certain land

Despite any provision of this plan, a person may, without the consent of the Council, carry out development on land for any purpose (not being designated development) within Zone No 6 (a) or 7 (f1) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if:

(a) such land is vested in the Crown, a Minister of the Crown, or the Council, and

(b) the development does not involve the erection of permanent structures ancillary to the use of that land.

Despite any other provision of this plan, a person may, but only with the consent of the Council, carry out development on the following land for any purpose (not being designated development) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if the development does not involve the erection of permanent structures ancillary to the use of that land:

Lot 1, DP 201626 and Lot 2, DP 542178, Ewingsdale Road, Ewingsdale
Lot 358, DP 704247, Bangalow Road, Byron Bay.

Financial Considerations

Rent payable under sub-licence must be set by Councils' adopted fees and charges.

Rent is currently set at \$1,735 (inc GST) per annum.

Consultation and Engagement

No requirements to consult or engage the public regarding the proposed new sub-licences.

**Report No. 13.6 Code of Conduct Annual Report 1
September 2021 - 31 August 2022**

Directorate: General Manager

Report Author: Ralph James, Legal Counsel

5 **File No:** I2022/1274

Summary:

10 Clause 11.1 of Council's Policy "Procedures for the Administration of Council's Code of Conduct" requires specified statistics concerning Code of Conduct complaints made about Councillors and the General Manager to be reported to Council within three months of the end of September each year.

RECOMMENDATION:

15 **That the Code of Conduct Annual Report for the period 1 September 2021 to 31 August 2022 be noted.**

Report

- 5 Clause 11.1 of Council's Policy "Procedures for the Administration of Council's Code of Conduct" requires specified statistics concerning Code of Conduct complaints made about Councillors and the General Manager to be reported to Council within three months of the end of September each year. The statistics for the year 1 September 2021 to 31 August 2022 are as follows:

	Reporting requirement	Statistics
a)	the total number of code of conduct complaints made about Councillors and the General Manager under the Code of Conduct in the year to September	Councillors 1 General Manager 0
b)	the number of code of conduct complaints referred to a conduct reviewer	0
c)	the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints	0
d)	the number of code of conduct complaints investigated by a conduct reviewer	0
e)	without identifying particular matters, the outcome of code of conduct complaints investigated under the procedures	The complaint was found by the General Manager to be "not sustained"
f)	the number of matter reviewed by the Office and, without identifying particular matters, the outcome of the reviews	0
g)	The total cost of dealing with code of conduct complaints made about Councillors and the General Manager in the year to September, including staff costs	0

Nature of complaint

The complaint alleged a failure to declare a conflict of interest at a Council meeting.

10 Financial Implications

No costs were incurred. A total of about 4 hours staff time was involved in the investigation of the complaint.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.2	Maintain, publish and report on relevant registers including delegations, Councillors and designated staff disclosures of interests, Councillor and staff gifts and benefits, and staff secondary employment.

Statutory and Policy Compliance Implications

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

Mandatory reporting requirements have been met.

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Report No. 13.7 Election of Deputy Mayor - 2022-2023

Directorate: Corporate and Community Services

5 **Report Author:** Amber Evans Crane, Governance Support Officer

File No: I2022/994

Summary:

10 In accordance with [Section 231](#) of the *Local Government Act 1993* Councillors can elect a Deputy Mayor. The Deputy Mayor will be elected for a period of 12 months at the Ordinary Council meeting in September each year.

15 As per Council Res **22-015**, due to the postponement of the Local Government Elections, the previous term of the Deputy Mayor was shorter than usual, from 3 February 2022 until 22 September 2022, to realign with the next Local Government Election in September 2024.

RECOMMENDATION:

- 20
1. That Council elects a Deputy Mayor for the period from 29 September 2022 until September 2023.
 2. That the method of election of the Deputy Mayor be by way of open voting.

Attachments:

- 25
- 1 Byron Shire Council Nomination Form Deputy Mayor 2022, E2022/74924 

Report

In accordance with Section 231 of the Local Government Act 1993, a council may elect a Deputy Mayor to assist the Mayor in the performance of his/her duties.

- 5 (1) *The councillors may elect a person from among their number to be the deputy mayor.*
(2) *The person may be elected for the mayoral term or a shorter term.*
(3) *The deputy mayor may exercise any function of the mayor at the request of the mayor or if the mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of mayor.*
10 (4) *The councillors may elect a person from among their number to act as deputy mayor if the deputy mayor is prevented by illness, absence or otherwise from exercising a function under this section, or if no deputy mayor has been elected.*

Term of the Deputy Mayor

Section 231 (2) of the Local Government Act states: “*The person may be elected for the mayoral term or a shorter term*” such as:

- 15 1. For a period of 12 months
2. For the period of the Mayoral Term
3. For another period determined by Council

As per Council Res **22-015**, due to the postponement of the Local Government Elections, the previous term of the Deputy Mayor was shorter than usual, from 3 February 2022 until
20 22 September 2022, to realign with the next Local Government Election in September 2024.

Returning Officer

Schedule 7(1) of the Local Government (General) Regulation 2021 states that the
25 “*General Manager (or a person appointed by the General Manager) is the Returning Officer.*”

Nomination

Schedule 7(2) of the Local Government (General) Regulation 2021 states that:

- (1) *A councillor may be nominated without notice for election as mayor or deputy mayor.*
30 (2) *The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.*
(3) *The nomination is to be delivered or sent to the returning officer.*
35 (4) *The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.*

Nomination forms have been provided as an attachment to this business paper. Any completed nomination forms should be handed to the General Manager prior to the commencement of the Council meeting.

Election

5 Schedule 7(3) of the Local Government (General) Regulation 2021 states:

- (1) *If only one councillor is nominated, that councillor is elected.*
- (2) *If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot; or by open voting.*

10 (3) *The election is to be held at the Council meeting at which the Council resolves the method of voting.*

- (4) *In this clause:*
***"ballot"** has its normal meaning of secret ballot;*
***"open voting"** means voting by a show of hands or similar means.*

15 The following additional information outlines various ballot systems. Traditionally, this Council has determined the election for Deputy Mayor by ordinary ballot.

Preferential ballot

20 As per its normal interpretation, the ballot papers are to contain the names of all candidates and Councillors mark their votes 1, 2, 3 and so on against the various names, so as to indicate their order of preference for all of the candidates.

Ordinary ballot or open voting

Ordinary ballot – ballots are secret with only one candidate's name written on a ballot paper.

Open voting - open voting is by way of a show of hands or other similar means.

25 Where there are two candidates, the person with the most votes is elected. If the votes for the two candidates are tied, the one to be elected is to be chosen by lots, with the first name out being declared elected.

30 Where there are three or more candidates, the person with the lowest number of votes is eliminated and the process started again until there are only two candidates. The determination of the election would then proceed as if the two were the only candidates. In the case of three or more candidates where a tie occurs, the one to be excluded will be chosen by lot.

35 Choosing by Lot – to choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen, on the basis detailed above.

Selection of Method

The Office of Local Government previously released [circular 20-29](#) giving guidance around the voting method required where the meeting is being held by audio-visual link:

- 5 • Open ballots can be undertaken remotely where a council is conducting its meetings by audio visual link.
- Ordinary and preferential ballots are secret ballots and councillors will need to attend the meeting in person if the election is to be by way of an ordinary or preferential ballot.

10 Should there be any Councillors attending via audio-visual link, the recommendation is that the 'open voting' method be used.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.4	Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring

Legal/Statutory/Policy Considerations

15 The Deputy Mayor will undertake the Mayor's role at the request of the Mayor and in situations where the Mayor is prevented by illness, absence or other reasons from exercising the functions of the position. The role of the Mayor is defined by [Section 226 of the Local Government Act 1993](#).

Financial Considerations

Section 249(5) of the Local Government Act 1993 states:

- 20 (5) *A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.*

25 Therefore the Deputy Mayor when acting in the role of Mayor, in instances where the Mayor has leave of absence endorsed by Council, could be paid a fee calculated on a pro-

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rata basis of the annual Mayoral allowance, which would be deducted from the amount of the monthly Mayoral allowance paid to the Mayor, in accordance with Section 249 of the *Local Government Act 1993*.

Consultation and Engagement

- 5 Not applicable.

Report No. 13.8 **Update to Section 355 Committee Guidelines**

Directorate: Corporate and Community Services

Report Author: Isabelle Wood, Project Officer (Generalist)

5 **File No:** I2022/1130

Summary:

10 Section 355 of the Local Government Act 1993 allows a council to delegate certain functions to Committees of Council. Council currently has 9 facilities managed by Section 355 Committees and Boards of Management (S355 Committees). Committee members consist primarily of volunteers who dedicate their time to manage the operations and maintenance of Council-owned community halls and facilities.

15 A review and update of the Halls and Venues Guidelines for Section 355 Committees and Boards (Guidelines) has been undertaken, in consultation with volunteer committee members to condense, simplify and improve the content and associated processes. The primary purpose of updating the Guidelines was to ensure it is clear, volunteer-centric and supports the management of community facilities.

20 **RECOMMENDATION:**

That Council endorses the updated Guidelines now referred to as ‘Section 355 Committee Guidelines’ (Attachment 1, E2022/83249).

Attachments:

25 1 DRAFT Section 355 Committee Guidelines, E2022/83249 

Report

Section 355 of the Local Government Act 1993 allows a council to delegate certain functions to Committees of Council. Council currently has 9 facilities managed by Section 355 Committees and Boards of Management (S355 Committees). Committee members consist primarily of volunteers who dedicate their time to manage the operations and maintenance of Council-owned community halls and facilities. This volunteer management model provides opportunities for local community members to act as hall custodians and represent the unique needs of their community.

S355 Committees are governed by the existing [Halls and Venues Guidelines for Section 355 Committees and Boards](#) (Guidelines). The Guidelines outline the function of S355 Committees and management processes and procedures relating to community halls and facilities.

In late 2021, Council engaged a consultant to conduct a governance review of the S355 Committee management model. The review recommended a refresh to improve resources relating to S355 Committees.

Following this recommendation, a review and update of the Guidelines and associated processes was undertaken to simplify information, increase volunteer understanding of legislated requirements and improve hall hirer (customer) experiences. This was undertaken in consultation with volunteer committee members and was informed by their experiences and suggestions.

The review also involved Council staff from Finance, Governance, Work Health and Safety, Maintenance, Legal and Events. This work has resulted in improved internal Council processes to support volunteers more effectively with committee operations.

Amendments

The Guidelines had not been updated for a number of years and required significant changes.

Content was updated to ensure volunteers have clear and sufficient information to manage community facilities. The way information is conveyed and presented to volunteers is important and contributes to how Committee operations are undertaken.

The key amendments to the Guidelines include:

- a visual diagram incorporated under 'community hall management structure' to clearly outline the hierarchy of decision-making by Council and S355 Committees.
- clarification of Council's role in responding to media enquiries.
- an outline detailing the process for fee reduction or fee waiver requests, including the need for a request to be considered by the relevant 355 Committee and referred to Council for consideration and approval. A fee reduction or fee waiver request usually requires a Council resolution, except in extraordinary circumstances where a request can be referred to the General Manager for consideration (e.g., emergencies,

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disaster recovery or matters that require an urgent decision such as during a pandemic).

- 5 • inclusion of a grievance procedure: If a committee member has a grievance about any aspect of their tasks, other volunteers or Council staff, Committee members can approach, or notify in writing, the relevant Council staff member, if they are comfortable to do so. Where possible, grievances or complaints will be resolved at first contact with Council. If this option is not suitable, Council's Complaint Handling Policy outlines how a complaint will be managed by Council.
- 10 • increased honorarium payment based on the Consumer Price Index (CPI). This amount has not changed since 2015 and was increased accordingly.
- changes to the payment requirements relating to ad-hoc cleaning services undertaken by committee members when a hirer has not adhered to their conditions of hire. This content has not changed since 2015 and was updated accordingly.
- 15 • clarification of the 'outsourcing of work' clause incorporated under 'Committee executive positions.
- simplification and distinction between the Committee's responsibility of repairs and minor maintenance and Council's responsibility of major maintenance, improvements, and compliance. This includes a clear list of activities not to be undertaken by volunteers.
- 20 • update to 'Accounting and bank accounts', including that Committees can have 2 debit cards per committee, to allow for online and in-store purchases using current balances in the Committee's bank accounts. Bank accounts are not permitted to be overdrawn.

The key process improvements include changes to:

- 25 • hall hirer enquiries, agreements, and bookings
- simplified risk assessments
- volunteer training and recognition
- filing and records management
- financial management
- 30 • WHS
- insurance
- maintenance
- communications
- community events enquiries

- 35 These changes will continue to be implemented in consultation with committees over the next few months.

Overall, the intended outcomes of the amendments include:

- volunteer-centric language to improve understanding of community facility management
- 40 • clear, concise, and accurate content to support Committee operations

- improved and simplified processes
- greater clarity on the roles and responsibilities of S355 Committees and Council respectively, and the associated decision-making powers.

Risks - Community Facilities Volunteer Management Model

- 5 Byron Shire Council remains one of the few local councils in NSW who continue to delegate the management of community halls and facilities to volunteers, under Section 355 Committees.

10 Under this management model, the governance and reporting requirements subject volunteers and staff to high levels of administration, which volunteers have reported can result in time-intensive and onerous workloads.

15 According to Volunteering Australia, the rate of volunteering has declined over time, with the most common types of organisations people volunteer for relating to sport and physical recreation (30.7%), religious groups (23.1%) and education and training (18.8%). Community volunteers are to be recognised and commended for the significant time, energy, and skills they offer to Council and most importantly, the wider community.

However, the changing nature of volunteerism in Australia highlights the need to explore the efficacy of a management model that is solely reliant on volunteers.

The S355 management model presents challenges for Council, including (but not limited to):

- 20
- an aging volunteer base.
 - difficulty retaining volunteers and recruiting new volunteers.
 - responding to the varied skill levels and competency of volunteers.
 - an inability to adequately respond to community need (e.g., the process for a community member to request reduced fees and charges to hire the facility is governed by legislation and is incredibly lengthy).
- 25
- risk of Committees failing to meet basic governance and accounting standards.
 - increased support and training required for volunteers to ensure Committees comply with legislation, processes, and procedures.
 - limited Council staff resourcing and capacity to offer the necessary support required to volunteers.
- 30

35 If Council continues to manage community halls and facilities through S355 volunteer committees, there needs to be an acknowledgement of the requisite succession planning, risk mitigation and reallocation of resources required to ensure facilities are accessible and meet community expectations. Alternatively, new management models may need to be considered. This will ensure Council is taking a strategic approach to facilities management and planning for the future.

Staff are currently considering a further risk based review of the existing governance framework of S355 volunteer committees (e.g. through an internal audit review) and will consider and report review recommendations for Council consideration.

40

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.5: Empower community leadership through collaboration, capacity building, and cultivating community driven initiatives	1.5.3: s355 Committees - Support the management of community halls to delegated s355 committees	1.5.3.1	Support Council volunteers with the delivery and management of community halls

Recent Resolutions

- 5 Resolution 21-148: Request for Financial Assistance Due to Impacts of COVID-19

Resolution 22-029: Establishment and Delegation to Section 355 Committees

Resolution 22-093: Appointment of Committee members to Section 355 Committees and Boards

Resolution 22-132: Bangalow Showgrounds s355 Committee membership

10 Legal/Statutory/Policy Considerations

Section 355 of the Local Government Act 1993 provides that a Council may appoint a committee and delegate under Section 377 certain functions to a committee, including the authority for the care, control and management of community buildings.

Financial Considerations

- 15 The Section 355 Management Committees are required to provide financial information in accordance with the Guidelines. Fees for these community facilities are set by Council at the beginning of each financial year.

- 20 Community representatives on a Section 355 Management Committee are volunteers. The Guidelines allow for the payment of an honorarium to selected committee members in recognition of the volume of work associated with office bearer positions.

These honorarium payments are subject to review and approval by Council's Finance Manager to ensure the revenue generated by the hall or facility is sustainable and covers any such payments.

Consultation and Engagement

- 5 Consultation has occurred with S355 Committee members in an ongoing capacity over a 15-month period, including collecting feedback from committee members via in-person meetings, inductions, surveys, and verbal and written communications.

- 10 Significant consultation was undertaken during the Section 355 Governance Review which informed the recommendation to review and update the existing Guidelines and processes. As a result of the extensive consultation activities, the proposed changes to the Guidelines have received considerable support from committee members and stakeholders.

- 15 Key recommendations, suggestions and advice were captured through consultation activities with committee members and used to identify the areas requiring change. This has helped inform the proposed amendments and process improvements.

A summary of the consultation activities is outlined in the table below:

Timeframe	Consultation activity	Stakeholders engaged
Ongoing throughout June 2021 – August 2022	Meetings (formal and informal), phone discussions and direct email liaison	S355 Committee members
October – November 2021	Survey (Governance review)	S355 Committee members
October – November 2021	Consultant-led meeting (Governance review)	S355 Committee members
October – November 2021	Consultant-led phone discussions and direct email liaison (Governance review)	S355 Committee members
October – November 2021	Consultant-led meeting (Governance review)	Council staff from: <ul style="list-style-type: none"> • Social and cultural planning • Maintenance • Finance • Governance • Events • Legal • Open Spaces • Executive Officer
February 2022	Report findings shared to close the loop on formal consultation. This included: <ul style="list-style-type: none"> • S355 Committee Review 	S355 Committee members

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Timeframe	Consultation activity	Stakeholders engaged
	– Stakeholder Consultation Report • Next Steps – S355 Committees	
April 2022	Induction sessions	S355 Committee members
April – May 2022	Post-induction survey	S355 Committee members
June 2022	Treasurer meeting	S355 Committee Treasurers
June – August 2022	Financial transition meetings	Committee members from: <ul style="list-style-type: none">• Bangalow A&I Hall Committee• Bangalow Park Trust (Showground) Committee• Durrumbul Hall Committee
August 2022	Bookings officer meeting	Committee Bookings officers

Report No. 13.9 **Appointment of Replacement Community Members to Advisory Committees**

Directorate: Corporate and Community Services

Report Author: Richard Bradbury, Councillor Support Officer

5 **File No:** I2022/928

Summary:

10 Council resolved on 24 March 2022 to appoint community representatives to its Advisory Committees for the term of Council. New members are required due to the resignation of members of the Water & Sewer, Biodiversity, Floodplain and Coastal & ICOLL Advisory Committees.

Expression of Interest for inclusion on these committees was invited by completing an online nomination form. This report provides information about the nominations received and recommends appointment to the various Advisory Committees with vacancies.

15

RECOMMENDATION:

- 20 1. That community representatives, as recommended in confidential attachment 1 (E2022/63044), be appointed to each respective Advisory Committee for the 2022-2024 term ending September 2024.
2. That, where no recommendation is made in confidential attachment 1 (E2022/63044), Council select the community representatives from the options provided, and they be appointed for the respective Advisory Committee for the 2022-2024 term ending September 2024.
- 25 3. That in the case of future resignations from Advisory Committees that replacement community members be appointed from the recommended list of previous applicants, and where no suitable or available applicants exist applications for new members are then advertised.
4. That all appointed Advisory Committee members:
 - 30 a) be notified of their appointment to the committee; and
 - b) complete induction, Code of Conduct, and confidentiality requirements.
5. That any unsuccessful nominees be notified.

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Attachments:

- 1 Confidential - Advisory Committees Nominations and Recommendations for Appointment
July 2022, E2022/63044
- 5 2 Confidential - Curriculum Vitae of applicants for the Water and Sewer Advisory Committee
July 2022, E2022/71581
- 3 Confidential - Curriculum Vitae of applicants for the Floodplain Advisory Committee July
2022, E2022/71580
- 4 Confidential - Curriculum Vitae of applicants for the Coastal and ICOLL Advisory Committee
July 2022, E2022/71579
- 10 5 Confidential - Curriculum Vitae of applicants for the Biodiversity Advisory Committee July
2022, E2022/71578
- 15

Report

Council resolved on 24 March 2022 to appoint community representatives to its Advisory Committees for the term of Council. New members are required due to the resignation of members of the Water & Sewer, Biodiversity, Floodplain, and Coastal & ICOLL Advisory Committees. Nominations were subsequently advertised. A summary of the number of nominations received is provided below:

- Biodiversity Advisory – 2 vacancies and 5 nominations
- Coastal and ICOLL Advisory Committee – 2 vacancies and 8 nominations
- Floodplain Management Advisory Committee – 2 vacancies and 7 nominations
- Water and Sewer Advisory – 1 vacancy and 2 nominations

The majority of committees received more nominations than available positions, in accordance with the structure and membership as determined by Council on 3 February 2022. Council is therefore asked to consider the nominations provided in confidential Attachment 1 and determine the appointment of community representatives to each of the committees.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.2: Engage and involve community in decision making	1.2.4: Advisory Committees - Coordinate advisory committees to inform decision making on their areas of expertise	1.2.4.1	Coordinate and support Advisory Committees to assist with effective Council decision making

Report No. 13.10 Delivery Program 6-monthly Report and Operational Plan 2021/22 Quarter 4 Report - to 30 June 2022

Directorate: Corporate and Community Services

5 **Report Author:** Heather Sills, A/ Manager Corporate Services

File No: I2022/940

Summary:

10 Council's Operational Plan outlines its projects and activities to achieve the commitments in its four-year Delivery Program. In accordance with the *Local Government Act 1993* progress reports must be provided at least every six months.


This report represents the second '6-monthly edition' of the Quarterly Report, providing an additional reporting layer regarding the Council's progress toward the higher-level actions of the Delivery Program.

15 Council achieved 73% of the Operational Plan activities that were planned to be delivered in 2021/22.

RECOMMENDATION:

20 **That Council notes the Delivery Program 6-monthly Report and 2021/22 Operational Plan Fourth Quarter Report for the period ending 30 June 2022 (Attachment 1 #E2022/67538).**

Attachments:

25 1 Delivery Program 6-Monthly Report and Operational Plan Quarterly Report - Q4 - to 30 June 2022, E2022/67538 

Report

The Delivery Program and Operational Plan are two key corporate documents that establish Council's goals and priorities for the term and the current financial year.

- 5 The Delivery Program (4-year) outlines the principal activities to be undertaken to implement the strategies established by the Community Strategic Plan (10-year), within the resources available under the Resourcing Strategy. All plans, projects, activities, and funding allocations must be directly linked to this program.

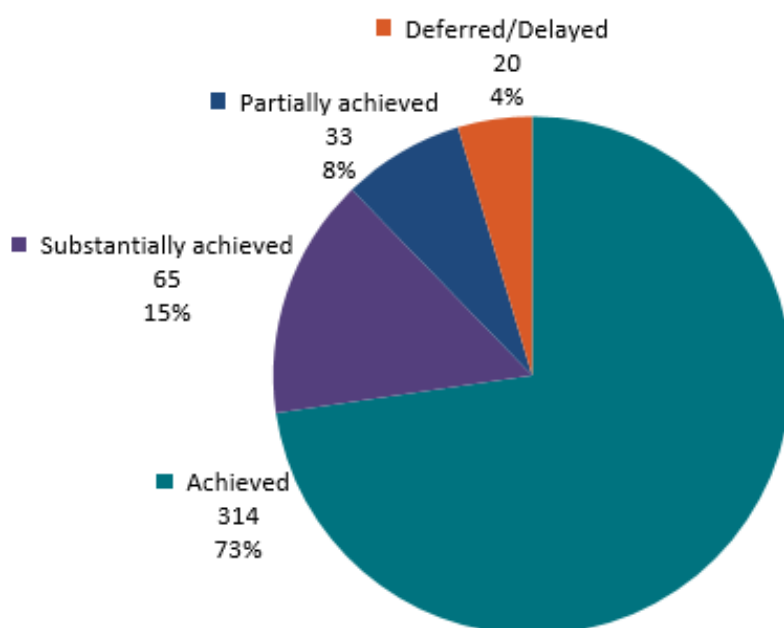
- 10 The Delivery Program is supported by the annual Operational Plan, which identifies the individual projects and activities that will be undertaken for the year to achieve the commitments made in the Delivery Program.

The General Manager is required to provide six monthly progress reports to the Council on the progress toward the delivery program, in accordance with the *Local Government Act 1993* s404 which states:

- 15 *"The general manager must ensure that regular progress reports are provided to the council reporting as to its **progress with respect to the principal activities detailed in its delivery program**. Progress reports must be provided at least **every 6 months**"*

- 20 While the requirement is six monthly reporting, the Council is provided with a Quarterly Report on the activities in the Operational Plan, to promote effective and efficient reporting and decision making.

2021/22 Operational Plan Activities



As this is the last quarter report for the 2020/21 financial year, this report details Council's achievement of the activities in the 2020/21 Operational Plan. Overall, Council achieved 73% of planned activities against the measures in the plan. This compares to 80% during 2020/21.

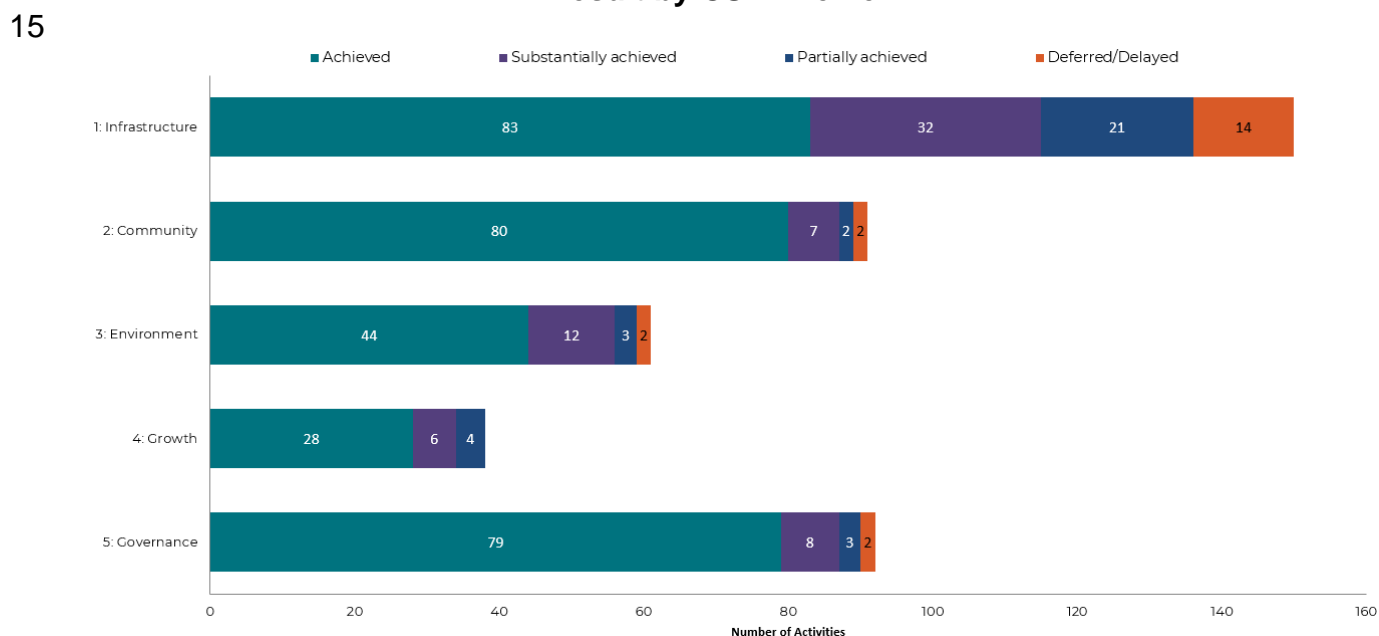
15% of activities were substantially achieved, meaning they were significantly progressed but not finalised, while 8% were partially achieved, and 4% deferred. Details on the reason for the status of each activity are outlined in the attachment.

Strategic Objectives

The report (#E2021/97874) is structured by the five 'Our Byron, Our Future' Community Strategic Plan 2028 objectives:

- 5 • Community Objective 1: We have **infrastructure**, transport and services which meet our expectations
- Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of **community**
- Community Objective 3: We protect and enhance our natural **environment**
- 10 • Community Objective 4: We manage **growth** and change responsibly
- Community Objective 5: We have community led decision making which is open and inclusive (**governance**)

Result by CSP Theme



Report Details

20 The report details Council's achievement of the activities in the 2021/22 Operational Plan. It includes a status update on progress and notes any highlights or exceptions where actions were delayed or reprioritised.

Each section notes the progress against the activities including:

- Activity
- Responsible directorate
- Measure
- 25 • Timeframe
- Comments
- Status

Summary of Achievements

Council achieved 73% of its actions during this period. Some activities were not fully achieved and/or deferred as a direct result of COVID-19 and the February/March 2022 flood events. Further detail on individual activities and the impacts is provided in detail in the attachment.

Key achievements include:

Infrastructure

- Stuart Street upgraded
- Middle Pocket Road improvements completed
- 24+ streets upgraded under the Fixing Local Roads - Ocean Shores Resurfacing project
- Grays Lane upgrade completed
- Successful speed radar sign trial
- Completed detailed laser assessment of the condition of all sealed roads which provided crucial data for a predictive computer modelling
- Completed new fully accessible toilet at Gaggin Park, Suffolk Park, with accessible pathway and new disability parking
- New accessible pathway installed at Bangalow Parklands
- Tennyson Street shared path upgrade works completed
- Byron Bay Library ceiling replacement works were completed
- Resolved (21-188) to implement a master plan for Lot 12 Bayshore Drive Byron Bay and moved to provide a long term lease site on the property to TAFE NSW
- Completed construction of the Byron Rail Precinct projects
- New public toilets provided at Middleton Street, Byron Bay, Clarkes Beach and Gaggin Park, Suffolk Park
- Capital renewal works completed to the Cavanbah Centre, Byron Stationmasters Cottage, Mullum War Widow's Cottage, Council Chambers, Suffolk Park Holiday Park, Brunswick Memorial Hall, Bangalow Showgrounds Rotunda, and First Sun Holiday Park.
- Byron Loves BYO campaign promoted reuse over waste generation
- Worked with Circular Cafes to support hospitality businesses to recycle organic waste, implement reuse programs and decrease waste to landfill
- Compliance with all NSW Environmental Protection Licences
- Upgrade to Butler Street Sewer Pump Station SPS3003 rising main
- Byron Bay, Brunswick Heads, and Ocean Shores sewerage pump station renewals
- Works on the Byron Bypass cross connection completed
- Online Digital Asset Management Plans built
- Ocean Shores water pipeline renewal completed in Casons Lane, New Brighton
- Engaged the Water Sensitive Cities Institute to assist with the review of the Effluent Reuse management plan strategy

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Community

- The Global Beats Harmony Festival was held in March 2022 in collaboration with people from culturally and linguistically diverse backgrounds
- Virtual Australia Day Awards recognised the contribution of community members
- 5 • The Lone Goat Gallery reopened in January 2022 with the highly successful and well-attended "Beach Dogs of Byron Bay", a posthumous exhibition commemorating the life and contribution of award-winning local photographer Rob Scott-Mitchell
- Worked with Arakwal Corporation and Tweed Byron Local Aboriginal Land Council to incorporate cultural designs into the Skate Park wetlands boardwalk at the Sandhills Estate, celebrating the cultural and environmental significance of the land
- 10 • Supported Byron Multicultural with a whole-of-community survey to gather insights and opinions from people from culturally diverse backgrounds
- 285 people were conferred as new Australian Citizens at 5 Citizenship Ceremonies
- 15 • Arakwal artists, Nickolla and Kaitlyn Clark, created artworks that depict sacred stories of local forest and coastal middens on pavements around the intersection of Burringbar Street and Stuart Street, as part of the Talking Street project
- Convened the Byron Shire Coordination group, who are working to improve outcomes for people sleeping rough; the services support up to 28 people per month and last year 17 people exited homelessness into housing.
- 20 • In partnership with Resilience NSW, opened the Recovery Centre in Mullumbimby to provide face-to-face support to residents and outreach to impacted communities affected by the flood
- Disability Inclusion Action Plan (DIAP) 2022-2026 was developed
- Partnered with the Byron Bay Community Association (BBCA) to open the Fletcher Street Cottage which provides support, information, referral and advocacy to people experiencing or at risk of homelessness in a safe, welcoming space
- 25 • Delivered high quality business and educational outcomes for Children's Services
- Partnered with Social Habitat to develop a concept design for a proposed upgrade to Brunswick Heads library
- 30 • Evans Street play unit was significantly refurbished and renewal of play items completed at Jacaranda playground
- Engaged the Australian Red Cross (ARC) to deliver 14 Strengthening Communities workshops and 15 Street Meets to support community resilience
- Fifteen Community Resilience Teams (CRT) created across the Byron Shire
- 35 • Get Ready Business Resilience workshops conducted on 5 and 12 October 2021.
- Mental health and natural disaster recovery for business owners workshop conducted on 17 May 2022
- Partnered with NSW Police and Experience Rova to deliver Soul Street NYE, a family-friendly event utilising place activation strategies through art, food, play, music
- 40 • and performance activities to increase community safety

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Environment

- Restored approximately 800m of the Brunswick riverbank and Flying-fox habitat through the NSW Environmental Trust Flying Improvement project
- Restored over 6ha of koala habitat on private land and in partnership with DPE
- 5 • Provided approximately 3,000 koala food trees to landholders
- Shire wide draft wildlife corridor mapping prepared
- Partnered with Brunswick Valley Landcare (BVL) to deliver Slips Slopes and Slides workshop restoring landslips and riverbank erosion, and to launch Climate Resilient Landscapes Guide
- 10 • Chemical free steam weeding programs have successfully been maintained across the Shire's playgrounds and town centers
- Delivered the 'Drought Pests and Weeds' project
- Carramar Reserve in Ocean Shores received significant fuel/weed reduction through the bush regeneration program
- 15 • Proactive approach taken to seek out and eradicate small outbreaks of Bitou Bush from the Byron containment zone
- Annual Emissions Inventory reported to Council along with an update on actions achieved under the Net Zero Emissions Action Plan for Council Operations 2025
- Climate Change Adaptation Plan prepared and implementation has commenced
- 20 • Continued to showcase public food garden outside Council Chambers
- Partnered with Tweed Council to run the 29th Annual NSW Coastal Conference - 'Living with Uncertainty' 31 May - 2 June 2022
- Various community education, engagement activities and information communication pieces were developed to increase awareness and understanding about the Shire's coastal biodiversity and values
- 25 • Construction of additional flowpath from Byron Sewerage Treatment Plant
- Four workshops delivered in partnership with Brunswick Valley Landcare including farm planning and soils workshops
- Farmer regenerative agriculture mentoring program in progress, in partnership with
- 30 Southern Cross University

Growth

- Finalised the Byron Arts and Industry Estate Precinct Plan
- Mullumbimby Talking Streets Project
- Updated the Bangalow Development Control Plan
- 35 • Gateway determination received to enable exhibition of Short-Term Rental Accommodation planning controls for a 90 day cap and up to 365 days in select locations of the Shire
- Workshops delivered including Mental Health and Natural Disaster Recovery with flood impacted businesses and Grow Your Business Online
- 40 • Student based apprenticeship and traineeship information evening in partnership with NSW Department of Education and Mullumbimby High School
- 200 responses to the Business Impacts, Resilience and Continuity Survey
- Played a key role in managing local recovery following the floods, providing services and assistance to the community and the ongoing coordinated process of supporting
- 45 affected communities in the reconstruction of the built environment and the restoration of emotional, social, economic, built and natural environment wellbeing

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- As part of the Bushfire Recovery funding, partnered with Banaam to deliver seven Aboriginal Custodianship workshops which included Rural Fire Service, NSW Fire and Rescue, Red Cross, Marine Rescue, NSW Police, local neighbourhood centres, Council staff, and the Aboriginal community

5 **Governance**

- A new corporate style guide was completed and is being rolled out
- Continued to talk directly with volunteer community groups through the Community Roundtable
- Frequent 'Flood Recovery Updates' distributed to keep the community informed about the Council's flood recovery activities and associated information
- A substantial increase in followers on social media and use of the website by members of the public during critical points of the COVID pandemic and the flood emergency
- Partnered with the University of New South Wales (UNSW) to develop a whole-of-council outcomes measurement framework to support Council to assess its performance and track community changes over time
- Funded nine applications, with a total value of \$44,200, through the Community Initiatives 2021-2022 funding round
- Comprehensive formal induction provided to new term of Council following the 2021 Local Government Election
- Prepared a number of infrastructure and asset management videos that have been posted to the web site and positively received by the community
- Adopted the revised Byron Shire Community Strategic Plan 2032, Resourcing Strategy, Delivery Program 2022-26 and associated plans
- Renewable Energy Supply Agreement was entered into on 1 January 2022

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties

Legal/Statutory/Policy Considerations

- The General Manager is required under Section 404 (5) of the *Local Government Act 1993* to provide regular progress reports as to the Council's progress with respect to the principal activities detailed in the Delivery Program/Operational Plan.

*“The general manager must ensure that regular progress reports are provided to the council reporting as to its **progress with respect to the principal activities detailed in its delivery program**. Progress reports must be provided at least **every 6 months**”*

5 Financial Considerations

Council's financial performance for the reporting period is addressed in the Quarterly Budget Review, which is the subject of a separate report included in this business paper.

Consultation and Engagement

10 The development of the Delivery Program was informed by extensive engagement around the Community Strategic Plan and specifically a Community Solutions Panel on infrastructure priorities.

The progress reports on the Operational Plan and Delivery Program are published on Council's website as a way of ensuring transparency around how Council is progressing activities and actions.

15

Report No. 13.11 Council Investments - 1 August 2022 to 31 August 2022

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2022/1195

Summary:

This report includes a list of investments and identifies Council's overall cash position for the period 1 August 2022 to 31 August 2022 for information.

10 This report is prepared to comply with Section 212 of the *Local Government (General) Regulation 2021*.

RECOMMENDATION:

15 **That Council notes the report listing Council's investments and overall cash position as at 31 August 2022.**

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Report

Council has continued to maintain a diversified portfolio of investments. As of 31 August 2022, the average 30-day bank bill rate (BBSW) for the month was 1.89%. Council's performance for August 2022 was 1.83%.

- 5 As investments mature Council should begin to see increased rates due to the recent Reserve bank increase in cash rates. The table below identifies the investments held by Council as at 31 August 2022:

Schedule of Investments held as at 31 August 2022

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
15/11/18	1,000,000.00	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	Y	B	3.00%	952,290.00
20/11/18	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	22/03/24	Y	B	1.78%	994,480.00
28/03/19	1,000,000.00	National Housing Finance & Investment Corporation	Y	AAA	28/03/29	Y	B	2.38%	909,780.00
21/11/19	1,000,000.00	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	Y	B	1.25%	944,620.00
27/11/19	500,000.00	National Housing Finance & Investment Corporation	Y	AAA	27/05/30	Y	B	1.52%	414,890.00
15/06/21	500,000.00	National Housing Finance & Investment Corporation	Y	AAA	01/07/31	Y	FRN	1.99%	501,560.00
06/09/21	1,000,000.00	Northern Territory TCorp	N	Aa3	15/12/26	Y	B	1.40%	1,000,000.00
16/09/21	1,000,000.00	QLD Treasury Corp (Green	N	AA+	02/03/32	Y	B	1.50%	928,180.00

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
		Bond)							
04/11/21	2,000,000.00	NAB	P	AA-	04/11/22	N	TD	0.45%	2,000,000.00
17/12/21	2,000,000.00	NAB	N	AA-	19/12/22	N	TD	0.72%	2,000,000.00
20/01/22	1,000,000.00	Westpac (Tailored)	P	AA-	20/01/23	N	TD	0.79%	1,000,000.00
08/03/22	2,000,000.00	Suncorp	P	A+	05/09/22	Y	TD	0.52%	2,000,000.00
20/05/22	2,000,000.00	NAB	N	AA-	16/11/22	N	TD	2.05%	2,000,000.00
07/06/22	2,000,000.00	NAB	N	AA-	05/09/22	N	TD	1.75%	2,000,000.00
07/06/22	1,000,000.00	Macquarie Bank Ltd	P	A	06/09/22	N	TD	1.77%	1,000,000.00
08/06/22	2,000,000.00	NAB	N	AA-	06/09/22	N	TD	1.85%	2,000,000.00
15/06/22	2,000,000.00	NAB	N	AA-	13/09/22	N	TD	2.15%	2,000,000.00
28/06/22	2,000,000.00	NAB	N	AA-	26/10/22	N	TD	2.52%	2,000,000.00
04/07/22	2,000,000.00	NAB	N	AA-	04/10/22	N	TD	2.32%	2,000,000.00
11/07/22	2,000,000.00	NAB	N	AA-	08/11/22	N	TD	2.68%	2,000,000.00
28/07/22	2,000,000.00	NAB	N	AA-	26/10/22	N	TD	2.60%	2,000,000.00
02/08/22	2,000,000.00	NAB	N	AA-	30/11/22	N	TD	2.90%	2,000,000.00
04/08/22	2,000,000.00	AMP Bank	P	BBB	03/11/22	N	TD	2.95%	2,000,000.00
23/08/22	2,000,000.00	AMP Bank	N	BBB	23/2/2023	N	TD	3.70%	2,000,000.00
25/08/22	1,000,000.00	Auswide Bank	P	BBB+	24/11/22	P	TD	2.95%	1,000,000.00
29/08/22	1,000,000.00	NAB	N	AA-	27/12/22	N	TD	3.11%	1,000,000.00
29/08/22	2,000,000.00	NAB	N	AA-	28/11/22	N	TD	2.95%	2,000,000.00
30/08/22	2,000,000.00	NAB	N	AA-	28/12/22	N	TD	3.15%	2,000,000.00
N/A	14,562,736.34	CBA Business Saver	P	AA-	N/A	N	CALL	1.95%	14,562,736.34
N/A	4,649,609.14	CBA Business Saver –	N	AA-	N/A	N	CALL	0.95%	4,649,609.14

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
		Tourism Infrastructure Grant							
N/A	18,094,753.34	Macquarie Accelerator Call	N	A	N/A	N	CALL	1.45%	18,094,753.34
Total	80,307,098.82						AVG	1.83%	79,952,898.82

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)

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

- 5 www.marketforces.org.au and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below highlights the percentage of each classification across Council's total investment portfolio in respect of fossil fuels only.

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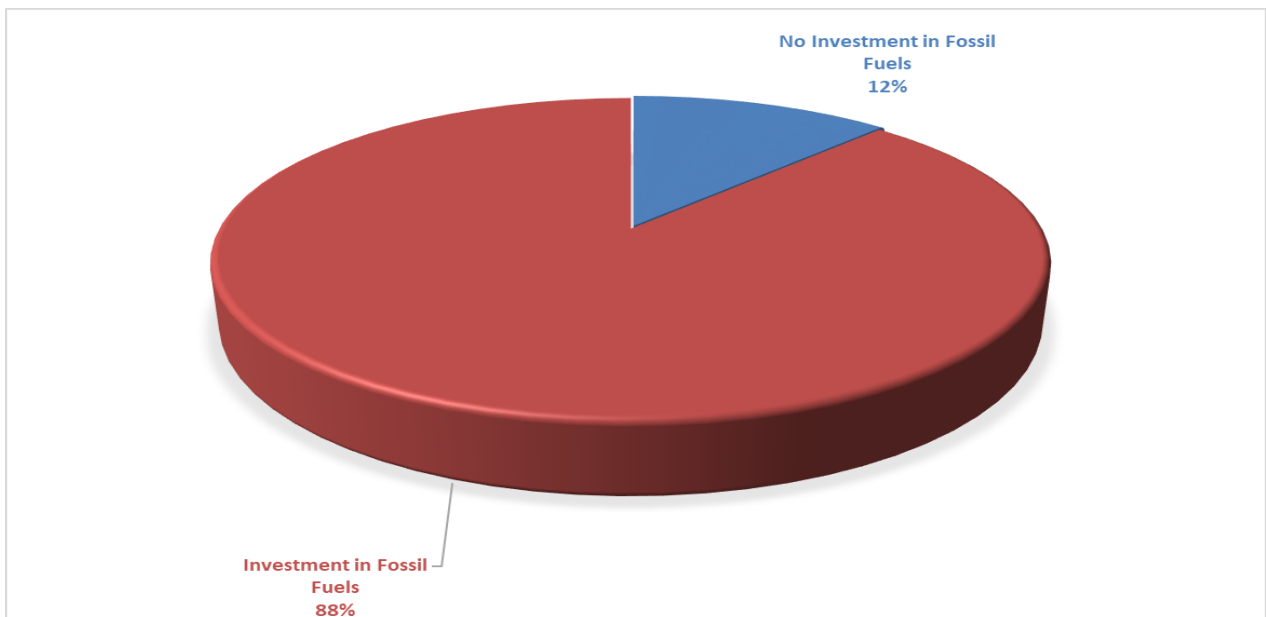
13.11

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

- 5 Council has one investment with a financial institution that invests in fossil fuels but is nevertheless aligned with the broader definition of Environmental and Socially Responsible investments i.e.:

1. \$1,000,000 investment with Westpac Bank maturing on 20 January 2023 is a tailored term deposit and certified green investment.

10



Investment Policy Compliance

- 5 The below 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 still mainly those with lower credit ratings (being either BBB or not rated at all i.e., credit unions).

Investment policy compliance			ACTUAL	
% should not exceed the following				
AAA to AA	A1+	100%	71%	Meets policy
A+ to A-	A1	60%	23%	Meets policy
BBB to NR	A2,NR	40%	6%	Meets policy

10 NSW Treasury Corporation Compliance – Loan Borrowing Conditions

Council has borrowed loans through NSW Treasury Corporation under the Local Government Low Cost Loans Initiative. As part of these loan borrowings, NSW Treasury Corporation has placed restrictions on where Council can invest based on the credit rating of the financial institution, the term of the investment and counterparty limit.

- 15 NSW Treasury Corporation has reviewed Council's Investment Portfolio and reminded Council it needs to remain within the investment parameters outlined in the accepted loan agreements. Council currently complies with T Corp Borrowing conditions as indicated in the table below:

Tcorp compliance						
% should not exceed the following			Counterparty Limit	Tenor	ACTUAL	Variance
Tcorp	100%	100%	100%	N/A	0%	Meets policy
AAA	100%	100%	100%	N/A	6%	Meets policy
AA+ to AA-	100%	100%	100%	5Y	62%	Meets policy
A+ to A	100%	100%	100%	3Y	27%	Meets policy
A-	40%	40%	40%	3Y	0%	Meets policy
BBB+		10% 3 Years	3Y	1%	Meets policy	
BBB	30%	5% 12 Months	1Y	5%	Does not meet policy	
BBB- and below (local ADI'S)		5% 12 Months	1Y	0%		
BBB- and below (other)	5%	250,000	1Y	0%		

- 20 Council had discussions with NSW Treasury Corporation and indicated it would start reporting the compliance in the monthly investment report to Council. Council is able to hold existing investments not in compliance until maturity but must ensure new investments meet the compliance requirements.

- 25 Meeting the NSW Treasury Corporation compliance means Council will be limited in taking up investments that may be for purposes associated with Environmental and Socially Responsible outcomes. Investments which do not comply with NSW Treasury Corporation requirements and investments with financial institutions that do not support fossil fuels will have to be decreased due to their credit rating status or lack of credit rating.

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The investment portfolio is outlined in the table below by investment type for the period 1 August 2022 to 31 August 2022:

Dissection of Council Investment Portfolio as at 31 August 2022

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
36,000,000.00	Term Deposits	36,000,000.00	0.00
1,500,000.00	Floating Rate Note	1,496,040.00	(3,960.00)
14,562,736.34	CBA Business Saver	14,562,736.34	0.00
4,649,609.14	CBA Business Saver – Tourism Infrastructure Grant	4,649,609.14	0.00
18,094,753.34	Macquarie Accelerator	18,094,753.34	0.00
5,500,000.00	Bonds	5,149,760.00	(350,240.00)
80,307,098.82		79,952,898.82	(354,200.00)

- 5 Council's overall 'cash position' is not only measured by funds invested but also by the funds retained in its consolidated fund or bank account for operational purposes. The table below identifies Council's overall cash position for the month of August 2022 as follows:

Dissection of Council's Cash Position as at 31 August 2022

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	36,000,000.00	36,000,000.00	0.00
Floating Rate Note	1,500,000.00	1,496,040.00	(3,960.00)
CBA Business Saver	14,562,736.34	14,562,736.34	0.00
CBA Business Saver – Tourism Infrastructure Grant	4,649,609.14	4,649,609.14	0.00
Macquarie Accelerator	18,094,753.34	18,094,753.34	0.00

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Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Bonds	5,500,000.00	5,149,760.00	(350,240.00)
Total Investment Portfolio	80,307,098.82	79,952,898.82	(354,200.00)
Cash at Bank			
Consolidated Fund	4,220,196.97	4,220,196.97	0.00
Total Cash at Bank	4,220,196.97	4,220,196.97	0.00
Total Cash Position	84,527,295.94	84,173,095.79	(354,200.00)

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.6	Maintain Council's cash flow

Legal/Statutory/Policy Considerations

- 5 In accordance with Section 212 of the *Local Government (General) Regulation 2021*, the Responsible Accounting Officer of Council must provide Council with a monthly report detailing all monies it 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.

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 March 2011.

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

5 Financial Considerations

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

Report No. 13.12 Tender 2022-1330 Cleaning of Council Administration Office

Directorate: Corporate and Community Services

Report Author: Len Reilly, Property Maintenance Coordinator

5 **File No:** I2022/750

Summary:

10 On 23 June the General Manager under delegated authority approved the use of the open tendering method to call for tenders for Contract 2022-1330 Cleaning of Council Administration Head Office for the purpose of establishing a contract to provide cleaning services to Council.

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulation 2021. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2022-1330.

15 The Request for Tender was advertised from 21 July to 11 August. Tenders were received from the following organisations:

- Advanced National Services
- Blueclean Property Services
- Clean Commercial Australia
- Command 51 Pty Ltd
- 20 • J Jansen & KJ Parsons
- Merfield Group
- Pickwick Group Pty Ltd
- SKG Commercial Cleaning
- Spick & Span Commercial Cleaning
- 25 • Storm International

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2021. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2022-1330.

RECOMMENDATION:

- 5 1. **That Council awards Tender 2022-1330 Cleaning of Council Administration Head Office to the preferred supplier identified in the tender evaluation report (Attachment 1 #E2022/58666).**
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 2021.**

10 **Attachments:**

- 1 Confidential - Request for Tender - 2022-1330 Cleaning of Council Administration Building - Evaluation Report, E2022/58666

15

Report

On 23 June the General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract 2022-1330 Cleaning of Council Administration head Office.

- 5 The contract is required to replace the previous cleaning contract which has expired.

The Request for Tender sought responses from proponents to provide cleaning services throughout the Head Office building on a daily basis, Monday to Friday each week, excluding public holidays.

- 10 The Contract is expected to commence in October 2022 for a period of three (3) years with an option of 2 x 1 year extensions.

The Contract will be managed by Len Reilly, Property Maintenance Coordinator

Tenders were advertised as follows:

Vendor Panel: 21 July to 11 August

Council website: 21 July to 11 August

- 15 An Evaluation Panel comprising of three (3) Council staff members was formed.

Tenders closed on 11 August and tenders were received from the following proponents:

- Advanced National Services
- Blueclean Property Services
- Clean Commercial Australia
- 20 • Command 51 pty ltd
- J Jansen & KJ Parsons
- Merfield Group
- Pickwick Group Pty Ltd
- SKG Commercial Cleaning
- 25 • Spick & Span Commercial Cleaning
- Storm International

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

- 30 *Compliance criteria:*
- a) Tenderer must have a valid Australian Business Number.
 - b) Substantial conformance to Conditions of Contract and Statement of Requirements.
 - c) Workers compensation insurance for all employees.
 - d) Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements.
 - 35 e) Satisfactory Work Health and Safety practices.
 - f) Commitment to ethical business practice principles.

Qualitative criteria:

Criteria	Elements
Profile and relevant experience	Tenderer profile
	Previous relevant experience
Quality and availability of resources	Proposed key personnel
	Proposed staff
	Use of subcontractors
Delivery Plan	Goods/services standards and methodology
	Implementation plan
	Opportunities for people experiencing disadvantage
	Employment Opportunities
	Environmental Practices
	Commitment to purchase supplies/services from NOROC business
	Supporting local business, social enterprise and Indigenous business
Price	Total contract price

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 Financial Considerations

The price basis for the contract is a lump sum. Council has budgeted \$112,500 per annum for this project. There is sufficient funding for the proposed contract in the current budget.

10 The awarded tenderer will be placed as a preferred supplier for other Council facilities as may be required. Additional service provision over the life of the tender may take overall expenditure over the General Manager's current delegations and therefore Council endorsement is sought.

Statutory and Policy Compliance Considerations

15 The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2021.

The Local Government (General) Regulations 2021 define the options available to Council. An extract is provided below.

Local Government (General) Regulation 2021 - Reg 178

Acceptance of tenders

5 178 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*

10 (b) *decline to accept any of the tenders.*

(1A) *Without limiting subsection (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 section 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted.*

20 (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 section 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.*

25 (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 section 167, 168 or 169, fresh tenders based on the same or different details,*

30 (c) *invite, in accordance with section 168, fresh applications from persons interested in tendering for the proposed contract,*

(d) *invite, in accordance with section 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*

35 (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.*

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(4) *If a council resolves to enter into negotiations as referred to in subsection (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 subsection (3)(b)–(d),*

5 (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).*

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

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Report No. 13.13 Local Approvals Policy 2022

Directorate: Sustainable Environment and Economy

5 **Report Author:** Stephen McCarthy, Building Services Coordinator
Kylie Grainey, Business Improvement Officer

File No: I2022/639

Summary:

10 A Local Approvals Policy allows for exemption to the requirement to obtain approvals under [Section 68 of the Local Government Act 1993](#) (the Act) for certain activities.

Under the Act, a local policy (other than a local policy adopted since the last general election) is automatically revoked at the expiration of 12 months after the declaration of the poll for that election.

15 The existing Local Approvals Policy has been reviewed and some minor amendments are proposed for Council's endorsement for public exhibition and adoption.

RECOMMENDATION:

20 **That:**

1. Council endorses the exemption provisions of the Draft Local Approvals Policy 2022 (#2022/13577).

2. The Draft Local Approvals Policy 2022 be placed on public exhibition for a period of 42 days.

25 3. **Where:**

a) no submissions are received, the Draft Local Approvals Policy 2022 is forwarded to the Departmental Chief Executive for consent to adopt the policy.

30 b) submissions are received, the Draft Local Approvals Policy 2022 and submissions are reported to Council for endorsement, prior to forwarding to the Departmental Chief Executive for consent to adopt the policy.

Attachments:

- 1 Draft Local Approvals Policy, E2022/13577 

5

Report

Council adopted the current [Local Approvals Policy](#) on 6 November 2018. The policy provides approval exemptions to simplify requirements under Section 68 of the Local Government Act 1993.

- 5 A review of a Local Approvals Policy is required under Section 165(4) of the Local Government Act, which states

“A local policy (other than a local policy adopted since the last general election) is automatically revoked at the expiration of 12 months after the declaration of the poll for that election.”

- 10 This report seeks Council endorsement of the Draft Local Approvals Policy (the policy) so it can be placed on public exhibition. If submissions are received it is recommended, the submissions and the policy will be reported back to Council for adoption. If no submissions are received, it will be adopted as exhibited.

- 15 The draft policy includes exemptions from the obtaining approval and therefore Section 162 of the Act requires the *Departmental Chief Executive’s consent to the adoption.*”

Following exhibition and adoption by Council, the draft policy would be forwarded to the Office of Local Government to for approval before it becomes effective.

The proposed changes to the current policy are highlighted in **Attachment 1 and are not substantive**. They include updating legislation, corrections, and other minor changes.

20 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.1: Leadership - Enhance leadership effectiveness, capacity, and ethical behaviour	1.1.1.1	Coordinate Council's annual policy review program, update and publish adopted policies

Legal/Statutory/Policy Considerations

A Local Approval Policy will reduce the need for the community to obtain certain approvals and assist the community by providing information and guidance on where approvals are required.

5 Financial Considerations

There are no financial considerations.

Consultation and Engagement

The draft Local Approvals Policy will be placed on public exhibition for 42 days.

Report No. 13.14 Request to use Denning Park by Byron Music Festival (part of Crown Reserve 82000)

Directorate: Sustainable Environment and Economy

Report Author: Alice Heasman, Events Officer
Sharyn French, Manager Environmental and Economic Planning
Shannon McKelvey, Executive Officer

File No: I2022/1105

Summary:

Council staff have received a submission from the event organisers of Byron Music Festival, requesting the use of Denning Park, Byron Bay (part of Crown Reserve R82000) for the Byron Music Festival (BMF) event on 17 June 2023 (Attachment 1).

Staff have been in communication with the BMF organisers, and several meetings have been held to discuss next steps and alternative sites, as Denning Park was only granted a one-off approval for their 2021 event:

Res 21-183 (relevant part), that Council makes clear that this event in this location being free of alcohol restrictions is a one-off and in no way to be relied upon as a precedent.

In February Council resolved that until a Plan of Management was made for Denning Park that commercial events such as BMF would be refused as they are inconsistent with the reserve purpose, exclude members of the public from using the reserve and involve liquor licencing.

Res 22-057 (relevant part):

1. Pending adoption of a new Plan of Management, Council as Crown Land Manager will not issue temporary licences for use of the Main Beach Reserve for activities that:

- (a) are inconsistent with the gazetted purpose of Public Recreation,
- (b) are of an enclosed commercial nature (except as referred to in part 2)
- (c) involve liquor licencing, and/or
- (d) exclude members of the public from free use of the Reserve.

Activities of a commercial nature or that are inconsistent with a reserve purpose, cannot be authorised by Council as Crown Land Manager. However, they can be authorised by the Minister under the Crown Lands Management Act. The BMF organisers approached Crown Lands who advised the applicants (Attachment 2):

‘It appears that your proposal for a festival which is commercial and would exclude the public from free use is not supportable by Council. We note that the proposal is

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inconsistent with the Reserve purpose (Public Recreation). In this, DPE – Crown Lands will not look to step in and Licence an activity that is at odds with the Crown Land Manager's intentions and management of the Reserve'.

5 Council has received an increased number of enquiries from other event organisers wanting to use Denning Park, since the 2021 BMF event. In discussion with these organisers, and acknowledging Council's resolved position, these event organisers have reshaped their events and/or are using other locations.

10 BMF propose to run the event based on the model of the 2021 event. Staff have encouraged BMF to look at alternative sites and or to reshape their event to fit within the requirements of Denning Park. Regardless BMF organisers have requested the use of Denning Park for a 2023 event knowing the sites limitations and existing Council resolutions.

15 This report tables the BMF organisers request to use Denning Park given Council's resolved position.

RECOMMENDATION:

That Council confirm Res 22-057 that:



- 20 1. **Pending adoption of a new Plan of Management, Council as Crown Land Manager will not issue temporary licences for use of the Main Beach Reserve (R82000) for activities that:**
- (a) are inconsistent with the gazetted purpose of Public Recreation,
- (b) are of an enclosed commercial nature (except as referred to in part 2)
- 25 (c) involve liquor licencing, and/or
- (d) exclude members of the public from free use of the Reserve.
- 30 2. **Council will continue to manage Low-Impact Commercial Recreation Activities on Main Beach Reserve consistent with Licence RI564194 and Council's adopted Policy *Commercial Activities on Coastal and Riparian Crown Reserves*.**
3. **That the Byron Music Festival (BMF) organisers be advised of the above.**

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Attachments:

- 1 Byron Music Festival Submission Request for use of Denning Park, E2022/82171 
- 2 Music Festival proposal - request for consideration by DPE - Crown lands to Licence -
5 Reserve 82000, Byron Bay_Redacted, E2022/85324 
- 3 Confidential - Legal Advice - Commercial Activities on Denning Park, E2022/10763

Report

Council has received a request from the Byron Music Festival (BMF) event organiser to use Denning Park (part of Crown Reserve 82000) for their second event in 2023, Attachment 1. Verbally they have advised their intention is for the event be an annual event at Denning Park.

This matter is being reported to Council as:

- Council endorsed (**Res. 21-183**) the use of Denning Park on a one-off basis for the BMF 2021 event,
- Council has since resolved (**Res. 22-057**) to hold no further events of this nature on Denning Park until the Plan of Management is adopted, and
- the BMF organisers have stated that they do not want to use alternative locations or change the format of their event to be consistent with the legal requirements that apply to the Reserve.

Background:

The BMF 2021 event was reported to Council on four occasions due to significant ongoing changes to the initial proposed event and a request to waiver fees:

- 25 February 2021 - this [report](#) sought Council endorsement for staff to issue a temporary licence for the BMF to take place as a commercial activity but open to the public (**Res 21-040**).
- 13 May 2021 – a [report](#) on the significant changes to the original proposed event including making the event a ticketed event and fencing off Denning Park, meaning it was no longer a free community event (**Res 21-198**).
- 10 June 2021 - a [mayoral minute](#) was considered on further changes to the event as the organisers wanted to include the sale and consumption of alcohol within Denning Park, rather than at private venues. Council also made it clear that this event in this location being free of alcohol restrictions is a one-off and in no way to be relied upon as a precedent (**Res 21-183**).
- 23 September 2021 - a [report](#) on a request from the organisers to reduce Council fees for the use of Denning Park. The fees were reduced from \$10,212 to \$4,086 (a reduction of \$6,126) (**Res 21-408**).

Additionally, Council considered a further [report](#) on the use of Denning Park for commercial activities at the 24 February 2022 meeting.

In Council's role as Crown Land Manager and Licensee, Council must manage the Reserve to:

1. be consistent with the Crown Reserve's gazetted purpose of Public Recreation; and
2. permit only activities that do not change the nature or use of the Crown Reserve (from what it has historically been used for).

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Council regularly gets requests to use Main Beach Reserve for a variety of activities. Requests for public recreation activities that are consistent with the historical use of the Reserve may be licenced by Council. However, the Reserve should not be used for activities of an enclosed commercial nature or that would change the nature and use of the reserve.

As such Council resolved (**Res 22-057**, relevant part):

1. Pending adoption of a new Plan of Management, Council as Crown Land Manager will not issue temporary licences for use of the Main Beach Reserve for activities that:
 - (a) are inconsistent with the gazetted purpose of Public Recreation,
 - (b) are of an enclosed commercial nature (except as referred to in part 2)
 - (c) involve liquor licencing, and/or
 - (d) exclude members of the public from free use of the Reserve.

If an activity is of a commercial nature or inconsistent with a reserve purpose, it cannot be authorised by Council as Crown Land Manager, however, they can be authorised by the Minister under the Crown Lands Management Act (CLMA).

The BMF organisers requested Crown Lands to licence their event, and Crown Lands have advised the applicants (Attachment 2):

'It appears that your proposal for a festival which is commercial and would exclude the public from free use is not supportable by Council. We note that the proposal is inconsistent with the Reserve purpose (Public Recreation). In this, DPE – Crown Lands will not look to step in and Licence an activity that is at odds with the Crown Land Manager's intentions and management of the Reserve.'

Since the BMF 2021 event the interest in Denning Park for commercial activities by other event organisers has grown. In discussion with these organisers, and acknowledging Council's resolved position, these event organisers have reshaped all or parts of their event to be consistent with the reserves purpose and/or are using other locations.

Staff have held several meetings with the BMF organisers to discuss alternative sites for their 2023 event, key issues, constraints, and potential approval pathways on each.

The Byron Events Farm and North Byron Parklands had been suggested as the most appropriate alternative sites. They both have relevant approvals and event infrastructure in place for an event of the BMF size to take place. They also fit the following requirements the BMF event is looking for: able to ticket the event, fence, sell and consume alcohol. However, these sites are not in the Byron Bay CBD and therefore don't align with the BMF organisers event model.

The Cavanbah Centre was also considered, though current approvals on this site do not provide for outdoor music events of a size proposed by BMF (3000 – 4000 people).

To this end, staff have commenced work point 5 of Resolution 22-288 '*... That council do further work to clarify the DA and tenure issues around local potential sites capable of hosting events of various sizes.*'

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A further report to Council on this will be presented at a future Council meeting to consider inter alia the ability to expand event use at the Cavanbah Centre.

- 5 Staff have encouraged BMF to look at alternative sites private land and/or to reshape their event to fit within the requirements of Denning Park. Regardless BMF organisers have requested the use of Denning Park for a 2023 event knowing the sites limitations and Council's current resolved position. BMF organisers have verbally advised of their intention that BMF be an annual event.

Next steps

- 10 Council's resolutions on the approval to use Denning Park for the BMF event in 2021 was clear that it was for a one-off event and in no way to be relied upon as a precedent.

Additionally, Council resolved that events of this nature will not be considered until a Plan of Management for the park is adopted. Options in relation to preparation of the Plan of Management were included in the [report](#) considered by Council in February 2022.

- 15 Council has two key legal obligations which are to ensure the activities that Council authorises on the Crown Land Reserve:

- are only for the purposes Public Recreation (unless there is a DPIE-Crown Land exemption); and
 - do not change "the nature or use" of the Reserve (unless there is a Minister-approved Plan of Management in place that gives Council permission to make the change).
- 20

Legal Counsel advice, which was reported to the 22 February 2022 meeting, is provided for ease of access in Confidential Attachment 3. Council can consider moving into confidential session under s10A(2)(g) if Council wants to discuss the privileged legal advice.

- 25 Council can:

1. Maintain Council's current resolved (Res. **22-057**) position that pending adoption of a new Plan of Management, commercial events such as BMF would be refused as they are inconsistent with the reserve purpose, exclude members of the public from using the reserve and involve liquor licencing.
- 30 2. Determine:
 - BMFs request to hold their 2023 event on Denning Park so long as it is consistent with the Reserve's Public Recreation purpose, does not involve elements of an enclosed commercial nature and does not change the existing nature and use of Main Beach Reserve;
 - 35 • issue a temporary licence to Byron Music Festival and decide what the licence conditions will be to ensure legal requirements are satisfied, with clarification whether that will include lifting of alcohol prohibitions; and
 - treat other applications for events of a similar nature the same in future.

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3. Reject the advice provided that the BMF event does not meet the statutory requirements that apply at Denning Park and determine to issue a temporary licence to BMF and decide what the licence conditions will be.
4. Apply to DPE – Crown Lands for an additional Commercial Activities licence that would authorise commercial events of the type proposed by BMF and if that licence is issued to Council, issue a temporary sub-licence to BMF and decide what the licence conditions will be (which will have to be consistent with the head licence conditions).

Whatever decision Council makes, it must be willing to make the same decision for similar events by other proponents at Denning Park.

If Council supports BMFs request, then the next steps will be for the event organisers to lodge their final event application in accordance with the above with no major changes to be made throughout the approval process. If Council supports option 4., staff will urgently prepare and make an application for the licence. How long the process will take will depend on the resources that are available within DPE-Crown Lands to consider the application. There could be no guarantee that the process would be completed by the date BMF have identified as their preferred next event.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.1: Foster opportunities to express, celebrate and participate in arts and cultural activity	2.1.3: Events and festivals - Support and enable arts & cultural activity, festivals, projects, and events	2.1.3.8	Administer licences for weddings, events, activities and filming on council and crown land
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.1: Foster opportunities to express, celebrate and participate in arts and cultural activity	2.1.3: Events and festivals - Support and enable arts & cultural activity, festivals, projects, and events	2.1.3.9	Collaborate with government, agency and industry on policy and legislative reforms

Recent Resolutions

Council passed the following resolutions relating to the Byron Music Festival:

21-040 Resolved:

- 5 1. That Council grants a temporary licence in accordance with section 2.20 of the Crown Land Management Act for the purpose of Entertainment, Exhibition and Markets to the Byron Music Festival between Friday 18 June 2021 and Monday 21 June 2021 for occupation of Denning Park.
2. That the granting of the temporary licence be subject to receipt and favourable assessment of a full Event Application including:
 - 10 a. management of environmental risks on the site with consideration to the dune areas
 - b. financial structure and management of the event.

21-183 Resolved:

- 15 1. That any restrictions affecting the sale and consumption of alcohol in that part of Denning Park Byron Bay highlighted in red in the following aerial be suspended for the duration of the Byron Music Festival on 19 June 2021.



2. That the Police and any other relevant authorities be notified of Council's resolution.
- 20 3. That Council makes clear that this event in this location being free of alcohol restrictions is a one-off and in no way to be relied upon as a precedent.

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21-198 Resolved:

That Council grants a temporary licence in accordance with section 2.20 of the Crown Land Management Act for the purpose Entertainment, Exhibition and Markets to the Byron Music Festival for Saturday 19 June 2021 for occupation of Denning Park, subject to:

- 5 1. All market stalls on the beachside of the existing pathway to be moved back, a minimum of 10m from the timber fence, in line with the pathway, with the area between the back of stalls and the timber fencing to be back of house only, with no general public access;
- 10 2. Market stalls requiring vehicles integral to stall operation, are to be located on the south side of the path;
3. The proposed 'world stage' is to be relocated away from the dune edge to the south side of the path.
4. A limit of 3,000 people being imposed on the Denning Park site.

15 **21-408 Resolved** (relevant part):

- 20 4. Council recognises this unique event and the circumstances in which it took place and supports a reduction of fees as per option 2 in the agenda: The reduction of fees includes the private rate for the event day only, and standard rate for the set up and pack down event days, when tickets were not required to enter the location. The Temporary Licence for Activity on Crown Reserve fees would then reduce from \$10,212 to \$4,086 (a reduction of \$6,126). This reduced fee combined with the other fees would equate to a total fee payable to Council of \$6,894.

Council passed the following resolutions relating to the use of R82000:

25 **22-057 Resolved:**

- 30 1. Pending adoption of a new Plan of Management, Council as Crown Land Manager will not issue temporary licences for use of the Main Beach Reserve for activities that:
 - (a) are inconsistent with the gazetted purpose of Public Recreation,
 - (b) are of an enclosed commercial nature (except as referred to in part 2)
 - (c) involve liquor licencing, and/or
 - (d) exclude members of the public from free use of the Reserve.
2. Council will continue to manage Low-Impact Commercial Recreation Activities on Main Beach Reserve consistent with Licence RI564194 and Council's adopted Policy *Commercial Activities on Coastal and Riparian Crown Reserves*.

Legal/Statutory/Policy Considerations

Byron Shire Council adopted *Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves*

Section 4 of Council's Policy *Commercial Activities on Coastal and Riparian Crown*

- 5 *Reserves* defines what activities Council has determined may be carried out on a coastal Crown reserve without requiring the issue of a temporary licence. These activities are:
- Emergency Services performed by recognised Emergency Service Organisations;
 - Social Gatherings;
 - Spreading of Ashes; and
 - 10 • Volunteer Rescue Organisations – Training Days.

Section 5 of the Policy outlines what activities Council may issue a temporary licence over this area for. These activities are:

- Sporting Events – Organised
- Educationally based community activities
- 15 • Fundraising activities by Registered Charities
- Political Functions
- Religious Functions
- Weddings

Crown Land Management Act and Local Government Act

- 20 Denning Park, which is part of Crown Reserve R82000, must be managed in accordance with the Crown Lands Management Act (CLMA) and Regulations, which in turn requires compliance with the public land provisions of the Local Government Act 1993 (LGA).

Some of the key provisions include:

- 25 • s2.12 CLMA – Crown land may only be used for its gazetted purpose/s or as expressed authorised by or under the CLMA
- s2.14 & 2.15 CLMA – Minister can add to or alter a Reserve's Purpose but Minister must be satisfied that the change is consistent with the objects of the CLMA and in the public interest
- 30 • s2.18 CLMA – Minister can grant a lease or licence for any purpose considered to be in the public interest (regardless of whether it is inconsistent with the reserve purpose).
- s2.20 CLMA – Regulations can allow short-term licences over Crown Land
- 35 • Clause 31 Crown Land Management Regulations – prescribes the purposes for which a short-term licence can be granted, for example entertainment, exhibitions, functions, sport and recreation, events and markets. (NB this is still subject to the need for consistency with Reserve purpose because the prescribed list also includes for example, camping, holiday accommodation or military exercises.)
- Part 3 CLMA – covers many aspects of 'Management of Crown Land', including Functions of Crown Land Managers and Plans of Management.
- 40 • s44 LGA – use of community land pending adoption of a Plan of Management
- Part 2 Chapter 6 LGA – use and management of community land

Legal Counsel advice which was reported to the 22 February 2022 meeting is provided for ease of access in Confidential Attachment 3.

Financial Considerations

- 5 If Council supports BMFs request to hold their 2023 event in Denning Park, then the organisers will be charged for the event in accordance with Council's adopted fees and charges.

Consultation and Engagement

Staff have been in discussion with BMF on their request.

Report No. 13.15 PLANNING - DA10.2021.827.1 - Byron Bay Community Market

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 **File No:** I2022/1186

Proposal:

DA No:	10.2021.827.1		
NSW PP	PAN-174206		
Proposal description:	Community Market to be held Monthly, with Option of Twice a Month in December and January		
Property description:	Lot 2 DP 827049, Part Lot 4729 DP 1228104, Lot 3 DP 827049, Part Lot 1 DP 1001454, Lot 1 DP 1001454, Part Lot 392 DP 728539, part Lot 393 DP 728539 and Part Johnson Street Road reserve.		
	Jonson Street, Butler Street, 2 Lawson Street, 88 Jonson Street, 86 Jonson Street BYRON BAY		
Parcel No/s:	187200, 268546, 187210, 233960, 237977, 129710, 160320		
Applicant:	Planit Consulting		
Owner:	Byron Shire Council		
Zoning:	RE1 Public Recreation, SP2 Infrastructure (Rail Corridor), SP2 Infrastructure (Car Park), B2 Local Centre and DM (Deferred Matter) under Byron LEP 2014.		
Date received:	20 December 2021		
Integrated / Designated Development:	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
Concurrence required	Yes –CNR-33511 Heritage NSW General Terms of Approval provided		

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Public notification or exhibition:	<ul style="list-style-type: none">– Level 2 advertising under Council's Community Participation Plan.– Exhibition period: 10/01/2022 to 06/02/2022– 17 Submissions received:– Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Estimated cost	\$73,000.00
Assessment Officer	The application was assessed by Consultant Planner Kellie Shapland
Delegation to determine	Council
Issues	Traffic and parking Closure of part of Johnson Street Heritage considerations Management/operational matters for stall holders

Summary:

Development Consent is sought to hold the Byron Bay Community Market monthly at Railway Park and Jonson Street, with an option for two additional markets in December and January. The markets traditionally have been held at the Butler Street Reserve but were moved to Main Beach while the Butler Street/Byron Bay Town Centre bypass was being constructed. The Butler Street reserve is no longer considered suitable for the markets to return to due to site contamination issues which are yet to be resolved.

The proposal seeks consent for 300 hundred stalls which will be sited in the railway corridor, Railway Park and a section of closed road in Jonson Street. The matter was reported to the Local Traffic Committee on the 12 August 2022, where support for the proposal was given. Council received 17 submissions raising various issues including the lack of consultation, return the markets to Butler Street reserve, impacts on businesses, the need for a 12-month trial, impacts on Railway Park and noise impacts. In response it is considered the site is suitable for the monthly markets, and conditions of consent are recommended to address potential impacts that might arise. In terms of closing Jonson Street, it is recommended the Traffic Management Plan be reviewed annually or more often if required by Council. NSW Police or Transport for NSW to respond to issues that might arise.

The application is recommended for approval subject to conditions of consent.

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NOTE TO COUNCILLORS:



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

10 RECOMMENDATION:

Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.827.1 for Byron Bay Community Market to be held Monthly, with Option of Twice a Month in December and January, be granted consent subject to the conditions in Attachment 2 (#E2022/85389).

15

Attachments:

- 1 10.2021.827.1 - Proposed Byron Market Plans, E2022/83717 
2 10.2021.827.1 - Proposed Conditions of Consent, E2022/85389 
20 3 Confidential - 10.2021.827.1 - Submissions, E2022/83716

Assessment:

INTRODUCTION

History/Background

The Byron Bay Community Market has been operating from Denning Park Reserve at Main Beach foreshore since 2019, when it was temporarily moved from Butler Street Reserve due to works on the Byron Bay bypass project. The location at Main Beach was not intended as a permanent location and Byron Shire Council is now seeking development consent to relocate the community markets for the longer term to within the railway corridor, Railway Park, and Johnson Street Road reserve, Byron Bay (the Railway Precinct).

Relocation of the markets back to the Butler Street reserve is not possible currently due to site contamination issues at the reserve.

The original Butler Street Reserve markets had 360 stalls and the Denning Park Markets has 290 stalls. The current proposal is for 300 stalls.

The proposal includes the temporary closure of part of Johnson Street between Marvel and Byron Streets between 5am and 5pm on market days. This matter was considered by the Local Traffic Committee at their meeting of 12 August 2020 where it was resolved:

That the Local Traffic Committee recommend that Council support:

1. *The temporary road closure in principle to facilitate the Byron Community Markets and to allow the Development Application to be considered.*
2. *Further reporting to the Local Traffic Committee prior to first event and annually thereafter.*

Description of the proposed development

Overview

This application seeks approval to relocate the Byron Bay Community Market from Denning Park Reserve to land within the railway corridor, Railway Park, North Johnson Street car park and the railway forecourt.

The subject site is shown on **Figure 1**.

Key aspects of the proposal include:

- Markets to be held monthly, with the option of twice a month in December and January.
- A maximum of 300 stalls with associated market management and facilities. The stalls are proposed to be located within Railway Park, the railway corridor, the railway forecourt area and the North Johnson Street parking area. The location of the proposed stalls is illustrated on the plans attached to this report and **Figure 2** below.
- Closure of part of Johnson Street Road Reserve between Marvel and Byron Streets.

- Parking is proposed within the western section of Butler Street Reserve (refer **Figure 1 and 3**).

Water and power are available on site for up to 40 market stalls. The serviced markets stalls are located in Railway Park, near the Butler Street walkway entrance and through the northern section of the railway corridor.

The market does not include any permanent structures. Market stalls, portable toilets, tables and seating and additional bins are proposed and will be removed at the end of market events.

Management Plan

A Preliminary Plan of Management has been submitted. It identifies the following key operational matters:

- *Hours of operation:*
 - Trading hours are 8am to 3pm.
 - Bump in hours 5-8am
 - Bump out hours 3-5pm
- *Stall holder parking:* Stall holders will be directed to unload in tranches and park off site at the western end of the Butler Street Reserve. Market ground staff will manage and monitor stall holder parking in this location. Market management will collect parking data, including vehicle counts and movements, to assist with ongoing management and monitoring
- *Visitor parking:* Market visitor parking available at:
 - Existing car parks at Main Beach, Lawson Street North, Byron Street, Middleton and Railway car parks
 - On street parking in the surrounding streets, including: Bay St, Lawson St, Fletcher St, Jonson St, Somerset St, Shirley St, Wordsworth and Burns Streets.
- *Road closure:* Road closure management includes:
 - Installation of roadblock barriers to be installed from 5am and be completed and in place by 7.30am.
 - Road barriers are to be installed, managed for the full duration of the markets and removed by suitably qualified/authorised traffic management providers.
 - Road Barriers are to be easily moveable for Emergency Vehicle access if/when required.
 - Road Barriers are to be removed efficiently, safely, and quickly upon the closure of the Markets.
- *Stall holder access:*
 - May access the site from 5am and are to be fully set up for operation, with vehicles removed to the allocated stall holder parking area by 8:00 am.

- Must be setup within the allocated stall space only and not blocking pedestrian access.
- Vehicle movements to the stall site must ceased by 7:45am, for the duration of the market, which is until 3:15pm.
- 5 ○ May begin pack down from 3pm. All equipment and marquees are to be packed down before bringing their car onto the site.
- No vehicles will be allowed to access the market stalls before 3:15pm.
- Maximum vehicle speed when in site is 5km (a slow walking pace)
- Vehicles entering the site must be under the guidance of market traffic staff

10 Pedestrian Access

The site has pedestrian connections from the Butler Street Reserve, through the new walkway, Short Street and to Byron Street. Pedestrian access is also available from the Jonson Street carpark in the north, the Butler Street Bus Interchange and walkway to the west, the Railway Hotel car park to the south and permeable access to Jonson Street to the east.

Pedestrian access is illustrated on **Figure 4**.

Vehicle parking and access

20 The Statement of Environmental Effects indicates that: *Vehicle parking is able to be accessed from the Lawson Street, Main Beach, Jonson Street, Byron Street, Middleton and Bay Street carparks which are all located within an 800m walking catchment of the market footprint. The markets will partly extend into the Railway Hotel car park and Jonson Street carparks, however, these car parks will remain accessible. On street parking is available on Lawson Street, Fletcher Street, Jonson Street, Somerset Street and Shirley Street.*

25 *Additionally, the site is immediately adjoining the Byron Bay Bus interchange and the Byron Solar Train station. Parking is available at the North Beach Solar Train Station for travel into the town centre on the solar train. Refer to **Figure 4** for the access context plan.*



Figure 1 – Subject Site (the market footprint is shaded orange and the parking area is white)

5

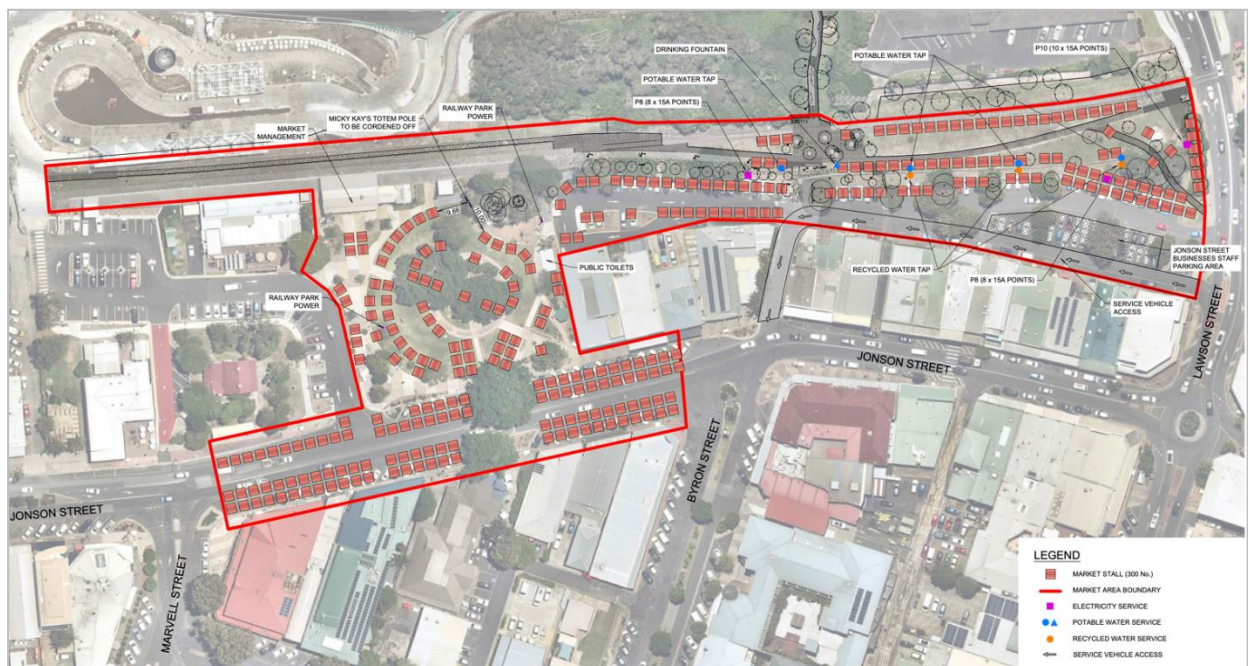


Figure 2 – Location of proposed stalls (source: Planit Consulting)

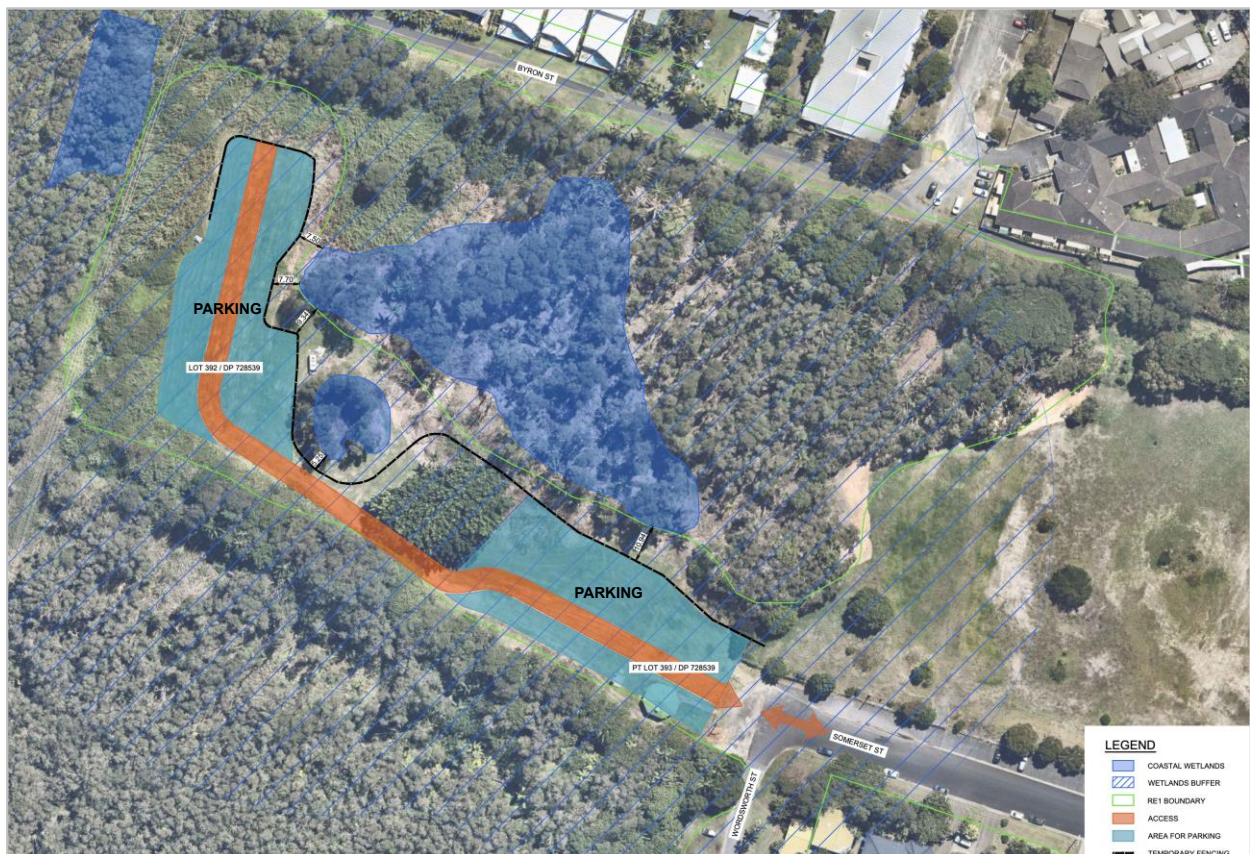


Figure 3 – Car Parking Plan (source: *Planit Consulting*)



Figure 4 – Access context plan (source: Planit Consulting)

Description of the site

- 5 The site of the proposed relocated community market is east of the former rail line, from the Station Building in the south to Shirley Street in the north and includes the Railway Park. The market borders the car park adjacent Railway Park and Lawson Street (adjacent the railway corridor). Both car parks will remain open.
- 10 The market also proposes the temporary closure of part of Jonson Street, between Marvell Street and Byron Street for the market events.
- Parking for stall holders is to be provided in the western portion of the Butler Street Reserve, within existing cleared areas of the site.
- 15 The proposed market site is relatively flat. There are some grade changes to the western boundary in association with the rail lines. There are some scattered trees throughout the site, which are to be retained.

Land is legally described	<p>Lot 2 DP 827049, Part Lot 4729 DP 1228104, Lot 3 DP 827049, Part Lot 1 DP 1001454, Lot 1 DP 1001454, Part Lot 392 DP 728539, part Lot 393 DP 728539 and Part Johnson Street Road reserve.</p> <p>This market and parking footprint includes the following land</p>
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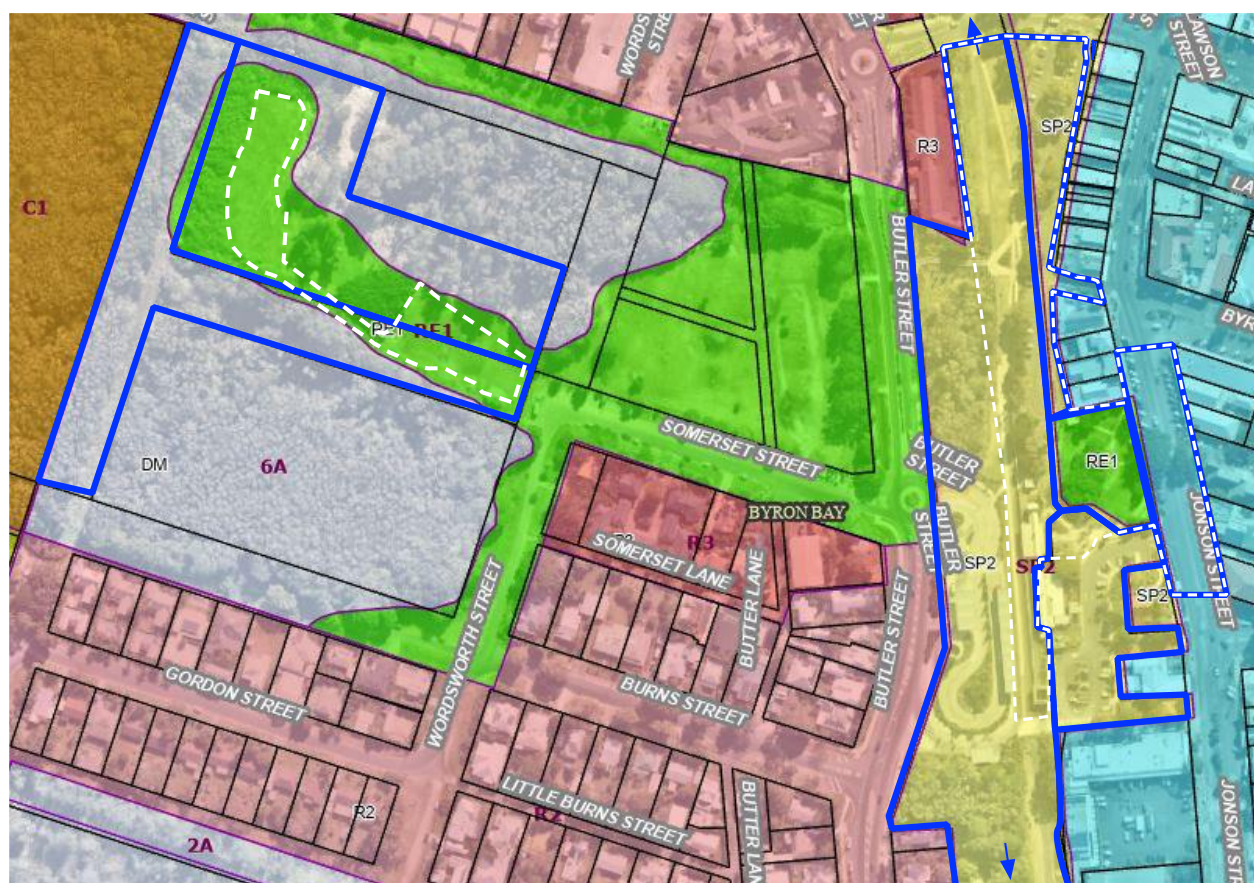
	<p>parcels, as shown on the site plan in Figure 1:</p> <ul style="list-style-type: none"> • Lot 2 DP 827049 (Railway Park) • Part Lot 4729 DP1228104 (railway corridor) • Part lot 3 DP 827049 (North Jonson Street car park) • Part Lot 1 DP 1001454 (Railway forecourt) • Jonson Street Road reserve between Marvell and Byron Streets • Part Lot 392 and part Lot 393 DP 728539 (car parking).
Property address	Jonson Street BYRON BAY, Butler Street BYRON BAY, 2 Lawson Street BYRON BAY, 88 Jonson Street BYRON BAY, 86 Jonson Street BYRON BAY
Land is zoned:	<p>The 'Subject Site' is zoned RE1 Public Recreation, SP2 Infrastructure (Rail Corridor), SP2 Infrastructure (Car Park), B2 Local Centre and DM (Deferred Matter) under Byron LEP 2014. The DM is zoned 6A Open Space under Byron LEP 1988.</p> <p>The markets only affect the land zoned RE1 Public Recreation, SP2 Infrastructure, SP2 Car Park and B2 Local Centre under Byron LEP 2014.</p> <p>Refer to Figure 5 for the zoning plan.</p>
Market/parking area is constrained by:	<p>Flood Liable Land</p> <p>Acid sulfate soils Class 3</p> <p>Bushfire prone land</p> <p>Erosion precinct 3</p> <p>Flooding</p> <p>High Environmental Value Vegetation 2021</p> <p>Byron Coast Comprehensive Koala Plan of Management 2016</p> <p>Key fish habitat</p> <p>Wildlife corridors</p> <p>Coastal wetlands 100m buffer</p> <p>The site contains the heritage listed Byron Bay Railway Station and Yard Group (item I078), which is of State significance, is within the curtilage of the State Heritage Register Curtilage, and is partly within of the Railway Precinct Heritage Conservation Area, of local significance as listed in the Byron Shire LEP 2014.</p>
<div>Is a BDAR required due to the location of the</div> <div> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> </div>	

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proposed development?	No
Are there any easements in favour of Council affecting the site? Easement for water supply over Lot 1 DP 1001454 – no impact for temporary stalls	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



5 **Figure 5** – Zoning (The 'subject site' is shown with a blue outline and the approximate market and parking envelope is shown with the white dashed line. The blue arrows indicate that the lot extends further to the north and south. The proposed development is located within zones RE1 Public Recreation, SP2 Infrastructure (Rail Corridor), SP2 Infrastructure (Car Park) and B2 Local Centre under Byron LEP 2014).

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SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions. The proposed development does not generate additional loading on Council's Water, Bulk Water and or Sewer systems beyond the existing ET entitlements.
Natural Resource Planner	No objections subject to conditions.
Resource, Recovery and Quarry	No objections subject to conditions.
Bush Re-generation	No objections if the car parking area does not include any of the existing bushland.
Heritage Consultant	No objections. Refer to report titled ' <i>Heritage Referral DA 10.2021.827.1 Community Markets Railway Park and Jonson St Road Reserve, Byron Bay</i> ', dated January 2022. The report concludes: <i>I concur with the findings of the SOHI that the proposed development will not have an adverse impact upon the assessed significance, setting or fabric of the State listed Railway and Yard Group, and the Heritage Conservation Area. The proposed use will enhance an active public use of the precinct and community spaces.</i>
Local Traffic Advisory Committee	The Local Traffic Committee, at their meeting of 12 August 2022, considered a report on the proposed temporary closure of Johnson Street for the markets. At this meeting the Committee recommended: <i>That Council support:</i> <i>1. The temporary road closure in principle to facilitate the Byron Community Markets and to allow the Development Application to be considered; and</i> <i>2. Further reporting to the Local Traffic Committee prior to first event and annually thereafter.</i> Conditions of consent to reflect these comments

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Referral	Issue
Transport for NSW	<p>The application was referred to TransportfNSW. Comments made relate to TfNSW role as the rail authority of the Country Rail Network. See below for discussion.</p> <p>No comments were made with respect to traffic and transport matters however, a representative of TfNSW sits on the Local Traffic Committee and their comments are considered as part of the committee meeting.</p>
Essential Energy	No objections – Comments included in the notes to the proposed conditions.
Heritage NSW	General Terms of Approval issued by the Heritage Council of NSW.

Issues:

Development Engineer

Parking:

5 The proposal requires 750 parking spaces to cater for 300 market stalls based on Council's DCP 2014 parking rates at 1 parking space per 2.5 stalls.

10 The existing market is in Denning Park Reserve and utilises the existing road and parking infrastructures in the surrounds. Similarly, the new site is located approximately 400m southwest of the existing site and proposes to utilise the existing parking infrastructures in the surrounds. A parking survey was conducted to verify the availability and utilisation of parking within the surrounds during a Market Sunday and a non-Market Sunday to offset parking requirement of the DA. The peak period surveyed ranged from 8:00-11:00am to all carparks within 800m radius.

15 The survey results found that there is less than a 10% fluctuation in parking demand between market Sunday and non-market Sunday and the total parking spaces available were not all utilised, rather the typical demand for parking was approximately 60%, leaving availability of approximately 40%, which is sufficient for day-to-day operation of a CBD as an occupancy of approximately 85% or below is ideal.

20 The car parking locations in the survey were assessed to verify practicality for market patrons to walk between the parking areas and the Market. The assessment found that Lawson St carpark with 166 parking spaces is approximately 1 km away, Lawson St (South Carpark) with 100 spaces is utilised by market stalls and the Jonson St parking with 25 142 spaces only have 50% parking spaces available as 50% is utilised by market stalls. These parking areas were discounted with a total reduction of 337 spaces.

30 The available parking in the surrounds is 752 spaces. This equates to 380 spaces utilised at 8AM, 429 spaces at 9am, 511 spaces at 10AM and 558 spaces at 11AM.

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The parking supply complies with the parking supply requirement in Council's DCP, and utilisation rates is approximately 60%. The parking supply and utilization rates will cater for the parking demand during a Market Sunday. The remainder 40% will accommodate the Sunday operation of the business in the surrounds.

5

Parking is considered satisfactory for the proposal.

Traffic:

10 The parking demand is directly proportional to the traffic generated by the Markets. The recorded parking utilization increase between a Market and non-market Sunday is 10% and the current parking demand is lesser than the available parking spaces. The traffic generated by the Markets generates will generally merge into the existing traffic stream with minimal impact to the surrounding road infrastructure network.

15

Temporary Road Closure:

20 The proposal includes a temporary road closure of Jonson St next to Railway Park, between Marvell and Byron Streets, to vehicles on monthly market days and the use of the western section of the Butler Street Reserve for stall holder parking.

25 The road closure will impact the existing businesses near and adjacent to the Market site as access is restricted and customer parking will be unavailable during the Market Sunday. Although there are restrictions generated by the closure of Jonson St, the adjacent businesses will also attract new customers from the Markets.

30 The customers of the businesses operating adjacent to the Market during a Market Sunday will be impacted by the road closure due to the unavailability of the parking adjacent to the businesses, however it is considered there is ample parking in the area to cater for the Market patrons and the patrons of the adjacent businesses operating during Market Sunday.

35 Traffic Management Plan (TMP) for the Byron Community Market

The TMP and associated Traffic guidance Scheme (TGS) must provide measures to ensure safety and efficiency of vehicular and pedestrian traffic are maintained before, during and after the Market Sunday for the following:

- 40
- Rerouting of traffic due to the temporary road closure of a section of Jonson St
 - Provide a convenient, safe and appropriate environment for pedestrians
 - Minimise effects on pedestrian movements and amenity.
 - Manage and control vehicular movements to and from the site.
 - Maintain current on street parking in the vicinity of the site where practical.
- 45
- Maintain access to other properties adjacent to the site.
 - Maintain safety for all market goers, stall owners and Market staff.

The submitted TMP provided the following measures to address parking and traffic impacts

- Encouragement for market attendees to utilise active transport modes (walking and cycling).
- 5 • Encouragement for market attendees to utilise public transport modes
- Stall holder arrivals and departures to be staggered in the bump in/bump out hours before and after the community market, to reduce vehicle congestion and improve road and pedestrian safety.
- 10 • Stall holders park off-site where possible, with allocated parking for the stall holders to be made available nearby such as at the western end of Butler Street Reserve
- The provision of multiple pedestrian entries to the markets to manage congestion which could occur at a single-entry point.
- Signage to assist market visitors.
- 15 • During peak times of the market, traffic should be directed to take a longer route through the town centre to access the site, resulting in less congestion closer to the site.

20 A condition is proposed requiring a Traffic management Plan to be approved under the Roads Act prior to the first event and for it to be reviewed and updated annually or earlier if directed by council, NSW Police or transport for NSW if traffic issues arise.

Environmental Health Officer

25 *Contamination: Council's EHO advised that: Given that the area of the railway corridor proposed to be used for this development was assessed for contamination at health Investigation levels HIL C (public open space1), subsequently. remediated and validated and that the area affected was capped after remediation and now has an elevated pedestrian boardwalk above, the likelihood of market stall holders, customers, and any pedestrians interreacting with soils and being subsequent affected is very low.*

30 *Other parcels are either road reserve or have prior approvals as public open space.*

It is noted that the assessment did not include an assessment of contamination from radioactive sands know to have been used in the surrounding locality for fill. However it is also noted in the preliminary assessment that the railway corridor area subject to this development proposal site was still in use as railways yards up to, including and after the
35 *radioactive sand industry existed in Byron Bay and as such it is considered unlikely that the site received sand mining by-product for fill purposes.*

The proposal is therefore satisfactory with respect to contamination.

Waste management: a (solid) waste management plan has been provided that is satisfactory and included as a plan in conditions.

40 Natural Resource Planner

Biodiversity Values Map: The Biodiversity Values Map contains mapped areas close to the proposed parking area, but not within the nominated parking areas. No native vegetation removal or prescribed impacts are proposed within mapped areas.

Byron Coast Comprehensive Koala Plan of Management:

The applicant advised that:

The proposed Markets and ancillary temporary car parking area has adopted a precautionary approach given its proximity to mapped areas of potential koala habitat. Specific to Section 12.3 Development Standards of the Byron Coast Comprehensive Koala Plan of Management, namely the Development Standards for Minor Development, the following comments are afforded:

Retention of potential koala habitat – The proposal does not involve any vegetation removal.

Protection of koalas from disturbance – No clearing of land is proposed

Bush fire asset protection zones – No asset protection zones are required to enable the proposal.

Swimming pools – No swimming pools are proposed.

Fencing – The proposal welcomes the inclusion of temporary fencing around the carparking area proposed on Lot 392 DP 728539 and Part 393 DP 728539. Whilst it is intended that this fencing does not include a 300mm underside gap, therefore separating koalas from parked and slow moving vehicles on market days. Overall, koala movement will predominately be unimpeded as the temporary fencing is removed outside of market events. Notwithstanding, the elevated fence position can be pursued if desired.

In addition, the temporary carparking area is to be ‘managed’ through the provision of traffic control and allocation to market stall holders, as opposed to the general public. Vehicle movements will be controlled to walking pace and well below 40kmph. Less than 1,500 vehicle movement per day will result from the stallholder carparking area.

Collectively, these provisions are considered to mitigate direct or indirect impacts on koala habitat.

No ecological objections.

Transport for NSW

TfNSW raised no objection to the development proceeding provided contamination issues are reviewed and assessed and the appropriate licenses leases are in place with Transport Asset Holding Entity (TAHE). Contamination matters have been considered and conditions to apply in relation to ongoing lease and license arrangements to use the rail corridor.

SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2019'.

- 5 As the proposal is for a temporary use that does not involve the construction of any buildings, the proposal does not raise any significant bushfire issues.

SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

- 10 Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Biodiversity and Conservation SEPP 2021</i></p> <p><i>Chapter 4 – Koala habitat protection 2021</i></p> <p>Consideration: The site in terms of the car park is within an area to which the Byron Coast Comprehensive Koala Plan of Management (CKPoM) applies. Pursuant to Section 4.8 of the SEPP, the determination of the application must be consistent with the approved koala plan of management that applies to the land.</p> <p>The proposal does not involve the removal of vegetation. The applicant has provided an assessment of the proposal against Section 12.3 Development Standards of the Byron Coast Comprehensive Koala Plan of Management.</p> <p>The proposal has been assessed by Councils Natural Resource Planner as satisfactory on ecological grounds.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Resilience and Hazards SEPP 2021</i></p> <p><i>Chapter 2 – Coastal management</i></p> <p>Consideration:</p> <p>This chapter applies to land within the coastal zone. Coastal management areas comprise:</p> <ul style="list-style-type: none"> • <i>the coastal wetlands and littoral rainforests area</i> –part of the subject site adjacent to the proposed stall holder car park is mapped as being affected by coastal wetlands. No work or parking is proposed within the wetland. The car parking area is within the 'proximity area for coastal wetlands. <p>Part of the railway land, north of Lawson Street,</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
<p>contains a mapped littoral rainforest and proximity area for littoral rainforest. This area forms part of the 'subject site' (Lot 4729 DP 1228104) but is not affected by the proposed market footprint, which is located south of Lawson Street.</p> <p>The extent of this mapping is illustrated on Figure 6.</p> <ul style="list-style-type: none"> • <i>the coastal vulnerability area</i> – no areas mapped at this time • <i>the coastal environment area</i> – part the subject site is within the coastal environment area – Refer Figure 7. • <i>the coastal use area</i> – part of the subject site is within the coastal use area - Refer Figure 7 <p>Section 2.7 (1) relates to development on certain land within the coastal wetlands and littoral rainforests area. There are no physical works proposed in the mapped coastal wetland area on the site.</p> <p>Section 2.8 Development on land in proximity to coastal wetlands or littoral rainforests provides:</p> <p>(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i> unless the consent authority is satisfied that the proposed development will not significantly impact on—</p> <p>(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or</p> <p>(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.</p> <p>(2) This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i>.</p> <p>The proposed car parking area is located in the proximity area for coastal wetlands. The extent of the parking is confined to the open, cleared and currently mown open space area.</p>		

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Considerations	Satisfactory	Unsatisfactory
<p>The application indicates:</p> <p><i>The use of the public reserve for monthly car parking will be managed to maintain the integrity of the adjoining coastal wetland. The use for temporary car parking does not involve any sealing of the ground surface and permeability to accommodate surface and ground water flows will be maintained. The parking use will not result in any built structures or any significant ground disturbance.</i></p> <p><i>Any potential impacts on the coastal wetland will be managed on market days by:</i></p> <ul style="list-style-type: none"> <i>Lightweight fencing / delineation of the area suitable for parking away from the coastal wetlands</i> <i>Directional signage to ensure that parking may only be in the cleared and unfenced areas</i> <i>Staffed traffic management and monitoring.</i> <p>The ecological assessment of the application has raised no objections to the proposal.</p> <p>Section 2.10 applies to 'Development on land within the coastal environment area' and Section 2.11 applies to 'Development within the coastal use area'.</p> <p>The proposal is for a temporal use with no permanent structures to be erected. The proposal will not adversely impact on:</p> <ul style="list-style-type: none"> Access to the foreshore or headland Overshadowing of the foreshore Visual amenity of the coastal foreshore and headlands Coastal views Aboriginal cultural heritage practices and places (management measures are proposed in relation to setbacks to the Micky Kay totem pole within Railway Park) The built heritage – refer to comments later in this report in relation to Clause 5.10 of Byron LEP 2014. Coastal processes <p>The proposal is considered satisfactory with respect to the relevant Section 2.10 and 2.11 considerations.</p> <p>Chapter 4 – Remediation of land</p>		

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Considerations	Satisfactory	Unsatisfactory
This policy has been addressed in the comments made by Councils Environmental Health Officer and is considered satisfactory		
<p>Transport and Infrastructure SEPP 2021</p> <p>Consideration:</p> <p>Chapter 2 - Infrastructure</p> <p><i>Division 5 - Subdivision 2 Development likely to affect an electricity transmission or distribution network – The application was referred to Essential Energy. No objections were raised subject to conditions which was discussed earlier in this report.</i></p> <p><i>Division 15 - Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors – notification and other requirements.</i></p> <p>The application was referred to Transport for NSW and their comments have been discussed earlier in this report in relation to the rail corridor.</p> <p>The applicant has indicated that the use of the station building as an office is to be undertaken as exempt development under the provisions of SEPP (Infrastructure) 2007 (Division 15 Railways, clause 82A(b), now SEPP (Transport and Infrastructure) 2021.</p> <p><i>Division 17 – Subdivision 2 Section 2.122 Traffic Generating Developments – The application was referred to Transport for NSW. Council is required to take into account any comments made by TfNSW and also take into consideration any potential traffic safety, road congestion or parking implications of the development</i></p> <p>The proposal was also forwarded to the Local Traffic Committee for comment that also includes a representative from TfNSW. Concerns were noted by the representative which related to the temporary closure of Johnson Street and the impact this may have on the shop keepers, general traffic users and the need for a trial. The final decision of the Local Traffic Committee though was:</p> <p><i>Committee Recommendation: That Council support:</i></p> <ol style="list-style-type: none"> <i>1. The temporary road closure in principle to facilitate the Byron Community Markets and to allow the Development Application to be considered; and</i> <i>2. Further reporting to the Local Traffic Committee prior to first event and annually thereafter.</i> 	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>Given the Local Traffic Committee recommendation and Councils Development Engineers comments and concerns raised by NSW Police and the TfNSW it is recommended that the TMP be reviewed annually, and or sooner if directed to by NSW Police, Transport for NSW or Council. That way if an unforeseen issue arises with the market in terms of traffic management including the road closure, this can be reviewed, and the market operations be amended to reflect the desired solution.</p> <p>In terms of advice directly from TfNSW in response to the referral the following comments were made:</p> <ul style="list-style-type: none"> TfNSW has identified that Butler Street and Lawson Street will be crossing points for patrons wishing to enter the event site. Given the high volume of pedestrians likely to cross these roads, it could compromise pedestrian safety. TfNSW recommends a Traffic Management Plan (TMP) with associated Traffic Guidance Scheme (TGS) should be implemented, with consideration given to identified traffic controllers being present at Butler Street and Lawson Street. Any regulatory signs and devices proposed for the event will require the endorsement of the Local Traffic Committee prior to Council approval. Please refer to <i>A guide to the delegation to councils for the regulation of traffic</i>. TfNSW Officers have previously observed directional signage relating to markets on the M1. The applicant needs to be aware that signage on the M1 is not permitted. TfNSW recommend this be included as a condition of consent. Byron Town Centre has limited parking for private vehicles, however, the application has not provided a Sustainable Transport Plan (STP). TfNSW recommends that Council consider requiring the preparation of an STP setting objective, targets and measures to reduce private car travel and encourage travel by active and public transport modes. <p>The matters raised by Transport for NSW have been included in conditions of consent for the development.</p>		

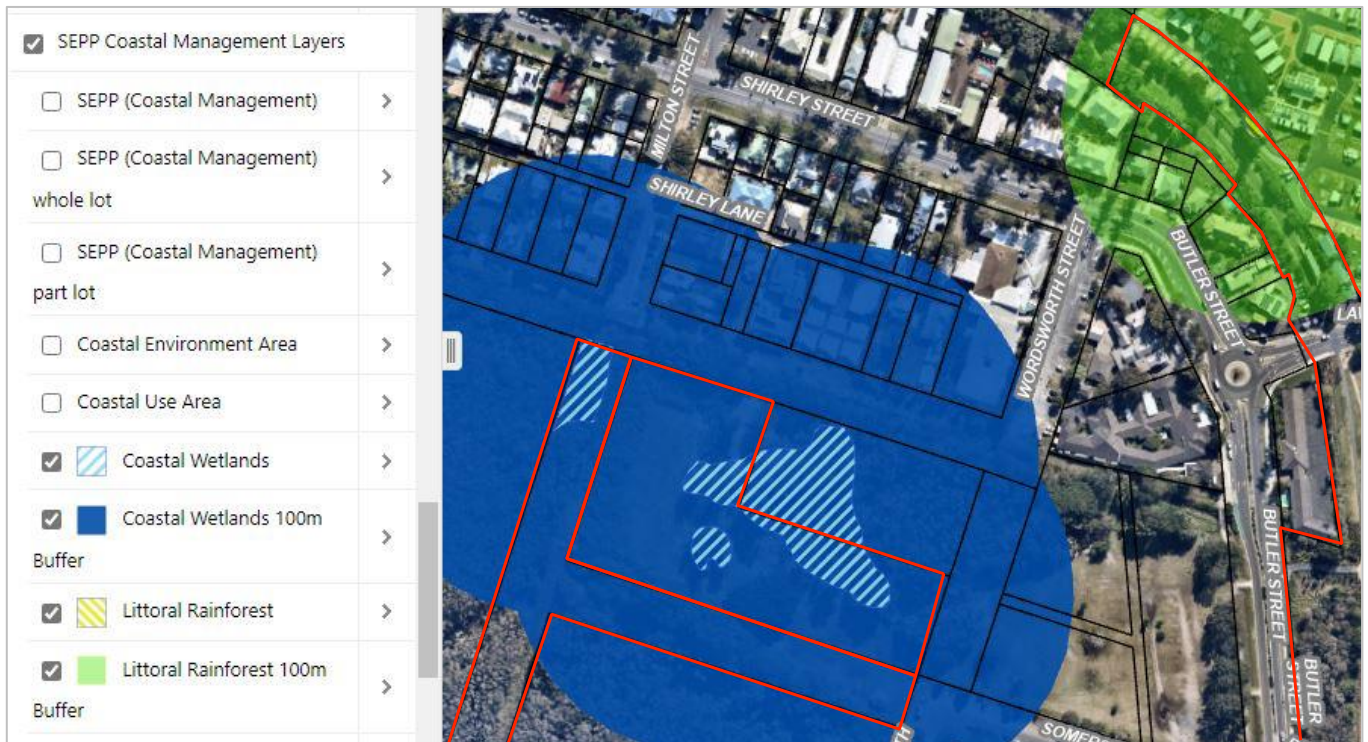


Figure 6 – Wetlands and Littoral Rainforests – part of subject site shown with red outline

5



Figure 7 – Coastal Environment Area and Coastal Use Area - part of subject site shown with red outline

10

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as a ‘market’ which is defined as:

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

- 5 (b) According to the Land Zoning Map, the 'subject site' is zoned RE1 Public Recreation, SP2 Infrastructure (Rail Corridor), SP2 Infrastructure (Car Park), B2 Local Centre and DM (Deferred Matter) under Byron LEP 2014. The DM is zoned 6(a) Open Space under Byron LEP 1988.

10 The markets and associated car parking only affect the land zoned RE1 Public Recreation, SP2 Infrastructure (Rail Corridor), SP2 Infrastructure (Car Park), B2 Local Centre under Byron LEP 2014, and not the Deferred Matter land.

- (c) The proposed development is a permitted use within the RE1 Public Recreation and the B2 Local Centres zones.

15 Markets are prohibited in the SP2 Infrastructure Zone. However, Item 9 in Schedule 1 provides that:

9 Use of certain land at Byron Bay Rail Corridor, adjacent Rail Land and Lawson Street South Car Park

- 20 (1) This clause applies to land at the Byron Bay Rail Corridor and Lawson Street South Car Park, being part of Lot 4729, DP 1228104, Lot 1, DP 1001454, and Lot 3 and part of Lot 7, DP 827049 and identified as "Area E" on the Additional Permitted Uses Map.

- (2) Development for the following purposes is permitted with development consent—

- 25 (a) community facilities,
(b) information and education facilities,
(c) markets, if Council is satisfied the development will not increase the number of markets on the land to which this Plan applies.

- (3) The following development is permitted without development consent—

- 30 (a) landscaping that does not involve excavation of more than 1 metre from ground level (existing), or filling of more than 1 metre above ground level (existing),
(b) development for the purposes of recreation areas.

35 As the proposal is for the relocation of existing markets, the proposal satisfies Item 9 clause 2 c of Schedule 1. Therefore, the proposal is permissible on the SP2 zoned land pursuant to Clause 2.5 'Additional permitted uses for particular land' and Item 9 of Schedule 1 of Byron LEP 2014.

- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
RE1 Public Recreation • To enable land to be used for public open	The markets are proposed to be held once

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<p>space or recreational purposes.</p> <ul style="list-style-type: none">• To provide a range of recreational settings and activities and compatible land uses.• To protect and enhance the natural environment for recreational purposes.	<p>a month, with the option of twice a month in December and January. No change to the dominant use of the area for recreation is proposed.</p> <p>The proposal activates the public space for identified market uses without significant or unreasonable impacts on the natural environment or infrastructure.</p> <p>The proposal is considered consistent with the zone objectives.</p>
<p>B2 Local Centre</p> <ul style="list-style-type: none">• To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.• To encourage employment opportunities in accessible locations.• To maximise public transport patronage and encourage walking and cycling.• To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.	<p>The proposal provides temporary retail outlets and encourages pedestrian activity throughout the town centre.</p> <p>The proposal is considered to be consistent with the relevant zone objectives.</p>
<p>SP2 Infrastructure</p> <ul style="list-style-type: none">• To provide for infrastructure and related uses.• To prevent development that is not compatible with or that may detract from the provision of infrastructure	<p>The proposal is not incompatible with the zoned infrastructure purposes (railway infrastructure and car park) and will not detract with the provision of infrastructure.</p> <p>The proposal is considered to be consistent with the relevant zone objectives.</p>

Clause 4.3 Height of buildings

A maximum height of 9m applies to the railway corridor and Railway Park. A height of 11.5m applies to the roadway. The proposal does not include any permanent buildings. Market stalls and ancillary structures will not exceed the 9m height limit.

Clause 5.10 Heritage conservation

This clause requires consideration and conservation of any heritage and/or Aboriginal cultural heritage.

Part of the site is identified as item I078 within Schedule 5 Environmental Heritage of the Byron LEP 2014 as a State significant item. The listing includes the Railway Station building and the surrounding railway land and line. The site is subject to the State Heritage Register Curtilage in association with the listing.

- 5 The site is also partly within the Railway Precinct Byron Bay Heritage Conservation Area, listed as Item C004 in Schedule 5 Environmental Heritage of the Byron LEP 2014.

Figure 8 shows the heritage listed item on the site and others in the general locality as well as the heritage conservation areas.

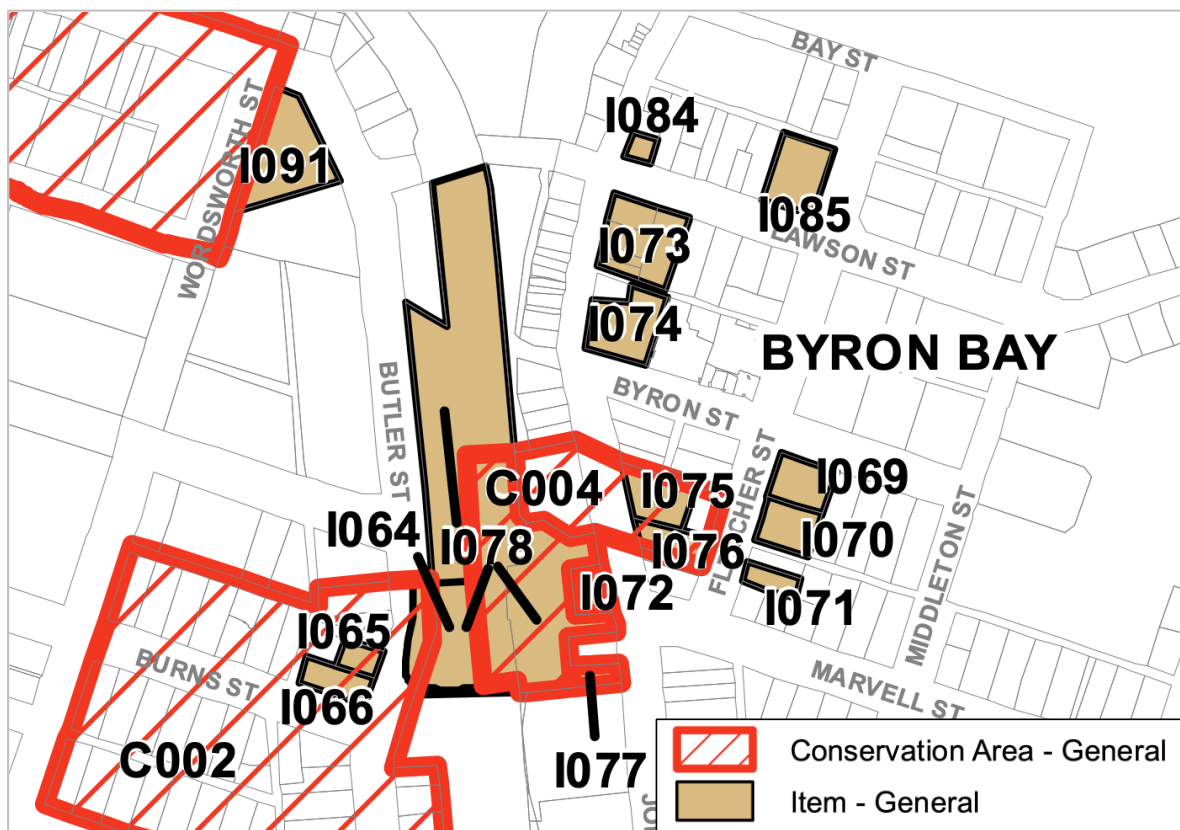


Figure 8 – Heritage – Byron LEP 2014

A Statement of Heritage Impact Assessment has been provided for the proposal which concludes:

- 15 *No works are proposed and equally no use is proposed of the built heritage items of the station, refreshment rooms or Station Masters House and the market will have no detrimental impacts on the built heritage. The market is to be held within the open areas of the railway line, carparks and forecourt and Railway Park, where potential impacts on the heritage significance are minimal. Additionally, the proposed community market use is*
- 20 *consistent with the management recommendations of the adopted Conservation Management Plan (CMP), endorsed by the Heritage Council of NSW 28 September 2019.*

Councils Heritage Advisor has reviewed the Statement of Heritage Impact Assessment and concurred with its findings.

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Sections 57 and 58 of the Heritage Act, 1977 require the approval of NSW Heritage and accordingly, the application is Integrated Development. Heritage NSW has provided General Terms of Approval for the proposal.

- 5 With respect to Aboriginal cultural heritage, the applicant undertook an AHIMS search with a 200m buffer which confirmed no known Aboriginal cultural heritage within the site or in the immediate vicinity of the site. A registered site is located within the railway corridor north of Shirley Street and outside of the market footprint.

The applicant advised that advice was sought from the Arakwal Aboriginal community through the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) (BOBBAC), who:

- 10
- noted that the Micky Kay totem pole within Railway Park is of significance to the local Arakwal Aboriginal community. The BOBBAC have requested the market stalls be kept at a distance (cordoned off) so there is respect kept for the totem pole and the area is avoided. This request is reflected on the application plans.
- 15
- supports the relocation within the railway corridor as long as there is no ground disturbances within this area. This request is supported. The market includes the temporary placement of market stall and ancillary service. No permanent structures or ground disturbance is proposed as such ground disturbance should be minimal.

The application was referred to Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and Tweed Byron Aboriginal Land Council, but no responses were received.

- 20 The proposal is considered satisfactory with respect to the requirements and considerations of Clause 5.10 of Byron LEP 2014.

Clause 5.21 – Flood planning

Due to the temporary nature of markets, the proposal is considered satisfactory with respect to flood planning considerations.

- 25 Clause 6.6 – Essential services

Infrastructure for water and power is located within the railway corridor and Railway Park. Water and power will be available to a maximum of 40 market stalls which are located around the Railway Park and the Butler Street walkway entrance.

- 30 Public toilets are available in Railway Park. Portable toilets are also to be provided on market days.

The proposal raises no other issues under the Byron LEP 2014

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

- 35 Part of the subject site adjacent to the proposed car parking area is zoned 6(a) Open Space under Byron LEP 1988. No work or other development is proposed in the 6(a) zone. There are no particular clauses of Byron LEP 1988 that are required to be considered.

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

- 40 None relevant to the proposal.

4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

Chapter B1 – Biodiversity

- 5 Potential impacts on the natural environment primarily relate to the provision of temporary car parking in the Butler Street Reserve, which is a proximity area for coastal wetlands. The proposed development is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).
- 10 The proposed parking is informal within a cleared and mown section of the western portion of the Reserve. The use for temporary car parking does not involve any sealing, therefore permeability to accommodate surface and ground water flows will be maintained.
- 15 Management measures proposed include the provision of lightweight fencing / delineation of the area suitable for parking away from the coastal wetlands and staffed parking management and monitoring.
- As discussed, no objections to the proposal have been raised by Councils Natural Resource Planner.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

- 20 The proposal has been assessed by Councils Development Engineer in relation to the requirements of Chapter B4 and conditions recommended.

Chapter B8 Waste Minimisation and Management

The application was accompanied by a Waste Management Plan. Management measures were assessed as being satisfactory subject to conditions.

25 Chapter C1 – Non-Indigenous Heritage

Issues in relation to non-indigenous heritage were discussed under the clause 5.10 considerations of Byron LEP 2014. No additional matters need to be considered.

Chapter C2 – Flooding

- 30 The market is a temporary use of the land. No permanent structures, fill or development requiring earthworks is proposed. The market use will not exacerbate or alter any flood risk on the land.
- Should flooding be a risk for a market day, the applicant has indicated that the market would not proceed.
- 35 The proposal is satisfactory with respect to flooding considerations. No additional flood assessment is required.

Chapter E10 Byron Bay Town Centre

The application identifies that:

The provisions of this chapter are intended to facilitate development that will:

- 40
- *implement the visions, principles and strategies of the Byron Bay Town Centre Masterplan;*
 - *contribute to the growth and character of the Byron Bay Town Centre; and*

- *protect and enhance the public domain.*

The application area for this chapter adjoins the market site and includes Jonson Street. Whilst the chapter does not significantly apply to the majority of the site, the permanent relocation of the monthly community market to the centre of town, with Railway Park at its heart, supports the:

- *Aims and priorities of the Byron Bay Town Centre Master Plan*
- *The social and economic outcomes of the Plan of Management Byron Bay Railway Park*

These statements are concurred with, and no additional consideration of this Chapter is required.

4.5 Environmental Planning and Assessment Regulation 2000 considerations

The proposal raises no issues under the EPA Regulations 2000 or updated provisions under EPA regulations 2021.

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality. Conditions are recommended with respect to traffic management.
Social Environment	No. The proposal will not have a significant social impact on the locality. The proposal will not have a significant economic impact on the locality. The proposal relocates an existing market within the Byron Bay town area.
Economic impact	No. The proposal will not have a significant economic impact on the locality. The proposal relocates an existing market within the Byron Bay town area.
Construction Impacts	No permanent structures are proposed. Work includes the installation of stalls, fencing, traffic control, portable toilets, and waste management.

4.7 The suitability of the site for the development

The site is a suitably serviced property for markets that subject to the implementation of recommended conditions of consent is suitable for the proposed development.

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited.

There were **17** submissions made on the development application:

- 5 – 1 For
- 2 conditional support
- 14 Against

10 The majority of the objections that have been raised were made from longstanding market stall holders as well as some CBD business owners. The applicant made a request under the Government Information (Public Access) Act 2009 (GIPA) to access the submissions and subsequently provided a response to the issues raised. The following Table outlines the primary issues raised in the objections, the applicant's response and comments regarding the objection/issue raised.

Issue: Lack of consultation	
The main issues raised was a concern that there was a lack of holistic consultation, particularly with the stallholders.	
Applicants Response	<p>The subject proposal is an extension of the adopted Byron Bay Town Centre Masterplan, to re-imagine the Byron Bay Town Centre. As articulated within the Byron Bay Town Centre Masterplan, improvements to the CBDs vitality are to be implemented which place additional emphasis on human scale and experience. The Byron Town Centre Masterplan underwent 18 months of intensive community consultation and established the policy blueprint to this Proposal.</p> <p>During the process of advancing the Proposal, Council's project team has pursued regular meetings (typically monthly) with market management, whom are the current licence holders, and their stallholder committee. This ongoing collaboration with market managers has been undertaken for almost 3 years to best support an extensive consultation process and a design that best reflects identified needs.</p> <p>Detailed consultation activities during the concept phase of the Proposal included distributing a survey to all community members, local businesses and directly to stallholders seeking their feedback and input. The results of this survey were previously reported to Council (at its meeting of 24 June 2021), where it was resolved to formally advance the Proposal via the subject DA.</p> <p>Upon lodgement, the subject DA was placed on public exhibition, facilitating additional community consultation. Further, market managers have established a stallholder committee to represent the views of the stallholders to management. Through this forum, monthly email and newsletter updates about the relocation of the markets were sent to all stallholders. It is also understood that market management conducted</p>

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	<p>their own survey to inform the stallholder committee commentary.</p> <p>Although many of the submissions expressed objection that their views had not been sought, or if sought, not heard, the subject DA comprises a balanced Proposal, reflecting the diverse needs of stallholders current and future. Council staff and the broader project team have implemented a framework to support a high-level of engagement with operational stakeholders, which has informed the DA as submitted. Finally, it is noted that whilst this theme was common across the objections received, the concerns raised do not identify impacts of concern, or suggest the Objects of the <i>Environmental Planning and Assessment Act 1979</i> (the Act) have not been met.</p> <p>In light of the above, amendment, or refusal of the subject DA on the basis of a lack of consultation is not warranted.</p>
Comments	<p>The Development Application has been advertised in accordance with the requirements of Byron DCP 2014. The Development Application must be assessed on its merits under the considerations contained in Section 4.15 (1) of the Environmental Planning and Assessment Act 1979. Although a number of the stallholders do not believe that adequate consultation has been undertaken in the leadup to the application, as outlined in the applicant's response, this issue does not justify refusal of the application.</p>
Issue: Return the Markets to Butler Street Reserve	
<p>Many of the stallholders expressed a strong desire to return the markets to the Butler Street Reserve. Some also expressed a preference for the markets to remain at Denning Park Reserve, rather than the proposed Railway Precinct area. Comments have also been made that the Farmers Markets are allowed to trade at the Butler Street Reserve, so why can't the Community Markets?</p>	
Applicants Response	<p>Whilst the Butler Street Reserve is referenced as the 'home' of the markets through the submissions received, the imposition of an EPA investigation order has discounted its ability to re-host markets at this time. Council staff have been advancing the resolution of the EPA investigation order for close to 3 years. Despite these best efforts, the matter remains outstanding and both Council and EPA are unable to determine an estimated timeframe of when the investigation may be complete.</p> <p>In light of the above, the subject DA cannot practically advance a Proposal for the Butler Street Reserve. Further, it is noted that whilst this theme was common across the objections received, the concerns raised do not identify impacts of concern with the site proposed, nor suggest the provisions of the Byron Local Environmental Plan 2014, Byron Development Control Plan 2014 or Byron Bay Town Centre Masterplan have not been met. Finally, our assessment concludes that the Proposal makes a positive contribution towards the Objectives of the Act, namely the orderly and economic use of the land. This is achieved</p>

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	by leveraging the civic asset, co-location and economic synergies of Railway Park and its surrounds. Accordingly, amendment, or refusal of the subject DA based on a preference for Butler Street Reserve, which is unavailable, is not warranted.
Comments	<p>As outlined in the applicant's response, unfortunately a return to the Butler Street Reserve is not possible at this time. The markets also cannot remain at Denning Park Reserve. The EPA have given approval for the Byron Farmers Market to return to a small, stable section of Butler Street Reserve following on-site contamination investigations. This is possible as the Farmers Markets are smaller, and they can use a smaller stable section of the reserve.</p> <p>Although the use of the proposed site requires the implementation of numerous management measures, some of which may not be ideal for some stallholders, it has been demonstrated that this is the best option for Byron Bay to continue to have a community market.</p>
Issue: Impact on existing businesses	
Issues raised include: That existing businesses in the CBD pay a lot of money in rent, rates and land tax and don't expect market stalls to block the town. There is a lack of parking without adding a market. Roads are congested. Blocking Johnson Street is not fair to the shops. The proposed use has none of the costs of existing businesses.	
Applicants Response	<p>Part of the rationale for the Proposal is to activate the CBD through increased foot traffic. As detailed previously, the Proposal forms an implementation component of the Byron Bay Town Centre Masterplan, as has other initiatives, such as resolving to close selected CBD streets to vehicle traffic. Whilst independent, this Proposal activates the 'closed' public domain space with vibrant and temporary activity as an intentional strategy to boost activity and civic engagement.</p> <p>To best support synergies with permanent CBD businesses, Council's project team has worked with market managers to design the stall layout to deliver foot traffic to bricks-and-mortar businesses within the market footprint and at either end. Further, the composition and placement of stallholders involves arrangements to ensure an appropriate relationship with bricks-and-mortar businesses that sell similar products.</p> <p>Ultimately, by clustering complimentary land uses and activating the public domain, improved turnover is projected for local businesses and market stallholders. This concept has been employed within centres around the world, as a successful mechanism for economic development. Approval of the Proposal provides an opportunity to focus social and economic activity in the commercial centre of town while relieving pressure on its periphery environmental areas, such as the foreshore.</p>

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Comments	<p>The applicant's response is noted, and it is agreed that the proposal represents an opportunity to increase foot traffic and potential business to outlets in the CBD on the limited days that the markets occur.</p> <p>Parking and traffic issues have been discussed previously in the report and assessed as being satisfactory subject to conditions. This includes the preparation of a Traffic Management Plan and Traffic Guidance Scheme which must be submitted to and endorsed by the Local traffic Committee prior to the first event and annually and following a significant traffic impact if directed by Council, Transport for NSW or NSW Police.</p>
Issue: Market amenity, useability and comfort	
<p>Comments raised include:</p> <ul style="list-style-type: none">• Stallholders need to park off site making set up and take down of the stalls difficult.• Problems with setting up in adverse weather conditions (stalls can't have pegs or vehicles for support).• Overnight vehicles being parked in allocated stall areas.• Design with no space between stalls is unsuitable for Byron's climate and it will be too hot with stalls on hard surface areas.• Impractical for stallholders to drop off their stock in Johnson Street is unsafe and discriminatory to older people and other people with mobility issues. Also concern regarding theft of stock after drop-off.• Loss of character of markets in a town centre – should be a green site• PA system will not be able to reach the entire market area.	
Applicants Response	<p>It is acknowledged that components of the Proposal will generate inconveniences to stallholders, particularly in peak summer periods where radiant heat is anticipated to have an increased impact in comparison to previous and current market locations. Further, the lack of carparking immediately adjacent to market stall locations may result in some existing stallholders not transitioning to the Railway Park location in the event of an approval. Notwithstanding that some disadvantages have been identified regarding the proposed location and density to those previously experienced, these are largely confined to design and operation matters, as opposed to merit-based considerations. Suitability of the site, by way of mitigating environmental impacts, such as noise, traffic and the like has been assessed and the Proposal identified as suitable. Further, the location leverages the significant capital investment (close to \$50 million) made in recent years by Byron Shire Council and the NSW Government in infrastructure upgrades through the Byron Bay Town Centre precinct, including:</p> <ul style="list-style-type: none">- Equitable access across all sites

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	<ul style="list-style-type: none"> - Significant number of plantings - Additional seating, water, lighting - Public art installation - Improved passive surveillance <p>These improvements have significantly enhanced the ambience and comfort of the space, which was previously identified as neglected, unsafe and a significant attractor of illegal and antisocial behaviour.</p> <p>The Proposal has been assessed as creating a people-friendly environment where you can meander around, enjoy the market, parkland, trees/ shade, nearby shops and extra seating. As discussed earlier, there are numerous examples globally showing that a market in a town centre brings vibrancy to the community and drives foot traffic to local businesses, likewise, the experienced amenity level of the site and surrounds is identified as being of high quality.</p> <p>Although carparking is more dispersed than previous market experiences, the quantity of parking available has been addressed through specific parking assessment. Likewise, the increased efficiency of the market stall footprint improves the ability to integrate within the Town Centre and the user experience. Considering the above, amendment, or refusal of the subject DA on the basis of market amenity, usability and comfort is not warranted.</p>
Comments	The applicant's response is noted. If necessary, operational matters can be addressed through modifications to operations (where they comply with consent conditions) and the Market Plan of Management updated.
Other Issues	
<p>Suggest restricting stalls in Railway Park to the hard surfaces only to assist in maintaining the grass surface.</p> <p><i>Comment:</i> Council may need to undertake additional maintenance of the turfed and lawn areas. This is an issue for Council as land owner manager and not a determining factor for the Development Application</p>	
<p>The proposal for stall holder parking at the Butler Street Reserve is inconsistent with the existing adopted Plan of Management (PoM).</p> <p><i>Comment:</i> The Statement of Environmental Effects notes that: The proposal is considered to be consistent with the <i>Plan of Management for the Butler Street Reserve, Byron Bay – Reserve 88993 for Public Recreation</i> (August 2002) which identifies the site for markets and car parking. Noting the age of the Plan of Management, other avenues through the State Environmental Planning Policy Infrastructure) 2007 have not been pursued.</p> <p>The applicant has demonstrated that the proposal is consistent with the PoM.</p>	
Market stage sites need to be identified and assessed for noise impacts – potential impact on Motel, visitor accommodation etc.	

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Comments: Councils Environmental Health Officer has assessed the application and raised no objections subject to conditions.

Standard noise conditions would be placed on any consent.

Suggest a 12-month trial period.

Comments: As Council is the applicant it can manage the markets and review the success or otherwise of the site and market layout accordingly and at any time.

4.9 Public interest

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

- 5 The proposal is for the relocation of markets and while there will likely be some logistical issues and difficulties for some existing stall holders in relation to access and layout, the proposal represents a suitable site where there does not appear to be any suitable alternative solutions.

10 DEVELOPER CONTRIBUTIONS

There is no nexus to levy water and sewer charges or developer contributions on the proposed markets.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

15 CONCLUSION

- 20 The DA proposes a Community Market to be held Monthly, with Option of Twice a Month in December and January. The main issue of concern is the closure of Jonson Street. The conditions for the traffic management plan require this to be reviewed annually or earlier if directed to by Council, the Police or Transport for NSW. This will enable any unforeseen issues that arise to be dealt with and market operations changed accordingly.

The proposed development application is recommended for approval subject to conditions of consent.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.16 Butler St Reserve Contamination Investigation

Directorate: Infrastructure Services

5 **Report Author:** Phil Warner, Manager Assets and Major Projects
Claire McGarry, Place Manager - Byron Bay

File No: I2022/558

Summary:

10 Butler Street Reserve is a public recreation Reserve in the centre of Byron Bay. Prior to the 1960s, the site was natural swamp land. During the 1960s until the 1980s the site was used as an uncontrolled landfill, at which stage it was capped and grassed and subsequently used for public recreation, markets and car parking.

15 Recent interest in development of the site has identified contamination issues related to the site's historical use, and Council (as manager on behalf of Crown Lands) has been working with the NSW EPA since 2018 to resolve these issues and return the site to community use for a mix of public recreation, markets and car parking.

Through a series of investigations over the past four years, the following types of contamination have been identified:

- 20 • Landfill gases including methane and carbon dioxide
- Selected metals
- Anthropogenic wastes (including materials containing asbestos)
- Per- and poly-fluoroalkyl (PFAS) substances

25 This report addresses **Res 21–236** (part 4), and summarises the investigation outcomes related to the site, including off-site impacts of contamination, and seeks approval for next steps of the contamination investigation which will inform any required remediation to mitigate the offsite PFAS contamination impacts.

This matter was considered at the Councillor Workshop on 1 September 2022.

30 **RECOMMENDATION:**

1. That the investigation budget be increased to \$150,000 for 2022/2023 with funding from the Waste Fund to progress the next stages of the poly-fluoroalkyl substances (PFAS) contamination off site hydrological and ecological investigations.
- 35 2. That the outcomes of the hydrological and ecological investigations be reported to Council.

Site History

Butler Street Reserve comprises Reserve 88993 for Public Recreation. The total area of the Reserve is 4.962 hectares. The subject site is shown **Illustration 1.1**.



5 Illustration 1.1 Reserve 88993 – Butler Street Reserve

Prior to the 1960's the site was natural swamp land and part of the current Cumbebin Swamp. During the 1960's until the 1980's, the Site was used as an uncontrolled landfill. The type and extent of the waste was not documented. Based on observations during the test pitting investigation (SMEC 2017), it is presumed that municipal largely non-putrescible waste and fill soil was placed directly on the swamp. Waste was observed to interconnect with natural soils at groundwater level.

An aerial photograph from 1979 indicates that clearing / filling activities also occurred up to 200 metres west into the Cumbebin Swamp and on the southern side of Somerset Street.

Council documentation and aerial photographs indicate the site was 'capped' and grassed during the early 1980's, after which it was used as community space – recreation, markets and later car parking.

Timeline of investigations

A significant amount of testing and monitoring has been conducted on the site over the past 5 years in an effort to resolve contamination issues. The below is a summary of the type of investigations undertaken and what the catalyst for each step in the process has been.

1. A geotechnical investigation was conducted at the site in 2017 by SMEC (on behalf of Transport NSW) for the potential use of the site as a bus interchange. The investigation confirmed that anthropogenic wastes were encountered in all bore holes including beneath Somerset Street (beyond the Butler Street Reserve).
2. In February 2018, Sydney Trains on behalf of Transport NSW informed Crown Lands that the site was contaminated due to uncontrolled landfilling activities and to consider notifying the site under section 60 of the Contaminated Land Management Act 1997 (CLM Act).
3. Crown Lands subsequently notified the EPA of contamination at the Butler Street Reserve based on finding contamination associated with the sites historical uncontrolled landfilling activities.
4. In response to the notification from Crown Lands, the EPA issued a Preliminary Investigation Order to Council, stating that further assessment of the contamination is warranted.
5. As manager of the Crown Lands site, Council engaged Tim Fitzroy and Associates (2018) to conduct a detailed investigation of Council records to determine the extent of the former landfill. This included advancement of test pits and boreholes and collection of soil, groundwater and soil gas data.

The EPA states that the purpose of the Preliminary Investigation Order is to:

1. delineate the nature and extent of the contamination on the specified land by the substances specified in this Order; and
2. investigate whether the contamination originating at the specified land has impacted adjacent underground services, nearby properties and local groundwater quality; and
3. document the findings of those investigations.

The investigations were undertaken by specialist consultants engaged by Council, as per the request from the NSW EPA, and on 27 February 2020 the NSW EPA wrote to council to advise that they had repealed the preliminary investigation order, noting that the works under the order had been submitted and that various reports had been submitted by council to the EPA. At this point, the EPA advised that they were still assessing whether there was significant harm to the environment which included investigating evidence of elevated dissolved methane in groundwater.

In April 2020 Council received a request from the NSW EPA to undertake additional works to assess contamination associated with the former landfill site. The primary focus was to analyse for per- and poly-fluoroalkyl substances (PFAS) contamination, which can result from historical and uncontrolled landfilling activities. The investigation is ongoing as detailed below.

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A number of reports have been prepared in response to advice from the EPA from 2018 to the present, including:

- 5 • Cavvanba (2019a) Data quality objectives and sampling, analysis and quality plan – Groundwater and soil vapour investigation, Butler Street Reserve, Butler Street, Byron Bay (Ref. 18077 R01).
- Cavvanba (2019b) Detailed Site Investigation, Butler Street Reserve, Butler Street, Byron Bay, NSW 2481 (Ref. 18077 R02).
- 10 • Cavvanba Consulting (2019c) Data quality objectives and sampling, analysis and quality plan – Soil and soil gas investigation, Butler Street Reserve and residential properties off Somerset Street, Butler Street, Byron Bay (Ref. 18077 R03).
- Cavvanba (2019d) Soil and soil gas investigation, Butler Street Reserve and residential properties off Somerset Street, Byron Bay NSW 2481 (Ref. 18077 R04).
- 15 • Cavvanba (2020a) DQOs and SAQP – Additional ESA (PFAS and soil gas investigation, Butler Street Reserve, Butler Street, Byron Bay NSW 2481 (Ref. 18077 R05).
- Cavvanba (2020b) Soil gas investigation, Butler Street Reserve and surrounds, Butler Street, Byron Bay NSW 2481 (Ref. 18077 R06).
- Cavvanba (2020c) PFAS groundwater and surface water investigation, Butler Street Reserve and surrounds, Byron Bay 2481 (Ref. 18077 R07).
- 20 • Cavvanba (2020d) Groundwater Monitoring Event – June 2020, Butler Street Reserve and Surrounds, Byron Bay NSW 2481 (Ref. 18077 R08).
- Cavvanba Consulting (2021a) Data quality objectives and sampling, analysis and quality plan – additional PFAS Assessment, Butler Street Reserve, Butler Street, Byron Bay (Ref. 18077 R09).
- 25 • Cavvanba (2021b) PFAS soil investigation, Butler Street Reserve, Byron Bay NSW (Ref. 18077 R10).
- Cavvanba (2021 LO1) Data Gas Analysis PFAS in Groundwater, Butler Street Reserve, and Surrounding Byron Bay NSW (Ref. P18077 11).
- 30 • Cavvanba (2021 LO2) PFAS Soil Investigation 28 Fletcher Street Byron Bay NSW (Ref. 18077 LO2).
- Cavvanba (2021c) PFAS Private Groundwater Bores and surface water, The Surrounds of Butler Street Reserve, Byron Bay NSW (Ref. 18077 R11).

Subsequent PFAS investigation requested

35 Following the advice from the NSW EPA in February 2020 that the preliminary investigation order had been repealed, Council received a request in April 2020 from the NSW EPA to undertake additional works to assess contamination associated with the former landfill site.

The request detailed the following scope of works to be completed:

- 40 1) The installation and testing of soil gas wells in representative background locations, preferably within similar subsurface profile and at a greater distance from the former landfill footprint:

- 5 a. Total organic carbon (TOC) samples should be collected from the natural profile of the newly installed soil gas wells:
b. A complete landfill gas round should be conducted on all accessible soil gas wells for the site to obtain a representative data set (we understand some soil gas wells may not be accessible, due to the sites current and temporary use as a storage depot); and
c. All landfill gas measurements should be collected, but with a focus on the carbon dioxide (CO₂) levels which were elevated across the site.
- 10 2) Completion of a groundwater sampling round specifically to analyse for per- and poly-fluoroalkyl substances (PFAS) contamination, which can result from historical and uncontrolled landfilling activities:
a) We suggest that majority of on-site and off-site groundwater wells be tested for PFAS to obtain a representative data set (we understand some groundwater wells may not be accessible, due to the sites current and temporary use as a storage depot);
15 b) The groundwater sampling round should include the collection of field measurements such as standing water levels and water quality parameters; and
20 c) In the event unacceptable PFAS contamination is found in groundwater, a bore water use survey may have to be conducted for the greater area.
- 3) Submission of a report detailing the findings of the additional works at the site and surrounding areas.
- 25 This scope of works has been completed by Tim Fitzroy and Associates and Cavvanba Consulting, the results of which are outlined below.

Council staff and these specialist consultants have been meeting with the NSW EPA to discuss the results of PFAS testing, with the aim of resolving outstanding issues and return the site to community use. The EPA require further hydrological and ecological
30 assessment as detailed below.

PFAS source

35 The source of PFAS is uncertain. It would be expected that PFAS contamination from landfill material at the site would present as a broad, low concentration plume which would be similar in distribution and geometry to the landfill waste body itself. However, the narrow distribution and plume geometry of PFAS concentrations in both groundwater and surface water appears to correlate with the Butler Street Reserve having a point source of PFAS, rather than diffuse contamination. The uncontrolled nature of the landfill however means that the concentrations of contaminants may be variable in the waste in the landfill itself.

40 Point sources of PFAS contamination may result from an incident such as a fire related response using aqueous film forming foam (AFFF).

On 1 October 2021 in an email to Council staff, the Senior Operations Manager, Regulatory Operations West, NSW EPA, advised that the EPA asked Fire & Rescue NSW

(FRNSW) to identify any offsite training exercises that may have been undertaken within the Byron Bay area, they provided the following information:

5 *With respect to offsite training exercises, the following information was obtained from the local crew in relation to offsite areas where training with foam, potentially AFFF, may have occurred:*

- *Byron Bay Recreational grounds, located at Tennyson Street – training occurred in the north-western portion of the site, in close proximity to the water hydrant*
- ***Butler Street Reserve, located at the corner of Butler Street and Somerset Street – training occurred in the central southern portion of the site, in close proximity to the water hydrant”***

10 The use of fire retardants in the northern portion of Butler Street Reserve for training exercises has also been confirmed by former retained fireman of the Fire & Rescue NSW to both council officers and NSW EPA staff.

PFAS test results

15 A summary of the outcomes of the PFAS investigation is provided below.

Ground water and surface water

20 PFAS concentrations were consistent in both groundwater sampling events (June and August 2020), with concentrations a similar order of magnitude and showing similar patterns of distribution. PFOS concentrations were four orders of magnitude above ecological criteria, and sum of PFOS & PFHxS concentrations were two orders of magnitude above drinking water criteria.

25 The highest concentrations of PFAS compounds were present in the north-eastern portion of the site, where the thickness of the waste body is greatest. This is also in close proximity to Byron Drain. Due to the nature of the landfill, it is likely that the waste body is in direct connection with the groundwater and therefore also the adjacent Byron drain.

30 Based on the results of surface water samples collected in Byron Drain, groundwater from the Butler Street Reserve appears to be discharging to the surface water of Byron Drain and is likely to be a continuing source of PFAS migrating from the site.

Soil

35 No exceedances of public open space health-based criteria were reported in any of the samples collected from the former site surface and/or landfill material. Three surface samples located within the north eastern corner of the site, exceeded the indirect ecological exposure criteria for PFOS.

No PFAS exceedances of public open space health-based criteria were reported in all samples collected from the former site surface and/or landfill material.

On-site implications of test results

During discussions with the NSW EPA, Council staff and project consultants have consistently stated the community and Council's desire to see the reserve returned to community use for a mix of green space, markets and car parking. The site plays a critical role in the functioning of the town centre, and there are a number of projects and stakeholders relying on the outcome of site investigations before they can proceed.

On 5 August 2021 the NSW EPA advised that based on the outcomes of the PFAS soil investigation, the EPA have no objection to the farmers markets returning to Butler Street Reserve. An Environmental Management Plan was developed to facilitate the return of the markets, with appropriate measures in place to monitor hazards and limit movement / disturbance on the Reserve.

While the on-site investigation results indicate that the site is considered suitable for the proposed intended community use as open space, a marketplace and carparking, given the presence of elevated PFAS in groundwater at Butler Street Reserve discharging offsite (see further detail below in this report) it is more likely than not that some form of remediation will be required to mitigate offsite impacts.

Remedial options including, but not limited to, excavation of PFAS contaminated hotspots or the installation of a permeable wall system to filter groundwater infused PFAS leaving the site would require a detailed cost benefit assessment prior to a decision being made on the preferred option. The costs to prepare, implement and monitor a Remediation Action Plan (if required) at the subject site are likely to be expensive and long lasting.

It is not recommended that Council proceed with expanded use of the site until the NSW EPA has agreed to, or ruled out the need for, site remediation.

Off-site implications of test results

Following submission of PFAS test results, the EPA provided a letter to Byron Shire Council advising that due to the presence of elevated PFAS compounds identified in private groundwater bores, and uncertainty regarding groundwater flow direction and/or hydrogeological conditions, further investigation is required. The intent is to understand the extent of groundwater impacted by PFAS which has migrated from the Butler Street Reserve and potential risks to human health and the environment.

The letter details areas of uncertainty, including:

- Potential variability in the groundwater flow direction and the effect of tides and excess water in the catchment (i.e., high rainfall and floods).
- Mounding effects in groundwater levels due to the landfill formation and its influence on groundwater flow direction and interpretation of groundwater flow direction.
- Whether Byron Drain is hydraulically connected to the groundwater and/or influencing groundwater flow in the area.
- Whether there are any other preferential pathways allowing the migration of PFAS impacted groundwater offsite to the north and east.

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- The extent of PFAS in groundwater to the north and east of the site which has not been delineated by existing groundwater monitoring wells.

The EPA has requested that a plan is developed to address these data gaps. Specifically, the following key issues need to be resolved to the satisfaction of the EPA:

1. Groundwater flow, direction, tidal influences and interfaces with surface water flow, in particular, Byron Drain
2. The extent and direction of PFAS contaminated groundwater leaving the site
3. The impacts of PFAS contaminated groundwater on offsite:
 - a. surface water;
 - b. sediment; and
 - c. biota (small fish, gastropods and macroinvertebrates)

Next Steps

It is recommended that Council proceed with the next steps of hydrological and ecological assessment which are intended to enable the EPA to reach a decision regarding site remediation, and Council to move forward with future plans for the site.

Estimates for the further hydrological and ecological testing and assessments required by the EPA are as follows:

ACTION	COST
Undertake an Ecological Risk Assessment (ERA)	\$90,000
Further off-site groundwater delineation (additional ten groundwater monitoring wells – installation and sampling)	\$45,000
Further monitoring of selected groundwater monitoring wells	\$15,000

The current approved budget in 2022/23 is \$50,000. This report recommends that the budget be increased to \$150,000 for 2022/2023 from the Waste Fund to progress the above estimated program.

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.3: Town / Village Masterplans - Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.3.8	Complete Butler Street Reserve contamination investigation and Environmental Management Plan

Recent Resolutions

Res 21–236 (in part).

- 5 “4. *Receives a report on Butler Street Reserve addressing issues raised in public access, including contamination investigation status update from the EPA, and outlining options and approval pathways.*”

Legal/Statutory/Policy Considerations

The ongoing contamination investigation is associated with the Butler Street Reserve being included as part of the NSW EPA PFAS management program.

Financial Considerations

- 10 The contamination investigations have been funded to date by the Waste fund.

The current approved budget in 2022/23 is \$50,000. This report recommends that the budget be increased to \$150,000 for 2022/2023 from the Waste Fund to progress the next stages of the poly-fluoroalkyl substances (PFAS) contamination off site hydrological and ecological investigations.

- 15 The Waste Fund has sufficient funds for the proposed budget increase.

- 20 It is noted, that while the on-site investigation results indicate that the site is considered suitable for the proposed intended community use as open space, a marketplace and carparking, given the presence of elevated PFAS in groundwater at Butler Street Reserve discharging offsite (see further detail below in this report) it is more likely than not that some form of remediation will be required to mitigate offsite impacts. The scale and associated cost of remediation is not yet known.

Consultation and Engagement

- 25 Council has undertaken regular and consistent engagement with the community regarding Butler Street Reserve, although the duration and complexity of site investigations has been frustrating for key stakeholders who are seeking resolution on the future use of the site.

The information on Council's website regarding Butler Street Reserve is current and up to date:

- 30 [Contamination at Butler Street Reserve - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/contamination-at-butler-street-reserve-byron-shire-council)
[Contamination investigation continues on Butler Street Reserve - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/contamination-investigation-continues-on-butler-street-reserve-byron-shire-council)
[Council proposal for future use of Butler Street Reserve with EPA - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/council-proposal-for-future-use-of-butler-street-reserve-with-epa-byron-shire-council)
[Byron Farmers Markets returning to Butler Street - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/byron-farmers-markets-returning-to-butler-street-byron-shire-council)

- 35 Additionally, regular updates are being provided verbally to both the Byron Masterplan Guidance Group and the Byron Community Market management and stallholder committee.

Report No. 13.17 Pay Parking Potential

Directorate: Infrastructure Services

Report Author: Judd Cornwall, Traffic & Transport Engineer

File No: I2022/866

5 Summary:

The purpose of this report is to respond to Council Resolution 21-442 which requested that staff investigate and report on pay parking potential in areas previously identified within the Shire. Those being Brunswick Heads, Bangalow, and Mullumbimby.

10 The following report provides further information on investigations to date and recommends that further investigation into cost benefit is required before moving forward.

RECOMMENDATION:

- 15 1. That \$140,000 be allocated in the September quarterly budget review to fund a Brunswick Heads Pay Parking benefit cost ratio investigation.
2. That staff meet with Transport for New South Wales to discuss parking/overflow related to the temporary housing within Mullumbimby and possible legacy outcomes from this initiative related to parking areas.
- 20 4. That staff provide a further report recommending rules on the number of parking permits per residence and how a permit relates to a residence.

Attachments:

- 25 1 TPS Report - Brunswick Heads Parking Scheme Review 2020, E2020/29468 
- 2 Bangalow Parking Scheme Review.pdf, E2019/24121 
- 3 Mullumbimby Parking Scheme Review, E2019/24120 

Report

On the 28 October 2021 Council resolved that Council receive a report on:

- 5 1. *Pay parking revenue in 2018-19 broken down into meter charges (combined), worker permits and resident permits, including an analysis of what the meter charges revenue would have been at \$5 and \$6 per hour.*
2. *Potential profit from schemes introduced into Brunswick Heads, Mullumbimby and Bangalow based on expected usage under business-as-usual conditions, at rates of \$4, \$5 and \$6 per hour.*
- 10 3. *The Breakdown of pay parking revenue from meters originating from residents of NRJO, being Byron, Ballina, Lismore, Kyogle, Richmond Valley and Tweed Shires vs those coming from elsewhere.*
4. *Ways that parking meters in a town like Bangalow could be made to better suit aesthetically the Heritage nature of the town.*
- 15 5. *Details of areas identified for potential peripheral parking in Mullumbimby and progress of discussions with Transport for NSW for access and or lease.*
6. *Comparisons with other local government areas that have high tourist numbers and that have pay parking and how they manage their system of residential permits.*

Resolution - Item 1

20 Pay parking revenue for 2018-19 is broken down into meter charges (combined), worker permits, and resident permits shown in table 1 (below).

It should be noted that when Council moved to the new parking meters in 2020, we lost access to old parking data. This was known at the time but will make it difficult for any detailed information (such as a breakdown of permit types and meter transactions).

25 Four dollar per hour tariff data provided by Finance and five dollar and six dollar per hour tariff data has been calculated from this.

Table 1: Pay Parking Revenue FY2018/19 (Byron Bay)

Revenue Type	Tariff at \$4/hr	Tariff at \$5/hr	Tariff at \$6/hr
Meter Charges (inc. cash and card)	\$3,594,189	\$4,492,736	\$5,391,284
Business/Worker/Volunteer/Temp Business Permits (\$110/yr)	\$609,101	\$609,101	\$609,101
Resident Permits (\$55/yr)			
Total	\$4,203,290	\$5,101,837	\$6,000,385
Overall Revenue Increase		\$898,547	\$1,797,095

It is considered that assumption usage levels did not change whether there was a 25% increase in the fee (\$5 per hour) and 50% increase in the fee (\$6 per hour), Council after

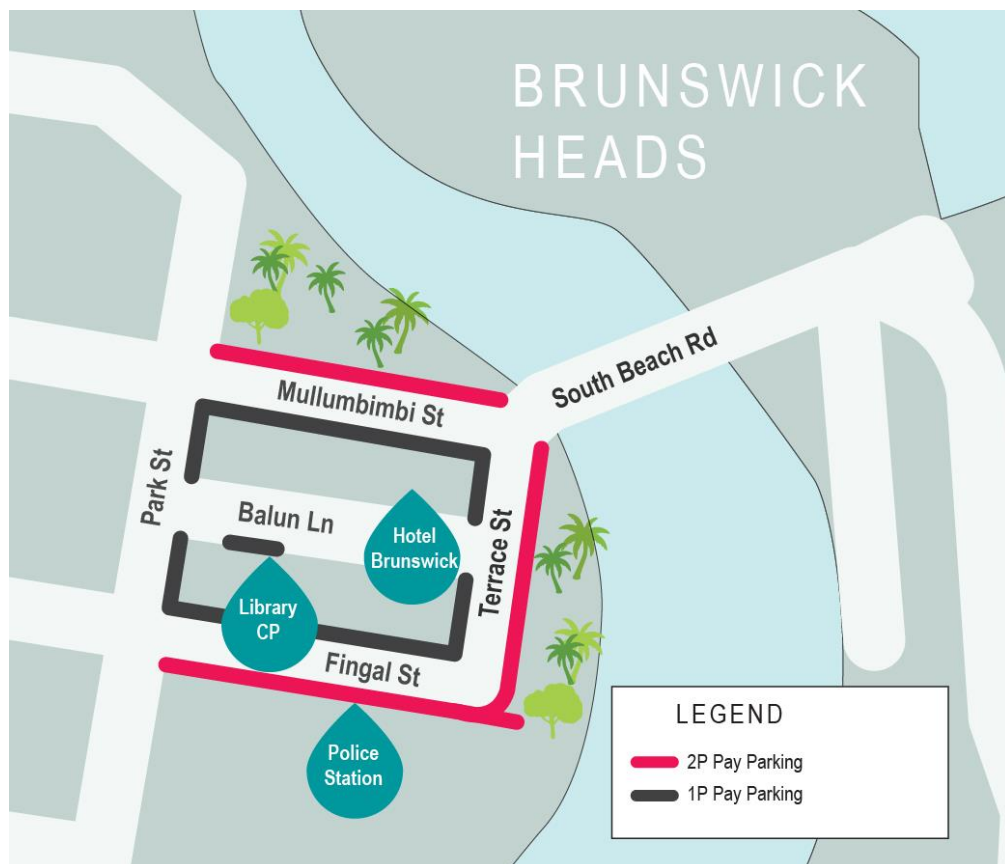
considering GST implications would have obtained the following additional revenues based on 2018-2019 monetary yields:

- At \$5 per hour an additional approx. \$898,500
- At \$6 per hour an additional approx. \$1,797,100

- 5 The above revenue predictions would be less if the fee increases reduce the usage of the parking scheme but that is unknown.

Resolution – Item 2

Pay Parking – Brunswick Heads



10 **Figure 1: Proposed pay parking zones (Brunswick Heads)**

Table 2: Pay parking spaces inventory Brunswick Heads

Time Limit	Spaces
2P	106
1P	81
Total	187

The potential pay parking zones for Brunswick Heads are based on findings from TPS Parking Review attachment 2 (E2020/29468).

Pay Parking – Bangalow



5 Figure 2: Proposed pay parking zones (Bangalow)

Table 2: Pay parking spaces inventory Bangalow

Time Limit	Spaces
2P	53
1P	56
Total	109

The potential pay parking zones for Bangalow were based on the original pay parking scheme that was proposed in 2017 shown in figure 2 (below).

10 A review of the parking (attachment 2) conducted in 2019 did not suggest the implementation for pay parking to manage demand within the town centre.

Pay Parking - Mullumbimby



Figure 3: Proposed pay parking zones (Mullumbimby)

Table 2: Pay parking spaces inventory Mullumbimby

Time Limit	Spaces
2P	176
1P	72
Total	248

- 5 Pay parking is a management option best considered when other options have been first deployed. It also typically requires at least 80% occupancy, which for Mullumbimby only accounts for about 32% of the public parking stock as indicated in the parking survey contained within attachment 3 (Mullumbimby Parking Scheme Review, E2019/24120).
- 10 Notwithstanding nominal pay parking zones have been derived from the Mullumbimby Parking Scheme Review (attachment 3). These zones consider all the short-term parking within the town centre that have an occupancy rate greater than 79%. The potential

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revenue for these zones also considers Byron Bays occupancy rates at \$4.00 with no change to occupancy at the five, or six-dollar tariff.

Pay Parking Estimates – Brunswick Heads, Bangalow, Mullumbimby

Assumptions

- 5
 - Parking turnover is that of Byron Bay's pay 2018/19 parking zones
 - Parking behaviour does not change due to increased tariff's (\$4, \$5, \$6)
 - Pay parking scheme aligns with Transport for New South Wales guidelines
 - Revenue per parking space was calculated assuming the Byron Bay original pay parking supply (2200 spaces)

10 **Table 2: Paid Parking revenue estimates (meter charges only)**

Location	Revenue Type	Revenue from Tariff at \$4/hr	Revenue from Tariff at \$5/hr	Revenue from Tariff at \$6/hr
Bangalow	Meter Charges	\$ 178,075.73	\$ 222,594.66	\$ 267,113.59
Mullumbimby	Meter Charges	\$ 405,163.12	\$ 506,453.90	\$ 607,744.69
Brunswick Heads	Meter Charges	\$305,506.07	\$381,882.58	\$458,259.10

An expert parking consultant should be considered for assessing the benefit cost ratio (BCR) for pay parking within the Brunswick Heads village centre. This will help Council understand if parking would mostly be used by residents or tourists and in turn the likely revenue.

- 15 This BCR advice should consider but not be limited to the following:
 - Parking occupancy, visitors outside the Shire against local residents
 - BCR for metered parking part time and full time (weekends and public holidays)
 - Parking areas/zones (for permits)
 - Metered parking on land not controlled by Council (parking areas to the east of the river)
 - Payment methods (cashless)

25 Council staff should also meet with Transport for New South Wales to discuss parking/overflow related to the temporary housing within Mullumbimby and possible legacy outcomes from this initiative related to parking areas.

Resolution – Item 3

Infrastructure Services and Finance do not have the level of detail required to confirm where parking patrons originated. Staff are not able to provide an answer to resolution item 3.

- 5 Consultation with Councillors Economic Development staff also confirmed that tourism data does not provide sufficient information. While the total number of visitors is known, the information does not indicate how they travelled to Byron Bay and how many people are in each vehicle.

- 10 To undertake this work in detail and origin destination review or license plate recognition review would need to be undertaken. A licence plate survey would require assistance from TfNSW to provide origin detail which may be subject to confidentiality and cost.

Resolution – Item 4

In consultation with the pay parking contractors, it has been confirmed there are several options available to Council to provide heritage friendly parking meters.

- 15 The following options are available to Council:

- Smaller and more subtle card only meters (figure 4, below)
 - The meter can be painted, or wrapped in heritage colours
 - Other Councils have placed an artistically designed box around the meter
 - Payment applications such as PayStay can significantly reduce the number of meters required to manage the parking.
- 20



Figure 4: Stainless, cashless parking meter

Resolution – Item 5

It is understood this item is for Mullumbimby only.

- 5 Preliminary discussions have taken place early in 2021 between Councils Place and Planning Team, Councils previous Traffic Engineer and members of the Mullumbimby community. These discussions looked at potential sites for parking on the fringes of Mullumbimby. One such area that was discussed was the vacant land within the vicinity of the Mullumbimby train station.
- 10 Notwithstanding, due to the recent disaster events temporary housing for displaced flood victims has been prioritised. Accordingly, any future planning for fringe parking around Mullumbimby will first have to consider the recent temporary housing sites and the impacts from traffic/parking generation from this type of accommodation. Infrastructure Planning (IP) will seek to convene a meeting to discuss with TfNSW what measures have been undertaken to address potential parking impacts from the temporary housing projects.
- 15 will also investigate whether these parking arrangements can become legacy items for Mullumbimby once the situation around the need for temporary housing has been resolved.

Resolution – Item 6

City of Gold Coast – Resident Permit

- 20 Resident permit management comparison between City of Gold Coast and Byron Shire Council was undertaken as they are the closest high tourist LGA with a pay parking scheme in place. NSW Council such as Coffs Harbour or Port Macquarie do not have Pay Parking. Information for NSW for the Northern Beaches is provide below.
- 25 A Residential parking permit allows residents to park on-street and avoid time limits in their scheme area. City of Gold Coast resident parking permit only relates to areas where paid parking does not apply to the section of road where your property is located (i.e. time restrictions only).

Gold Coast do not have a permit that excludes a resident from paying for pay parking.

Table 3: Number of permits available by type of residence (City of Gold Coast)

Type of Residence	Number of off-street parking spaces (carport/garage/ 4.9m x 2.6m concrete or similar)	Maximum number of permits per premises
House or duplex	0	3
	1	2
	2	1
	3 or more	0 (not eligible)
Unit or townhouse	0	2
	1	1
	2	0 (not eligible)

Northern Beaches Council – Resident Permits

Residential permit

A Residential parking permit allows residents to park on-street and avoid time limits in their scheme area. Residential Pay Parking permit fees and charges for Manly are:

- 5 • 1st permit issued to property - \$47
- 2nd permit issued to property - \$110
- 3rd permit issued to property - \$110
- Replacement Multi-use permit - \$230
- 4th permit residential/multi-use (extenuating circumstances only) - \$280

10 **Beach parking permit**

The Northern Beaches also provide an option for residents to purchase Beach Parking Permits (2 permits per resident) that require displaying a parking permit to avoid time restrictions or parking meter fees.

Cost:

- 15 • Full year - \$223 (valid from 1 September to 31 August)
- Half year - \$112 (valid from 1 March to 31 August).

Byron Shire – Residential parking permits

Traffic area permit

- 20 Byron Bay or Wategos residents who live adjacent to pay parking areas may be eligible for 2 free Traffic Area Permits. One for the resident and another for visitors.

Traffic Area Permits allow you to park in the street where you live with no time restriction. They cannot be used in the pay parking area.

Resident Permit (pay parking)

Byron Shire charges a \$55 annual fee for a resident parking permit.

- 25 The resident parking permit allows you to, park within a space controlled by pay parking for the specified time limit without paying a fee.

There is currently no limit for the number of parking permits per residence, however this is currently under review.

- 30 The permit is related to the primary residence (within the Shire) and the vehicle registration address.

Strategic Considerations

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.2: Connect the Shire through integrated transport services	5.2.4: Parking - Manage parking through effective controls that support Movement and Place Plans and are coordinated with other initiatives such as park and ride	5.2.4.1	There is currently no corresponding OP activity. If the recommendation is resolved by Council a new activity will be included in the Quarter 1 Amendments.

Recent Resolutions

Resolution number 21-442

Legal/Statutory/Policy Considerations

- 5 Councils Finance Manager has been consulted and assisted with the above response.

Financial Considerations

Considerations to costs in relation to consultation for Pay Parking cost benefit and parking area management within Brunswick Heads.

Consultation and Engagement

- 10 The community and community groups in each town have been consulted with regarding to Pay Parking at various times and various levels.

Bangalow Pay Parking was ready to be rolled out a number of years ago, but was cancelled due to community concern.

- 15 Brunswick Heads has received both support and no support. Reflections have confirmed no pay parking is permitted in the car park located on Fingal St adjacent to the pedestrian footbridge across Simpsons Creek.

An additional survey is required to confirm if any car spaces located within zone 28, adjacent to Banner Park, are also located within the footprint of Banner Park, which is also managed by Reflections. This is currently being completed.

- 20 Given Torakina Beach Car Park is located within Crown Land it may be subject to Native Title claims. The impact of this on the installation of pay parking in this car park are currently unknown.

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Pay Parking can be a contentious issue and should only be committed to when the parking data and a benefit cost ratio supports its implementation.

Report No. 13.18 Proposed Extenuating Circumstances - Johnstons Lane Bridge Construction

Directorate: Infrastructure Services

Report Author: Hayden Kress, Project Engineer

5 **File No:** I2022/1276

Summary:

Johnstons Lane causeway is part of the “Bring Back the Brunz”, Department of Primary Industries funded Flagship Program. It is the last remaining causeway to upgrade before the Flagship grant program works can be completed.

10 The project has been significantly delayed through the approvals process due to land ownership and Crown licence issues. These delays have now all been resolved, however during this period there have been significant cost increases which have resulted in quoted prices exceeding the tender threshold of \$250,000.

15 This report seeks Council endorsement to complete the bridge construction without inviting tenders, relying on the extenuating circumstances provision in section 55 (3) of the Local Government Act 1993.

20 RECOMMENDATION:

1. That pursuant to Section 55 (3) of the Local Government Act 1993, Council not proceed to invite tenders due to extenuating circumstances and the unavailability of competitive tenderers which apply to the “Johnstons Lane Bridge Installation” such that a satisfactory result would not be achieved by
25 inviting tenders for the following reasons:
 - i) It is considered more of a benefit to the community and the environment to complete the works without the tender process, than to risk not completing the proposed work as soon as possible.
 - 30 ii) Recent Request for Quotation for these bridge works resulted in only one price submission from Quickway Constructions after inviting 8 suppliers to provide a submission.
 - iii) Recent competitive Invitation to Tender for Contract 2021-0030 – Fixing Country Bridges resulted in Council accepting the lowest price submission from Quickway Constructions
- 35 2. That Council delegates authority to the General Manager to negotiate agreement with Quickway Constructions to complete the Proposed Works.

Report

Johnstons Lane causeway is part of the “Bring Back the Brunz”, Department of Primary Industries (DPI) funded Flagship Program. It is the last remaining causeway to upgrade before the Flagship grant program works can be completed.

- 5 The works have experienced significant delays through the approval process due to land ownership and Crown licence issues.

These delays have now all been resolved, however during this period there have been significant cost increases which have resulted in quoted prices exceeding the tender threshold of \$250,000.

- 10 Council staff cost estimate prior to seeking quotations for the works in May 2022 were below the \$250,000 tender threshold. It was unknown at that time that cost increases would have such an impact.

Key issues

- 15 Staff originally planned to deliver these works with an internal works team, however, due to changes in the works team and current commitments this is no longer the preferred delivery method.

An open Request For Quotation (RFQ) process was used to obtain contract prices for the bridge installation. The RFQ invited 8 selected suppliers experienced in similar works.

- 20 The RFQ closed on Wednesday 11 May 2022. One response was received. This quote exceeded the tender threshold.

- 25 The same contractor has also been engaged to complete bridge replacements at English's Bridge, Sherringtons Bridge and Upper Main Arm Road bridge under Contract 2021-0030. They were also the successful and lowest price bidder for this contract following Councils invitation to Tender on 27 September 2021. This demonstrates that the market has been tested recently for similar works.

Staff have been negotiating with DPI since May to obtain further funding to cover the additional costs. This has resulted in an additional \$125,600 being offered by DPI.

- 30 The project is now construction ready and the contractor is in the area that is ready to commence works. Therefore, it is recommended to proceed using the quoted price. Should Council instead resolve to invite tenders for the works there is potential for tender prices to increase beyond the current price, resulting in further negotiations for extra funds being required.

Options

- 35 1. Award the contract as proposed
2. Proceed to open tender

Strategic Considerations

Community Strategic Plan and Operational Plan

There is not a specific activity for this project however, it has key links to the following activity.

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
3: Nurtured Environment We nurture and enhance the natural environment	3.1: Partner to nurture and enhance our biodiversity, ecosystems, and ecology	3.1.3: Habitat restoration - Restore degraded areas that provide high environmental or community value	3.1.3.5	Deliver Federal Fish Habitat Restoration Project

5 Recent Resolutions

N/A

Legal/Statutory/Policy Considerations

Council's procurement policy requires that works are managed in accordance with [Section 55 of the Local Government Act 1993](#) and in accordance with the regulations.

10 The recommendation seeks reliance on the exclusions LGA Act Section 55(3)(i):

(3) *This section does **not** apply to the following contracts:*

15 *i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders*

The NSW DLG, Tendering Guidelines for NSW Local Government

ICAC advise in their discussion paper "Taking the Con out of Contracting", May 2001, that in addition to the above requirements of Section 55 (3):

- 20 • the resolution must be passed in good faith and not merely an attempt to avoid the public tender requirement of Section 55 (1)
- poor planning should not be considered an adequate excuse for failing to adopt a competitive process
- 25 • the option of relying on clause 12 of the regulation to shorten a tender period from at least 21 days to a minimum of 7 days, on the basis there are exceptional circumstances rendering inappropriate the normal 21 day deadline, could also be considered by a council before seeking to rely on the extenuating circumstances provision

Regarding the above advice, in this instance the provisions of Section 55 (3) still apply. A shortened tender period would still rely heavily on staff time and resources and not improve the outcome of the project (it is likely that cost would increase further). The market has been tested through recent tender and quotation processes which shows value in the price received.

It is believed that for the “*Johnstons Lane Bridge Installation*”, there are currently extenuating circumstances and unavailability of competitive tenders which would result in unsatisfactory results if the proposed work were subjected to the formal tender process.

Note that the term ‘extenuating circumstances’ is not defined in the Local Government Act.

10 Financial Considerations

The total current available budget is \$370,604.

The total projected spend is \$470,549 (this includes costs to date, project management and other project costs)

15 The project still has a shortfall of \$99,945, however, this shortfall will be resolved with the September quarterly review using \$50,000 from each of the Causeway and Culvert capital renewal budgets to ensure this important project can proceed and be completed.

It is noted that these funds are for capital works, however, they are the funds which create the least impact to Council’s overall program.

Consultation and Engagement

20 Bringing Back the Brunz as a project has received various levels of consultation with the community. The proposed Johnstons Lane causeway renewal has been through extensive consultation with the impacts land owners.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Finance Advisory Committee Meeting held on 18 August 2022

5 **Directorate:** Corporate and Community Services

Report Author: James Brickley, Manager Finance

File No: I2022/1098

Summary:

- 10 This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 18 August 2022 for resolution by Council.

RECOMMENDATION:

- 15 1. That Council notes the minutes of the Finance Advisory Committee Meeting held on 18 August 2022.

2. That Council adopts the following Committee Recommendations:

Report No. 4.1 Budget Review - 1 April to 30 June 2022
File No: I2022/990

Committee Recommendation 4.1.1

1. That Council authorises the itemised budget variations as shown in Attachment 2 (#E2022/77197) which includes the following results in the 30 June 2022 Quarterly Review of the 2021/2022 Budget:
 - a) General Fund - \$126,500 decrease in Unrestricted Cash Result
 - b) General Fund - \$27,657,600 increase in reserves
 - c) Water Fund - \$4,366,600 increase in reserves
 - d) Sewerage Fund - \$8,070,200 increase in reserves.
2. That Council adopts the revised General Fund Estimated Unrestricted Cash Result of \$0 for the 2021/2022 financial year.

3. That Council adopts the following Committee Recommendations:

Report No. 4.2 Carryovers for inclusion in the 2022-2023 Budget

File No: I2022/1032

Committee Recommendation 4.2.1

That the Committee recommends Council approves the works and services (with respective funding) shown in Attachment 1 (#E2022/76668) to be carried over from the 2021/2022 financial year and that the carryover budget allocations be adopted as budget revotes for inclusion in the 2022/2023 Budget Estimates.

Attachments:

5

- 1 Minutes 18/08/2022 Finance Advisory Committee, I2022/1041 

Report

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 18 August 2022 for determination by Council. The agenda for this meeting can be located on [Council's website](#).

5 Committee Recommendation

The Committee considered two reports being the 30 June 2022 Quarterly Budget Review and Budget Carryovers for inclusion in the 2022-2023 Budget.

Report 4.1 concerning the 30 June 2022 Quarterly Budget Review outlined Council's initial estimated financial position for the 2021/22 financial year, reviewed as at 30 June 2022.

- 10 The 30 June 2022 Quarterly Budget Review illustrates actual outcomes for 2021/2022 and the scale of works completed. There are a number of budget variations representing proposed changes for works not completed in the 2021/22 financial year which leads to the next Report, being Report 4.2, concerning Budget Carryovers for inclusion in the 2022/23 Budget.

- 15 The 30 June 2022 Quarterly Budget Review has resulted in an increase to the budget deficit and \$0 in unrestricted cash as at 30 June 2022. The report focused on the cash position of Council at financial year end, attributed to costs associated with flood restoration/clean up works yet to be reimbursed to Council. Specifically, the report identified over \$7.179million in expenditure associated with the flood events that Council was yet to be reimbursed as at 30 June 2022.

The 30 June 2022 Quarterly Budget Review also identified significant reserve movements to place funds in reserve for works to be completed in 2022/2023. This amounted to \$27.658million for General Fund, \$4.367million for Water Fund and \$8.070million for Sewerage Fund.

- 25 Report 4.2 concerning Budget Carryovers for inclusion in the 2022/23 Budget provided the Committee with a schedule of works and services not completed or requested to be carried forward to the 2022/23 financial year. The value of carryovers is \$17.539million for the General Fund, \$3.318million for the Water Fund and \$4.042million for the Sewerage Fund. There were explanations provided in the report on the status also of Local Roads and Drainage projects sought to be carried forward that amounted to \$8.492million.

Financial Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 18 August 2022.

Statutory and Policy Compliance Implications

- 35 As per the Reports listed within the Finance Advisory Committee Meeting of 18 August 2022.

Report No. 14.2 Report of the Audit, Risk and Improvement Committee Meeting held on 18 August 2022

Directorate: Corporate and Community Services

Report Author: Mila Jones, Governance and Internal Audit Coordinator

5 **File No:** I2022/1106

Summary:

This report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 18 August 2022 for determination by Council.

10

RECOMMENDATION:

1. That Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 18 August 2022.
2. That Council adopts the following Committee Recommendation:

Report No. 4.1 Update from OLG on membership requirements for Audit, Risk and Improvement Committees

File No: I2022/925

Committee Recommendation 4.1.1

That Council notes the update provided by the Office of Local Government in Circular 22-21 pertaining to the draft Guidelines for Risk Management and Internal Audit for Local Councils in NSW.

15

3. That Council adopts the following Committee and Management Recommendations:

Report No. 4.2 Draft Constitution of the Audit, Risk and Improvement Committee

File No: I2022/828

Committee Recommendation 4.2.1

That Council adopt the Draft Audit, Risk and Improvement Committee Constitution (Attachment 1 E2022/73365).

Management Recommendation

That the Draft Audit, Risk and Improvement Committee Constitution be amended at part 9 *Secretariat* to allow for the agenda to be distributed 10 days prior to the meeting, rather than a week prior to the meeting.

4. That Council adopts the following Committee Recommendation:

Report No. 4.3 Financial Reporting to Audit, Risk and Improvement Committee
File No: I2022/996

Committee Recommendation 4.3.1

1. That a revised version of the financial reporting update be presented to the Committee at the November 2022 meeting.
2. That Council notes that the Audit, Risk and Improvement Committee receive financial reporting updates.

5. That Council adopts the following Committee Recommendation:

Report No. 4.4 Internal Audit Plan 2022-2024
File No: I2022/823

Committee Recommendation 4.4.1

1. That Council endorses the Internal Audit Plan 2022-2024 (E2022/61398).
2. That the proposed audits for 2023-2024 be brought to the Audit, Risk and Improvement Committee Meeting in November 2022.

6. That Council adopts the following Committee Recommendation:

Report No. 4.5 Delivery Program 6-monthly Report and Operational Plan
2021/22 Quarter 4 Report - to 30 June 2022
File No: I2022/987

Committee Recommendation 4.5.1

That Council notes that the Audit, Risk, and Improvement Committee noted the Delivery Program 6-monthly Report and 2021/22 Operational Plan Fourth Quarter Report for the period ending 30 June 2022 (Attachment 1 #E2022/67538).

7. That Council adopts the following Committee Recommendation:

Report No. 5.1 Quarter 4 2021-22 Risk Report

File No: I2022/732

Committee Recommendation 5.1.1

That Council notes the Strategic and Operational Risk Reports for the quarter ending 30 June 2022 (Attachment 1 E2022/63424) and improvements planned or underway.

8. That Council adopts the following Committee Recommendation:

Report No. 5.2 Internal Audit Report - 2021-2022 Quarter 4 (and 2021-2022 Quarter 1 report deferred from the ARIC meeting of 19 May 2022)

File No: I2022/826

Committee Recommendation 5.2.1

That Council:

- 1. Notes the Summary of Internal Audit Recommendations for Quarter 1 2021-2022 (Attachment 1 E2021/123033).**
- 2. Endorses the recommendations from the Executive Team and Audit, Risk and Improvement Committee to close off four internal audit recommendations from Quarter 1 2021-2022 as listed in Table 1 of this report (which is a summary from Attachment 1 E2021/12033).**
- 3. Notes the Summary of Internal Audit Recommendations for Quarter 4 2021-2022 (Attachment 2 E2022/63964).**
- 4. Endorses the recommendations from the Executive Team and Audit, Risk and Improvement Committee to close off seven internal audit recommendations from Quarter 4 2021-2022 as listed in Table 2 of this report (which is a summary from Attachment 3 E2022/62825).**
- 5. Requests management to record any findings needing further action from the Internal Audit of Payroll – Data Analytics (Attachment 4 E2022/69122) in Council’s Internal Audit Register.**
- 6. Endorses the proposal to shift the Inventory Internal Audit from Quarter 2 2021-2022 to Quarter 1 2022-2023.**

9. That Council adopts the following Committee Recommendation:

Report No. 5.3 Social Engineering Incident - Reporting of Independent Investigation

File No: I2022/506

Committee Recommendation 5.3.1

That Council:

- 1. Notes the outcome of the investigation and the importance of being constantly aware of social engineering and cyber security.**
- 2. Notes the progress of implementing the recommendations proposed following the independent investigation.**

10. That Council adopts the following Committee Recommendation:

Report No. 5.4 Cyber Security and IT System Outages Quarterly Update
File No: I2022/904

Committee Recommendation 5.4.1

- 1. That Council notes the report.**
- 2. That the Audit, Risk and Improvement Committee receives ongoing cyber security and system outage status reports.**



11. That Council adopts the following Committee Recommendation:

Report No. 5.5 External Audit Actions Quarter 4 2021-2022 Update
File No: I2022/1001

Committee Recommendation 5.5.1

- 1. That Council notes the external audit activity update for the quarter ending 30 June 2022 as outlined in Confidential Attachment 1 (#E2022/76444).**
- 2. That Council endorses the closure of Issue 2 from the 2021 Year End Audit Management Letter regarding 'Confirming orders after invoicing'.**

Attachments:

- | | | |
|----|---|--|
| 5 | 1 | Minutes 18/08/2022 Audit, Risk and Improvement Committee, I2022/1081  |
| | 2 | Confidential - Updated Internal Audit Plan 2022-2024, E2022/61398 |
| | 3 | Confidential - Internal Audit Status Report Q1 2021-22, E2021/123033 |
| | 4 | Confidential - Grant Thornton Q4 2021-22 Internal Audit Status Report, E2022/63964 |
| | 5 | Internal Audit Status Report - Q4 2021-22, E2022/62825  |
| 10 | 6 | Confidential - Internal Audit Report: Payroll - Data Analytics, E2022/69122 |
| | 7 | Confidential - External Audit Activity Report Quarter 4 2021-22, E2022/76444 |

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

14.2

Report

The attachment to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 18 August 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

5 [Audit Risk and Improvement Committee](#)

10 The attachment numbers included in the recommendations to this report is the numbering that was applicable to the Audit, Risk and Improvement Committee Meeting Agenda. However confidential attachments from that Agenda have been included with this report for Council's information. The non-confidential attachments are available at the link provided above.

Confidential attachments included in this report:

- Report 4.4 Attachment 1 – This has been included as Attachment 2 to this report
- Report 5.2 Attachment 1 – This has been included as Attachment 3 to this report
- Report 5.2 Attachment 2 – This has been included as Attachment 4 to this report
- 15 Report 5.2 Attachment 3 – This has been included as Attachment 5 to this report
- Report 5.2 Attachment 4 – This has been included as Attachment 6 to this report
- Report 5.5 Attachment 1 – This has been included as Attachment 7 to this report

Management Comments

20 Management provides the following additional information in relation to Report 4.2 Draft Constitution of the Audit, Risk and Improvement Committee:

25 At the Meeting, the Committee endorsed the Draft Constitution be reported to Council for adoption. This Draft Constitution specifies that the Agenda documents be provided to members one week prior to the meeting however, later in the meeting during a general discussion, the members requested that future Agenda documents be distributed to members 10 day prior to Committee meetings. A management recommendation has been included in this report to Council to include an amendment to the Draft Constitution to allow for the 10 day timeframe.

Financial Implications

30 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 18 August 2022.

Statutory and Policy Compliance Implications

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 18 August 2022.

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 14.3 Report of the Coastal and ICOLL Advisory Committee Meeting held on 30 June 2022

5 **Directorate:** Sustainable Environment and Economy
Report Author: Michelle Chapman, Project Support Officer
File No: I2022/845

Summary:

10 This report provides the minutes of the Coastal and ICOLL Advisory Committee Meeting of 30 June 2022 for determination by Council.

Amendments to the constitution are recommended for adoption, including a change to the name of Committee.

15

RECOMMENDATION:

1. That Council notes the minutes of the Coastal and ICOLL Advisory Committee Meeting held on 30 June 2022.
2. That Council adopts the following Committee Recommendations:

Report No. 3.1 Update on the development of Coastal Management Programs (CMPs) for the Byron Shire Coastline

File No: I2022/61

Committee Recommendation 3.1.1

That the Coastal and ICOLL Advisory Committee:

1. Notes the legislated process and associated extended timeframes associated with preparing Coastal Management Program(s) under the NSW Coastal Management Framework.
2. Advises Council that a particular hazard at Belongil namely end of wall effect on estuary opening needs consideration in the Stage 2 Coastal

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.3

Hazard Assessment Study.

- 3. Advises Council that there is a need to recognise ‘coastal squeeze’ as a threat on both the coast and in the estuaries.**
- 4. Advises Council that there is a need to recognise the important shorebird breeding, feeding and roosting area at Belongil and Marshalls Creek.**

3. That Council adopts the following Committee Recommendations:

Report No. 3.4 Review Constitution of Coastal and ICOLL Advisory Committee
File No: I2022/682

Committee Recommendation 3.4.1

- 1. That the Coastal and ICOLL Advisory Committee recommends to Council to adopt the constitution at Attachment 1 (E2022/11708) with the following changes:**

a) Amend the name of the committee to Coast and ICOLL Advisory Committee.

b) Amend 2a. Purpose to:

Advise Council in the development of Coastal Management Programs for the Shire’s coast, estuary and ICOLLs

c) Amend 2b. Purpose to:

Advise on projects, plans and strategies related to the coast, estuary and ICOLLs.

d) Update 5. Membership to read:

“Membership is to include:

- 2 Councillors**
- 6 relevantly qualified community representatives**

Representatives from:

- Department of Planning and Environment**
- DPI Fisheries - Cape Byron Marine Park**
- National Parks and Wildlife Service**
- Crown Lands**
- State Emergency Services**
- Transport for NSW**
- Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)**

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.3

- Jali Local Aboriginal Land Council
- Tweed Byron Local Aboriginal Land Council
- Byron Shire Council General Manager (or staff member delegate)''

Note: Staff members and state agency representatives participating on the Committee do not have any voting entitlements.

e) Amend 7. Quorum to:

A quorum is to constitute at least half the number of community members and Councillors plus one (resulting half numbers go down), one of which is to be a Councillor.

The General Manager or delegate, who must be a member of staff, is to attend the committee meeting and is not counted in the quorum for the meeting.

State government and indigenous organisation representatives do not form part of the quorum.

f). Amend 10a. Voting to:

Each member of the Committee (with the exception of Council staff and state government agency representatives) is to have one vote, with the Chairperson to have the casting vote in addition to a deliberate vote.

g) Amend 10 Voting to include:

Representatives of Bundjalung of Byron Bay Aboriginal Corporation (Arakwal), Jali Local Aboriginal Land Council and Tweed Byron Local Aboriginal Land Council can elect to have voting rights.

4. That Council adopts the following Committee Recommendations:

Report No. 3.5 Consideration of Dredging of Capricornia Canal and Marshalls Creek and the Removal of the Marshalls Creek Training Walls

File No: I2022/699

Committee Recommendation 3.5.1

That the Coast and ICOLL Advisory Committee:

- 1 Notes the report and outline of the issue.**
- 2. Notes that the Floodplain Advisory Committee will receive a further report with a proposed scope that includes recommendations received from the Committee.**
- 3. Advises Council as part of the review of the 2022 Floods, again consider**

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.3

options of (i) dredging Capricornia Canal and Marshalls Creek, and
(ii) removing rockwalls at the south end of Readings Bay, as to:

- a) what benefit would have resulted for the 2022 flood (lower flood levels);
- b) what costs may be incurred (financial, environmental, social),
- c) what prohibitions may be in place (eg disturbing seagrass in a Marine Park); and
- d) what approvals would need to be sought; and
- e) that the findings be shared with the public, including visually by way of representative creek cross sections for the dredging option.

Attachments:

- 1 Minutes 30/06/2022 Coastal and ICOLL Advisory Committee, I2022/758 

Report

The recommendations are noted by management and are provided in the attachment to this report.

Financial Implications

- 5 As per the Reports listed within the Coastal and ICOLL Advisory Committee Meeting of 30 June 2022.

Statutory and Policy Compliance Implications

As per the Reports listed within the Coastal and ICOLL Advisory Committee Meeting of 30 June 2022.

**Report No. 14.4 Report of the Housing and Affordability
Advisory Committee Meeting held on 18
August 2022**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy
Noreen Scott, EA Sustainable Environment and Economy

File No: I2022/1187

Summary:

- 10 This report provides the minutes of the Housing and Affordability Advisory Committee Meeting of 18 August 2022 for determination by council.

RECOMMENDATION:

- 15 1. That Council notes the minutes of the Housing and Affordability Advisory Committee Meeting held on 18 August 2022.

2. That Council adopt the following Committee Recommendations:

**Report No. 3.1 Review Constitution of Housing and Affordability Advisory
Committee**

File No: I2022/936

Committee Recommendation 3.1.1

**That Housing and Affordability Advisory Committee recommends to Council to
adopt the draft constitution at Attachment 1 #E2022/3414.**

3. That Council adopts the following Committee Recommendation as follows:

Report No. 3.2 Presentation by Mike Myers

File No: I2022/915

Committee Recommendation 3.2.1

That the Housing and Affordability Advisory Committee notes the report and presentation provided by Mike Myers.

4. That Council adopts the following Committee Recommendations:

Report No. 3.3 Byron Shire Housing Forum

File No: I2022/944

Committee Recommendation 3.3.1

That the Housing and Affordability Advisory Committee notes:

- 1. The key findings and outcomes of the Byron Housing Summit as summarised in this report and as below:**
 - a) The community to articulate what it wants and how to get there, with importance of self-defined measures of success.**
 - b) A desire to build on existing social capital as we adapt and respond.**
 - c) A preference to nurture a housing industry that embraces alternative tenure and living options with a cooperative focus.**
 - d) A promotion of the mosaic of communities as places which are to be respected, with room to dabble and explore.**
 - e) Participants warmed to the idea of a demonstration village exemplifying diverse & affordable housing that is Byron friendly.**
 - f) The underpinning of a respect of Bundjalung Country and First Nation Peoples and therefore Aboriginal housing to be prioritised.**
- 2. That staff will consider the key findings and outcomes of the Byron Housing Summit in future strategy, plan, policy and project work.**
- 3. There are numerous housing initiatives and projects currently being progressed by staff in response to multiple resolutions of Council about local housing need and the housing crisis as actions adopted in the current Delivery Program 2022-2026 and Operational Plan 2022-2023.**

5. That Council adopts the following Committee Recommendation:

Report No. 3.4 Delivery Program - Workshop Session

File No: I2022/937

Committee Recommendation 3.4.1

That the Housing and Affordability Advisory Committee notes the presentation on the Delivery Program 2022-26.

Attachments:

5

- 1 Minutes 18/08/2022 Housing and Affordability Advisory Committee, I2022/1038 

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.4

Report

The attachment to this report provides the minutes of the Housing and Affordability Advisory Committee Meeting of 18 August 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Housing and Affordability Advisory Committee Meeting - Thursday, 18 August 2022](#)

Financial Implications

As per the Reports listed within the Housing and Affordability Advisory Committee Meeting of 18 August 2022.

10 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Housing and Affordability Advisory Committee Meeting of 18 August 2022.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.5 Report of the Water and Sewer Advisory Committee Meeting held on 18 August 2022

- 5 **Directorate:** Infrastructure Services
- Report Author:** Rachel Barnden, Systems Support Officer
- File No:** I2022/1095

Summary:

- 10 The attachment to this report provides the minutes of the Water and Sewer Advisory Committee Meeting of 18 August 2022 for determination by Council.

RECOMMENDATION:

- 15 1. **That Council notes the minutes of the Water and Sewer Advisory Committee Meeting held on 18 August 2022.**

2. **That Council adopts the following Committee Recommendations:**

Report No. 4.1 Committee Constitution
File No: I2022/957

Committee Recommendation 4.1.1

That Council adopt the constitution E2021/148692 with the following amendments

Section 2 Purpose:

The purpose of the Committee is to:

a) develop policies and programs that address the water and sewer needs and aspirations of the Shire's populations in a resilient and ecologically sustainable way.

b) develop strategies and advise on projects that minimise the environmental

impacts (i) of extracting water, (ii) of returning sewage to receiving environments, and (iii) of treatment and processing for these purposes.

c) recommend strategies and plans to manage water and sewerage assets.

In Section 5 Membership:

Council appoints Advisory Committee members, thus conferring their responsibilities and rights as set out in this document.

In Section 11 Majority Decision:

A decision of the Committee is by majority of the voting members present at the time of the vote, including on-line presence.

In Section 16 Absence from Committee Meetings:

a) **Has been absent from two consecutive meetings of the Committee without having given acceptable reasons for the member's absence.**

3. That Council adopts the following Committee Recommendations:

Report No. 4.3 Safe and Secure Yield
File No: I2022/583

Committee Recommendation 4.3.1

- 1. That the Committee notes that the attachment was omitted from this report.**
- 2. That an extraordinary WSAC meeting is held to consider Hydrosphere's Mullumbimby Water Supply Strategy (IWCM) Hydrosphere July 2022**

4. That Council adopts the following Committee Recommendations:

Report No. 4.4 West Byron STP Compliance Report
File No: I2022/947

Committee Recommendation 4.4.1

That the Water and Sewer Advisory Committee:

- a) Note the report and the attachments.**

- b) Note from the report in terms of Condition 9, that 2791ET (1.65ML/day) were connected between December 2002 and April 2022, and that reuse capacity is 3416ET (2.016ML/day), being the Melaleuca regeneration area, the West Byron STP onsite reuse and the urban reuse.
- c) Note that further work on the recycled water applications is nearing completion and the committee receives a report at the next meeting.
- d) The Operational Environmental Management Plan (OEMP) be updated, and an application be made to amend the consent to reflect an updated OEMP.

5. That Council adopts the following Committee Recommendation:

Report No. 4.5 STP Quarterly Operational Performance Report
File No: I2022/999

Committee Recommendation 4.5.1

That Council notes the report.

6. That Council adopts the following Committee Recommendations:

Report No. 4.6 Byron STP Condition 9 Additional Load - Quarterly Report
File No: I2022/955

Committee Recommendation 4.6.1

That Council:

- a) Notes the report; and
- b) That the quarterly reporting become annual (financial year) reporting.

Attachments:

5

- 1 Minutes 18/08/2022 Water & Sewer Advisory Committee, I2022/1077 

Report

The attachment to this report provides the minutes of the Water and Sewer Advisory Committee Meeting of 18 August 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Water and Sewer Advisory Committee Meeting - Thursday, 18 August 2022](#)

Committee Recommendation

That Council notes the minutes of the Water and Sewer Advisory Committee Meeting held on 18 August 2022.

Financial Implications

- 10 As per the Reports listed within the Water and Sewer Advisory Committee Meeting of 18 August 2022.

Statutory and Policy Compliance Implications

As per the Reports listed within the Water and Sewer Advisory Committee Meeting of 18 August 2022.

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Report No. 14.6 Report of the Moving Byron Advisory Committee Meeting held on 18 August 2022

Directorate: Infrastructure Services

Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services
Judd Cornwall, Traffic & Transport Engineer

File No: I2022/1097

Summary:

The attachment to this report provides the minutes of the Moving Byron Advisory Committee Meeting of 18 August 2022 for determination by Council.

RECOMMENDATION:

1. That Council notes the minutes of the Moving Byron Advisory Committee Meeting held on 18 August 2022.

2. That Council adopts the following Committee Recommendations:

Report No. 4.1 Moving Byron Submissions Report

File No: I2022/762

Committee Recommendation 4.1.1

That the Moving Byron Committee recommend Council:

1. Revise and expand the Submissions Summary Report as follows.
 - a) Amend heading for Figure 1 to read 'Rail Corridor options' and display levels of support for 'multi use', 'rail' and 'trains' as referenced in the submissions.
 - b) Amend commentary in the report and submissions table to refer to either 'multi use', 'rail' and 'trains' as referenced in each submission acknowledging that a 'rail trail' is understood by the community to be infrastructure that excludes provision for any type of rail activation or services.
 - c) Expand summary commentary in the report to include a fuller

description of references to 'public transport' to include inter town and regional references the benefits discussed.

- d) Expand summary commentary in the report to include a fuller description of submissions referring to 'rail' and 'trains' that is not limited to the 'heavy' or 'light' rail and that summarises the benefits, not just critical comments.
 - e) Include summary of key strategic themes referenced in submissions including but not limited to 'car dependence', the 'big picture challenge' to 'diversify' infrastructure and services, submissions referencing costed and technical assessments for multi use and or rail, submissions from prospective operators, safe hinterland road network access issues and other key themes.
 - f) otherwise amend the summary to ensure that it capture the flavour and nuance of the community submissions.
- 2. Support Staff and at least two Councillors commencing detailed conversations with Transport for NSW on how both levels of government can partner together to achieve a fully comprehensive and endorsed Action Plan from the Moving Byron document (attachment 3 to the Report 4.1 of Moving Byron Committee Meeting of 18 August 2022 Agenda / E2021/149220).
 - 3. Support the work of the committee by allocating time at the next meeting for a discussion of the key strategic themes and objectives of the Strategy.
 - 4. The Moving Byron Committee receive further reporting regarding a proposed way forward that is supported by Transport for NSW and allows for the Moving Byron documents to be adopted.

3. That Council adopts the following Committee Recommendations:

Report No. 4.2 Additional Discussion Items
File No: I2022/1044

Committee Recommendation 4.2.1

That Council, when next reviewing the Bike Plan, reconsider the priority for the Brunswick-Byron Coastal Cycleway Project IT005.

Attachments:

- 1 Minutes 18/08/2022 Moving Byron Advisory Committee, I2022/1023 

Report

The attachment to this report provides the minutes of the Moving Byron Advisory Committee Meeting of 18 August 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 https://byron.infocouncil.biz/Open/2022/08/MBAC_18082022_AGN_1528_AT.PDF

Committee Recommendation

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

Management Comments

- 10 At the request of Transport for NSW (TfNSW) a meeting is to be held on 6 September 2022 with staff. The purpose of meeting is to discuss the status of Moving Byron and the development of an Integrated Transport Plan for Byron Shire.

Staff had inquired if Councillors may attend and TfNSW have advised that they would like the initial meeting to be with staff.

- 15 The purpose of the meeting was as a project initiation for an Integrated Transport Strategy that meets the requirements of the movement and place framework set up by TfNSW.

Some of the outcomes from this meeting are to review the existing documentation and to set a project timeline that includes consultation with Councillors and the Moving Byron Advisory Committee.

- 20 **Financial Implications**

As per the Reports listed within the Moving Byron Advisory Committee Meeting of 18 August 2022.

Statutory and Policy Compliance Implications

- 25 As per the Reports listed within the Moving Byron Advisory Committee Meeting of 18 August 2022.