



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 21 June 2018

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

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

Mark Arnold
Acting General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL

ORDINARY MEETING

BUSINESS OF ORDINARY MEETING

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2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (S450A LOCAL GOVERNMENT ACT 1993)
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Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director prior to the meeting. Any suggested amendments to the recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

MAYORAL MINUTE

5 **Mayoral Minute No. 8.1** **Update - Short Term Holiday Let Government Announcement**
File No: I2018/1096

I move that Council:

1. **Acknowledges the legitimate role short term holiday letting can play as part of the suite of visitor accommodation provision;**
2. **Note the disappointing lack of planning clarity thus far shared via press releases concerning short term holiday letting;**
3. **Note the disappointing absence of engagement of any form with Byron Shire in the 8 months since the close of the formal consultation period in October 2017;**
4. **Reinforce that, due to the Byron Shire a blanket approach to planning regulation via a state policy is a major cause for concern;**
5. **Request support from MP's Ben Franklin and Tamara Smith to assist in convening a meeting with the Minister for Planning in order for council to seek a deferral of Byron Shire from the new state wide planning policy (pause to implementation).**

10

Background Notes:

The NSW Government has announced a new a regulatory framework to govern the short-term holiday letting industry on 5 June.

15

The new framework is to include new planning laws, an industry Code of Conduct and new provisions for strata scheme by-laws.

20

The announcement is in response to the short term holiday letting option paper exhibited by the Department of Planning and Environment last year.

25

Council made a submission to this paper advocating strongly for the ability to locally respond to short term holiday let activity through planning regulation, registration and compliance mechanisms. The early indication from the consultation being held was that this would be the case.

30

It was extremely disappointing then for Byron Shire that further direct engagement with local government (and in particular this Council) did not occur subsequent to the consultation close in October 2017 and the Government announcement.

35

In reviewing the limited details on the proposed new state-wide planning controls, it would seem that short-term holiday let is to be enabled via exempt development provisions with or without host for 365 days a year, unless a reduction to 180 days is granted. Other critical details to Council being development standards, registration and or compliance proposals for short term holiday let activity are lacking and needed for an informed consideration and response to be made.

Council acknowledges the divergent views on the impacts of short term holiday let in councils across NSW. However, Byron Shire has experienced rapid growth in the last few years in online holiday rental listing and activity in the Shire as evidenced below. This has resulted in significant adverse impacts on our community in terms of amenity and character, and has reduced the

available and affordable rental accommodation for residents and key workers that are needed to support our local tourist economy.

5 At December 2017 Byron Shire had around 2,655 listings of the total Northern Rivers listings 4,256. Listings are up from 1,483 listings in 2016. Byron Shire has a total of 15,645 dwellings. Listings currently represent @17% of part / all dwellings use. Staggering compared to other local government areas in NSW and Australia.

10 As such a blanket approach to planning regulation via a state policy is a major cause for concern.

It is noted that the Fair Trading (Short Term Rental Accommodation) Bill has been read in parliament and likely to be enacted shortly. Reference is made in the transcript to the new state wide planning policy but at the time of writing this no details were available on the Department of Planning web site.

15 Due to the above, I have written to the Minister for Planning to seek a deferral of Byron Shire from the new state wide planning policy (pause to implementation) to enable a full consideration of the impact of the changes to short term holiday let in Byron Shire in terms of environmental, social and economic impacts. I have also requested an urgent meeting to discuss the situation and
20 circumstance of Byron Shire further.

To support this approach as being reasonable, the Minister was advised that Council already permits one bedroom short term holiday lets with host as exempt development. As such the
25 requested pause on implementation to the state policy would only be to short term holiday lets where no host is present.

This I consider to be a reasonable and equitable position for the state government to take for Byron Shire given the need to ensure that what is imposed on our community is both fair and balanced
30 for the community as a whole not just one part.

Signed: Cr Simon Richardson

Mayoral Minute No. 8.2
File No:

General Manager Recruitment
I2018/1101

I move that Council note the report at Confidential Attachment 1 (E2018/49761) and appoint Candidate #4 on a 5-year senior staff contract, at the current total remuneration package (TRP), in accordance with the Office of Local Government's Standard Contract for the Employment of General Managers.

5

Attachments:

- 1 Confidential - Byron Shire Council recruitment and selection report - General Manager May2018, E2018/49761

10

Signed: Cr Simon Richardson

NOTICES OF MOTION

Notice of Motion No. 9.1 **A Zero Waste Target for Byron Shire**
File No: I2018/1076

5

I move:

1. **Adopts a ‘Zero Waste Target’ across the Shire and includes this objective in our Integrated Waste Strategies and Management Plans.**
2. **Supports a circular economy model approach to manage its resource recovery, with an expressed a desire for an innovative waste management strategic focus (with zero waste to landfill aspirations).**
3. **Seeks regional support, through the Northern Rivers Joint Organisation, and other regional waste bodies, to encourage or incentivise businesses that will manufacture or create product from the recycled product in the region and to develop a region wide zero waste target.**
4. **Support the Northern Rivers Joint Organisation identified priority in waste management to proceed with and complete a detailed feasibility study for a regional AWT facility.**
5. **Write to the Relevant Minister, requesting:**
 - a) **That the NSW Government investigate further options for reforming the waste levy grant system, including providing greater flexibility in the grant guidelines for waste management projects.**
 - b) **That the NSW Government investigate opportunities to enhance the collaborative powers of Regional Organisations of Councils to encourage investment in waste facilities, to be funded by the waste levy.**
 - c) **That the NSW Environment Protection Authority provide additional support to local councils and resource recovery organisations to meet recycling targets and manage issues such as stream contamination, bureaucratic barriers, lack of product stewardship, and limited market opportunities.**
 - d) **That the NSW Environment Protection Authority urgently investigate, identify and implement alternative solutions to the ban on the importation of recyclable plastics by China**
 - e) **That the NSW Environment Protection Authority, in collaboration with stakeholders, investigate opportunities to embed zero waste strategies and the circular economy in New South Wales.**
6. **Write to Tamara Smith MLA and Ben Franklin MLC seeking their support and advocacy within NSW Parliament**

10

Signed: Cr Simon Richardson

Councillor’s supporting information:

Overview

5

We can thank the Chinese for abruptly stirring Australia, and NSW out of its’ responsible waste treatment slumber. The ‘Chinese Sword’ policy will greatly increase the need for local areas to become more responsible for what they consume and more important, what they do with the residual materials.

10

For a shire and region that has vulnerabilities in the provision of landfill security and yet seeks to develop innovative job creation and sustainable practices, this should be seen as a threat, but more importantly, an opportunity.

15

The Chinese Sword policy's greatest impact is/will be on the recycling industry as that was the majority of product that was being exported. The policy shift will cause a much needed change in the Australian industry to focus on more on-shore processing facilities, leading to opportunities for regional collaboration in this space, particularly if there is sufficient support and drive from the State and Federal Government. NOROC waste officers have already met with the EPA to discuss the implications of the Chinese policy.

20

A Local Approach

25

Aware of the looming problems that would arise from a change in policy by China, or Queensland or both; with an intent to explore the possibilities to be a landfill free shire, and aware of the fantastic employment and sustainability outcomes that could arise from a flourishing and innovative, circular economy system within the shire, Council ‘Council commissioned the Byron Shire Waste Strategy, completed by Arcadis, in August 2017. This report was the first stage in development of the strategy, not the final strategy. Arcadis have now completed stages 1, 2 and 3 of the strategy project– project inception, the BAU report, and the preliminary future options studies into AWT. The Integrated Waste Management Strategy (Stage 4 of the strategy project) is nearing completion and this should come to Council in September.

30

35

The Arcadis report recommended that some technologies be taken through a more detailed assessment, including: Combustion (mass burn of residual MSW and C&I Waste with energy recovery in form of electricity) and Gasification (close-coupled form, with electricity generation via a steam turbine) and identified further work to clarify the following:

40

- Costs, including capex, opex, benchmark landfill costs and transport/transfer costs within the region for different siting options
- Plant footprint requirements and preferred site options
- The materials and energy recovery potential of the technology options as a function of the waste composition
- Offtake markets for energy products (electricity, heat and fuel), RDF, mixed waste compost, bottom ash and air pollution control residues.
- Assessment of the carbon impacts of each option, including transfer activities

45

Arcadis also recommended a further workshop with key stakeholders to review the technology options, refine the waste flow projections and gain consensus on the assessment framework and scoring.

50

The ability to grow businesses within our Shire, or to attract businesses to our Shire first starts with the articulated intention to become a Zero Waste Shire and one focused on a circular economy.

55

Getting the ‘feedstock’ to cater for new businesses is also crucial, this will only come from looking to the region, as staff recently stated, “There are a lot of new and innovative European alternative

5 waste management technologies that are starting to come to Australia. These require more feedstock waste volume than the Byron Shire can provide so looking to partner with other councils in the region is important when assessing the viability of these facilities. These waste issues highlight the need for continued investment in innovative solutions in processing and in the Byron Shire we have a strong focus on recycling.”

10 The report summarised that, “each of the councils will assess the AWT options against their own benchmark costs for landfill disposal, either in their own landfill or using another regional landfill. In that respect, Tweed seemingly has the lowest benchmark cost which, if correct, is going to make it difficult for that council to justify an AWT commitment. Without Tweed, the volume of residual waste available drops by at least 25%. For other councils, their benchmark costs are broadly in line with preliminary expected costs for the shortlisted AWT solutions, indicating potential financial viability. AWT is not likely to provide significant financial savings in the short term, but it will provide long-term surety of residual waste costs in the face of ever-increasing landfill costs for all councils, but further work is required to verify the benchmark disposal costs, technology costs, transport costs and ongoing fixed landfill costs that councils will incur.”

20 It is worth noting of course that all of us in the Shire have a responsibility in how we collectively deal with our ‘waste.’ Our individual and community initiatives to reduce our plastic use and recycling is to be applauded, but it is crucial we continue and build on these changes. It is vital our community continue our current recycling efforts, as any exploration and implementation of AWT options will compliment kerbside recycling

25 *A Regional Approach*

As articulated, it is only through working collaboratively and aggregating our resource recovery streams that Byron can achieve its goals. Council’s Integrated Waste Management and Resource Recovery Strategy has noted that many of the proven, available AWT technologies for recovery of residual waste require a larger throughput than what Byron Shire can supply on its own. Hence it is accepted by Council that regional collaboration on an AWT solution will likely be necessary to aggregate sufficient volumes of waste to create a viable project.

35 When first shared with NOROC councils, the Arcadis report was not universally endorsed and a commitment to action not forthcoming. However, the tide has turned and it is now very opportune to seek regional partners once more, as other Northern Rivers council’s have recently committed to similar innovative and sustainable outcomes.

40 On 22 March, 2018, Tweed Shire Council passed a resolution to aspire to a zero waste target, and this provides an opportunity for the staff of the two council’s to develop more engagement, as the work we have been doing on this front, increasingly aligns with others. This allows us the opportunity to progressing investigations into the feasibility of AWT technologies on a regional scale. Tweed is a critical player in the region due to the volume of feedstock produced.

45 Recent developments within NOROC further enhance the momentum towards regional collaboration. As directed by the State Government, a key deliverable of the soon to be established Northern Rivers Joint Organisation is to adopt a statement of Regional Priorities. The statement of strategic regional priorities (statement) should set out a vision for the region and an overview of the joint organisation’s strategic work program to deliver this vision. Over the last 6 months, NOROC has developed a set of regional priorities. One of which was determined to be Waste Management. 50 The priority will draw from community strategic plans, regional plans and other strategic documents.

The Waste Management priority, as currently drafted, identifies three opportunities, to,
 55 1. Adopt collaborative, innovative approaches to waste management to increase recycling and improve cost effective service delivery to Northern Rivers residents and visitors.

2. Advocate for changes to NSW waste management regulation including a regulatory intervention to create a market for recycled product and review of the waste levy to facilitate increased funding available for local initiatives.
3. Conduct a Northern Rivers pilot of innovative waste processing and/or waste to energy technology

The draft also identifies success in this priority area as, 'Agreement between NOROC councils to proceed with and complete a detailed feasibility study for a regional AWT facility. "

A State Approach

NSW is the second highest per capita producer of waste in the world. A parliamentary inquiry into waste regulations has handed down its recommendations, including investigating options to restructure the NSW EPA. The committee (Portfolio Committee No. 6 - Planning and Environment- 'Energy from waste' technology), was established on 6 April 2017 to inquire into and report on matters relating to the waste disposal industry in New South Wales, with particular reference to the impact of waste levies, 'energy from waste' technology, the role of waste to energy and its impact on the recycling industry, regulatory standards, guidelines and policy statements on this and references to regulations overseas. In addition, it focused on illegal dumping and actions to prevent it, impacts of landfilling, the transport of waste out of the state and the sustainability of the current waste and landfill regime in New South Wales.

The final report acknowledged that successive NSW Governments have "failed to effectively leverage levy funds" to support the development of much-needed services and infrastructure, leaving the state dependent on landfill.

As identified by the myriad of EPA components within the NoM, the EPA is a crucial authority in the waste management space. Management of waste transport, processing, treatment and landfilling is regulated by the New South Wales Environment Protection Agency under the provision of the Protection of the Environment Operations Act and Regulations. Thus, any changes to waste treatment and processing to achieve a zero waste target must be in line with this legislation.

The committee recommended the NSW Government investigate options to restructure the NSW Environment Protection Authority (NSW EPA) to improve its performance and an independent review conducted into the EPA. The full report can be found here <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2436#tab-reports>.

So far, the response by the government has been underwhelming at best. Minister Upton announced a support package of up to \$47 million to help local government and industry, however, the package is being drawn from funding already allocated under the Waste Less, Recycle More program. The deck chairs were merely shuffled.

In response, LGNSW called for financial assistance to be drawn from funds collected via the waste levy that currently go into consolidated revenue.

Nonetheless, the package still provides opportunity for Byron and the Northern Rivers, as it includes a \$9.5 million allocation for industry and local government to co-invest in infrastructure projects to:

- find new uses for recyclable materials
- improve the quality of recycled products, and
- reduce the amount of waste sent to landfill at the end of the process.

The pursuit and aspiration to create a zero waste region nearly aligns with both the State Government's priorities of encouraging business investment and accelerating major project

delivery and the Premiers articulated priorities of 150,000 new jobs by 2019 (priority 1), keeping our environment clean (priority 10) and Improving government services (Priority 12.)

A Global Approach- the Circular Economy

5 The circular economy moves away from the traditional “take-make- dispose” economic model to one that is regenerative by design. It has also been called the regenerative economy.

10 It is underpinned by a transition to renewable energy sources, building economic, natural and social capital. The goal is to retain as much value as possible from resources, products, parts and materials to create a system that allows for long life, optimal reuse, refurbishment, remanufacturing and recycling.

15 According to World Business Council For Sustainable Development’s (WBCSD): CEO Guide to the Circular Economy , the circular economy is a \$4.5 trillion opportunity by 2030, and up to \$. It presents a massive opportunity to accelerate society onto a sustainable path.
(http://docs.wbcsd.org/2017/06/CEO_Guide_to_CE.pdf)

20 WBCSD offers, “The opportunities to be found within the new circular economy cannot be overstated, in short, it is nothing short than the biggest opportunity to transform production and consumption since the First Industrial Revolution 250 years ago. By unleashing circular innovation, we can boost the global economy’s resilience, support people and communities around the world and help fulfil the Paris Agreement and the UN Sustainable Development Goals. “

25 **Staff comments by: Manager Open Space and Resource Recovery, Infrastructure Services**
(Management Comments must not include formatted recommendations – resolution 11-979)

30 This NoM supports Councils strategic direction which includes the aspirational target of zero waste to landfill through best practice in waste avoidance, recovery and treatment.

35 Staff are in discussion with Arcadis about specific targets, timeframes under the strategic focus areas/objectives of enhanced solutions to recover, treat and dispose residual waste (includes AWT options and working with business and tourism sector), education and sustainable procurement.

Financial/Resource/Legal Implications:

N/A

40 Is the proposal consistent with any Delivery Program tasks?

Yes

Consistent with the WARR Strategy deliverables.

Notice of Motion No. 9.2 **Support for the Uluru Statement from the Heart**
File No: I2018/1086

I move that Council:

1. **Supports the Uluru Statement from the Heart.**
2. **Will be a signatory to the ACOSS statement of support for the Uluru Statement.**
3. **Acknowledges Aboriginal and Torres Strait Islander people as the Traditional Owners of this country and pay respect their ongoing spiritual and cultural connections with it.**
4. **Recognises the need for constitutional change that goes beyond the symbolic and the benefits that a treaty offers all Australians.**
5. **Thanks those who gathered at the 2017 National Constitutional Convention in Uluru for your persistence and patience.**

5

Signed: Cr Simon Richardson

10

Councillor's supporting information:

On Friday 26 May 2017 Delegates of the National Constitutional Convention released the [Uluru Statement from the Heart](#).

15

The statement is a proposal of constitutional reform that would establish a constitutionally enshrined First Nations representative body to advise parliament on policy affecting Indigenous peoples and commit Australia to a process of truth-telling of its colonial history through the establishment of a commission.

20

There are three key elements to the reforms set out in the Uluru Statement. Only one involves a change to the Australian Constitution.

1. **The Constitutional Change**

25

Involves enshrining a First Nations Voice in the Australian Constitution that would empower Aboriginal and Torres Strait Islander people.

2. **The Legislative Change**

30

Involves the establishment of a Makarrata Commission. The Makarrata Commission would supervise a process of agreement-making with Australian governments.

3. **The Commission**

Would also oversee a process of truth-telling about Australia's history and colonisation.

35

Uluru represents the largest ever consensus of Aboriginal and Torres Strait Islander people on a proposal for substantive recognition. The Uluru Statement was immediately rejected by Prime Minister Turnbull.

40

A Parliamentary Inquiry into the Uluru Statement, co-chaired by Senator Pat Dodson and MP Julian Leeser, is currently open for submissions and due to produce an interim report by 30 July 2018.

A key resolution from Uluru was the rejection of minimalist or symbolic constitutional recognition, in favour of something capable of creating substantive change while maintaining Indigenous sovereignty. The proposed body has no voting rights and will not alter the make-up of the Australian Parliament, but it will, for the first time, give First Nations peoples a voice to Parliament.

If the body is not constitutionally enshrined, thus guaranteeing it cannot be unilaterally dismantled like the Aboriginal and Torres Strait Islander Commission was in 2005, it no longer has the support of the Uluru forum.

AUSTRALIAN COUNCIL OF SOCIAL SERVICES (ACOSS) STATEMENT OF SUPPORT
www.acoss.org.au/supportfirstnations/

“A call to the Prime Minister and Australian Parliament

We support First Nations peoples to have a voice. We call on the Australian Parliament to make this a national priority.

We represent non-Indigenous Australians whose hearts and minds were filled with hope as First Nations voices called for acknowledgement in the Constitution and recommended treaties to bring about structural reform for socio-economic improvement.

There have been many consultations and reports over many years, with the latest being the *Uluru Statement from the Heart*.

The *Uluru Statement from the Heart* calls for ‘constitutional reforms to empower our people and take a *rightful* place in our own country’. It calls for a constitutionally guaranteed advisory body to provide advice to Parliament. The proposed body has no voting rights and will not alter the make-up of the Australian Parliament, but it will, for the first time, give First Nations peoples a voice to Parliament. It also seeks a Makarrata Commission to commence treaty negotiations engaging with all Australian governments and more active steps for ‘truth telling about our history’.

We are concerned about the negative response from the Australian Government to the Uluru Statement from the Heart causes great concern.

Many First Nations peoples are again experiencing a governmental rejection of their views. First Nations voices are the only ones who can truly explain and ameliorate the historical intergenerational traumas, the marginalisation, the hurts and all their consequences. This inability to listen and work constructively with First Nations peoples potentially compounds intergenerational traumas and their consequences. Evidence from many studies, here and overseas, shows when First Nations peoples are empowered, the adverse consequences of their marginalisation are more effectively addressed.

Governments should support institutional reform to hear to the multiplicity of First Nations voices and allow them to bring a rich and varied range of proposals for constructive change to the table. Many of us have seen the devastatingly negative effects of successive federal, state and territory policies imposed on First Nations peoples; peoples who consistently remind us they are the best able to address the current situation affecting them, their families and communities.

We strongly support progressing Australia’s First Nations peoples’ right to a say in the decisions that affect their lives.

First Nations peoples make up the first sovereign nations of Australia with evidence of their presence in Australia for over 60,000 years. This sovereignty was ‘never ceded or extinguished

and co-exists with the sovereignty of the crown'. However, it is yet to be rightfully acknowledged and First Nations peoples are not mentioned in the Constitution.

5 We agree with the *Uluru Statement of the Heart* that "With substantial constitutional change and **structural reform** [our emphasis] this ancient sovereignty can shine through as a fuller expression of Australian nationhood'. Such reforms must empower First Nations peoples and enable individuals, families, and children to flourish and consequently contribute inevitably to a more complete Australian society.

10 The Australian Government has been seeking support for recognition from both Indigenous and non-Indigenous Australians over many years.
A national survey recently found over 70 per cent of Australians surveyed support First Nations peoples' constitutional recognition, with 60.7 per cent supporting the Voice to Parliament proposal, and the Uluru Statement from the Heart was 'endorsed by unprecedented Indigenous
15 consensus'.

We urge the Australian Parliament to listen to First Nations peoples' recommendations in the Uluru Statement, and to back this attempt to improve their circumstances and participate more fully in Australian society.

20 We do not want Australia to continue on a path of policies and associated expenditure on interventions and activities that are proving ineffective in many situations.

25 Giving First Nations peoples a say in the decisions that affect their lives will provide an opportunity for doing things differently and more productively, by simply listening to the advice of people who are affected, and by allowing First Nations peoples to claim **their rightful place** in the nation.

We support First Nations peoples' Uluru Statement from the Heart. We call on the Australian Parliament to make this a national priority."

30 References:

www.1voiceuluru.org

www.acoss.org.au/supportfirstnations/

35 www.theguardian.com/australia-news/2018/may/26/a-year-on-the-key-goal-of-uluru-statement-remains-elusive

Staff comments by Sarah Ford, Manager Community Development, Corporate and Community Services:

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

The Manager Community Development supports the recommendations proposed. It is assumed that part five of the recommendation will be fulfilled should Council adopt the Notice of Motion via a resolution given part five will be on the public record as part of the resolution.

45 Financial/Resource/Legal Implications:

Nil.

50 Is the proposal consistent with any Delivery Program tasks?

SC 3.2 Acknowledge, foster and celebrate Aboriginal culture

SC 3.1.1 Develop strong and productive relationships between the Aboriginal Community and Council.

Notice of Motion No. 9.3 **Lots Identified**
File No: I2018/1089

I move that an amendment to Chapter B14.2 of DCP 2014 be prepared as part of the next House Keeping DCP amendment/s by adding the following clause to the Prescriptive Measure in DCP – Chapter B14 – Excavation and Fill:

Lots that are identified as having stability problems either on Councils GIS mapping or through the development assessment process (slopes greater than 15 degrees, land that has historically been used for uncontrolled filling, or land that has is constrained by springs or wet areas etc.) are to adequately address geotechnical constraints through the submission of a detailed geotechnical report prepared by a suitably qualified professional. The development application shall also incorporating preliminary design detail for footings, driveways and storm water management to demonstrate how the risk is can be adequately managed. In certain circumstances the geotechnical constraints will prevent properties from being developed for infill development and applications will not be approved.

5

Signed: Cr Cate Coorey

10

Councillor’s supporting information:

Under the DCP 2010, there was a Chapter for South Ocean Shores that was not carried over to the current DCP 2014.

15

Section 2 from 2010 DCP states:

“It should be noted that the allotments originally identified as having stability problems were generally made larger than usual in order to provide a stable dwelling site. Council will not approve applications to re-subdivide these lots unless a fully demonstrated merits based case is made to the satisfaction of the Council’s Community Infrastructure Executive Manager.”

20

Residents were surprised when DA 2018.127.1 (9 Bian Court and 13 Warrambool Rd, Ocean Shores) for a medium density development was lodged.

25

While that DA was withdrawn after consultation between neighbours and the developer, it proposed to remove native trees and double the density of Bian Crt by combining three lots and building 13 dwellings over a wetland and council infrastructure on a steep block.

30

Major issues include stormwater and traffic management, ecological destruction and a lack of consideration to the character of the area.

Strong and clear council policy aimed at protecting resident amenity from development will prevent future litigation between developers and residents and ensure the public trust in planning authorities is maintained.

35

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

40

Staff raise no objection to the proposed amendment discussed above. The amendment will provide greater clarity for applicants in terms of how to address constraints on a site as part of the development assessment process, whilst also strengthening the provisions under Chapter B14 which apply Shire wide. It is also recommended that consideration be given to renaming the

Chapter, "Earthworks and Geotechnical Controls" to ensure the controls are more readily identified within Byron DCP 2014.

Financial/Resource/Legal Implications:

5

Amendment to DCP must meet requirements of Environmental Planning and Assessment Act 1979.

Is the proposal consistent with any Delivery Program tasks?

10

Yes - DP 2017-2021 Action 4.5 a) Development and Implement Strategies for our community's needs

SUBMISSIONS AND GRANTS

Report No. 11.1 **Byron Shire Council Submissions and Grants as at 30 May 2018**

Directorate: Corporate and Community Services

5 **Report Author:** Jodi Frawley, Grants Co-ordinator

File No: I2018/1029

Theme: Corporate Management
Governance Services

10

Summary:

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

15

RECOMMENDATION:

That Council note the report and attachment (#E2018/45500) for the Byron Shire Council Submissions and Grants as at 30 May 2018.

Attachments:

20

1 BSC Submissions and Grants Register as at 7 May 2018, E2018/45500 [⇒](#) 

Report

This report provides an update on grant submissions including funding applications submitted and new potential funding opportunities.

5

Successful Applications

- Social Access Solar Gardens, Australian Renewable Energy Agency, Project lead: UTS - \$194,970
- 10 • Coolamon Scenic Drive between Mullumbimby and Goonengery Road, Safer Roads – Safer Local Government Roads, NSW Roads and Maritime Services - \$342,100
- Jonson St, Byron Bay, Safer Roads – Safer Local Government Roads, NSW Roads and Maritime Services - \$199,000

15 Applications Submitted

- The refurbishment of Byron’s tennis facilities, Infrastructure Grants – sports and recreation stream, NSW Office of Responsible Gambling

20 Applications in Preparation

- The construction of the Byron Bay Bypass Business Case, Growing Local Economies, NSW Regional Growth Fund
- The upgrade of Brunswick Library Business Case, Regional Cultural Fund, NSW Regional Growth Fund
- 25 • The Byron Bay Skatepark Business Case, Regional Sports Infrastructure Fund, NSW Regional Growth Fund
- Mobile Wash Station, Community Building Partnerships, NSW Government

30 Additional information on the grant submissions made and/or pending is provided in Attachment 1 – Submissions and Grants report as at 30 May 2018.

Financial Implications

35 If Council is successful in obtaining the identified grants more than \$18 million would be achieved which would provide significant funding for Council projects. Some of the grants require a contribution from Council (either cash or in-kind) and others do not. Council’s contribution is funded. The potential funding and allocation is noted below:

Requested funds from funding bodies	18,653,905
Council cash contribution	10,393,699
Council in-kind Contribution	320,158
Other contributions	17,040,000
Funding applications submitted and awaiting notification (total project value)	46,407,762

40

Statutory and Policy Compliance Implications

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

DELEGATES' REPORTS

**Delegate's Report No. 12.1 Law Enforcement Conduct Commission Hearing Operation
Tambora - 26-28 March 2018**

5 **File No:** I2018/1099

Delegate notes provided by Nicqui Yazdi for the Law Enforcement Conduct Commission Hearing Operation Tambora, held 26-28 March 2018 in Sydney, are included as Attachment 1 to the Report titled "Public Hearing into Byron Bay Police Actions – outcome" in this Agenda.

Signed: Cr Simon Richardson

10

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 Proposed Amendments to Council's Code of Meeting Practice

Directorate: Corporate and Community Services

5 **Report Author:** Ralph James, Legal Counsel
David Royston-Jennings, Corporate Governance Officer

File No: I2018/789

10 **Theme:** Corporate Management
Governance Services

Summary:

15 At the 22 March 2018 Ordinary Meeting, Council resolved to place draft amendments to Clause 22 and Schedule A of Council's Code of Meeting Practice on public exhibition.

During the public exhibition period, two submissions were received.




20 In accordance with resolution **18-163**, these submissions are attached to this report for Council to consider prior to any proposed adoption of the amended Code of Meeting Practice.

RECOMMENDATION:

That Council:

1. **Note the attached submissions received in relation to the draft amendments to Clause 22 and Schedule A of the Code of Meeting Practice (E2018/16039).**
2. **Adopt the draft amendments to Clause 22 and Schedule A of the Code of Meeting Practice.**
3. **Incorporate the adopted draft amendments into the Code of Meeting Practice.**
4. **Update Council's Corporate Documents Register with the revised Code of Meeting Practice and update the associated procedure (DM804466).**

25 **Attachments:**

- 1 Clause 22 in the form it would appear if all proposed amendments were accepted, E2018/16039 
- 2 Code of Meeting Practice Amendment to Clause 22 and Schedule A - Submission from John Anderson, E2018/34744 
- 30 3 Code of Meeting Practice Amendment to Clause 22 and Schedule A - Submission from Duncan Dey, E2018/45094 

Report

At the 22 March 2018 Ordinary Meeting, Council resolved to place draft amendments to Clause 22 and Schedule A of Council’s Code of Meeting Practice on public exhibition.

5

During the public exhibition period, two submissions were received.

In accordance with resolution **18-163**, these submissions are attached to this report for Council to consider prior to any proposed adoption of the amended Code of Meeting Practice.

10

The report provided to the 22 March 2018 Ordinary Meeting provided information on the time devoted to public access, questions and submissions.

Staff have examined available data and now provide additional information on the length of Council meeting in general including public access and questions with this information presented below.

15

Average Meeting Length 2013 - 2017

Based on the data from the 2017 Performance Excellence Program report, prepared in collaboration by Local Government Professionals Australia and PricewaterhouseCoopers, for the last 6 meetings in FY17, Byron had the second longest average meeting length (427 minutes) of the 135 participating Councils across Australia and New Zealand.

20

In the FY16 Performance Excellence Program, Byron had the second longest average meeting length (412 minutes). In the three years prior to that Byron had the longest meeting lengths of all participants with averages of 338, 450 and 391 minutes.

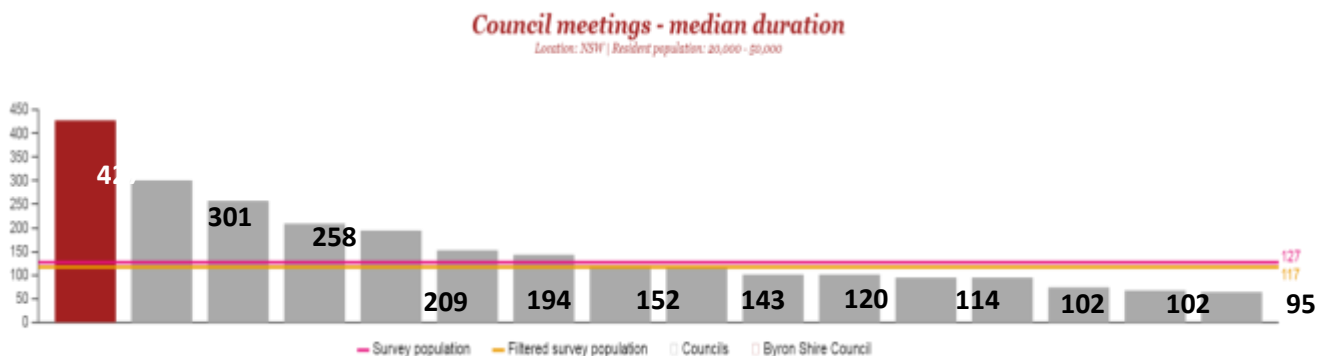
25

2017 Meeting length comparisons

For the last six months of the 2017 financial year, considering participating councils with a resident population of between 20,000 to 50,000 residents (16 councils including Byron) the median meeting length was 117mins

30

Council meetings averages and median – last 6 months of FY2017



35

Numbers shown above are the average length of meetings in minutes for the participating councils.

The lines represent the median (or the middle of the range) length of meetings in minutes within this group of councils (yellow) and across all participating councils (red) line.

40

Source: *The Australasian LG Performance Excellence Program FY17*, which requires the following information to be provided: *The information, statements and statistics are of a general nature and have been prepared from data provided by participating councils. The reliability, accuracy or completeness of this information has not been independently verified. Accordingly, whilst the*

statements are given in good faith, no one should act without obtaining specific advice and neither LG Professionals, NSW nor PwC accepts any responsibility for the consequences of any person's use of or reliance on the report (in whole or in part) or any reference to it

5 A review of the websites of the 15 other NSW councils (identified based on their resident population of 20,000 to 50,000) for meeting schedules, Codes of Meeting Practice (where available) and minutes of recent meetings, for 2018 showed that:

- 1 council scheduled 10 meetings
- 10 • 5 councils scheduled 11 meetings
- 4 councils, including Byron, scheduled 12 meetings
- The remaining 6 councils scheduled 15, 16, 18, 20 or 22 (2 councils) meetings for 2018.

15 For all but 1 of the 16 councils the above averages include public access and/or public question time.

Within the filtered group of councils participating in the LG Performance Excellence Program in 2017, based on averages for the last 6 meetings in FY17:

- 20 • 9 scheduled fewer meetings than Byron but achieved significantly shorter average meeting lengths (up to 5 hours per meeting shorter).
- This is even though at least 8 of those councils included public access/questions inside their meetings.

25 Byron's 2017 data for the full year shows that there were 12 meetings taking a total time of 4,019 minutes (excluding breaks and reserve trust meetings) at an average of 335 minutes.

Byron's 2018 data up to 19 April 2018 shows there have been 4 meetings at a total time of 1,697 minutes at an average of 424 minutes.

30 2017 Public Access, Submissions and Questions Component of Meetings

Of the total meeting time in 2017, public access and question time comprised:

- 934 minutes in Ordinary Meetings
- 35 • 135 minutes in Extraordinary Meetings.

Reviewing minutes of Ordinary Meetings in 2017 shows around 193 people addressed Council during public access, submissions and/or questions.

40 Of them:

- 35% of appearances were made by just 4 people, who addressed Council 35, 18, 8 and 7 times during the year.
- 34% of appearances were made by people who only addressed Council once during the year.
- 45 • 31% of appearances were made by people who addressed Council up to 4 times during the year (note this includes professional planners appearing on behalf of development application clients).

50 Of the 15 other Councils reviewed, where it could be identified from their website, there were a variety of arrangements for public access, submissions or questions including:

- Max 5 mins each for access and max 30 mins for questions.

- Max 5 speakers at 3 mins each, i.e. max 15 mins, for access and no question time.
- Max 3 speakers at 15 mins each, i.e. max 45 mins, for access and max 15 mins for questions
- Max 6 speakers at 5 mins each for access, i.e. max 30 mins for access, and max 5 people for 2 mins, i.e. max 10 mins for questions,
- 5 • Max 2 people at 5 mins each for access, i.e. max 10 mins, and max 30 mins for questions but all questions must be submitted in writing and they are read out by staff and must be max no more than 5 mins each to read.

Council Strategic Planning Workshop

10 On 8 February 2018 a workshop was held with Councillors in relation to the draft Code of Meeting Practice prepared by the Office of Local Government (OLG), which sought feedback from Councillors in order to prepare a submission to OLG on the draft document.

15 During this workshop, Councillors indicated that staff should consider, and submit to Council, proposed amendments to the provisions of Council’s Code of Meeting Practice dealing with Public Access, including public questions and submissions.

20 Draft amendments to the relevant sections of the Code, Clause 22 and Schedule A, were presented to Council at its Ordinary Meeting on 22 March 2018. Council subsequently resolved as follows:

Resolution 18-163:

1. *That the draft amendments to Clause 22 and Schedule A of the Code of Meeting Practice be placed on public exhibition for a period of 28 days, with the additional change:*
 - 25 *A person/organisation is permitted two speeches in favour of or against items on the Agenda.*
2. *That in the event:*
 - 30 a) *that any submissions are received on the draft amendments to Clause 22 and Schedule A of the Code of Meeting Practice those submissions be reported back to Council prior to the adoption of the amended Code;*
 - 35 b) *that no submissions are received on the draft amendments to Clause 22 and Schedule A of the Code of Meeting Practice the amendments be adopted and incorporated into the Code and that the amended Code be incorporated into Council’s Policy Register.*

40 The draft amendments were placed on public exhibition from 19 April 2018 for a period of 28 days. This was advertised in the Byron Shire News, in the public notices on Council’s website and via social media on Council’s Facebook page.

Submissions

45 The following table summarises the submissions received*:

*Please note that submissions have been attached to this report in full.

Submission Reference	Submission details	Recommendation(s)
E2018/34744	I don’t support any of the changes proposed in the staff report.	Noted
	Changes are not made in good faith.	On 8 February 2018 a workshop

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.1

Submission Reference	Submission details	Recommendation(s)
		was held with Councillors. During this workshop, Councillors indicated that staff should consider, and submit to Council, proposed amendments to the provisions of Council's Code of Meeting Practice dealing with Public Access, including public questions and submissions.
	Not designed to reduce meeting length.	As above
	To reduce the accountability of staff by fiddling with public questions.	As above
	Staff report is intellectually dishonest in that it tries to engender indignation by Councillors by not comparing the length Eunice of Byron Council meetings with those of other Councils.	Material of this nature has been included in the body of this report.
	If Council were to hold meetings every 2 to 3 weeks instead of the current 4, then each individual meeting would be hours shorter, even public access would be shorter.	The frequency of Ordinary Meetings is a matter for Council.
	Proposed changes to public access would on average save 5 or 6 minutes.	Proposed changes are in accordance with matters discussed by Councillors at the 8 February 2018 workshop.
	The staff report attempts to suggest that a member of the public who is not satisfied with a response provided to a previous question should not be permitted to seek clarification.	The staff report does not application being available. Clarification on any matter has always been available via written request to the General Manager.
	That a distinction be made between "answer" and "response".	No distinction is required. An answer is a reaction to a question. A response to a question is an answer.
E2018/45094	Submissions on clauses 22.2, 22.3, 22.4 and 22.10 and 22.17 relate to grammatical matters.	It is a matter for Council as to whether grammatical amendments are made.
	Submissions on causes 22.1, 22.5, 22.6, 22.7, 22.8 and 22.16 relate to replacing "speak in favour of or against the recommendation" with "speak on the recommendation".	Whilst the submission would promote economy of words it is considered necessary that persons who nominate to speak should indicate whether they will be speaking for or against the recommendation. This affords efficiency in the Public Access agenda and assists the chairperson

Submission Reference	Submission details	Recommendation(s)
		in time allocation. The wording “speak in favour or against the recommendation” is therefore necessary in 22.1 and it is recommended that it be retained in all other clauses purely for consistency.
	The submission as to clause 22.8 proposes a limitation on the time allowed to Councillors to ask questions of a speaker. The submission does not propose any time restriction on the length of the answer to the question.	The submission has merit. So too does a restriction on the length of an answer. It is recommended that clause 22.8 be amended as follows 22.8 The Mayor will invite Councillors to ask questions of speakers at the conclusion of the speeches in favour of or against an item on the Agenda. The time allowed for Councillors to ask questions of speakers is limited to a total of 1 minute per question Speaker’s responses to Councillors Individual questions are limited to 1 minute.
	The submission as to clauses 22.18 to 22.23 relate to the extension of Public Access.	A motion to extend Public Access is a procedural motion and therefore is not required to be seconded. Any motion to extend Public Access will require the vote of a majority of Councillors. It is recommended that no amendment be made to these clauses.

Financial Implications

5 The conduct of Council Meetings is a function of Council and that function is budgeted for. Any financial implications associated with the proposal concerning Public Access contained in this report would be difficult to ascertain except to allow more time for consideration of the Ordinary Meeting Agenda.

Statutory and Policy Compliance Implications

10 The Australasian LG Performance Excellence Program FY17 report stated that:

15 *For councillors to make effective and informed decisions on policy settings, as well as council strategy, they require timely and succinct information prior to the meeting, clear agendas, and adequate time devoted to each element of the agenda to enable proper consideration of the issues.*

20 The amendments recommended to Public Access are intended to create time to enable Councillors to devote to the items on the agenda whilst the same time preserving the ability of the community to have input into those items and to other issues before Council.

Report No. 13.2 Mayor and Councillors Payment of Expenses and Provision of Facilities Policy Review

Directorate: Corporate and Community Services
Report Author: David Royston-Jennings, Corporate Governance Officer
 Mila Jones, Corporate Governance Coordinator
File No: I2017/1012
Theme: Corporate Management
 Governance Services

Summary:

This report outlines proposed changes to the Mayor and Councillors Payment of Expenses and Provision of Facilities Policy and recommends it for adoption for public exhibition.

On 27 June 2017, the Office of Local Government distributed Circular 17-17 (Attachment 2), which provided a better practice Councillors Expenses and Facilities Policy template, developed for use by all Councils. The Policy template has been provided as the suggested format for councils to be consistent with the Local Government Act 1993 (the Act) and Local Government (General) Regulation 2005 (the Regulation) and the Office of Local Government's (OLG) Guidelines for the payment of expenses and provision of facilities for mayors and councillors in NSW (the Guidelines).

Council staff have realigned the existing Mayor and Councillors Payment of Expenses and Provision of Facilities Policy, as adopted on 27 October 2016, within the structure proposed by the Policy template provided by OLG. This new draft Policy has been attached to this report (Attachment 3) and is recommended for adoption by Council for public exhibition.





RECOMMENDATION:

1. **That in accordance with Section 253 of the Local Government Act 1993, Council adopt the amended Councillor Expenses and Facilities Policy as shown at Attachment 3 (E2018/47331) to be placed on public exhibition for a minimum period of 28 days.**
2. **That in the event:**
 - a) **that any submissions are received on the draft Policy, that those submissions be reported back to Council, prior to the adoption of the Policy.**

OR

 - b) **that no submissions are received on the draft Policy, that the Policy be adopted and incorporated into Council's Policy Register.**

Attachments:

- 1 Current Policy: Mayor and Councillors Payment of Expenses and Provision of Facilities, E2016/95684 
- 2 OLG Circular 17-17 Councillor Expenses and Facilities Policy - Better Practice Template, E2017/97115 
- 3 DRAFT Policy Councillor Expenses and Facilities 2018, E2018/47331 
- 4 Proposed amendments to Policy: Mayor and Councillor Payment of Expenses and Provision of Facilities 2018, E2017/90837 

Report

5 Section 252 of the Local Government Act 1993 (LG Act) requires Council, within the first 12 months of each term of a Council, to adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor and the other councillors in relation to discharging the functions of civic office.

10 A Council must comply with this section when proposing to adopt a policy in accordance with Section 252(1), even if the council proposes to adopt a policy that is the same as its existing policy (s253(5)).

15 At its Ordinary Meeting on 27 October 2016, Council resolved to adopt an amended Mayor and Councillors Payment of Expenses and Provision of Facilities Policy (resolution **16-538**) (Attachment 1), in accordance with Section 252(1).

20 On 27 June 2017, the Office of Local Government (OLG) distributed Circular 17-17 (Attachment 2), which provided a better practice Councillors Expenses and Facilities Policy template, developed for use by all councils. The Policy template has been provided as the suggested format for councils to be consistent with the Local Government Act 1993 (the Act) and Local Government (General) Regulation 2005 (the Regulation) and the OLG Guidelines for the payment of expenses and provision of facilities for mayors and councillors in NSW (the Guidelines). It is noted that if there are any inconsistencies, the Act, Regulations and Guidelines take precedence.

25 Following a workshop with Councillors seeking their input, Council staff have realigned the existing Mayor and Councillors Payment of Expenses and Provision of Facilities Policy, as adopted on 27 October 2016, within the general structure proposed by the policy template provided by OLG. The draft Policy has been attached to this report (Attachment 3).

30 In summary the policy makes provision for expenses and facilities such as:

- Professional development, conferences and seminars
- ICT equipment, consumables and support services
- General travel expenses
- Accommodation and meals
- 35 • Telephone (fixed line/mobile)
- Councillor Assistance Program
- Carer expenses
- Access to facilities in Councillor room
- Council vehicle and fuel card (Mayor)
- 40 • Support staff

It also outlines the process for approval, payment and reimbursements.

45 A list of amendments to the existing Policy is included at Attachment 4 for comparison with the new draft Policy. Due to the large number of structural changes, it was not helpful to include track changes in the draft Policy as it hindered reading.

50 Given Council has already adopted a Policy subject of this report in accordance with Section 252 of the Local Government Act 1993, the revisions or amendments of the Policy as outlined in the report are proposed to be subject to public exhibition subject to Section 253 of the Local Government Act 1993 before formal adoption by Council.

Financial Implications

55 The 2018/2019 Draft Budget contains allocations to fund the requirements of this Policy.

In addition, the insurance coverage identified in the Policy for Councillors is covered by other budget allocations for Council's insurances generally as the coverage for Councillors is included in Council's general insurance policies.

5 Provision will also need to be made in future Council budgets beyond 2018/2019 to accommodate the requirements of this Policy.

Statutory and Policy Compliance Implications

10 The relevant sections of the Local Government Act 1993 are as follows:

252 Payment of expenses and provision of facilities

- 15 (1) Within the first 12 months of each term of a council, the council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.
- 20 (2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.
- (3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.
- (4) A council may from time to time amend a policy under this section.
- 25 (5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.

253 Requirements before policy concerning expenses and facilities can be adopted or amended

- 30 (1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.
- (2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.
- 35 (3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.
- (4) (Repealed)
- 40 (5) A council must comply with this section when proposing to adopt a policy in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.

254 Decision to be made in open meeting

45 The council or a council committee all the members of which are councillors must not close to the public that part of its meeting at which a policy for the payment of expenses or provision of facilities is adopted or amended, or at which any proposal concerning those matters is discussed or considered.

Report No. 13.3 Temporary suspension of Railway Park artisan markets**Directorate:** Corporate and Community Services**Report Author:** Paula Telford, Leasing and Licensing Coordinator

Claire McGarry, Place Manager - Byron Bay

5 **File No:** I2018/684**Theme:** Corporate Management

Governance Services

10 **Summary:**

The Byron Bay Community Association Inc ('BBCA') operates community, beachside and artisan markets in Byron Bay.

15 This report outlines implications from the BBCA request to vary its licence to operate artisan markets at Railway Park, alongside implications of Council's scheduled upgrade to Railway Park. Recommendations are made in line with Council's Policy 15/007 Sustainable Community Markets (attachment 2) which guides the operation of markets in the Shire.

20 The BBCA holds a current licence to operate artisan markets every Saturday between 3.00pm and 9.00pm at Railway Park Byron Bay.

In April 2018 (see attachment 1) the BBCA sought a variation to the artisan market licence at Railway Park:

- 25
- to allow for the markets to be suspended, without payment of rent, between May and September for each remaining year of the licence with an option to restart if desired; and
 - to allow for non-payment of rent if a market is cancelled between the months October to April

30

 - to provide for an expanded market licensed area following an upgrade to Railway Park.

35 The proposal should be viewed in the context of the Railway Park upgrade, should construction occur between October 2018 and March 2019, which will impact on the market's operation.



RECOMMENDATION

1. **That Council suspend artisan markets at Railway Park, without payment of rent, during the Railway Park upgrade construction period.**
2. **That Council consider an expanded market licence area following the upgrade to Railway Park to offset the loss of income to the BBCA during the construction period.**
3. **That Council approve outside of the Railway Park upgrade schedule, the proposal by the Byron Bay Community Association Inc to:**
 - a) **permit suspension of artisan markets at Railway Park, without payment of rent, during cooler months commencing from the first Saturday in May and completing on the last Saturday in September for each remaining year of the licence; and**
 - b) **request a variation of the proposed 5 month suspension by the BBCA, should the BBCA decide to re-start artisan markets at Railway Park before the last**

Saturday in September but after the first Saturday in May for each remaining year of the licence; and

- c) **to permit non-payment of rent upon cancellation of an artisan market in Railway Park by the BBCA during the months October to April of each remaining year of the licence, where the cancellation is a result of works or an event outside the control of the BBCA**

Attachments:

- 5 1 Correspondence concerning artisan market at Railway Park trading in winter months PDF, E2018/40586 [⇨](#) 
- 2 Policy: Sustainable Community Markets (Adopted 17/09/15 Res 15-471 replaces Markets within Byron Shire 5.51) (Current_Policies), E2015/33306 [⇨](#) 

10

Report**Request to vary a market licence:**

- 5 The Byron Bay Community Association Inc ('BBCA') holds a current licence to operate artisan markets every Saturday between 3.00pm and 9.00pm at Railway Park Byron Bay.

10 The market licence is for a term of five years and expires on 31 October 2021. The licence approves the BBCA to run 52 artisan markets per year at Railway Park in return for rent of \$6,448 per annum.

In April 2018 the BBCA contacted Council seeking the following variations to the market licence:

- 15 i. to allow for the Railway Park artisan markets to be suspended, without payment of rent, during cooler months commencing from the first Saturday in May and concluding on the last Saturday in September for each remaining year of the licence ; and
- 20 ii. to allow for a variation of the proposed 5 month suspension by the BBCA, should the BBCA decide to re-start artisan markets at Railway Park before the last Saturday in September and after the first Saturday in May for each remaining year of the licence; and
- 25 iii. to allow for non-payment of rent upon cancellation of an artisan market in Railway Park by the BBCA during the months October to April of each remaining year of the licence; and
- iv. to provide for an expanded market licensed area following an upgrade to Railway Park.

30 Allied to this issue is Council's scheduled upgrade of Railway Park. The proposal should be considered in the context of this upgrade, with estimated construction or partial construction between October 2018 and March 2019, which would impact the ability of the markets to operate in this space. Staff have discussed with the BBCA the possibility of a temporary market relocation, but relocation is not considered a viable option due to the layout and operations of the market. If the market cannot be relocated, Council will need to suspend the market licence during the Railway Park construction period.

35 As such, in this instance both parties (Council and the BBCA) are proposing a variation to the market licence agreement.

Council's Market Policy:

- 40 Policy 15/007 Sustainable Community Markets ('the Policy') guides the operation of markets in the Shire and sets the following objectives for markets in the Shire:
- 45 1.1. To provide vibrant markets to the community and to make markets attractive for both the community and tourists.
- 1.2. To incubate local small businesses and artisans by providing them an accessible avenue to sell their goods and/or services.
- 50 1.3. To encourage production of local agriculture and to provide an accessible avenue for the sale and purchase of locally grown produce to promote local food security.
- 1.4. To use the crown reserves in a way which supports local community, businesses and attracts tourism, and whose management and consumer access is both equitable and transparent.

- 5 1.5. To clarify how approval to manage a market can be obtained, ensuring that market organisers are aware of Council requirements so as to assist and encourage the efficient organisation of markets whilst receiving requisite approvals in a timely and orderly manner.
- 1.6. To ensure the proper and effective maintenance and enhancement of reserves.
- 1.7. To support local charities and not for profit organisations.
- 10 1.8. To provide Council with recurrent income from markets on Council land to support its Community Strategic Plan.
- 1.9. To acknowledge the community service provided by Markets and to promote the social benefit to community members.
- 15 1.10. To enhance consumer choice and fair prices and enable stallholders to make a reasonable living.

20 The Policy requires that a market licence is granted only after a competitive process and that the resulting licence is an agreement to operate a specific type of market at a stipulated location on a stipulated day in return for rent that is set by Council's fees and charges. Any variation to this agreement must achieve Policy objectives as listed above.

25 Competitive process to grant market licences:

In June 2016 Council ran a public request for proposal to operate an artisan market at Railway Park between the hours of 8am to 11pm. The BBCA submitted a proposal to operate a weekly market, every Saturday between 3pm and 9pm. Based on the BBCA submission Council awarded the Railway Park artisan market licence to the BBCA.

30 Consideration of each proposed market licence variations:

The proposed variations have been considered in relation to the financial year in which they would be in place, and assessed accordingly.

Variation	Implications 2018-19 Financial Year	Implications 2019-2022 Financial Year
BBCA proposal to allow for the Railway Park artisan markets to be suspended, without payment of rent, during cooler months commencing from the first Saturday in May and concluding on the last Saturday in September for each remaining year of the licence.	<p>No market licences provides for non-payment of rent in the case of cancellation of a market.</p> <p>Generally the proposal would not achieve Policy Objective 1.8 – to provide Council with recurrent income from markets on Council land to support its Community Strategic Plan. Loss of income in 2018-19 is \$126.00 per market.</p> <p>A requirement to operate the markets through this period may impact both on the reputation of the Market and the support of the market by stallholders due to decreased trade during this period and the walk up nature of</p>	Loss of market income based on future year fees and charges.

Variation	Implications 2018-19 Financial Year	Implications 2019-2022 Financial Year
	the market.	
BBCA proposal for the option to restart markets before the last Saturday in September but after the last Saturday in May for each remaining year of the licence.	The earlier restarting of markets is in line with Policy Objective 1.8 – to provide Council with recurrent income from markets on Council land to support its Community Strategic Plan.	As above
<p>BBCA proposal to vary the market licence to allow for non-payment of rent where an artisan market at Railway Park is cancelled between the warmer months October to April in any year of the licence term.</p> <p>Allied to the Council's scheduled works in Railway Park between October 2018 to March 2019.</p>	<p>The scheduled Railway Park upgrade from October 2018 to March 2019 suspension of the artisan markets with non payment of rent is supported at a cost of \$3,276.00.</p> <p>Following the upgrade to Railway Park in 2019 the proposal for non-payment of rent following a cancellation of market by the BBCA would not achieve Policy Objective 1.8 – to provide Council with recurrent income from markets on Council land to support its Community Strategic Plan. Loss of income is \$126.00 per market.</p>	Loss of market income based on future year fees and charges
BBCA proposal that the market licence be varied to extend the licenced area for the artisan markets at Railway Park to coincide with the upgrade of Railway Park.	A licence variation to extend the licenced area for artisan markets at Railway Park should be considered by Council following the upgrade of Railway Park to make best use of available space being consistent with Policy Objectives 1.1, 1.2 and 1.3.	Additional income is based on future year fees and charges

The market licence currently requires the licensee to provide Council with its annual audited financial accounts that includes the number of market stalls per annum reconciled to the audited market income.

5

Financial Implications

Market rental income from the artisan markets at Railway Park is currently \$6,448.00 per annum inclusive of GST. The rent is calculated by the formula set out in Council fees and charges for the 2017-2018 year and for future years. Income derived from the rent is general income and used in support of implementation of Council's Community Strategic Plan. Market rent is increased annually as part of a review of Council's fees and charges.

10

Suspension of markets during the scheduled Railway Park upgrade will reduce recurrent income by \$3,276.00 inclusive of GST based on proposed 2018-19 fees and charges.

15

5 The further proposal for non-payment of rent upon cancellation by the BBCA of an artisan market at Railway Park following the scheduled Railway Park upgrade would further reduce recurrent income available to Council to support implementation of its Community Strategic Plan. Based on proposed 2018-19 fees and charges lost income is \$126.00 inclusive of GST per market cancelled.

10 The proposed variation to the market licence to increase the licenced area would have the effect of increasing rent payable by the BBCA. Market rent is calculated by a formula set out in Council's fees and charges and based on the number of stalls operating in the licenced area as provided by the BBCA annual audited financial accounts.

Statutory and Policy Compliance Implications

15 *Local Government Act 1993* (NSW)

s47A Leases, Licences and other Estates in respect of Community Land – Terms of 5 Years Or Less.

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

Report No. 13.4 **Mayor and Councillor Fees 2018/2019**
Directorate: Corporate and Community Services
Report Author: David Royston-Jennings, Corporate Governance Officer
File No: I2018/890
5 **Theme:** Corporate Management
 Councillor Services


Summary:

10 The Local Government Remuneration Tribunal has handed down its report and determinations on fees for Councillors and Mayors for the 2018/2019 Financial Year. This report outlines the Local Government Remuneration Tribunal's fee range and the proposed Mayor and Councillor fees for 2018/2019.

RECOMMENDATION:

1. **That Council fix the fee payable to each Councillor under Section 248 of the Local Government Act 1993 for the period 1 July 2018 to 30 June 2019 at \$19,790.**
2. **That Council fix the fee payable to the Mayor under section 249 of the Local Government Act 1993, for the period from 1 July 2018 to 30 June 2019 at \$43,170.**
3. **That Council in accordance with its current practice not determine a fee payable to the Deputy Mayor.**

Attachments:

- 20 1 Local Government Remuneration Tribunal Annual Report and Determination 2018, E2018/40896 

Report

Each year the Local Government Remuneration Tribunal must determine, in each of the categories determined under section 239, the maximum and minimum amounts of fees to be paid during the following year to Councillors and Mayors.

The Local Government Remuneration Tribunal has determined the maximum and minimum amounts of fees to be paid during the 2018/2019 financial year. Byron Shire Council is categorised as a Regional Rural council and the appropriate fee range determined is as follows:

10

Category	Councillor/Member Annual Fee		Mayor/Chairperson Additional Fee*	
	Minimum	Maximum	Minimum	Maximum
Regional Rural	8,970	19,790	19,100	43,170

* This fee must be paid in addition to the fee paid to the Mayor/Chairperson as a Councillor/member (s249(2)).

15 Currently the annual fees payable to Councillors and the Mayor for the 2017/2018 financial year are fixed at \$19,310 per annum for a Councillor with an additional fee of \$42,120 for the Mayor.

The Local Government Remuneration Tribunal has reviewed the criteria that apply to the categories of Councils and the allocation of Councils into those categories. The Local Government Remuneration Tribunal found that there was not a strong case to change the criteria or the allocation of Councils into categories at this time.

The Local Government Remuneration Tribunal has determined that the minimum and maximum fees applicable to each category will be increased by 2.5 per cent which is consistent with the NSW State Government policy on wages.

A full copy of the Report and Determination of the Local Government Remuneration Tribunal is provided at Attachment 1 to this report and is also available at:

30 <https://www.lgnsw.org.au/member-services/nsw-local-government-remuneration-tribunal>

Financial Implications

Councillors and Mayoral fees presently paid

35

\$19,310 each x 9	=	\$173,790
Plus Mayor additional fee	=	<u>\$ 42,120</u>
Total Paid		\$215,910

40

Councillors and Mayoral fees 2018/2019 increased to maximum set by the Tribunal

45

\$19,790 each x 9	=	\$178,110
Plus Mayor additional fee	=	<u>\$ 43,170</u>
Total Paid		\$221,280

50

The Draft 2018/19 Budget will include a total allocation for Councillor Fees and the Mayoral Fee required to meet the maximum fees payable.

Fee for Deputy Mayor

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

- 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.”*

10 Council is not bound to set a fee for the Deputy Mayor, but if it so chooses must deduct that sum from the amount available under the Mayoral fee.

15 Council’s current practice is that an acting period for Deputy Mayor would apply only in instances where the Mayor has leave of absence endorsed by Council and any pro rata fees would be deducted from the Mayoral allowance where agreed on a case by case basis in accordance with Section 249 of the Local Government Act 1993.

Statutory and Policy Compliance Implications

20 Section 248 of the Local Government Act 1993 states:

- 21 1. *A council must pay each Councillor an annual fee.*
22 2. *A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.*
23 3. *The annual fee so fixed must be the same for each Councillor.*
24 4. *A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.*

Section 249 of the Local Government Act also states (in the case of the Mayor)

- 30 1. *A council must pay the Mayor an annual fee.*
31 2. *The annual fee must be paid in addition to the fee paid to the Mayor as a Councillor.*
32 3. *A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.*
33 4. *A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.*
34 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.*

40 Section 250 of the Local Government Act states:

Fees payable under this Division by a council are payable monthly in arrears for each month (or part of a month) for which the councillor holds office.

Report No. 13.5 Community Initiatives Program (Section 356) - 2017/18 funding round applications

Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Project Officer
File No: I2018/944
Theme: Society and Culture
Community Development

5

10 **Summary:**

Following the adoption of the new Community Initiatives Program (Section 356), a call for applications was advertised, with applications closing on 18 May 2018. This report provides the results of the funding round with a recommendation to fund three projects from the unallocated 2017/18 Section 356 funds.

15

RECOMMENDATION:

1. That Council provide \$5,000 from the unallocated Section 356 budget to each of the projects which met the assessment criteria of the Community Initiatives Program 2017/18 funding round and which are recommended for funding in Confidential Attachment 1 (#E2018/48170).
2. That Council advertise the Section 356 Donations proposed to be made in part 1 if approved by Council.
3. That the 2018/19 funding round of the Community Initiatives Program be advertised as soon as practicable following adoption of the 2018/2019 Budget.
4. That Council note that unsuccessful applicants from this funding round will be provided detailed feedback and staff support to work on more complete applications that meet all criteria in future rounds.
5. That Council staff will continue to work with community groups to support them in submitting high quality applications to future rounds of the program.

Attachments:

20

- 1 Confidential - Applications for Community Initiatives Program (Section 356) 2017-18 recommendations for funding, E2018/48170

25

Report

5 Council reviewed, publicly exhibited and adopted the new Community Initiatives Program (Section 356) Policy and Program Guidelines at the 22 March 2018 Ordinary Meeting with the aim of improving equity, transparency and providing a more strategic approach to community donations with strong community outcomes,

10 A call for applications was advertised during April 2018 with applications closing 18 May 2018. In addition, due to the changes in the Section 356 program, a workshop was held for community members on 2 May 2018 and approximately 35 community members attended.

15 Seven applications were received for the Community Initiatives Program 2017/18, each applying for \$5,000 which is the maximum amount available to any one applicant. An internal assessment panel reviewed the applications against the assessment criteria and recommends to Council to fund three of the projects as outlined below.

20 Due to the new application process, the workshop was useful in providing information to community members about the program guidelines and how to write successful grant applications. Not all applicants attended the workshop or spoke to staff prior to submitting an application. As a result, some applications did not meet the criteria and/or did not clearly outline the benefits to the Community or Council of the proposed projects. Council staff will provide detailed feedback and work with applicants to submit a complete application in future rounds.

25 The Community Initiatives Program is an excellent pathway for community groups to develop skills in grant writing which may enable them to apply for state and federal government programs in future.

Projects recommended for funding

30 The attached confidential attachment recommends three projects for funding.

Financial Implications

35 Council's budget allocation for Section 356 unallocated funds for 2017/18 is provided in the table below, which also shows the outcome if all three projects recommended for funding are funded.

Donations to Community Organisations, Other Groups and Persons	\$36,200
Assistance for Festivals and Community Functions	\$7,000
Donations to Community Groups – Reimbursement of Council Application Fees	\$2,000
<i>Sub-Total</i>	<i>\$45,200</i>
Resolution 17-381*	-\$3,000
Project 1	-\$5,000
Project 2	-\$5,000
Project 3	-\$5,000
TOTAL remaining unallocated amount for 2017/18	\$27,200

40 *Resolution 17-381 in part states: "Allocate \$3,000 of Council's Community Development Program's unallocated S356 donations in the 2017/18 budget to support international relations".

Statutory and Policy Compliance Implications

Section 356 of the Local Government Act 1993

45

Report No. 13.6 **Public Hearing into Byron Bay Police Actions - outcome**
Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Project Officer
File No: I2018/1034
5 **Theme:** Society and Culture
 Community Development

Summary:


10 This report has been prepared in accordance with **Part 4 of Resolution 18-198**, to present to Council the Report on the Public Hearing into Byron Bay Police Actions, prepared by the Community Youth Representatives attending the Police Hearing.

15 A copy of this Report has been included at Attachment 1.

RECOMMENDATION:

That Council note the Public Hearing into Byron Bay Police Actions report.

20 **Attachments:**

- 1 Law Enforcement Conduct Commission Hearing - Nicqui Yazdi/James Wright - Attendance Report, E2018/45569 [⇨](#) 

25

Report

At the 22 March 2018 Ordinary Meeting, an urgency motion was considered and Council resolved resolution **18-198** as follows:

- 5
1. *That Council provides \$1000 from the Mayoral discretionary fund to the gofundme campaign, "Get Byron Reps to Police Hearing" in order to support community youth representatives to attend the Public Hearing into recent police action in Byron Bay, to be held in Sydney.*
 - 10 2. *That Council writes to Louisa Dear, Manager, Community Engagement, the Law Enforcement Conduct Commission, Local member Tamara Smith, and the NSW Police Minister, declaring its strong disappointment that this public hearing was not held in Byron Bay and forward its contention that not holding it in Byron Bay is highly inappropriate.*
 - 15 3. *That Council requests The Commission to hold an information session in the Byron Bay area if the report is released publicly.*
 4. *That Council request attendees present a report to Council on the public hearing.*

20 All points of the resolution have now been actioned and this report provides to Council the report on the public hearing as per part 4 of the resolution.

Financial Implications

25 Nil for this report.

Statutory and Policy Compliance Implications

30 Council Resolution **18-198**.

Report No. 13.7 **LGNSW Board Vacancy - Vice President (Rural/Regional Councils)**
Directorate: Corporate and Community Services
Report Author: David Royston-Jennings, Corporate Governance Officer
File No: I2018/1039
5 **Theme:** Corporate Management
 Governance Services

Summary:



10 As a member of LGNSW, Council have been invited to participate in an election to fill a casual vacancy in the office of Vice President (Rural/Regional Councils) on the Board of the Local Government and Shires Association of New South Wales ('Board').

15 Council is entitled to nominate three voting delegates for this election, as per the table included in Attachment 2 of this report.

RECOMMENDATION:

20 **That Council nominate Cr _____, Cr _____ and Cr _____ as voting delegates in the election to fill the casual vacancy in the office of the Vice President (Rural/Regional Councils) on the Board of the Local Government and Shires Association of New South Wales.**

Attachments:

- 25 1 Letter to General Managers_Nomination of voting delegates, E2018/45714 [⇒](#) 
- 2 Annexure A_Nomination of voting delegates, E2018/45712 [⇒](#) 

Report

5 As a member of LGNSW, Council have been invited to participate in an election to fill a casual vacancy in the office of Vice President (Rural/Regional Councils) on the Board of the Association ('Board'). This invitation has been included as Attachment 1 to this report.

10 On 6 April 2018 the former Vice President (Rural/Regional Councils) resigned from the Board, which has resulted in the casual vacancy. The Association's rules require the casual vacancy to be filled by secret postal ballot in accordance with the provisions appropriate to the election for the vacant office.

The Registered Organisations Commission ('ROC') has approved the election and has instructed the Australian Electoral Commission ('AEC') to make arrangements for the election.

15 Council is entitled to nominate three voting delegates for this election, as per the table included in Attachment 2 of this report.

20 Following a resolution of Council, the names and postal addresses of Council's nominated voting delegate will be provided to LGNSW prior to the deadline stipulated in Attachment 1, being 12 noon (AEST) on Friday 6 July 2018, using the online nomination process provided by LGNSW. No changes to the names of voting delegates will be accepted after this time/date.

25 Following this, on Friday 13 July 2018 the AEC will cause an Election Notice inviting nominations for the office of Vice President (Rural/Regional councils) to be published in the Association's official journal, the LGNSW Weekly, and sent to each member entitled to vote in the election, by post, on this date.

30 Further details about the election, including the date that nominations close and the date that the ballot opens/closes will be contained in the Election Notice.

35 The Vice President (Regional/Rural Councils) is required to attend Board meetings every two months in Sydney at LGNSW's office and chair meetings in the event that the President and Vice President (Metropolitan councils) are unavailable. The successful nominee for the casual vacancy will undergo training provided by LGNSW and receive a sitting fee for attending Board meetings. LGNSW also have a Board Expenses Policy which applies to travel expenses incurred attending meetings.

Additional information can be sought from the following:

- 40
- About members' voting entitlements and nomination of voting delegates:
Contact Adam Dansie (Senior Manager – Industrial Relations) on (02) 9242 4140 or at adam.dansie@lgnsw.org.au
 - About all other matters relating to the election:
45 Contact Anthony Carey (AEC Returning Officer) on (02) 9375 6361 or at nswelections@aec.gov.au

Financial Implications

50 Nil.

Statutory and Policy Compliance Implications

5 Voting delegates must be a Councillor of a Council which is an Ordinary Member of the Association in the 'Rural/Regional Councils' category or member of the Board in the 'Rural/Regional Councils' category under the Association's rules.

Report No. 13.8 **Investments May 2018**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2018/1041
5 **Theme:** Corporate Management
 Financial Services

Summary:

10 This report includes a list of investments and identifies Council's overall cash position for the month of May 2018 for Council's information.

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

RECOMMENDATION:

20 **That the report listing Council's investments and overall cash position as at 31 May 2018 be noted.**

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

Report

In relation to the investment portfolio for the month of May 2018, Council has continued to maintain a diversified portfolio of investments. At 31 May 2018, the average 90 day bank bill rate (BBSW) for the month of May was 1.96%. Council's performance to 31 May 2018 is 2.60%. Council's performance is again higher than the benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits and purchasing floating rate notes with attractive interest rates.

10 The table below identifies the investments held by Council as at 31 May 2018:

Schedule of Investments held as at 31 May 2018

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel ADI	Type	Interest Rate Per Annum	Current Value
28/10/16	650,000	Teachers Mutual Bank	P	BBB+	28/10/19	Y	FRN	3.17%	653,642.89
24/03/17	1,000,000	NAB Social Bond (Gender Equality)	P	AA-	24/03/22	N	B	3.25%	1,011,100.17
31/03/17	1,000,000	CBA Climate Bond	P	AA-	31/03/22	N	FRN	3.25%	1,000,000.00
16/11/17	750,000	Bank of Queensland	P	BBB+	16/11/21	N	FRN	2.63%	750,000.00
08/12/17	2,000,000	ME Bank	P	BBB	08/06/18	Y	TD	2.55%	2,000,000.00
08/12/17	2,000,000	My State Bank	P	BBB	08/06/18	Y	TD	2.65%	2,000,000.00
19/12/17	2,000,000	Credit Union Australia	P	BBB	19/06/18	Y	TD	2.60%	2,000,000.00
02/01/18	2,000,000	ME Bank	N	BBB	04/07/18	Y	TD	2.55%	2,000,000.00
12/01/18	1,000,000	Bank of Queensland	N	BBB+	12/06/18	N	TD	2.55%	1,000,000.00
12/01/18	1,000,000	Bankwest	P	AA-	12/06/18	N	TD	2.55%	1,000,000.00
23/01/18	1,000,000	AMP Bank	P	A	23/07/18	N	TD	2.60%	1,000,000.00
24/01/18	1,000,000	ME Bank	N	BBB	24/07/18	Y	TD	2.60%	1,000,000.00
29/01/18	2,000,000	Rural Bank	P	BBB+	30/07/18	Y	TD	2.60%	2,000,000.00
31/01/18	2,000,000	AMP Bank	N	A	03/08/18	N	TD	2.60%	2,000,000.00
02/02/18	1,000,000	Rural Bank	N	BBB+	02/08/18	Y	TD	2.62%	1,000,000.00
06/02/18	1,000,000	Gateway Credit Union	P	NR	07/08/18	Y	TD	2.55%	1,000,000.00
07/02/18	2,000,000	Beyond Bank	P	BBB	18/06/18	Y	TD	2.50%	2,000,000.00
08/02/18	1,000,000	AMP	N	A	08/08/18	N	TD	2.60%	1,000,000.00
15/02/18	1,000,000	Bankwest	N	AA-	15/06/18	N	TD	2.50%	1,000,000.00
15/02/18	1,000,000	Police Credit Union Limited (SA)	P	NR	15/08/18	Y	TD	2.61%	1,000,000.00
16/02/18	1,000,000	Gateway Credit Union	N	NR	18/06/18	Y	TD	2.45%	1,000,000.00
01/03/18	1,000,000	Defence Bank	P	BBB	01/08/18	U	TD	2.50%	1,000,000.00
05/03/18	1,000,000	NAB	N	AA-	05/06/18	N	TD	2.54%	1,000,000.00
06/03/18	2,000,000	My State Bank	N	BBB	06/09/18	Y	TD	2.65%	2,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel ADI	Type	Interest Rate Per Annum	Current Value
06/03/18	1,000,000	Bananacoast Credit Union	P	NR	06/09/18	Y	TD	2.60%	1,000,000.00
07/03/18	1,000,000	Beyond Bank	N	BBB	09/07/18	Y	TD	2.50%	1,000,000.00
07/03/18	1,000,000	Bananacoast Credit Union	N	NR	07/08/18	Y	TD	2.55%	1,000,000.00
14/03/18	1,000,000	NAB	N	AA-	16/07/18	N	TD	2.58%	1,000,000.00
15/03/18	1,000,000	Auswide Bank Ltd	P	BBB-	15/06/18	Y	TD	2.51%	1,000,000.00
15/03/18	1,000,000	The Capricornian Credit Union	P	NR	15/06/18	U	TD	2.55%	1,000,000.00
16/03/18	1,000,000	The Capricornian Credit Union	N	NR	17/09/18	U	TD	2.80%	1,000,000.00
28/03/18	1,000,000	Bankwest	N	AA-	26/06/18	N	TD	2.50%	1,000,000.00
04/04/18	2,000,000	Police Credit Union Limited (SA)	N	NR	03/10/18	Y	TD	2.86%	2,000,000.00
04/04/18	1,000,000	NAB	N	AA-	04/07/18	N	TD	2.57%	1,000,000.00
04/04/18	1,000,000	NAB	N	AA-	04/10/18	N	TD	2.60%	1,000,000.00
05/04/18	1,000,000	AMP	N	A	02/10/18	N	TD	2.60%	1,000,000.00
05/04/18	1,000,000	NAB	N	AA-	05/07/18	N	TD	2.57%	1,000,000.00
05/04/18	1,000,000	Police Credit Union Limited (SA)	N	NR	02/10/18	Y	TD	2.85%	1,000,000.00
06/04/18	1,000,000	Hunter United Employees Credit Union	P	NR	05/07/18	U	TD	2.55%	1,000,000.00
10/04/18	1,000,000	Bankwest	N	AA-	09/07/18	N	TD	2.60%	1,000,000.00
12/04/18	1,000,000	Bankwest	N	AA-	12/07/18	N	TD	2.60%	1,000,000.00
16/04/18	1,000,000	The Capricornian Credit Union	N	NR	17/09/18	U	TD	2.74%	1,000,000.00
17/04/18	1,000,000	Police Credit Union Limited (SA)	N	NR	17/10/18	Y	TD	2.94%	1,000,000.00
23/04/18	1,000,000	NAB	N	AA-	23/07/18	N	TD	2.57%	1,000,000.00
24/04/18	1,000,000	Bankwest	N	AA-	23/07/18	N	TD	2.65%	1,000,000.00
30/04/18	2,000,000	NAB	N	AA-	30/08/18	N	TD	2.64%	2,000,000.00
02/05/18	2,000,000	Police Credit Union Limited (SA)	N	NR	30/10/18	Y	TD	2.83%	2,000,000.00
02/05/18	1,000,000	Maitland Mutual Building Society	P	NR	29/10/18	Y	TD	2.83%	1,000,000.00
07/05/18	2,000,000	NAB	N	AA-	06/08/18	N	TD	2.64%	2,000,000.00
08/05/18	2,000,000	ME Bank	N	BBB	07/08/18	Y	TD	2.60%	2,000,000.00
09/05/18	1,000,000	Coastline Credit Union	P	NR	07/08/18	U	TD	2.80%	1,000,000.00
15/05/18	1,000,000	Maitland Mutual Building Society	N	NR	15/08/18	Y	TD	2.85%	1,000,000.00
15/05/18	1,000,000	Maitland Mutual	N	NR	15/10/18	Y	TD	2.85%	1,000,000.00

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel ADI	Type	Interest Rate Per Annum	Current Value
		Building Society							
17/05/18	1,000,000	Hunter United Employees Credit Union	N	NR	17/09/18	U	TD	2.80%	1,000,000.00
23/05/18	1,000,000	The Capricornian Credit Union	N	NR	23/11/18	U	TD	2.85%	1,000,000.00
24/05/18	1,000,000	ME Bank	N	BBB	21/09/18	Y	TD	2.60%	1,000,000.00
28/05/18	1,000,000	B & E Ltd (Bank of Us)	P	NR	28/11/18	U	TD	2.85%	1,000,000.00
28/05/18	1,000,000	ME Bank	N	BBB	27/08/18	Y	TD	2.60%	1,000,000.00
30/05/18	1,000,000	Maitland Mutual Building Society	N	NR	20/08/18	Y	TD	2.80%	1,000,000.00
30/05/18	1,000,000	Maitland Mutual Building Society	N	NR	11/09/18	Y	TD	2.80%	1,000,000.00
30/05/18	1,000,000	AMP	N	A	25/02/19	N	TD	2.80%	1,000,000.00
31/05/18	1,000,000	Maitland Mutual Building Society	N	NR	20/08/18	Y	TD	2.80%	1,000,000.00
N/A	575,625	CBA Business Online Saver	N	A	N/A	N	CALL	1.40%	575,625.12
12/01/18	1,007,330	NSW Treasury Corp	N	AAA	N/A	Y	CALL	1.60%	1,007,330.27
Total	75,982,955						AVG	2.60%	75,997,698.45

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.

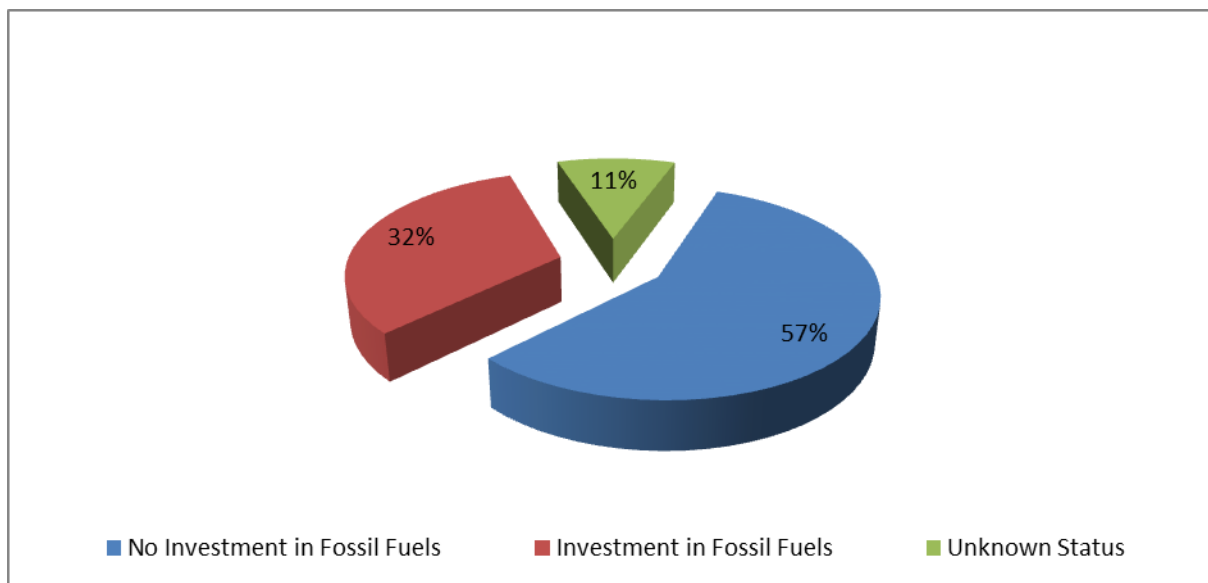
Type	Description	
B	Bonds	Principal can vary based on valuation, interest payable via a fixed interest, payable usually each quarter.
FRN	Floating Rate Note	Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.
TD	Term Deposit	Principal does not 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

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

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. Council's Investment Policy can be found at the following link:

https://www.byron.nsw.gov.au/files/assets/public/hptrim/corporate-management-policies-current/council-investments-policy-2017-current_policies.pdf



In this regard Council has an additional two investments that are with financial institutions that invest in fossil fuels but the purposes of the investments are in accord with the broader definition of Environmental and Socially Responsible investments as indicated below:

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

For the month of May 2018, as indicated in the table below, there is a dissection of the investment portfolio by investment type:

Dissection of Council Investment Portfolio as at 31 May 2018

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
71,000,000.00	Term Deposits	71,000,000.00	0.00
2,400,000.00	Floating Rate Note	2,403,642.89	3,642.89
575,625.12	Business On-Line Saver (At Call)	575,625.12	0.00

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1,007,330.27	NSW Treasury Corp (T Corp)	1,007,330.27	0.00
1,000,000.00	Bonds	1,011,100.17	11,100.17
75,982,955.39		75,997,698.45	14,743.06

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

The table below provides a reconciliation of investment purchases and maturities for month of May 2018 on a current market value basis.

10

Movement in Investment Portfolio – May 2018

Item	Current Market Value (at end of month) \$
Opening Balance at 1 May 2018	75,995,029.59
Add: New Investments Purchased	19,000,000.00
Add: Call Account Additions	500,000.00
Add: Interest from Call Account	683.63
Less: Investments Matured	19,500,000.00
Add: T Corp Additions	0.00
Add: Interest from T Corp	1,985.23
Less: Call Account Redemption	0.00
Less: Fair Value Movement for period	0.00
Closing Balance at 31 May 2018	75,997,698.45

Investments Maturities and Returns – May 2018

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000	Police Credit Union	TD	02/05/18	181	2.73%	27,075.62
1,000,000	Maitland Mutual Building Society	TD	02/05/18	180	2.55%	12,575.34
2,000,000	NAB	TD	07/05/18	91	2.47%	12,316.17
2,000,000	ME Bank	TD	08/05/18	90	2.45%	12,082.19
1,000,000	Gateway Credit Union	TD	11/05/18	122	2.50%	8,356.16
2,000,000	Bank West	TD	15/05/18	98	2.45%	13,156.16
1,000,000	Hunter United Employees Credit Union	TD	17/05/18	90	2.45%	6,041.10
1,000,000	Police Credit Union	TD	18/05/18	182	2.75%	13,712.33
1,000,000	The Capricornian	TD	23/05/18	181	2.55%	12,645.21
1,000,000	ME Bank	TD	24/05/18	181	2.55%	12,645.21
1,000,000	B & E Ltd (Bank of Us)	TD	28/05/18	91	2.48%	6,108.22

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Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
1,000,000	ME Bank	TD	29/05/18	91	2.38%	5,933.70
1,500,000	Defence Bank	TD	29/05/18	90	2.40%	8,876.71
1,000,000	ME Bank	TD	29/05/18	90	2.35%	5,794.52
1,000,000	Bananacoast Credit Union	TD	29/05/18	182	2.65%	13,213.70
19,500,000						170,532.34

5 The overall 'cash position' of Council is not only measured by what funds Council has invested but also by what funds Council has retained in its consolidated fund or bank account as well for operational purposes. In this regard, for the month of May 2018 the table below identifies the overall cash position of Council as follows:

Dissection of Council Cash Position as at 31 May 2018

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	71,000,000.00	71,000,000.00	0.00
Floating Rate Note	2,400,000.00	2,403,642.89	3,642.89
Business On-Line Saver (At Call)	575,625.12	575,625.12	0.00
NSW Treasury Corp (T Corp)	1,007,330.27	1,007,330.27	0.00
Bonds	1,000,000.00	1,011,100.17	11,100.17
Total Investment Portfolio	75,982,955.39	75,997,698.45	14,743.06
Cash at Bank			
Consolidated Fund	4,200,004.04	4,200,004.04	0.00
Total Cash at Bank	4,200,004.04	4,200,004.04	0.00
Total Cash Position	80,182,959.43	80,197,702.49	14,743.06

10 Financial Implications

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

15 Statutory and Policy Compliance Implications

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

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

to ensure the required report will be provided to Council and this will for some months require reporting for one or more months.

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

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

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

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.9 **CZMP for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach) - Engagement and Public Exhibition Outcome**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Chloe Dowsett, Coastal and Biodiversity Coordinator
File No: I2018/632
Theme: Ecology
10 Planning Policy and Natural Environment

Summary:





15 At the 30 October 2017 meeting Council resolved (**Res 17-521**) to develop a newly formed draft Coastal Zone Management Plan (CZMP) for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach). The draft CZMP has been developed in close consultation with public agencies and is in the final stages prior to submission to the Minister. At the 19 April 2018 meeting Council resolved (**Res 18-209**) to publicly exhibit the draft CZMP and the accompanying
20 Emergency Action Sub Plan (EASP) for a period of 4 weeks.

This report provides an outline of the consultation and engagement activities completed during the development of the draft CZMP and EASP and the submissions received during public exhibition.

RECOMMENDATION:

1. **That, subject to the receipt and consideration of the legal advice referred to in the body of this report, Council adopts the draft CZMP for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach) as amended in accordance with the recommendations outlined in Attachment 2 (#E2018/45410) of this report.**
2. **That the CZMP as adopted be submitted to the Minister for certification.**
- 25 **3. That Council note the timeframes for delivery of the draft CZMP.**

Attachments:

- 1 Community Engagement Plan - draft CZMP for the Eastern Precincts of the BBE, E2018/46695 
- 30 2 Response and/or Recommendations to Submissions Received - draft CZMP for the Eastern Precincts of the BBE, E2018/46725 
- 3 3 Combined Agency Submissions - draft CZMP for the Eastern Precincts of the BBE - 28 May 2018, E2018/45201 
- 35 4 Combined Community Submissions - draft CZMP for the Eastern Precincts of the BBE, E2018/46385 

Report

At the 30 October 2017 meeting Council resolved (**Res 17-521**) to develop a newly formed draft Coastal Zone Management Plan (CZMP) for the Eastern Precincts of the Byron Bay Embayment (Cape Byron to Main Beach). The draft CZMP has been developed in close consultation with public agencies and is in the final stages prior to submission to the Minister. At the 19 April 2018 meeting Council resolved (**Res 18-209**) to publicly exhibit the draft CZMP and the accompanying Emergency Action Sub Plan (EASP) for a period of 4 weeks.

This report provides an outline of the consultation and engagement activities completed during the development of the draft CZMP and EASP and the submissions received during public exhibition.

Community engagement

Extensive consultation was undertaken in 2016 during preparation of the preceding draft CZMP for the Byron Bay Embayment (Cape Byron to South Tyagarah), with further consultation undertaken in 2018 on the newly formed plan for the Eastern Precincts of the BBE (Cape Byron to Main Beach).

A Community Engagement Plan guided the engagement activities in 2018 and comprised activities including website updates, media releases, facebook alerts, newspaper advertisements and workshops. A workshop was undertaken with public agencies on 24 January 2018 where feedback and comments were sought on the plan, along with Councillor workshops and updates throughout the development of the CZMP. Attachment 1 provides a description of the activities delivered during the development of the plan.

Exhibition of draft CZMP

The draft CZMP was publicly exhibited under section 55E of the *Coastal Protection Act 1979* from 26 April 2018 to 25 May 2018 for a period of 4 weeks. The statutory advertisement for public exhibition was placed in The Echo on 25 April and 9 May 2018 and the Byron Shire News on 26 April and 10 May 2018.

Feedback from public authorities

Section 55C(2)(b) of the *Coastal Protection Act 1979* states:

- (2) *A coastal zone management plan must not include the following:*
- (b) *proposed actions or activities to be carried out by any public authority or relating to any land or other assets owner or managed by a public authority, unless the public authority has agreed to the inclusion of those proposed actions or activities in the plan.*

Section 55G(2) of the *Coastal Protection Act 1979* states:

Before submitting the draft coastal zone management plan to the Minister under subsection (1), the council must consult with other public authorities in the manner specified in the Minister's guidelines.

During the development of the CZMP staff liaised with representatives of the Department of Primary Industries – Fisheries (Marine Parks), Department of Industry – Crown Lands & Water, Office of the Environment and Heritage, NSW Crown Holiday Parks Trust (Reflections Holiday Parks), Arakwal Corporation, NSW National Parks and Wildlife Service, NSW State Emergency Service (SES), and the NSW Police. During the public exhibition period, staff contacted relevant agencies, seeking their feedback and advice as per section 55C(2)(b). At the time of preparing this report, the following NSW agency responses had not yet been received:

- Department of Primary Industries – Fisheries (Marine Parks)
- NSW Police

If letters from these agencies are received over the coming days, they will be provided to Council as late attachments to this report. Where necessary, staff will also provide recommendations to Council concerning further amendments to the draft CZMP if required in response to these submissions. Copies of all submissions received so far from public authorities are provided in Attachment 3.

Feedback from public authorities was general in nature and primarily consisted of minor editorial comments (word and figure amendments), and further articulation, description and/or clarification of management actions, agency roles and responsibilities.

One agency has suggested a policy change, however this is not supported by staff. The suggested policy change raised by the NSW Crown Holiday Parks Trust (Reflections Holiday) relates to the Trust seeking to recommend that it be clarified in the plan, that Crown Lands may also apply small scale armouring works (in line with those prescribed in the plan for protection of significant cultural assets, i.e. middens) for the purpose of stabilising the dune toe in areas alongside, east and west of the Aboriginal midden/s, the caravan park and remaining large trees in the dunes. In essence the CZMP does not support or advocate any new 'hard' coastal protection works (seawalls) apart from the option for small scale armouring works (such as a cobble berm) for protection of significant cultural assets.

Attachment 2 lists all comments received from public agencies and staff's response and recommendation. It is recommended that Council amend the draft CZMP in accordance with the recommended changes in Attachment 2.

Feedback from public submissions

Five submissions were received from community members/interest groups, Attachment 4. Public submissions have been considered in accordance with section 55F of the *Coastal Protection Act 1979*.

Attachment 2 lists all public comments received and staff response and recommendation. It is recommended that Council amend the draft CZMP in accordance with the recommended changes in Attachment 2. The public submission comments that are more significant in nature are drawn out in Table 1 below.

Table 1 – Significant comments raised in public submissions

Community Member/Group	Comment	Response/Recommendation
Wategos Beach Protection Association	Intermittent erosion of Wategos Beach is not considered in the plan.	Recommendation: Amend draft CZMP to further acknowledge the intermittent erosion of Wategos Beach depending on the volume of sand within the bay.
Byron Preservation Association	Council should be making a plan for the whole of the Byron Bay Embayment.	Given the issues raised, Council's legal services team is obtaining further legal advice. The advice will be privileged and will be provided to Councillors on a confidential basis as soon as possible prior to the meeting.
Byron Preservation Association	The Jonson Street Protection Works will be enlarged with the addition of many tonnes of rock onto the beach.	As above.

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Community Member/Group	Comment	Response/Recommendation
Byron Preservation Association	Council should return to the previous plan for the whole Byron Bay Embayment and achieve compliance with the Minister Direction.	As above.
Byron Preservation Association	We urge Council to pursue an equitable and legal solution for the whole of the embayment, residents are willing to work with Councillors on such a solution.	As above.
Byron Preservation Association	This part of the coastline has already seen an extended period of litigation. There is nothing objectionable about residents litigating these matters.	As above.
Positive Change for Marine Life	Concern regarding the impact of dune reformation/ beach scraping on flora and fauna communities. Mitigation measures to be implemented.	Noted. No change. Any proposed works for beach scraping would require the appropriate approvals and conditions/measures to reduce any impact on flora and fauna communities.
Community Member #1	Whole of Catchment goals and targets should be referenced with more reference to coastal and marine biodiversity issues included.	Noted. No change. The CZMP addresses issues within the coastal zone, to approx., 1km inland, hence, a Whole of Catchment approach has not been goals and targets are not addressed within this plan. Coastal and marine biodiversity issues and goals are included to a level that does not overlap or replicate Marine Park management plans, such as specific action plans for large mega fauna.

Community Member/Group	Comment	Response/Recommendation
Community Member #2	The plan could consider minor changes including removal of the three spur groynes, but the main thrust of the plan should be to relinquish this artificial structure, using the “planned retreat” approach.	<p>Noted. No change.</p> <p>Refer CZMP Vision (Section 1.4.1): <i>2) To retain the Jonson Street Protection Works for the future security of the Byron Bay Township, critical public infrastructure and assets, whilst seeking to modify the design of the structure to mitigate coastal hazard risks, improve public safe and amenity, and remove spur groynes.</i></p> <p>Council has committed recently and over the years (Res 14-66; 16-169; 17-641; 18-104) to protecting the coastal protection works at the Town Centre with the first step in delivery of the project, to refine a concept design in close consultation with the community.</p> <p>The preferred concept design will be based on considering various alternatives and options for the Main Beach foreshore precinct.</p>

Project delivery

5 At the 19 April 2018 meeting Council considered the revised timeframes for the delivery of the draft CZMP. These timeframes are still considered appropriate with the next steps in delivery outlined below.

1. Review submission and feedback; report to Council at 21 June 2018 meeting; finalise draft CZMP – **Jun 2018**
- 10 2. Submit to the Minister for certification – **Jul 2018 (pending)**
3. Review and certification of the CZMP by the Minister – **Jul/Aug 2018 (pending)**
4. Minister certifies the CZMP - **Sep 2018 (pending)**
5. Report to Council to endorse the CZMP to be published in the gazette – **Oct 2018 (pending)**

15 **Financial Implications**

The financial implications associated with the draft CZMP are detailed in the Implementation Schedule in Section 2.5 of the plan. The main management action at the forefront of this plan is the upgrade of the Jonson Street Protection Works at Main Beach. Considerable funding will be
 20 required for implementation of this action.

Council has resolved to consider \$150,000 in next financial year’s budget for the Implementation of the pre-construction sub-tasks of this action (design, modelling and approvals). Staff will seek
 25 appropriate funding sources from relevant grant programs as well.

Statutory and Policy Compliance Implications

5 The *Coastal Protection Act 1979* was repealed on 3 April 2018, with enactment of the *Coastal Management Act 2018*. Should the draft CZMP be certified by the Minister it will be required to be transferred over to a Coastal Management Program (CMP) under the new coastal legislation by December 2021. To meet this timeframe Council will need to commence preparation of a new CMP in 2019/20 financial year. A budget bid will be submitted at this time.

Report No. 13.10 **PLANNING - Draft Employment Lands Strategy for Public Exhibition**
Directorate: Sustainable Environment and Economy
Report Author: Natalie Hancock, Senior Planner
File No: I2018/920
5 **Theme:** Ecology
 Planning Policy and Natural Environment

10 **Summary:**

15 Council resolved (**Resolution 13-127**) to prepare an Employment Land Strategy (Strategy) to provide a strategic framework to guide the future zoning and use of employment land in Byron Shire. The Strategy will inform Council’s decision making toward delivering an adequate and appropriate supply of employment lands to 2036. For purposes of the Strategy, ‘employment land’ is land that is predominantly used for retail, commercial or industrial activities resulting in employment. Although the Strategy does not directly focus on agricultural land, it nevertheless recognises agriculture to be a valued sector and a key driver of change in the Byron Shire economy and employment land demands.

20 This report presents a draft Employment Land Strategy and Employment Land Strategy Background Report for Council’s consideration for public exhibition. (Attachments 1 & 2)

25 Key highlights of the Strategy include:

- Byron Shire has experienced relatively strong jobs growth in recent years, with some 14,000 jobs as at 2015/16
- Byron Shire’s economy is growing at a marginally faster rate than the rest of Regional NSW and the Northern Rivers Region
- 30 • Byron Shire businesses are quick to respond to consumer trends in food production, retailing, tourism and workspace /place opportunities
- some 8 -10 ha of new release land is needed to accommodate future industrial growth — with possible sites at Manns Road, Mullumbimby, southern Gulgan Road/Pacific Highway interchange and Bangalow East
- 35 • the majority of Business Centres will experience an undersupply of floor space over the next 20 years, with the following options suggested to address this shortfall:
 - increasing in floor space ratios (FSR)
 - introducing an active frontage overlay as an LEP Map to secure ground floor commercial uses.
 - 40 – expanding business zoned land in the town centres of Byron Bay, Mullumbimby and Bangalow
- for Brunswick Heads, investigating a possible rationalisation of the use and allocation of *B2 Local Centre* zoned land and planning control incentives for live-work arrangements in the *B4 Mixed Use Zone* around Tweed Street.

45 Preparation of the Strategy has been informed by technical research, a Business Survey and consultation with State Government agencies and initial discussions with landowners of possible new employment precincts.

50 A Community Consultation Engagement Plan was presented to the Communications Panel on 8 May 2018 and noted for exhibition.






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.

RECOMMENDATION:

That Council place the draft Employment Land Strategy, Attachment 1 (#E2018/47136) on public exhibition for a period of 6 weeks and that the exhibition of the Strategy is accompanied by the Employment Land Strategy Background Report, Attachment 2 (#E2018/47137).

Attachments:

- 10
- 1 Draft Byron Employment Land Strategy 1 June 2018, E2018/47136 [⇒](#) 
 - 2 Byron Employment Land Strategy Background Report 1 June 2018, E2018/47137 [⇒](#) 
 - 3 Attachment to Council report State Government agency advice on possible new Employment Lands 2018, E2018/44574 [⇒](#) 
 - 15 4 Employment Lands Strategy Engagement Plan 2018, E2018/35765 [⇒](#) 
 - 5 Disclosure of Pecuniary Interest Annexure, E2012/2815 [⇒](#) 
- 20

Report

Background

5 Council resolved (**Res13-127**) to prepare an Employment Land Strategy (Strategy) to provide a strategic framework to guide the future zoning and use of employment land in Byron Shire. The Strategy will inform Council’s decision making toward delivering an adequate and appropriate supply of employment lands to 2036. For purposes of the Strategy, ‘employment land’ is land that is predominantly used for retail, commercial or industrial activities resulting in employment.

10 Although the Strategy does not directly focus on agricultural land, it nevertheless recognises agriculture to be a valued sector and a key driver of change in the Byron Shire economy and employment land demands.

15 A draft Employment Land Strategy and accompanying Employment Land Strategy Background Report is presented for Council’s consideration for public exhibition, Attachments 1 & 2.

The Strategy focuses on existing and future zoned land for industrial, retail and commercial uses under Byron Local Environmental Plan 2014, as follows:

Business centres	Employment precincts
B1 Neighbourhood Centre	IN1 General Industrial
B2 Local Centre	IN2 Light Industrial
B4 Mixed Use	B7 Business Park
RU5 Village (only Billinudgel)	

20

Process

The Figure 1 below provides an overview of the Strategy preparation process:

25



Figure 1: Process

5 The strategic directions and actions in the Strategy have been informed by:

- analysis of population and employment profiles within the Byron Shire using ABS Census data and Bureau of Transport data
- analysis of macro and micro economic trends including emerging industries that may influence the future of employment lands in Byron Shire
- audit of existing land uses across employment areas to identify the strengths and weaknesses of each area
- examination of trends in retail demand and implications for future retail floor space demand
- projection of future employment growth to predict future floor space demand
- assessment of the future capacity of employment lands to accommodate projected growth
- targeted consultation with:
 - business community via a Byron Shire Business Survey conducted in late 2017
 - State Government agency employment precinct bus trip and workshop with the Office of Environment and Heritage, Department Transport - Roads and Maritime Services, Department of Primary Industries and Department of Planning and Environment - the later two providing a written response, refer to Attachment 3
 - early notification and/or initial discussions with landowners of possible new employment precincts. All landowners were sent information and an invitation to attend a meeting on 16 May 2018. Those landowners in attendance indicated their support in principal. Subsequent to this meeting Council has received formal advice from some land owners of their support to be included in the Strategy

Key Findings

People and Jobs

- 5
- Byron Shire had some 14,000 jobs as at 2015/16 representing a 23% increase in employment generation from 2001/2.
 - Byron Shire’s economy is growing at a marginally faster rate than the rest of Regional NSW and the Northern Rivers Region.
- 10
- Byron Shire business are quick to respond to consumer trends in food production, retailing, tourism and workspace /place opportunities such as shared workspace and work/live arrangements.

Business Centres overview

15

Business Centre	Key Messages
All centres	Introduce an ‘active frontage overlay’ map in LEP 2014 to secure ground floor commercial uses.
Bangalow Centre	The current undersupply of floor space is forecast to increase and possible options to accommodate future demand include: <ul style="list-style-type: none"> • possible expansion of the centre eastward along Byron Street • potential for a larger supermarket than what is currently provided
Suffolk Park Centre	Slight current undersupply, but not significant. An option to accommodate future demand could involve investigating an increase in FSR, from the current 0.5:1 to around 1:1.
Byron Bay Trade Catchment made up of: <ul style="list-style-type: none"> • Byron Bay Centre • Sunrise Boulevard Centre (Treated as a single trade catchment in the Strategy due over lapping trade areas.)	The current oversupply is forecast to reverse to an ‘undersupply’ around 2026 – primarily in the Byron Centre. The strategy notes that there is capacity within the current zoned land to potentially meet this need, but given the propensity to develop tourist accommodation in the town centre it recommends introducing an ‘active frontage overlay’ map in LEP 2014 to secure ground floor commercial uses. Other options to accommodate future demand: <ul style="list-style-type: none"> • investigating increasing FSRs • two possible areas for expansion: <ul style="list-style-type: none"> – North of Shirley Street and to the west of Jonson Street – east of Middleton Street and south of Lawson Street).

Business Centre	Key Messages
<p>Northern Villages made up of:</p> <ul style="list-style-type: none"> • Brunswick Heads Centre • Bayside Brunswick Heads Centre • Ocean Shores Centre • Billinudgel Village Centre <p>(Treated as a single trade catchment in the Strategy due to over lapping trade areas.)</p>	<p>Current and anticipated oversupply of floorspace within the main trade area and limited need for additional land.</p> <p>In Brunswick Heads to help provide a more identifiable core consideration could be given to:</p> <ul style="list-style-type: none"> • possible rationalisation of the centre (<i>B2 Local Centre Zone</i>) • investigating planning control incentives to facilitate live-work opportunities in the 'Tweed Street' (<i>B4 Mixed Use Zone</i>).
<p>Mullumbimby Centre</p>	<p>Forecast to have a slight undersupply, options to accommodate future demand include:</p> <ul style="list-style-type: none"> • investigating increasing FSRs • possible area for expansion south of Tincogan Street using a <i>B2 Local Centre Zone</i> or <i>B4 Mixed Use Zone</i> • potential for additional supermarket expansion within the town centre area.

Employment Precincts overview

5 It is prudent to provide for an additional supply of land (or contingency) above that projected to ensure greater choice and price competition. Without some level of vacancies upward pressure on land values or rents could undermine further economic growth and investment. A healthy additional supply of land (or contingency level) is considered to range between 20% and 40% above projected demand.

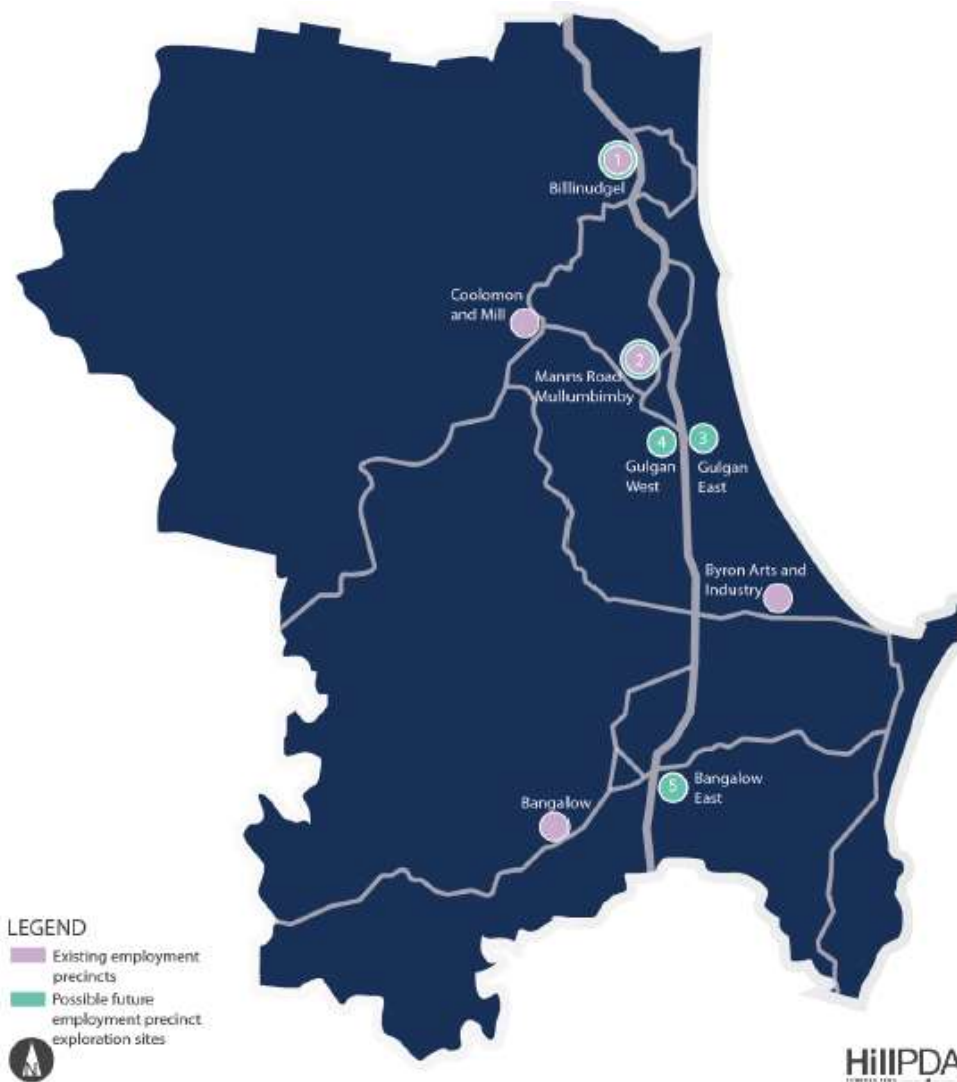
10 Byron Shire currently provides a total of around 64 hectares of land within its employment (industrial) precincts. Of this, around 24.4 hectares is undeveloped and could accommodate the majority of the projected demand for the next 15 years. However, a proportion of this undeveloped land may be unsuitable for development or not on the market for a variety of reasons, including environmental or other development constraints.

15 Analysis to determine the amount of suitable developable land within this undeveloped land indicates that amount of additional vacant zoned land would be in the order of 12 ha in the following locations:

20

Vacant sites with capacity to accommodate future industrial space Industrial precinct	Lots	Land area (ha)
Byron Arts and Industry Estate	8	2.9
Manse Road Industrial area	10	1.8
Bangalow Industrial area	2	0.2
Billinudgel Industrial area	5	0.5
West Byron	1	7.5
Total	22	11.9

The Strategy recommends that in addition to the above vacant zoned land, around 8-10 hectares of additional new industrial land should be provided. Ultimately the amount of new land required will be dependant on employment growth rates and floor space ratios density controls applied to new land. The Strategy identifies 3 possible locations for new industrial land, being: 'New Employment Precincts': east and west of the southern Gulgan Road/Pacific Highway interchange; and Bangalow East; as well as a possible expansion area west side of Manns Road, Mullumbimby. These are shown on Figure 2 below.



10 **Figure 2: Employment Precinct and Possible Expansion Areas**

All of the sites shown on Figure 2 will require a more detailed investigation to determine suitability and potential developable area.

15 Public Exhibition

An Community Consultation Engagement Plan for exhibition was presented to the Communications Plan on 8 May meeting and noted for exhibition, Attachment 4. The Plan outlines a considered engagement approach aimed at providing genuine and meaningful opportunities for stakeholder input. The key messages for the Plan are:

- Planning for employment lands is an important part of managing the Shire’s future growth.

- Council is keen to hear your thoughts about the Strategy and where our priorities should sit.
- Feedback from this round of engagement will result in an updated draft Strategy being reported to Council for adoption later this year.

5 Subject to Council's adoption of the draft Strategy for public exhibition, there may be subsequent refinements to the Strategy's language and format to improve legibility prior to being exhibited. Such changes would not affect the draft Strategy policy position or actions as adopted by Council.

Financial Implications

10 The costs of preparing the Strategy and proposed public exhibition can be met within the current 2017-18 budget. The timeframe for this project will extend beyond financial 2017-18 financial year and hence its successful completion will require additional budget allocation in the 2018/19 financial year. A \$15,000 budget bid has been included in the 2018/19 Council Budget.

Statutory and Policy Compliance Implications

15 The Employment Land Strategy has been informed by the relevant state, regional and/or local planning framework and best practice planning principles.

**Report No. 13.11 PLANNING - 26.2016.4.1 - Rural Function Centres - Results of
Community Engagement**

Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
File No: I2018/798
Theme: Ecology
 Planning Policy and Natural Environment

5

10

Summary:

At the meeting of 23 November 2017, Council resolved:

15 **(17-594):**

That Council, for the purposes of community consultation:

1. *Prepare a draft Planning Proposal to amend Byron Local Environmental Plan 2014 to insert a clause permitting function centres with consent in zones RU1, RU2 and R5 subject to a range of controls which will manage impacts on existing residents.*
2. *Conduct information sessions in all rural communities where the proposal may have affect.*
3. *Issue a media release and Council website post at least two weeks prior to the first information session to advise the community of the planning proposal with notice of all information sessions.*
4. *Following completion of the information sessions and other community consultation, a report be received by Council with a review of the community meetings and consultation.*

20

25

This report provides information in response to this resolution, including a summary and assessment of the community information sessions and online platform feedback.

30

The aim of the community engagement was to obtain input from the community as to how Council should manage the issue of rural function centres, particularly relating to wedding venues.

Four meetings were held throughout the Shire. A “Your Say” page was live for one month, containing background information, a community survey and a forum for comments.

35

While the on-line survey included a question about whether functions centres should be permissible at all in rural areas, the majority of the survey was deliberately aimed at getting feedback about how permissibility could be best managed (i.e. to assist in drafting appropriate and effective controls).

40

This was designed on the basis that the wedding industry is very active and is here to stay – previous compliance / enforcement actions have been effective in some limited cases, but a significant number of unauthorised venues and activities remain.

45

Resolution 17-594 recognised this and provided a direction to proceed to amend the LEP to permit and control rural function centres.

50

171 individual survey responses were received. In addition, approximately 80 people attended the community information sessions and approximately 20 individual submissions were received. A summary of the responses is included as Attachment 1.

55

The community is divided about whether to permit function centres in the rural zones. In response to that survey question, 63% of respondents said function centres should be permissible in rural zones, with 37% saying they should remain prohibited.

The concerns expressed as reasons to retain the current prohibition included:

- the loss of productive farmland and impact on farming;
 - erosion of the rural character and amenity, particularly by disturbance to residents;
 - the commercialisation of rural land; and
- 5 • a lack of trust in the ability for Council to monitor and police compliance with approval conditions.

10 There was general agreement, at least among those who accepted the premise of permitting and controlling rural function centres, that the controls should include provisions that define the suitability of sites as well as controls relating to the management of events.

There was widespread agreement that management of noise and traffic was the key to limiting the disturbance to neighbours.

15 There was an acknowledgement of the positive benefits of the wedding industry, in terms of employment and expenditure, and recognition that, on appropriate sites, it is possible for events to be managed to minimise or avoid disturbance to neighbours.

20 Rural function centres also need to be considered in the context of Council's Rural Land Use Strategy, which establishes a framework that values farming, biodiversity and rural character/amenity.

25 Based on the results of the community engagement and the framework within the Byron Rural Land Use Strategy, it is recommended that Council proceed with a Planning Proposal to amend the Byron LEP to permit function centres on land zoned RU2 and insert an additional local clause that contains controls to address site suitability and event management. A draft Planning Proposal is included as Attachment 2.

30 It is recommended that function centres not be permitted within the RU1 Primary Production Zone, to reinforce the commitment of Council, through the adopted Rural Land Use Strategy, to protect, facilitate and enhance farming as a key component of our economy and our community.

35 It is also recommended that function centres not be permitted within the R5 large Lot Residential Zone, recognising that lots are generally smaller than 1ha. In this zone, adequate separation is unlikely to be available between event locations and neighbouring dwellings.

NOTE TO COUNCILLORS:

40 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.

45





RECOMMENDATION:

That Council:

1. **Forward the Planning Proposal at Attachment 2 (#E2018/46690) to the NSW Department of Planning and Environment for a Gateway determination, to amend Byron Local Environmental Plan 2014 to permit function centres in the RU2 Rural Landscape Zone with development consent and subject to appropriate controls relating to site suitability and management.**

2. In keeping with the commitment to value, protect and enhance farming in the Shire, not proceed with allowing function centres in the RU1 Primary Produce Zone.
4. Agree that staff can proceed to public exhibition of the Planning Proposal and government agency consultation based on the Gateway determination issued by the NSW Department of Planning and Environment, and report back to Council as part of post-exhibition reporting.
5. Investigate the possibility of implementing a registration system for approved rural function centres, and report back to Council as part of the post-exhibition reporting.

Attachments:

- 5 1 Submissions Overview - survey review, online ideas, online forum, email and letters PDF,  [↔](#)
26.2016.4.1 Planning Proposal v.1, E2018/466  [↔](#)
- 2 Form of Special Disclosure of Pecuniary Interest, E2018/2/2815  [↔](#)
- 3 

10

Report

Background

5 The report to Council's November 2017 meeting highlighted that Byron Shire is an extremely popular wedding destination. The wedding industry in the Shire is large; estimated to support 392 direct full-time and 314 indirect employees.

10 Under the current LEP, a commercial wedding/ event site is defined as a *function centre*. Function centres are prohibited within the RU1, RU2 and R5 zones, but permissible with consent in the RU5 Village zone.

15 Council is aware of a number of unauthorised venues that are or have previously been operating in the rural area. Fines and notices have been issued in response to complaints in relation to a number of these venues and some have ceased operation in response to that enforcement action.

Rural Land Use Strategy

20 Consideration of functions centres in rural parts of the Shire should be undertaken within the context of the *Byron Shire Rural Land Use Strategy*, which sets out a 20-year strategic framework to guide future land zoning and use, protection and/ or development of:

Our Rural Environment
Our Rural Economy
Our Rural Community
Our Rural Infrastructure

25 The primary focus of the Strategy in relation to *Our Rural Economy* is the protection, promotion and facilitation of farming. The Strategy also recognises, however, that rural tourism activities are an important part of the rural economy of the Shire.

In this regard, some of the relevant Policy Directions adopted for the Strategy include:

- 30
- *Future rural tourist development will build on and complement our agricultural industry, reinforcing the predominant use of the rural area for agricultural production while maintaining the rural character and take into consideration increased road traffic impacts; and*
 - *Future rural tourist development will be located and designed to avoid adverse visual or noise impacts.*
- 35

The Rural Land Use Strategy reinforces Council's commitment to farming, areas of high biodiversity and rural character and amenity.

Community Engagement

40 In response to resolution **17-594**, four "drop-in" community information sessions were held across the Shire (Bangalow, Byron Bay, Federal and Mullumbimby). A media release was issued two weeks prior to the first community session.

45 The community information sessions were also advertised in local newspapers and in rural school newsletters. Letters were sent to all known unauthorised venues and to wedding planners.

Council's Major Projects Planner was interviewed on local ABC radio in the lead up to the sessions to outline the project and generate interest in attendance at the sessions.

50 A 'Your Say' page was also created, linked to Council's website, to allow the wider community to participate in the project. The webpage included an online survey and a forum.

While the on-line survey included a question about whether functions centres should be permissible at all in rural areas, the majority of the survey was deliberately aimed at getting input into the formulation of practical and efficient controls to include in an amendment to existing planning controls.

- 5 Council set out to inform and raise awareness of both the negative impacts that weddings and events have been having on rural areas, and the positive benefit the industry can bring to the wider community, including local employment.
- 10 The emphasis was on developing planning controls that would facilitate a balance, allowing the industry to continue on suitable sites, while protecting the rural amenity for existing (and future) residents.

Community Input

- 15 The community, both industry participants and rural residents, were extremely eager to contribute to this project and find solutions.

The on-line survey received 171 contributions. A further 20 contributions were made via email.

- 20 Over the four community information sessions, approximately 90 individuals attended.

People associated with the wedding industry were well represented at each of the community information sessions, and it was apparent that industry representatives advocated having supporters complete the online survey.

- 25 Completing the survey required respondents to leave a name. However, it was possible for individuals to complete the survey multiple times, using different names. It is not possible to determine to what extent, if any, that occurred. The survey also did not gauge from respondents whether they worked in the wedding industry, were rural residents, or both (or neither).

- 30 Notwithstanding any potential shortcoming of the survey, its results regarding key issues and suggestions for future controls are valid and useful, and are consistent with the discussions from the community at the information sessions.

- 35 Overall, it is clear that the community is divided about whether to permit function centres in the rural zone. In response to that survey question, 63% of respondents said function centres should be permissible in rural zones, with 37% saying they should remain prohibited.

- 40 A portion of the community is confident that balance can be found and the coherent themes to be included in new planning controls relate to management and respect.

The majority of respondents, whether in favour of the potential LEP amendment or not, contributed practical suggestions to be included in potential LEP controls.

- 45 During the community engagement period, Council staff heard both negative and positive examples of weddings and events operating in the rural areas. Viewpoints from neighbours, industry workers and landowners were all expressed and listened to.

- 50 While it is clear that there has been a history of disturbance associated with rural functions, it is also clear that there are a number of venues that operate in a way that does not generate disturbance to nearby residents. The information sessions were valuable in learning from both the negative and positive cases.

The table below provides a breakdown of the main concerns and solutions provided by the community responses. As shown, noise and traffic were the two most commonly highlighted negative impacts for the rural amenity.

Impacts	Details	Solutions
<p>Noise</p> <p><i>Respondents agree that uncontrolled noise is an unacceptable impact.</i></p> <p>91 respondents suggested a curfew.</p> <p>27 respondents believe 10pm is a suitable time for events to end.</p> <p>25 others believe the curfew should be later, while 7 believe it should be earlier</p>	<p>Some rural residents have been disrupted in the past from loud music.</p> <p>Noise generated from the guests was also highlighted as a negative impact with shouting, loud singing, etc. being the main issues, especially at the end of events. Buses playing loud music or idling late at night was also identified as an unacceptable impact.</p> <p>Separation of event sites from neighbouring dwellings is important. However, setting an appropriate distance is difficult, as topography, vegetation and weather can strongly influence how far noise is 'carried'.</p> <p>Similarly, controls that rely on measuring and limiting noise levels are difficult. Topography and weather can significantly influence a decibel reading and the distance noise can travel. Low frequency sounds (e.g. base) can also travel large distances but is not picked up by a simple decibel reading.</p> <p>Some respondents do not have faith in the ability of the Council to manage/ enforce the issue of noise, noting that a conditional approval based on restricting noise levels would require additional compliance resources. The majority of participants agreed that more compliance/ enforcement resources are needed.</p>	<p>A majority of respondents are in favour of a separation control, with 500m to neighbouring dwellings a common suggestion.</p> <p>The opposing view was that, if events are managed to avoid/ minimise disturbance, physical separation is not an important control.</p> <p>Introducing a curfew for amplified music and for the event itself was the most favoured solution. Various times were offered, with 10pm being the average for venues to cease operation, and 10:30pm for the guests to leave. <i>[It was noted that well-managed operators currently apply these curfews and it was reported that these operators are not impacting their neighbours in an unacceptable way.]</i></p> <p>Suggestions were also made for music to either cease or move indoors prior to this curfew.</p> <p>An on-site event manager, to control aspects of noise, guest behaviour, music and transportation, was suggested and favoured by a majority of participants.</p> <p>It was suggested that each site would need to submit an acoustic report carried out by a professional consultant prior to any approval. The acoustic assessment would show the potential impacts that noise could have on the neighbours.</p> <p>A number of respondents suggested that fees should be charged for each event, with money raised paying directly for enforcement by Council staff (Note: Council's ability to do this is limited).</p> <p>Snapshot:</p> <ul style="list-style-type: none"> • Curfew • Acoustic Assessment • Purpose built space for events or fixed locations for marquees – strategically located to minimise sound • Buffers or alternative sound proofing

Impacts	Details	Solutions
		<ul style="list-style-type: none"> • On site event manager • No overnight stay for guests, maybe with the exception of the bride and groom only • Distance to neighbours should be key consideration • Maximum number of guests per venue should be included as a condition of consent • Duration of event could be a consideration
<p>Traffic</p> <p><i>Respondents agree that the current state of roads is a concern for increased traffic</i></p> <p><i>118 respondents suggested the use of buses to minimise car trips.</i></p>	<p>Too many cars coming and going on small rural roads that are already degraded.</p> <p>Too many cars parking on site and also on neighbours' land/public land which is not aesthetically pleasing, nor safe.</p> <p>Helicopters scaring farm animals.</p>	<p>Ensuring that all guests are transported to and from the site via bus was highly favoured.</p> <p>It was also suggested that an onsite event manager could ensure buses are neither idling whilst waiting for the guests nor playing music as they depart.</p> <p>Ensuring venues store and have their own equipment to limit the traffic generated by the set-up and pack-down was suggested. Venues potentially could have their own tables, chairs, marquees, cutlery, etc.</p> <p>Many respondents suggested that Council should capture fees from each venue to contribute to the state of the roads (see note above).</p> <p>Snapshot:</p> <ul style="list-style-type: none"> • Bus for guests • On site event manager • Encouraging sites to store some equipment on site as to limit the set-up and pack-down • Financial contribution to state of roads • Driveways should be sealed • There should be sufficient on-site parking • Increased signs on roads/verges for No Parking • Limitations around set up and pack down travel times • Number of guests should accord with number of available and realistic parking and capability of access roads
<p>Rural Character</p>	<p>Common concern expressed about the commercialisation of rural land.</p>	<p>Some suggested that there should be some parts of the rural hinterland that are 'off limits' to events.</p>

Impacts	Details	Solutions
	<p>Many people noted that the main attractor for living in the rural areas was the 'peace and quiet'.</p> <p>Concern was expressed that providing an approval pathway would lead to a proliferation of event sites across the Shire, resulting in cumulative loss of amenity and character.</p> <p>It was suggested that approval of function centres would detract from viability of local halls.</p>	<p>Snapshot:</p> <ul style="list-style-type: none"> • Weddings should be restricted to rural halls • Needs to be some 'function-free' areas • Visual impacts associated with marquees needs to be considered, with marquees located on suitable sites and not on ridgelines
<p>Loss of Agricultural Land</p>	<p>Concern was expressed that too many function centres will be approved and they will not maintain the land/use the land for farming purposes.</p> <p>Concern is held that if a function centre is approved near a working farm, the venue operator may begin complaining about farming activities such as tractor noise, spraying etc.</p> <p>It was also identified that function centres could be a positive way for farmers to diversity and value add for positive financial gain.</p> <p>Conversely, there was concern that allowing events on RU1 land would lead to an erosion of farming and the eventual loss of active farming.</p>	<p>Suggested that, rather than prohibiting function centres in RU1, an alternate solution may be to restrict the number of allowable events within a calendar year to less than 5.</p> <p>This might allow a rural land owner (farmer) to get some financial benefit, to supplement farming income, while maintaining a financial disincentive to transform totally from farming to function centre.</p> <p>Snapshot:</p> <ul style="list-style-type: none"> • Not in RU1 • Consider nearby active farms at time of DA assessment • Clause to encourage farming as primary land use if events allowed on Regionally Significant Farmland • Clause to encourage and recognise Right to Farm
<p>Compliance</p>	<p>Compliance is already difficult to manage and control. Concern was expressed that current issues will not be resolved if compliance is not available.</p> <p>There is a lack of faith in Council's ability to monitor and take action against breaches in compliance.</p>	<p>Snapshot:</p> <ul style="list-style-type: none"> • Compliance officers should be more available, with costs paid by the function centre. Including parking compliance officers for illegal parking • There needs to be a practical protocol for registering complaints • Action needs to be taken against non-compliance • DA should come with a 'three strike' condition, meaning 3 breaches of compliance results in a loss of the DA approval • DA should include three year sunset

BYRON SHIRE COUNCIL

Impacts	Details	Solutions
		clause <ul style="list-style-type: none"> • Fines should be increased
Environment	<p>Rubbish being left on site and increased levels of waste generation were highlighted as unacceptable impacts.</p> <p>Fireworks and balloon releases were considered to be unacceptable.</p> <p>Concern was raised that floral arrangements could be spreading weed.</p> <p>Concern for sewer and potential run off into creeks was highlighted</p>	Snapshot: <ul style="list-style-type: none"> • There should be a sustainability emphasis • No fireworks, balloon releases or offsite decorations • Distance to significant flora/fauna should be identified i.e. koala habitat, waterbody, wildlife corridor • Garbage disposal, and prevention, should be considered • Sufficient toilets, transportable recommended • Not allowed on flood prone land • Distance to significant bush fire areas
Privacy	<p>Guests crossing neighbour boundaries were identified as unacceptable.</p> <p>Lights from cars, or lasers, shining onto nearby houses also pose as negative issues.</p>	Snapshot: <ul style="list-style-type: none"> • On site event manager at all times • Security for high volume events • Neighbours to be consulted
Local Economy	<p>The community understands that the industry can bring financial benefit to the Shire but is concerned that this is benefiting those outside the shire or rural area, whilst the rural residents themselves are the ones who are suffering.</p>	Snapshot: <ul style="list-style-type: none"> • Provisions to encourage local employment, not backpacker employment, should be considered
Industry	<p>Concern is held over what exactly an 'event' could be.</p> <p>Many respondents suggested that there should be a registration system for approved rural function centres, facilitating an event fee or the like.</p>	Snapshot: <ul style="list-style-type: none"> • Investigate the possibility of a registration and user pays' system • All suppliers should be part of association with code of conduct • Good management is the underlying key to weddings and events having minimal to no impact on the rural amenity • Limitations as to type of 'events' permissible should be given • Phone numbers of event managers should be given to neighbours

Based on the results of the community engagement and the framework within the Byron Rural Land Use Strategy, it is recommended that an approval pathway be provided for function centres in the rural area, but that it be restricted to the RU2 zone and that it contain provisions that characterise the suitability of site and the management requirements that will ensure that disturbance to neighbours can be minimised/ avoided.

5

The table below contains the recommended draft clause and commentary providing explanation/ justification.

Recommended Clause	Comments
6.10 Function Centres in RU2 Rural Landscape Zone	It is recommended that function centres not be permitted in the RU1 Primary Production Zone. This will reinforce Council’s commitment to farming, and ensure that high quality agricultural land in the Shire is maintained for that purpose.
(1) Development consent must not be granted for a function centre on land zoned RU2 Rural Landscape unless the consent authority is satisfied that:	The controls in this sub-clause are aimed at identifying the key characteristics of a suitable site.
(a) events will occur in a location that is a minimum of 500m from an existing dwelling house on an adjoining property. Council will consider a variation to the minimum separation distance, but not less than 250m, only where: <ul style="list-style-type: none"> i. existing topography and/or vegetation on the land are such that there is not a clear line of sight between the event site and adjacent dwellings; and ii. an acoustic assessment clearly demonstrates that event use will not result in unacceptable noise impacts at the neighbouring dwelling 	Noise is clearly the key issue associated with disturbance from functions. Distance to nearby dwellings, while important, is not the only determinant of disturbance, as topography and vegetation play a role in how far music can carry. Generally, however, a distance of 500m is likely to be sufficient in the majority of cases, to minimise disturbance from noise. Flexibility is recommended, as there are a number of cases where function centres have operated closer than 500m to homes with no noise impacts.
(b) the proposal is supported by a site specific acoustic assessment, prepared by a suitably qualified person, quantifying existing background noise levels and noise levels predicted for events in relation to all nearby dwellings	Each application will require detailed assessment to understand how noise from functions might impact nearby dwellings.
(c) the subject site is accessed by way of a sealed road with sufficient capacity for the traffic volume and type generated by the function centre, and that buses are able to access and exit the property in a forward direction.	A suitable site must have capacity for buses and cars associated with functions to park on-site and access the site safely. The onus will be on the applicant to demonstrate that the access road has sufficient capacity for the intended traffic types and volumes, given road width and standard.
(d) the use of the site for events will not result in unacceptable adverse impacts on any adjoining land or the amenity of the neighbourhood, particularly in relation to noise and traffic	The key words being “unacceptable adverse impacts”. This will allow a consideration of the circumstances of each case to determine whether the anticipated outcomes are reasonable in the circumstances of the site.
(e) the use of the site for events will not result in any land use conflict in relation to adjoining or nearby farming activities	As above – based on Council’s commitment to value farming.
(f) no tree clearing is required for the	Minimise impacts on rural vegetation.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

Recommended Clause	Comments
function centre	
(2) Applications for development consent for a function centre must include an Events Management Plan, which contains (as a minimum) provisions that:	The controls below are intended to address key requirements for the management of each event, to minimise/ avoid disturbance.
(a) ensure that the majority of event attendees will be transported to and from each event by bus; and	Necessity to minimise local traffic.
(b) require all amplified activities (music, speeches, etc.) to be undertaken within a temporary or permanent structure after 7.00pm; and	Will assist in reducing noise at night.
(c) ensure that all amplified music will cease no later than 10:00pm; and	See above – community very keen for noise to cease at a reasonable time. This is supported by the industry.
(d) ensure that all event attendees will be off-site no later than 10.30pm; and	Ensures that ongoing crowd noise is capped.
(e) outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and	Links to the site-specific acoustic assessment.
(f) provide for the monitoring of noise generated at events and six-monthly reporting of results to Council; and	Data will be required, to allow Council to assess the ongoing compliance.
(g) provide for the notification of nearby residents prior to each event, including contact details for an appropriate management person who must be on-site and contactable during each event; and	Local communication can assist in minimising complaints.
(h) ensure that adequate arrangements are in place to manage wastewater and general waste for each event; and	
(i) manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function.	
(3) In deciding whether to grant consent for a function centre on land zoned RU2 Rural Landscape, the consent authority must consider:	
(a) the need for a development consent to be limited to a particular period;	In most cases, it would be appropriate for consents to be limited to a three-year period, with an ability to extend that period dependant on the applicant's ability to demonstrate ongoing compliance.
(b) the potential loss of farming on land that is mapped as Regionally Significant Farmland;	Will ensure that good quality farmland remains available for farming.

Recommended Clause	Comments
(c) the potential impacts on areas of high environmental value, whether on the function centre site or on adjacent and nearby land, particularly in relation to known koala habitat	Will minimise disturbance/ impacts on areas of high biodiversity.
(d) the need to impose a condition specifying that development consent would cease if three substantiate complaints were received in relation to functions at the site.	Numerous people suggested a “three strikes and you’re out” policy for functions.

Financial Implications

5 **Event Fees:** A number of people suggested that function centres should be charged a fee, on a per-event basis, with money raised used to fund compliance officers and/ or local road upgrades.

10 Council’s ability to raise revenue from development is limited by Developer Contributions under the Environmental Planning and Assessment Act, or “fees for service” under the Local Government Act.

15 Developer contributions would be payable, on a one-off basis, for each development consent. Section 94A Levies would be imposed, requiring payment based on a small percentage of the development costs. Given that minimal set-up costs would be expected for most cases, it is unlikely that significant developer contributions would be generated by the function industry.

20 In any case, any contributions carried must be spent on projects outlined in Council’s Developer Contributions Plan. This would, for example, allow contributions to be uses on rural roads.

Local Government Act service fees are limited to the costs of providing necessary services and would have no application to rural functions.

Statutory and Policy Compliance Implications

25 This report recommends an amendment to the Byron Local Environmental Plan 2014.

Report No. 13.12 **Adoption of Constitution for Strategic Business Panel**
Directorate: Sustainable Environment and Economy
Report Author: Sharyn French, Manager Environmental and Economic Planning
File No: I2018/835
5 **Theme:** Economy
 Economic Development


Summary:

10 This report provides the Constitution of the Strategic Business Panel, for adoption by Council.

RECOMMENDATION:

That Council adopt the Constitution of the Strategic Business Panel at Attachment 1 (#E2018/2442).

15 **Attachments:**

1 CONSTITUTION Strategic Business Panel, E2018/2442 

Report

At the 2 November 2017 meeting it was resolved (**17-547**) that Council merge the Sustainable Economy Panel into a new Strategic Business Panel.

5 It was also resolved that the model, terms of reference (constitution), and membership be drafted with the existing Sustainable Economy Panel nominated Councillors Richardson, Spooner, Hunter. Councillors and staff met in late November 2017.

10 The model for the Strategic Business Panel meetings is for different formats for each meeting, such as field days and workshops. Expert guest speakers, industry leaders and other attendees would be invited to each meeting, relevant to the theme set by the Panel Councillors and staff.

15 Panel meetings have been held around the topics of Innovation Business Incubators (26 March) and Agriculture and Agribusiness (9 May).

The upcoming meeting dates for the Strategic Business Panel have been scheduled for:

- 19 September 2018
- 14 November 2018

20 It is recommended that Council adopt the Constitution of the Strategic Business Panel at Attachment 1.

Financial Implications

25 Nil.

Statutory and Policy Compliance Implications

30 Nil.

**Report No. 13.13 PLANNING - Residential Strategy - Accessible Housing Project
(Housing Summit Action)**

Directorate: Sustainable Environment and Economy

Report Author: Natalie Hancock, Senior Planner

File No: I2018/889

Theme: Ecology
Planning Policy and Natural Environment

Summary:

Council resolved in June 2017 (**Resolution 17-260**) to expedite a number of actions to facilitate improved access to housing, following a Housing Summit in February 2017. One of these actions was to undertake an expression of interest (EOI) inviting landowner proposals to facilitate accessible housing in the Byron Shire, as part of an early implementation program to supplement Council's Residential Strategy. For purposes of this program "accessible housing" is a type of housing infrastructure contribution that will be made available to a mix of very low, low and moderate income households (as defined in *SEPP 70 – Affordable Housing*).

An EOI process was conducted and the outcomes reported to the 23 November 2017 Council meeting, where it resolved (**Resolution 17-601**) to support more detailed investigations on certain EOI sites.

This report provides an update on the progress since the 23 November meeting and importantly seeks confirmation from Council on the following matters in order to progress to the next stage in the project:

- Accessible Housing Principles
- Accessible Housing Project Objectives
- Role of Council
- Project terms and conditions
- Acceptable form/s and level of contribution
- Project resourcing

Confirmation of Council's position on the above matters is important to:

- provide landowners participating in the Accessible Housing Project (AHP) with a level of certainty and confidence in the process, prior to committing resource and funds; and
- ensure the process is consistent with the outcomes sought in the initial resolution of Council (**Res 17-260**).

As this project proposes the residential rezoning of certain land that is not identified in an adopted residential strategy, staff have written to the Department of Planning and Environment seeking advice on this early implementation initiative. Councillors will receive an update on the Department's response when received.

The outcomes of this Council report will be communicated back to the landowners for consideration and to confirm their willingness to proceed. It is anticipated that the entire process from lodgement of a Planning Proposal up to the stage where a LEP amendment is gazetted could take 12+ months.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:**That Council:**

- 1. Endorse the accessible housing principles in this report as the overarching framework to guide implementation of the Accessible Housing Project initiative.**
- 2. Endorse the accessible housing objectives in this report to provide the community and landowners with a clear understanding on the housing outcomes being facilitated by the Accessible Housing Project.**
- 3. Confirms its core role as that of a ‘facilitator’ in the Accessible Housing Project.**
- 4. Endorse the Accessible Housing Project terms and conditions outlining the expectations of proponents as contained in this report.**
- 5. For purposes of the Accessible Housing Project, only accept landowner contributions in the following forms:**
 - (i) dedication of land**
 - (ii) dedication of land with constructed housing**
 - (iii) combination of the above.**
- 6. Endorse a minimum of 30% of developable area is applied to all land dedication made for purposes of the Accessible Housing Project.**
- 7. Endorse, subject to budget allocation in the 2018/19 Budget, the allocation of \$50,000 to fund a 6 month planning position to assist with delivery of this and related strategic land use planning projects.**

Attachments:

- 1 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 [⇒](#) **

5

Report

Background

- 5 Byron Shire residents are paying an increasingly large proportion of their income to put a roof over their head, and in some cases are simply unable to access local housing. This is clearly illustrated in the Mullumbimby local catchment area, as shown on Figure 1. With a population of some 3,780 people:
- there are only 32 social housing households
- 10
- there is a 10 year waiting list for social housing in the 1 – 3 bedroom range
 - at least 50% of these households in private rental arrangements are in housing stress (where housing costs as a proportion of income are greater than 30%),
 - some 20% of those with a mortgage are also in housing stress
- 15
- 1 – 2 bedroom dwellings make up only 20% of the housing stock (this includes some 100 secondary dwellings that have been approved since 2011).

(Sources: ABS Census 2016/ FACs as at 30 June 2017/ Council records).

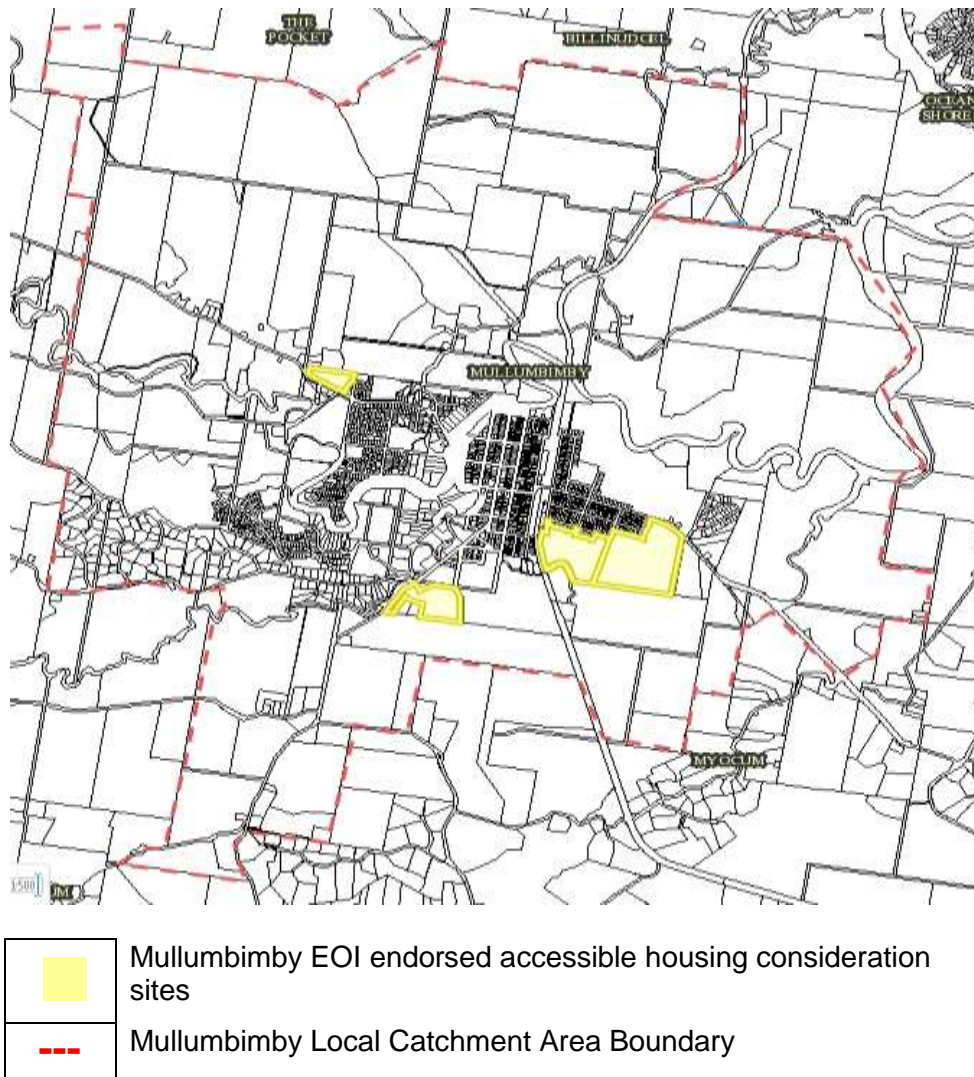


Figure 1: Mullumbimby Local Catchment Area

5

For comparison with the national average in 2015-16, the proportion of gross weekly income that home owners with a mortgage spent on housing costs remained stable at 16%, after having fallen from 18% in 2013-14, while renters were spending 20% of their gross income on housing costs. (Source: ABS 4130.0 - Housing Occupancy and Costs, 2015-16)

10

Council resolved in June 2017 (**Resolution 17-260**) to expedite a number of actions to facilitate improved access to housing, following a Housing Summit in February 2017. One of these actions was to undertake an expression of interest (EOI) inviting landowner proposals to facilitate accessible housing in the Byron Shire, as part of an early implementation program to supplement Council’s Residential Strategy. For purposes of this program “accessible housing” is a type of housing infrastructure contribution that will be made available to a mix of very low, low and moderate income households (as defined in *SEPP 70 – Affordable Housing*). This local initiative seeks to address housing accessibility as a priority action ahead of completing the draft Residential Strategy.

15

20

Council staff are making good progress on this action (referred to in this report as the ‘Accessible Housing Project’ (AHP)) with further development of a supporting framework for Council’s endorsement, before moving forward with the next stages. Staff also held a meeting in May with affected landowners to outline the process going forward. The information presented at that meeting is the subject of the sections below.

25

This report now seeks confirmation from Council on the following matters in order to progress to the next stage in the project:

- Accessible Housing Principles
- 5 • Accessible Housing Project Objectives
- Role of Council
- Project terms and conditions
- Acceptable form/s and level of contribution
- Project resourcing.

10

Confirmation of Council's position on the above matters is important to:

- provide landowners participating in the AHP with a level of certainty and confidence in the process, prior to committing resource and funds; and
- 15 • ensure the process is consistent with the outcomes sought in the initial resolution of Council (Res 17-260).

15

Accessible Housing Principles

A set of 'accessible housing principles' have been developed to provide the overarching framework around the outcomes being facilitated by the AHP. The following principles are adapted from SEPP 70 — *Affordable Housing*.

20

- a) Mixed and balanced communities are created.
- b) Accessible housing is to be created and managed so that a socially diverse residential population representative of all income groups is developed and maintained in a locality.
- 25 c) Accessible housing is to be made available to a mix of *very low*, *low* and *moderate income* households.
- d) Accessible housing is made available for both renters and home buyers.
- e) Accessible rental housing is to be rented to appropriately qualified tenants and at an appropriate rate of gross household income.
- 30 f) Rent from accessible housing, after deduction of normal landlord's expenses (including management and maintenance costs and all rates and taxes payable in connection with the dwellings), is generally to be used for the purpose of improving or replacing accessible housing or for providing additional accessible housing.
- 35 g) Land provided for housing infrastructure is to be used solely for the provision of accessible housing.
- h) Buildings provided for accessible housing are to be managed so as to maintain their continued use for accessible housing.
- 40 i) Accessible housing is to be constructed to a standard that is consistent with other dwellings in the vicinity.

30

35

40

To help understand how the households referred in Principle c) are defined - they are households whose gross incomes fall within the target recipient criteria shown in Table 1. Using the Mullumbimby Local Area Catchment (as identified in Figure 1) as an example, the median household income for this catchment area was \$965 per week as at *Census 2016* - Australian Bureau of Statistics.

Table 1: Target Recipient Household Criteria

Category Level	Criteria	Example using Mullumbimby Local Area Catchment
Very low income household	less than 50%	< \$482.50 per week
Low income household	50 or more but less than 80%	\$482.50 - \$722.00 per week
Moderate income household	80–120%	>\$722.00 – \$1158.00 per week

The above criteria are also derived from *SEPP 70 – Affordable Housing*.

It is noted that the Mullumbimby catchment area contains 4 of the 5 potential AHP sites (the other site is in Bangalow shown in Figure 2 below) and hence is likely to deliver the bulk of accessible housing outcomes under this project.



Figure 2: Bangalow AHP site location off Rankin Drive

RECOMMENDATION:

That Council’s endorses the above principles as the overarching framework to guide implementation of the AHP initiative.

Accessible Housing Project (AHP) Objectives

Supplementing the above principles are a number local objectives for this project. These have been developed to provide a clear understanding for the community, landowners and Council on the housing outcomes being facilitated by the AHP. The project objectives are:

- a) Address housing accessibility as a priority action ahead of completing the draft Residential Strategy;
- b) Identify housing delivered from the AHP as a form of critical infrastructure;
- c) Ensure investigation areas are considered in the context of the draft Residential Strategy (in preparation) and not as isolated rezoning requests;

- d) Ensure sufficient infrastructure is provided to support the additional housing resulting from the AHP; and
- e) Enable the delivery of high quality, permanent housing stock.

5 RECOMMENDATION:

That Council endorse the above objectives to provide the community and landowners with a clear understanding on the housing outcomes being facilitated by the AHP.

10 Council Role in AHP

Council's core role in this process is considered to be that of 'facilitator', rather than a 'developer' of accessible housing in the AHP. This is because the latter involves taking on greater financial risk and on-going administration of the end product. As a facilitator, Council's primary focus is to enable the dedication of land (or land & houses) for the purpose of providing a secure stock of accessible housing. The responsibility for developing and administering this housing stock would be taken on by a Registered Housing Provider, or an equivalent 'non-profit' entity.

RECOMMENDATION:

That Council's confirms its core role as that of a 'facilitator' in the AHP.

Project terms and conditions (for proponents)

Council's expectations of the proponents that participate in this initiative should be articulated to them as early as possible in the process. In this regard the AHP initiative is premised on the proponent:

- a) undertaking a landowner initiated planning proposal (referred to here in as a *rezoning request*) and/or development application to deliver accessible housing;
- b) ensuring coordinated project management (e.g. planning consultant) of their planning proposal;
- c) fully funding all relevant Council fees and charges and the cost of any studies/site investigations required to support a planning proposal or development application;
- d) entering into a voluntary planning agreement as part of any planning proposal; and
- e) understanding that an amendment to Byron Local Environmental Plan 2014 (e. rezoning of the land) cannot occur until a voluntary planning agreement has been executed and registered on the title of the land.

The above terms and conditions were presented and discussed at the meeting with landowners in May.

RECOMMENDATION:

That Council endorse the above project terms and conditions outlining the expectations of proponents.

Voluntary Planning Agreements

A Voluntary Planning Agreement (VPA) will provide the legal mechanism for securing accessible housing stock. VPAs are legal agreements between a planning authority (Council) and a landowner/developer that remain on the title of the land. They are a common tool used to secure a public benefit that may be offered by a landowner/developer as part of a rezoning request to

change planning controls, or as a part of a development application. Under the agreement the landowner would agree to provide an infrastructure contribution (eg. dedication of land) for accessible housing. The VPA would articulate the terms and conditions around the timing of transfer as well as the requirement for the land to be used for accessible housing.

5 Landowners would agree to enter into a voluntary planning agreement as part of any planning proposal. The draft VPA would be exhibited with the draft rezoning to enable informed public comment. An amendment to Byron Local Environmental Plan 2014 (e. rezoning of the land) cannot occur until the VPA has been executed and registered on the title of the land.

10 **Acceptable form/s of contribution**

For the purposes of the AHP and to be consistent with Resolution **17-260** it is recommended that landowner contributions are only accepted in the following forms:

- i. dedication of land
- 15 ii. dedication of land with constructed housing
- iii. combination of the above.

[Note: acceptance of monetary contributions does not achieve the project objectives outlined above and is therefore not recommended.]

20

RECOMMENDATION:

That Council, for purposes of the Accessible Housing Project, only accept landowner contributions in the forms identified above.

25

Acceptable level of contribution

At the meeting of 4 August 2016, Council resolved (among other things) the following in relation to the draft Residential Strategy:

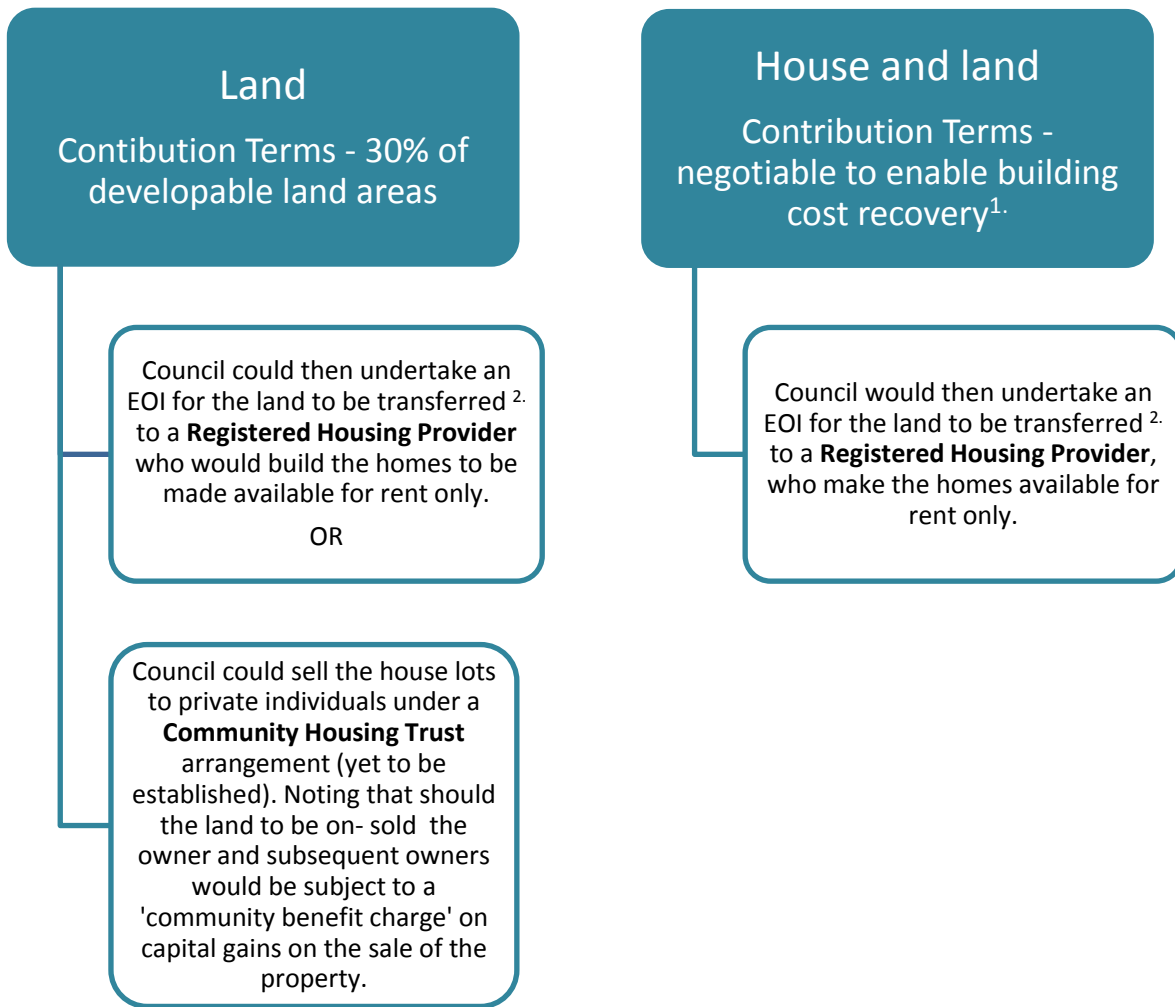
30 ***Res 16-422 (3) That Council in progressing Resolution 16-292 consider the economic and social benefits of adopting a 30% affordable housing provision into the shire's planning instruments. Any dwellings identified through these provisions to be managed by a community housing provider to ensure ongoing compliance and support.***

35 Consistent with the above resolution, it is recommended that a minimum of 30% of developable area be applied to all land dedication made for purposes of the AHP.

RECOMMENDATION:

40 **That a minimum of 30% of developable area is applied to all land dedication made for purposes of the AHP.**

45 Figure 3 (below) indicates how the two contribution pathways would operate to deliver accessible housing stock.



- 5 1. Should the landowner choose to provide land and constructed housing, this would then be transferred to a registered community housing provider, the quantum of the contribution would best determined on merits of the proposal as a landowner in dedicating both land and constructed dwellings for affordable housing may be looking for an agreed building cost recovery cost from a registered community housing provider, who then rents to very low to moderate income households.
- 10 2. Transfer as referred to here may be a change in ownership or a long term lease – the means to be determined at a later stage in the AHP.

Figure 3: Contribution pathways to facilitate secure accessible housing stock.

15 **Overview of Process to date and going forward**

An overview of the process to date and going forward is shown in Figures 4 and 5 below.

20

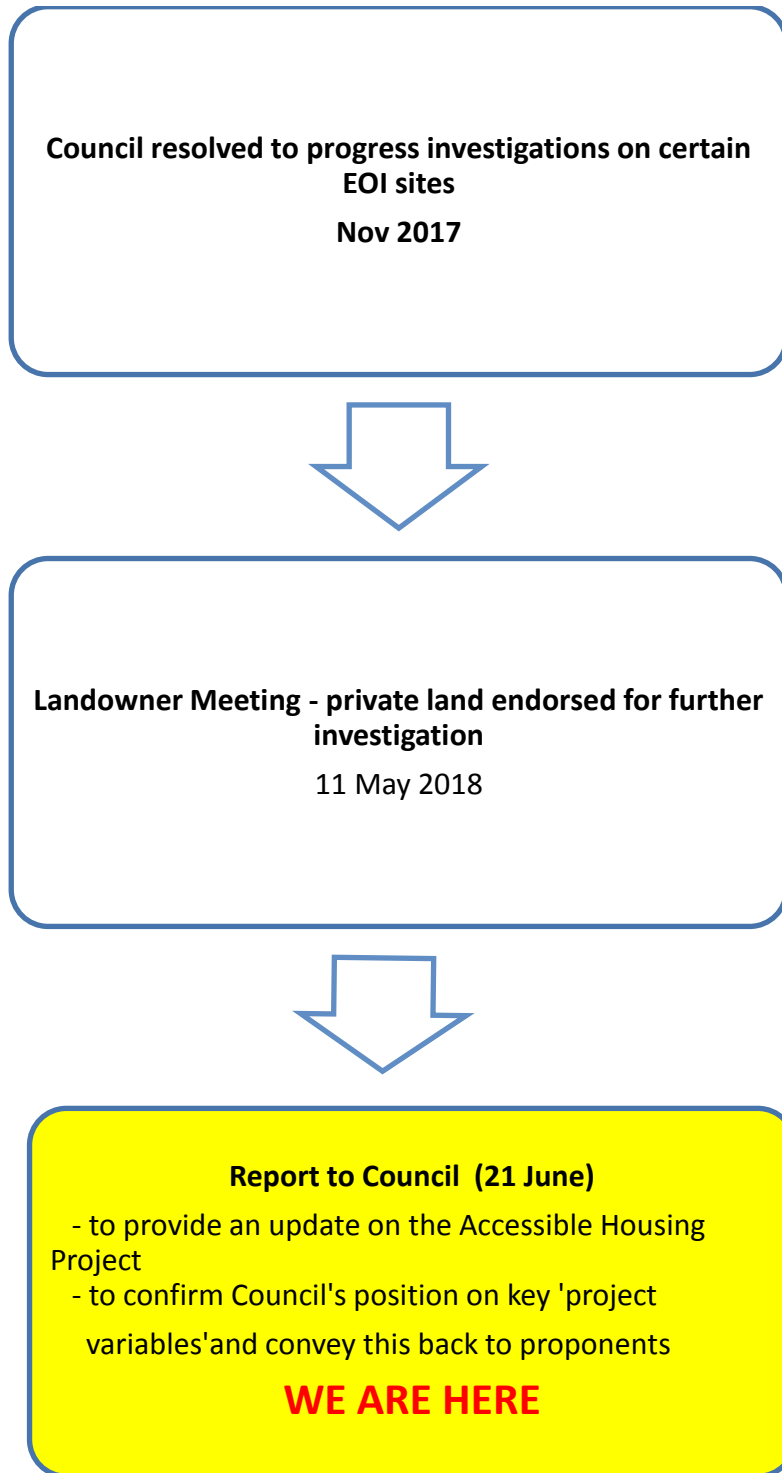


Figure 4: Process to date

5

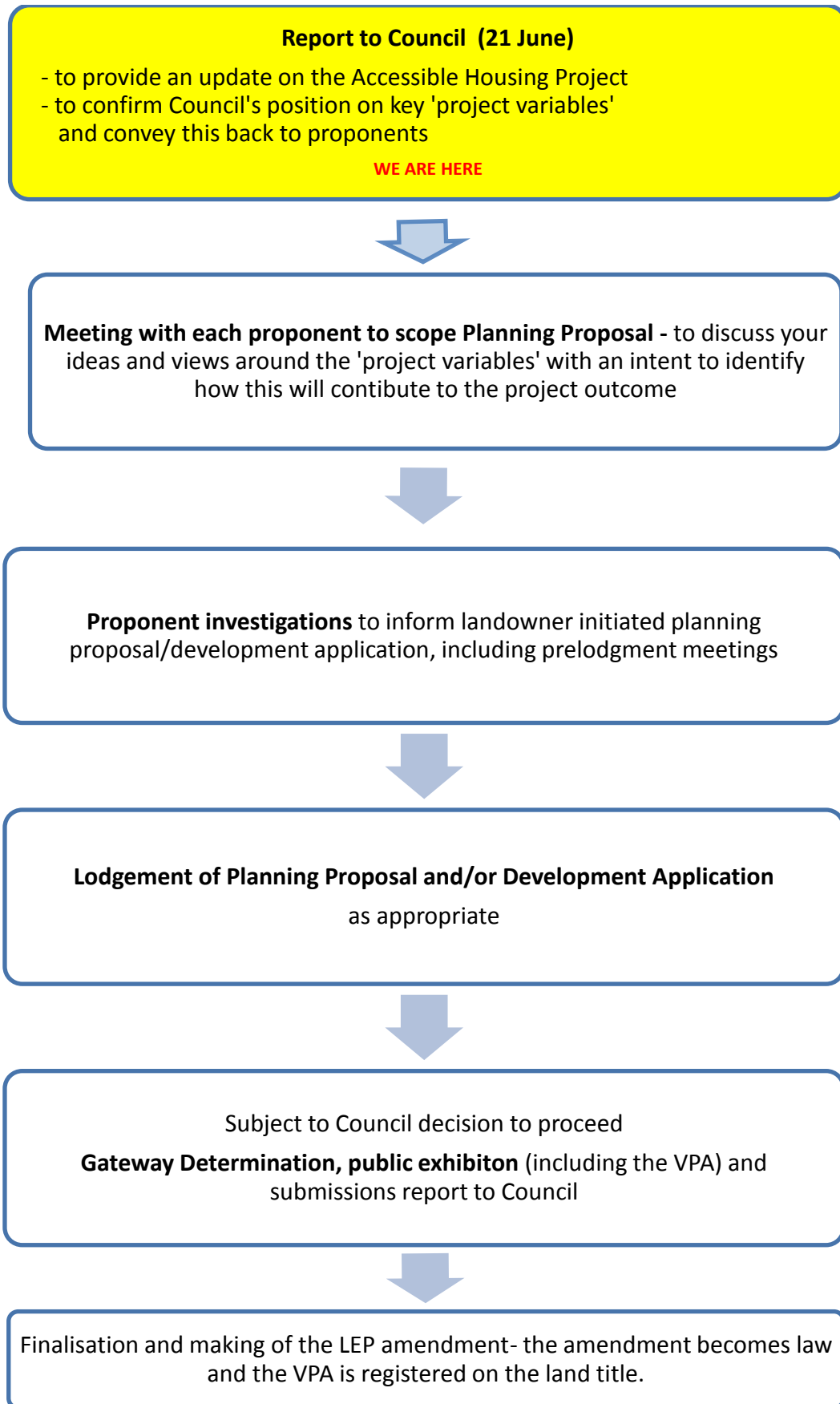


Figure 4: Process forward

Additional communication and engagement

The outcomes of this Council report will be communicated back to the landowners for consideration and to confirm their willingness to proceed. It is anticipated that the entire process up to the stage where a LEP amendment in gazetted could take 12+ months.

5

As this project proposes the residential rezoning of certain land not identified in an adopted Residential Strategy, staff have written to the Department of Planning and Environment seeking advice on this early implementation initiative. Council will be provided with an update on the Department's response once this is received.

10

Financial Implications

The AHP is premised on landowner-initiated planning proposals being fully funded by the applicant. However, progressing Council's AHP initiative will impact on timetable for other major land use projects. This is because the same staff currently managing the AHP are also responsible for delivering the following projects:

15

- Employment Land Strategy,
- Residential Strategy and
- E Zones Review.

20

To ensure the timely delivery of these projects as well as Council's AHP initiative, an additional budget allocation of \$50,000 to fund a 6 month senior planner position is required. This allocation will enable exhibition of the draft Residential Strategy by late 2018/early 2019 (otherwise not until mid-2019) while keeping the other project timelines on track as follows:

25

- Employment Land Strategy – adoption by late 2018
- E Zones Review – Stages 1-3 Planning Proposals submitted for Gateway Determination by second half of 2019

30

Statutory and Policy Compliance Implications

The proposed process for implementing Council's AHP initiative is consistent with the relevant Commonwealth, State and Regional policy frameworks, as well as Council's Supporting Partnership Principles.

35

Report No. 13.14 **Barrio Eatery and Bar - Update on Resolution 18-170**
Directorate: Sustainable Environment and Economy
Report Author: Andrew Hill, Team Leader Community Enforcement
File No: I2018/907
5 **Theme:** Ecology
 Development and Approvals

Summary:

10 On 22 March 2018, Council considered report No. 13.24 Update - Barrio Eatery and Bar, 1 Porter Street, Byron Bay - Enforcement proceedings.

15 https://byron.infocouncil.biz/Open/2018/03/OC_22032018_AGN_773_WEB.htm

As a result of that report, Council resolved to:

18-170 Resolved:



- 1 Note the report.
- 2 In respect of the Penalty Infringement Notice, accept the legal advice and take action accordingly.
- 3. Be provided a report on compliance with the prevention order and relevant conditions of consent within three months.

The purpose of this report is to respond to point 3 of Resolution 18-170 above.

RECOMMENDATION:

That Council note the report.

Attachments:

- 1 Tim Fitzroy & Associatesfinal Noise Management Report_schedule of action strategies which are
35 attached to this report., E2018/46263 
- 2 Tim Fitzroy & Associates_Final Noise Management Report_schedule of action strategies,
E2018/48980 

Report

On 22 March 2018, Council considered report No. 13.24 Update - Barrio Eatery and Bar, 1 Porter Street, Byron Bay - Enforcement proceedings.

5

https://byron.infocouncil.biz/Open/2018/03/OC_22032018_AGN_773_WEB.htm

As a result of that report, Council resolved to:

10 **18-170 Resolved:**

- 1 Note the report.
- 2 In respect of the Penalty Infringement Notice, accept the legal advice and take action accordingly.
3. Be provided a report on compliance with the prevention order and relevant conditions of consent within three months.

15

The purpose of this report is to respond to point 3 of Resolution 18-170 above.

20

Point 3 Barrio Eatery and Bar - Compliance with the prevention order and relevant conditions of consent

On 13 April 2018, consultant Tim Fitzroy & Associates provided Bayshore Development Pty Ltd with a final Noise Management Report. The report contained a schedule of action strategies which are attached to this report as Attachment 1.

25

On 16 May 2018, consultant Tim Fitzroy & Associates provided Bayshore Development Pty Ltd with a concept plan proposal for a acoustic wall which is attached to this report as Attachment 2.

30

On 16 May 2018, Council issued a second formal Direction to Take Preventive Action to Bayshore Development Pty Ltd, pursuant to section 96 of the Protection of the Environment Operations Act 1997. The direction stipulated works that would be required to be undertaken to ameliorate adverse noise impacts from the site to achieve compliance with conditions of consent for noise and amenity.

35

The direction requires Bayshore Development Pty Ltd to take the following action:

1. Implement all non-building works 'action strategies' contained with Tim Fitzroy & Associates' final Noise Management Report dated 13 April 2018 (items 1.1, 2.1, 3.1, 3.2, 4.1, 5.3, 5.4, 5.6, 5.7, 6.1, 6.2 and 6.3) on or before 16 June 2018; and
2. Implement all building works 'action strategies' contained with Tim Fitzroy & Associates' final Noise Management Report dated 13 April 2018 (items 5.1,5.2 and 5.5) on or before 16 August 2018. The reference to 'movable acoustic barrier' in item 5.2 is replaced by the proposed acoustic green wall recommended by Tim Fitzroy & Associates on 16 May 2018.

40

45

Enforcement staff will continue to monitor compliance with the Direction to Take Preventive Action and also any relevant condition of consent for noise and amenity.

50

Financial Implications

Cost to Council depends on outcome of enforcement action.

Statutory and Policy Compliance Implications

Compliance with relevant planning and environment Acts and Regulations.

Report No. 13.15 **Report of the Planning Review Committee Meeting held on 15 May 2018**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 **File No:** I2018/941

Theme: Ecology
 Development and Approvals

10 **Summary:**

This report provides the outcome of the Planning Review Committee Meeting held on 15 May 2018.

15

RECOMMENDATION:

That Council note the report of the Planning Review Committee meeting held on 15 May 2018.

20

Report:

The meeting commenced at 4.40pm and concluded at 4.50pm.

5

Present: Crs Martin, Hunter, Hackett,
Staff: Chris Larkin (Manager Sustainable Development).
Apologies: Cr Coorey

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

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2018.86.1	Aurecon	Old Pacific Highway Brunswick Heads	Installation of 30m high Telecommunications Facility and Associated Ancillary Equipment	Level 2 22/3/18 to 4/4/18 1 submission	The extent of variation to Council policies proposed height variation under BLEP 2014 Council

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

15

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2014.753.2	Newton Denny Chapelle	30 Tanner Lane Tyagarah	Section 4.55 to permit the staged use of the land as an events site	Level 2 19/4/18 to 2/5/18 No submission	Under staff delegation

Report No. 13.16 Local Development Performance Monitoring and DPE Development Assessment Best Practice Guide

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy

5 Kylie Graine, Project Officer

File No: I2018/961

Theme: Ecology
Development and Approvals

10 **Summary:**

15 This report provides information on Council's development assessment performance as published by the NSW Department of Planning and Environment (DPE) in the Local Development Performance Monitoring Report 2015/16, as well as the previous two years, and year to date comparison.

20 It also provides information on the DPE Development Assessment Best Practice Guide issued 2017; and on service delivery initiatives being implemented by Council the result, to get applications processed as quickly as possible.

RECOMMENDATION:

That Council receive and note the report.

25

Report

Part 1 - Local Development Performance Monitoring Report (LDPM)

5 At the end of each financial year, councils provide information to the DPE regarding their
development assessment and determination functions. The DPE analyses the data from each
council and provides comprehensive statistical and performance information on the operation of
the local development assessment system. This data includes the volume and value of
10 development in NSW, determination times, delegation and staffing, legal appeals and reviews and
post-development certificates.

The following data is an overview of Council's performance in development assessment taken from
the LDPM Report prepared by the DPE for 2015/16 year, and the previous two years for
15 comparison.

Byron is categorised as Group 4, along with Ballina and Lismore. All Council's are grouped into
one of 6 regions based on geographical location of the local government area and former planning
region boundaries.

20 The DPE are yet to release the LDPM results submitted August 2017. They have been requested
and if they become available prior to the meeting will be provided to Councillors under separate
cover.

Initial feedback data provided on submission of the data revealed there were **769 DAs determined**
25 in the **2016/17** year and the value of these were **\$185,377,936**.

Local Byron trends

30 The table below shows that the number of applications assessed by Council has steadily grown
since the 2013/14 period, and not surprisingly so has the times taken to assess these DAs. Note
'planning assessment' staff numbers changed after 2013/14 due to restructure but have been fairly
constant for the period following.

Local Byron Trends	2015/16	2014/15	2013/14
No of DA's determined	744	729	634
\$ Value of DAs	\$188,821,388	\$136,162,186	\$106,586,753
Average determination time (net days)	47	33	30
Median determination time (net days)	39	26	22
Average determination time (gross days)	75	53	48
Median determination time (gross days)	60	41	36
No of DAs with 'stop the clock'	199	194	181
No of DAs with referrals	109	99	74
No of complying development certificates (private and council)	75	92	83
Equivalent full time staff *	8	8	8
Average determination per staff position	93	91	79

35

Comparison data

The table below provides a comparison between other North Coast councils and the Group 4 average.

5

Comparison data	Average (Gross) determination time	Average determination time per staff member	No of DAs approved	Value of DAs approved
Byron	75	93	735	\$188,373,298
Ballina	44	106	681	\$136,732,985
Tweed (Gr 5)	66	43	1039	\$253,381,126
Lismore	76	39	355	\$46,545,220
Group 4 average	54	65	475	\$111,564,134

10 This table shows that Byron’s average processing times are higher than neighbouring councils and Group 4. This can be explained by the higher number of DAs received and environmental complexities and constraints such as bushfire prone land, acid sulfate soils, flood prone land, coastal precincts, etc. applicable.

15 Also a factor, the standard of applications received at times. Once lodged and subject to a more thorough assessment by a planner some applications often fail to adequately address constraints, and or articulate how they satisfy Council’s planning controls resulting in delays to processing and determination of applications outside of the statutory timeframe.

20 Further, Byron does not have the same extent of greenfield development and or complying development that Ballina and Tweed do which again influences the complexity of development and approval pathways available. In particular pressure to develop existing residential properties for infill development such as dual occupancy, medium density housing purposes and secondary dwellings is apparent. Such applications can and do raise objections from neighbours where existing residential amenity is considered to be impacted adversely from development. Also, the need to extend consultation, and or report to Council on contested applications are further factors in overall determination times.

Current year July 2017 – May 2018

30 The table below shows that development application numbers are trending high again this year. Also overall processing times are improving. Staff continue to work on business improvements to get applications processed as quickly as possible as discussed in parts 2 and 3 of the report.

Comparison data	Received	Determined
DAs	669	594
Average value of development		\$244,661
Average determination time (net days)		46
Median determination time (net days)		61
Average determination time (gross days)		84
Median determination time (gross days)		97

Part 2 - Development Assessment Best Practice Guide

35

Guide purpose and principles

The Minister for Planning, Housing and Special Minister of State Anthony Roberts released the [Development Assessment Best Practice Guide](#) on 21 March 2017.

5 The guide outlines processes and procedures that are being used in some councils already to improve development application (DA) approval times.

It focuses on high-level customer service before development application lodgement to create a more efficient assessment process.

10 The premise of the guide is to boost 'housing supply' by increasing the efficiency of the development assessment process through process improvement. As such the focus is on 'housing applications' only.

15 *"The development assessment process is a key link in the housing supply chain and impacts on how efficiently new housing can be delivered to market. In recognition of this the Premier of NSW has set a priority for Faster Housing Approvals, with a target of 90 per cent of housing approvals to be determined within 40 days."*

20 **Importantly, the guide acknowledges that assessing officers are capable of achieving the 40 day assessment timeframe only when they manage up to 25 relatively straightforward DAs at any one time.**

25 Where officers have more than 25 relatively straightforward DAs, and/or where a significant proportion of the applications are complex, assessment timeframes increase proportionally.

30 **The current case load of an individual Byron council officer at the time of writing this report is 35-40 applications. Although this case load fluctuates throughout the year, it does not generally fall below 30. This case load, coupled with the environmental complexities and constraints that apply to land in the Shire, continues to impact on current development assessment times as reported in part 1 of the report.**

Notwithstanding the above, the guide promotes a number of underlying principles that, if consistently applied throughout the assessment process, will lead to improved determination times.

35 Council has directly responded to these principles through a number of business improvement changes implemented as listed below.

DPE Principle	Byron response
Targeted pre DA services	Pre-lodgement advisory service Pre-lodgement meetings Online planning controls Pre DA services for larger/complicated applications
Efficient lodgement and triage practices	Clearing house / gateway planner / development support officers
Notification procedures commensurate with impacts	DCP has different notification requirements for development based on impact
Corporate accountability for assessment timeframes in the form of key performance indicators	Delivery Program / Operational Plan has KPIS – reported 6/12 monthly to council, annual report to DPE
Delegations that support a consistent, targeted and efficient decision making process.	Delegations increased to Manager and Team Leader last FY.

Part 3 – Other business improvement initiatives

5 A number of other business improvement initiatives are also being explored and or being rolled out progressively including:

- **E lodgement** - subject to IT system review next financial year.
- **Online mapping** - subject to IT system review next financial year.
- **Customer feedback** – one on one sessions with consultants, customer survey and mystery shopper program.
- **Assessment Efficiency Partnership Agreement** - recommended by the guide at the start of the development assessment process to define roles and responsibilities. A template agreement has been prepared for council’s use and is under review by staff. This initiative to be rolled out this year as a pilot with select applicants.
- **Priority Biz 'fast track' application service** - To be available for commercial or industrial projects that meet the Council's set requirements. (Note – All applications will still be subject to the standard assessment criteria as set out in the LEP and DCP and Council may either grant consent or refuse the application on its merits.)
- **Design Excellence 'fast track' application service** – To be available for major projects that meet the Council’s set requirements for building design excellence and sustainability. (Note – All applications will still be subject to the standard assessment criteria as set out in the LEP and DCP and Council may either grant consent or refuse the application on its merits.)

25 **Part 4 - Business improvement considerations**

30 Limitations on IT systems within Council for the lodgement and assessment of development applications is a hurdle to staff trying to improve the processes for the community, staff and the DPE through reporting. The current program was introduced in 1996, and there has been little improvement. A full program to provide the community with pre-lodgement guidance and online lodgement, staff with improved systems to register applications and provide intuitive processes based on application and development types would provide for greater improvement.

35 The DPE has recently announced it will not be progressing the introduction of online lodgement of development and associated applications through their ePortal. Council was waiting for this implementation to introduce e-lodgement of applications.

40 E-lodgement provides the opportunity for staff to view applications prior to actual lodgement therefore being able to identify issues with the information up front, and put the onus back on to the applicant prior to accepting the application into the assessment phase. This is now something Council needs to fund to keep up with technology and other council’s.

45 In addition, a review of counter-productive and resource inefficient processes impacting the planning service for document management is necessary. This is something that management is currently working to resolve.

Financial Implications

50 As per current and forward budget estimates.

Statutory and Policy Compliance Implications

Council is required to assess applications for development, construction certificates and complying development certificates in accordance with the Environmental Planning and Assessment Act, the

State Environmental Planning Policy (Exempt and Complying Development) Code (SEPP) and the standard instrument Local Environmental Plan (LEP).

Report No. 13.17 PLANNING - Residential Strategy - Update on responses to relevant state government policy

Directorate: Sustainable Environment and Economy

Report Author: Natalie Hancock, Senior Planner

5 **File No:** I2018/966

Theme: Ecology
Planning Policy and Natural Environment

10 **Summary:**

Council at its 19 April 2018 ordinary meeting, resolved (part **Res 18-217**):

- 15 3. *Request staff to prepare a report for Council outlining the information and process to consider amending SEPP 70, LEP 2014 and the Byron Development Contributions Plan in relation to affordable housing provisions.*

20 This report provides an update to this resolution and informs Council that:

- Staff are preparing to seek quotations from appropriately skilled consultants to undertake the detailed analysis of the need for affordable housing stock in Byron Shire, in order to support Council's submission for inclusion in *SEPP 70*.
- Recent informal advice from the Department of Planning and Environment suggests they are considering expanding the areas that *SEPP 70* applies.
- A new *Low Rise Medium Density Housing Code* under the *Environmental Planning and Assessment Act 1979* is scheduled to commence on 6 July 2018, and that staff have written to the Minister for Planning requesting to pause its applicability to the Shire pending finalisation of Council's Residential Strategy.

30 **NOTE TO COUNCILLORS:**

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

RECOMMENDATION:

That Council:

1. **Formally write to the Department of Planning and Environment to confirm they are considering expanding the areas that SEPP 70 applies and if Council's detailed submission for inclusion in SEPP 70 is warranted at this time.**
2. **Note that staff have written to the Department of Planning (as requested) to seek a pause on the application of the *Low Rise Medium Density Housing Code* to Byron Shire until the Residential Strategy is finalised.**

40

Report

Council at its 19 April 2018 Ordinary Meeting, resolved (part **Res 18-217**):

- 5 3. Request staff to prepare a report for Council outlining the information and process to consider amending SEPP 70, LEP 2014 and the Byron Development Contributions Plan in relation to affordable housing provisions.

This report presents the following information as an update to this resolution.

10 Inclusion in SEPP 70 Affordable Housing

Previously the Department of Planning and Environment (DPE) advised that it is happy to discuss Byron Shire's inclusion in SEPP 70 and that any request would need to be supported by a detailed needs analysis. This was reported to Council at the 19 April 2018 meeting - [Report 13.20](#).

15

Staff are preparing to seek quotations from appropriately skilled consultants to undertake the detailed analysis of the need for affordable housing stock in Byron Shire, in order to support Council's submission for inclusion in SEPP 70. This analysis includes:

20

- the need for affordable housing
- target residents for affordable housing such as homeless or key workers
- mechanisms for delivering affordable housing
- mechanisms to manage the affordable housing portfolio
- role of Council in the delivery of affordable housing.

25

Subsequently the DPE have informally advised they are reviewing SEPP 70 to consider expanding where it applies.

30

As such, it is recommended that Council formally write to the DPE to seek confirmation of this advice and if Council's detailed submission for inclusion in SEPP 70 is warranted at this time.

Low Rise Medium Density Housing Code (new)

35

The DPE has prepared a new *Low Rise Medium Density Housing Code* under the *Environmental Planning and Assessment Act 1979* to commence on 6 July 2018. The new Code seeks to provide more housing choice to meet different household needs, and improve housing affordability.

40

This code will allow one and two storey *dual occupancies*, *manor houses* and *multi-dwelling (terraces)* to be carried out under a fast track complying development approval. Low rise medium density housing is only allowed as complying development where the above development types are already permitted under a council's local environmental plan.

45

For Byron Shire the new code applies to development in the R2 *Low Density Residential Zone*, R3 *Medium Density Residential Zone* and *RU5 Village Zone* in LEP 2014 (or their equivalent zone in LEP 1988). In the *RU5 Village Zone* this would only apply to an attached dual occupancy.

50

Council or an accredited certifier can determine if a development application meets the relevant criteria contained in the code. The new Code is supported by Design Criteria that are set out in the *Low Rise Medium Density Design Guide. Principle 1 - Context and neighbourhood character* of this guide requires consideration of how the development has responded to identified desirable elements of an area's existing or future character.

55

The issue of character has been a point of contention already for Byron Shire under other State Policies and Codes as they apply to the Shire, with inadequate consideration and or guidance provided by the DPE on how it is defined, and or to be assessed under these instruments to address concerns of community. The fact that the Code will enable private certifiers to make this decision is of further concern.

That being said, Council is preparing a residential strategy which will include local area residential character narratives setting out the desirable elements of the area's existing or future character. Councillors at a 15 June 2017 strategic planning workshop agreed it would be beneficial to undertake more consultation with local communities using Guidance Groups to better inform these narratives.

The above concerns of the Code being pre-emptive of the residential strategy and potential character impact were raised with the DPE in May. Council at the Director level has now been invited to submit a formal request to pause the implementation of this Code to Byron Shire until the residential strategy is finished. To meet the Department's timeframe staff have already written to DPE requesting this pause. Having this pause will enable Council to determine the nature and extent of any impacts on its Residential Strategy (in preparation) and supporting planning controls.

15 Financial Implications

Additional funding is required to engage a consultant to prepare the detailed analysis to support the *SEPP 70* submission. Up to \$15,000 is required to undertake this work. This matter will be reported back to Council on receipt of the Department's advice as to whether this body of work is still required.

Additional staff resource is required to manage and prepare the *SEPP 70* submission and determine the implications of the *Low Rise Medium Density Housing Code* for the Shire. A separate report on this Meetings Agenda titled 'Residential Strategy – Accessible Housing Project (Housing Summit Action)' proposes an additional temporary staff resource. This position can also manage this work.

Statutory and Policy Compliance Implications

30 There are no statutory implications from the actions of staff presented in this report.

Report No. 13.18 PLANNING - Status report - Resolution 17-575 - Plan of Management for Railway Park

Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
File No: I2018/973
Theme: Ecology
 Planning Policy and Natural Environment

Summary:

At the meeting of 23 November 2017, Council resolved (**17-575**):

1. *Note the report.*
2. *Request staff to commence work to include Railway Park in an updated Plan of Management with the aim of completing the process by 30 June 2018.*
3. *Request staff to enter into discussions with the Byron Environment Centre about the future occupation/location of the rotunda structure and bring a report on the outcome of those discussions back to the first Council meeting in 2018.*

This report provides an update on progress regarding the Plan of Management.

Staff have consulted with representatives of the Byron Environmental Centre (BEC), including a site walk through the park that involved the Landscape Architect engaged by Council to development the detailed design for the endorsed Landscape Concept Plan for the Park.

Subsequent discussions with BEC have included a meeting at Council with the Mayor, General Manager, and staff.

A preliminary draft Plan of Management has been prepared. It includes a provision authorising the rotunda, either in its current location or an alternate mutually agreeable site, and a provision for an ongoing lease/ licence for BEC to occupy that structure.

It is recommended that Councillors and staff workshop the draft Plan of Management prior to proceeding to formal public engagement.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

1. **That a Strategic Planning Workshop be arranged to allow staff to brief Councillors on the recommended Plan of Management and the process for its adoption.**
2. **That, unless otherwise agreed at that Strategic Planning Workshop, staff arrange for the public exhibition of the draft Plan of Management, in accordance with the requirements of the *Local Government Act 1993*; including arrangements for an independently chaired Public Hearing at the completion of the exhibition period.**

- 3. That a post-exhibition report be brought to Council, including conclusions and recommendations from the Public Hearing, to allow the adoption of a Plan of Management for Railway Park by the end of the calendar year.**

5

Report

5 Council considered a report on Railway Park at the meeting of 23 November 2017. The report provided details of the history, basis and conditions under which the Byron Environment Centre (BEC) occupies the Rotunda in Railway Park.

The report noted:

10 *In relation to the requested information on the basis and conditions of occupation, it appears that the conversion of the structure was not approved by Council and there is no record of any license, lease or other documented authorisation for occupation for the structure.*

15 The report also noted that Railway Park was included within the 'Generic Plan of Management – Parks', adopted by Council in 1996, but that it was not included in the updated version of that Plan, adopted in the early 2000's.

In accordance with the latest Council resolution (**15-757**), a preliminary draft Plan of Management has been prepared for Railway Park, consistent with the requirements of the *Local Government Act 1993*.

20 The draft Plan of Management categorises the land as *General Community Use*.

Pursuant to Section 36I of the LGA, the core objectives for land categorised as general community use are:

25 *to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:*

- 30 (a) *in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and*
(b) *in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).*

The draft Plan of Management outlines how Council proposes to achieve these core objectives in relation to Railway Park.

35 The draft Plan acknowledges and authorises, existing leases, licences, and agreements, particularly in relation to the Artisans Market. It also recommends that a lease/licence be negotiated with the BEC relating to the continued occupation and use of the rotunda, either in its current location or in an alternate mutually agreed location within the park, subject to demonstration of the structural adequacy of the facility.

40 Preliminary Engagement

45 As reported to the Council meeting in February 2018, staff initiated discussions with representatives of BEC, including a meeting at Council and a subsequent site walk at the Park, including Council's Landscape consultant.

50 Another meeting was held at Council on 23 May 2018 to advise BEC representatives that the preliminary draft Plan of Management has been drafted and that it provides for their continued use of the rotunda.

Process for Adoption

It is now appropriate to discuss the details of the draft Plan of Management with Councillors at a Strategic Planning Workshop, prior to the public exhibition of the draft document.

Because the draft Plan of Management will categorise the land, which currently does not have a formal categorisation, a Public Hearing will be required prior to adoption of the Plan, pursuant to Section 40A of the *Local Government Act 1993*.

- 5 In accordance with that Act, the Hearing will need to be chaired by an independent person, who will then prepare a report with recommendations for Council.

Following the exhibition and public hearing, Council will reconsider the Plan of Management for adoption.

10

Financial Implications

Council will need to engage an independent chair for the public hearing. Fees for that engagement are likely to be in the order of \$5,000.

15

Statutory and Policy Compliance Implications

The Plan of Management is required to guide the future management of Railway Park as Community Land.

Report No. 13.19 PLANNING - NSW Planning System Reforms and Community Engagement Obligations for Planning Functions

Directorate: Sustainable Environment and Economy

Report Author: Steve Daniels, Project Officer - Planning Reforms

5 **File No:** I2018/1035

Theme: Ecology
Planning Policy and Natural Environment

10 **Summary:**

The *Environmental Planning and Assessment Act 1979* has been updated.

15 The updated Act follows the passing of the *Environmental Planning and Assessment Amendment Act 2017* in the NSW Parliament in November 2017. This Act commenced on 1 March 2018 and most of the changes to the *Environmental Planning and Assessment Act 1979* came into effect from this date.

20 There are however a significant number of major changes requiring further guidance and consultation from the Department of Planning prior to being implemented by Council.

An overview of estimated commencement dates for these changes is provided in Attachment 1.

25 The purpose of this report is to update Council on some of the changes to the Act, and the staged implementation of these by staff.

In particular:

- Statement of reasons for decisions; and
- 30 • Community Participation Plans.

NOTE TO COUNCILLORS:

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

40





RECOMMENDATION:

That Council:

1. **Note that further information will be provided to Councillors to assist with the development of a template for 'statement of reasons' for decisions following the release of guidelines from the Department of Planning & Environment.**
2. **Support the commencement of a review of the existing Byron DCP 2010 & 2014 requirements for public exhibition and notification of development applications by staff as part of the preparation of community participation plan; and receive a further report on this prior to or at the December 2018 meeting of Council.**
3. **In response to current community concerns about major development notification have staff:**

- a) **Prepare a draft amendment to Byron DCP 2010 & 2014 requiring developers to consult with members of the community who are affected by proposed 'major development' before any development application is made to Council, and exhibit this draft amendment.**
 - b) **Prepare a draft amendment to Byron DCP 2010 & 2014 requiring site notification for development applications subject to Level 2 notification, and exhibit this draft amendment.**
- 4. Receive a further report on a) and b) above only if submissions are received to the amendments proposed; otherwise upon completion of the notification period approve the amendments to the Development Control Plans as exhibited.**

Attachments:

- 5 1 Attachment 1 - Staged Implementation of NSW Planning Reforms (June 2018 Council Report), E2018/47075 [⇒](#) 
- 2 Attachment 2 - JRPP Determination & Statement of Reasons (June 2018 Council Report), E2018/47077 [⇒](#) 
- 3 Attachment 3 - Review of EP&A Act 1979 Public Exhibition Requirements for Planning Functions in Comparison to Existing DCP/LEP Requirements (June 2018 Council Report), E2018/47081 [⇒](#) 
- 10 4 Template - Form of Special Disclosure of Pecuniary Interest , E2012/2815 [⇒](#) 

Report

The *Environmental Planning and Assessment Act 1979* as updated is the culmination of the biggest overhaul of the Act since the legislation commenced almost 40 years ago.

The updated Act follows the passing of the Environmental Planning and Assessment Amendment Act 2017 in the NSW Parliament in November 2017. This Act commenced on 1 March 2018 and most of the changes to the Environmental Planning and Assessment Act 1979 came into effect from this date.

There are however a significant number of changes requiring further guidance and consultation from the Department of Planning & Environment (DPE) prior to being implemented by Council. This can only occur in a staged approach over the coming months and year.

An overview of estimated commencement dates for new obligations under the Act is provided in Attachment 1.

There are two changes that are critical to Council at this time, which are discussed below.

1. Statement of Reasons

The first major change to be implemented is a requirement for local councils to prepare a 'statement of reasons' for planning decisions. A statement of reasons will be required from July 2018, with the DPE expected to provide guidelines for preparing a statement of reasons in June 2018.

One of the main aims of providing a statement of reasons is to enable those affected by planning decisions made under the *Environmental Planning and Assessment Act 1979* (such as an applicant or an objector) to understand why a decision was made, and what factors were taken into account in making the decision.

Decisions that require public notification and a statement of reasons include:

- (a) The determination by the Minister (or the Independent Planning Commission) of an application for State significant infrastructure.
- (b) The determination by the Minister (or the Independent Planning Commission) of a request for a modification of an approval for State significant infrastructure (being a request that was publicly exhibited).
- (c) The determination by a consent authority of an application for development consent.
- (d) The determination by a consent authority of an application for the modification of a development consent (being an application that was publicly exhibited).
- (e) The granting of an approval, or the decision to carry out development, by a determining authority where an environmental impact statement was publicly exhibited under Division 5.1.

Items c, d and e pertain specifically to Council decisions.

An obligation to prepare a statement of reasons is already in effect for Joint Regional Planning Panels (JRPP's). Attachment 2 provides an example of a determination and statement of reasons issued by the Western JRPP for approval of a solar farm. It should be noted that the complexity and comprehensiveness of a statement of reasons will vary relative to the complexity of the application and the assessment process. In effect, the statement of reasons for a DA will provide a

summary of conclusions reached in the development assessment report as agreed to by the planning authority.

5 Further information will be provided to Councillors to assist with the drafting of a statement of reasons template following the release of guidelines from the DPE. This is imminent.

2. Community Participation Plans

10 Community participation plans are to be prepared by all local councils and will come into effect in late 2019. The plans will set out when and how planning authorities will engage with their communities across all the planning functions they perform. A local council is a planning authority for certain types of planning functions.

15 In preparing their plans, planning authorities will have to take into consideration new community participation principles set out in the Act, these principles will set the standard for how the community should be engaged. The principles are as follows:

- a) The community has a right to be informed about planning matters that affect it.
- 20 b) Planning authorities should encourage effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.
- c) Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.
- 25 d) The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.
- e) Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.
- 30 f) Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made.
- 35 g) Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been taken into account).
- 40 h) Community participation methods (and the reasons given for planning decisions) should be appropriate having regard to the significance and likely impact of the proposed development.

45 Of interest, is that the above principles align with the Charter of Good Planning adopted by Council in 2014. It is proposed that the Charter be reflected in the new Council community participation plan rather than remain as a stand alone document of Council. By doing this, **Resolution 17-530** will be met.

Resolution 17-530:

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

50 Further, Council may choose to incorporate a community participation plan into a broader community engagement policy or strategy prepared under the Local Government Act, but in doing so needs to ensure that the document meets the updated Act. At this time and in the absence of

such a document, it is proposed to prepare a stand alone Community participation plan for planning matters.

5 a) Public Exhibition Requirements under a Community Participation Plan

While the new community participation plan must meet the minimum requirements for community participation that are set out in [Schedule 1](#) to the *Environmental Planning and Assessment Act 1979*, they can go beyond the minimum requirements if it's appropriate.

10 Attachment 3 provides a review of existing public exhibition timeframes required under Byron DCP 2010 & 2014 in comparison to the minimum mandatory requirements under [Schedule 1](#) to the *Environmental Planning and Assessment Act 1979*. The *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* allows for existing public
15 exhibition/notification DCP controls to remain in force until such time as the community participation plan is implemented. Therefore, there is no change to Council's adopted timeframes at the present time.

It is recommended that staff commence a review of the existing Byron DCP 2010 & 2014 requirements for public exhibition and notification of development applications as part of the
20 preparation of the community participation plan; and receive a further report on this prior to or at the December 2018 meeting of Council.

b) Major Development notifications

25 Notwithstanding the above, there is an opportunity to review the existing DCP controls in the short term to address concerns raised by the community (via the community roundtable and other feedback) about the notification of major development applications. Options for this are discussed below:

30 *Pre-Lodgement Community Consultation*

As noted in point (f) of the community participation principles listed above, Council's should consider consultation with members of the community who are affected by proposed major development before an application for planning approval is made. "Major development" has not
35 been clearly defined; however the general consideration is in terms of community impact at either a local level or Shire wide.

Unless prescribed by the State Government, it is expected that a framework for classifying major development will be drawn from Council's Community Engagement Policy. For development
40 applications, it seems appropriate that pre-lodgement community consultation will be conducted by the applicant, not Council.

Council will need to consider requirements for pre-lodgement community consultation when preparing the community participation plan. Once the plan is adopted, any community consultation
45 provisions will carry legal weight under the *Environmental Planning and Assessment Act 1979*.

There is no current legal impediment to Council introducing pre-lodgement community consultation requirements as a provision of Byron DCP 2010 & 2014. Such provisions could be adopted in the
50 short term and rolled into the community participation plan at a later date.

It is therefore recommended that staff prepare a draft amendment to Byron DCP 2010 & 2014 requiring applicants to consult with members of the community who are affected by proposed major development before any development application is made to Council, and exhibit this draft
55 amendment.

5 In doing so, Council should be aware that such DCP provisions would be policy only and not legally binding until the community participation plan comes into effect in late 2019. That being said, the amendment would send a clear message to the applicants/development industry and community about pre lodgement consultation being an integral stage to the development assessment process of Council.

Site Notification (Signs) for Major Development Applications

10 A requirement for site notification (signs) to be provided at properties subject to a development application was previously included as a provision of Byron DCP 2010 and was later removed. This requirement applied only to development applications subject to Level 2 notification.

15 There is no current legal impediment to Council re-introducing site notification (signs) requirements as a provision of Byron DCP 2010 & 2014. Such provisions could be adopted in the short term and rolled into the community participation plan at a later date.

20 It is therefore recommended that staff prepare a draft amendment to Byron DCP 2010 & 2014 requiring site notification for development applications subject to Level 2 notification, and exhibit this draft amendment. It is also recommend that the relevant Fees and Charges for development application notification be reviewed and updated also to account for this change.

Financial Implications

25 Costs to be managed within existing Planning Team budgets.

Statutory and Policy Compliance Implications

The relevant statutory and policy considerations are addressed above.

Report No. 13.20 **PLANNING - Exceptions to Development Standards - 1 January 2018 to 31 March 2018**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development
Noreen Scott, EA Sustainable Environment and Economy

File No: I2018/1048

Theme: Ecology
Development and Approvals

Summary:

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under clause 4.6 of the Standard Instrument LEP and clause 6 of SEPP 1.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That Council note the report on exceptions to development standards for the period 1 January to 31 March 2018.

Report

5 This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under clause 4.6 of the Standard Instrument LEP and clause 6 of SEPP 1.

SEPP 1 applies to development applications submitted under Byron Local Environmental Plan 1988. Clause 4.6 applies to development applications submitted under Byron LEP 2014.

10 The period of reporting is for the 1 January, 2018 to 31 March 2018 for the following DA's:

DA No.	10.2017.641.1
Development	Alterations and Additions to Existing Dwelling House
Property:	204 Balraith Lane EWINGSDALE NSW 2481
Lot and DP:	LOT 3 DP 1235916
Zoning:	R5 Large Lot Residential / 7(d) (Scenic / Escarpment Zone)
Development Standard being varied:	Clause 40 of Byron Local Environmental Plan 1988
Justification	The DA proposes alterations and additions to an existing dwelling-house. The building included small tower elements, one of which exceeded the 9m height limit at 9.35m representing a 3.9% variation. The application is accompanied by a well founded SEPP 1 objection and was supported by staff.
Extent of variation	3.9%
Concurrence	Assumed Concurrence
Determined Date	13/2/2018
DA No.	10.2017.691.1
Development	Dual Occupancy (Detached)
Property:	42 Corella Crescent MULLUMBIMBY NSW 2482
Lot and DP:	LOT: 93 DP: 1232439
Zoning:	R2 Low Density Residential
Development Standard being varied:	BLEP 2016 Cl.4.1E Minimum lot size for dual occupancy
Justification	Part (2) of this clause specifies that, in the R2 zone, the minimum lot size for dual occupancy (detached) is 800m ² . The site has an area of 784.4m ² . The variation to the standard is very minor and the development otherwise complies with key density controls, such as FSR and height. The development is consistent with the urban form and density of development in this newly released residential area and a variation to the development standard was supported under clause 4.6 of Byron LEP 2014. .
Extent of variation	1.95%
Concurrence	Assumed concurrence
Determined Date	20/2/2018

Financial Implications

15 Not applicable.

Statutory and Policy Compliance Implications

The report is provided as a requirement of NSW Department of Planning circular PS 17-006. This circular can be viewed at <http://www.planning.nsw.gov.au/~media/Files/DPE/Circulars/planning-circular-variations-to-development-standards-2017-12-19.ashx>

5

BYRON SHIRE COUNCIL

Report No. 13.21 **PLANNING - Development Application 10.2018.110.1 Tourist and Visitor Accommodation (Twelve (12) Cabins including Use of Existing Structures as Storage and Staff Lunchroom and Construction of Day Spa), Camping Ground (Two Hundred and Thirty Nine (239) Sites), Park Entry Office/Kiosk, New Dwelling and Recreation Facility (Indoors) - Yoga Facility at 1897 Coolamon Scenic Drive Mullumbimby**

Directorate: Sustainable Environment and Economy

Report Author: Simone Kenyon, Planner

Noreen Scott, EA Sustainable Environment and Economy

File No: I2018/1050

Theme: Ecology

Development and Approvals

Proposal:

Proposal description:	Tourist and Visitor Accommodation (twelve (12) cabins including use of existing structures as storage and staff lunchroom and construction of day spa), camping ground (two hundred and thirty nine (239) sites), park entry office/kiosk, new dwelling and recreation facility (indoors) - yoga facility
Property description:	LOT: 4 DP: 874348 1897 Coolamon Scenic Drive MULLUMBIMBY
Parcel No/s:	218430
Applicant:	Chris Lonergan - Town Planner
Owner:	Keywaters Pty Ltd
Zoning:	Part RU2 Rural Landscape / Part 1A General Rural zone
Date received:	16 March 2018
Integrated Development:	No
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Exhibition period: 29/3/18 to 26/4/18 - Submissions received: 312 Against, 16 Support
Planning Review Committee:	12 April 2018
Delegation to determination:	Council
Issues:	<ul style="list-style-type: none"> - Proposal cannot be considered as 'low scale'; - Aspects of proposal not permissible in the zone; - Insufficient information supplied by the applicant that addresses but is not limited to the following: <ul style="list-style-type: none"> • Water and Sewer; • Bushfire and flooding; • Indigenous cultural impacts; • Impacts on flora, fauna impacts and first, second and fourth order streams; • Potential for the number of visitors to the site; • Noise impacts; • Conflict with adjoining rural land uses; and • Adverse impacts on traffic and access within and adjoining the site.

Summary:

Development approval is sought for Tourist and Visitor Accommodation (twelve (12) cabins including use of existing structures as storage and staff lunchroom and construction of day spa), camping ground (two hundred and thirty nine (239) sites), park entry office/kiosk, new dwelling and recreation facility (indoors) - yoga facility. The property is zoned Part RU2 Rural Landscape and Part 1A General Rural in accordance with the Byron Local Environment Plans 2014 and 1988 respectively. It is noted that whilst much of the proposal is located within the RU2 portion of the site, works are expected to occur within the area mapped as deferred matter in order to provide services and asset protection zones etc. Whilst the Statement of Environmental Effects attempts to address BLEP 2014 and BDSCP 2014, the application does not consider BLEP 1988 or BSDCP 2010.

Insufficient information has been submitted that addresses but is not limited to the following:

- Permissibility within the zone and scale of development;
- Water and Sewer;
- Bushfire and flooding;
- Indigenous cultural impacts;
- Impacts on flora, fauna impacts and first, second and fourth order streams;
- Potential for the number of visitors to the site;
- Noise impacts;
- Conflict with adjoining rural land uses; and
- Adverse impacts on traffic and access within and adjoining the site.

Overall, the proposed development is inconsistent with all relevant environmental planning instruments and controls applicable to the site and is considered to be a gross overdevelopment that fails to achieve the values and objectives of the site and its surrounds. As such, the application is recommended for refusal based on the reasons for refusal contained in Attachment 3.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, development application no. 10.2018.110.1 for a Tourist and Visitor Accommodation (twelve (12) cabins including use of existing structures as storage and staff lunchroom and construction of day spa), camping ground (two hundred and thirty nine (239) sites), park entry office/kiosk, new dwelling and recreation facility (indoors) - yoga facility, be recommended for refusal subject to the following reasons

- 1) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal conflicts with State Environmental Planning Policy Coastal Management.**
- 2) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal will not conflict with State Environmental Planning Policy No. 44 – Koala Habitat.**
- 3) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal will not conflict with State Environmental Planning Policy No. 44 – Koala Habitat.**

Assessment Act 1979, the proposal conflicts with State Environmental Planning Policy Rural Lands (2008).


- 4) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal complies with State Environmental Planning Policy No. 55 Remediation of Land.
- 5) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal plans are inconsistent with the Basix Certificate submitted and therefore does not comply with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- 6) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal complies with State Environmental Planning Policy – Infrastructure 2007.
- 7) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposal is a permissible use as stipulated in the land use table and does not achieve the objectives of the 1(a) zone of the Byron LEP 1988.
- 8) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, a kiosk is not a permissible use as stipulated in the land use table and does not achieve the objectives of the zone of the Byron LEP 2014.
- 9) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy Clause 6.3 Flood Planning and 6.4 Flood Risk Management, Clause 6.2 Earthworks and Clause 6.6 Services of the Byron LEP 2014.
- 10) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to address Clause 5.10 Heritage Conservation of the Byron LEP 2014 in relation to Aboriginal Cultural Heritage
- 11) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy
- 12) Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to satisfy Clause 6.8 Rural and nature Based Tourism of the Byron LEP 2014, having regards to the size and scale of the development.
- 13) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies with the applicable chapters of the Byron Shire Development Control Plan (BSDCP) 2010.
- 14) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies or can be reasonably conditioned to comply with Chapter 11 Mullumbimby of the Byron Shire Development Control Plan (BSDCP) 2010.
- 15) Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that demonstrates the proposed development complies or can be conditioned to comply with:
 - Chapter B2 Preservation of Trees and Other Vegetation
 - Chapter B3 Services.
 - Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access
 - Chapter B5 Providing for Cycling
 - Chapter B7 Mosquitoes and Biting Midges
 - Chapter B8 Waste Minimisation and Management

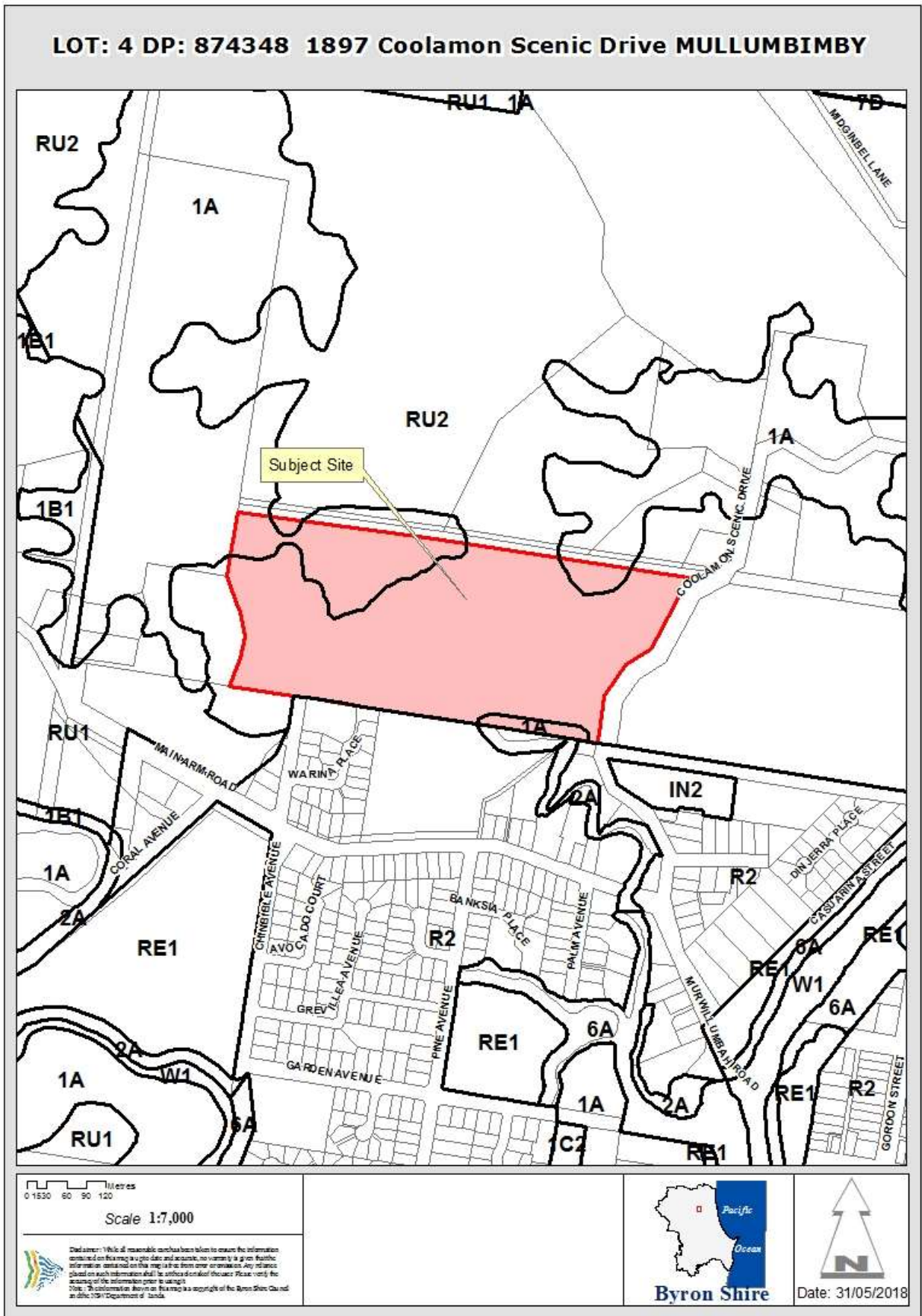
- Chapter B9 Landscaping
- Chapter B12 Social Impact Assessment Landscaping
- Chapter B13 Access and Mobility
- Chapter B14 Excavation and Fill
- Chapter D2 Residential Accommodation and Ancillary Development
- Chapter D3 Tourist Accommodation
- Chapter D4 Commercial and Retail Development
- Chapter E3 Mullumbimby

of the Byron Shire Development Control Plan (BSDCP) 2014.

- 16) Pursuant to the provisions of Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts of the development will have an adverse cumulative impact on the intended rural context, setting, streetscape and public domain.
- 17) Pursuant to the provisions of Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts of the development on the natural environment.
- 18) Pursuant to the provisions of Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been supplied that ensures the proposal complies with Management of Contaminated Land Policy.
- 19) Pursuant to the provisions of Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*, the proposal will not be compatible with the desired streetscape within and adjoining the site, and has failed to adequately address bushfire affecting the site.
- 20) Pursuant to the provisions of Section 4.15 (1)(d) of the *Environmental Planning and Assessment Act 1979*, submissions made in accordance with this Act or the regulations identified issues relevant to the development application that cannot be reasonably conditioned to ensure adverse impacts can be mitigated.
- 21) Pursuant to the provisions of Section 4.15 (1)(e) of the *Environmental Planning and Assessment Act 1979*, in the circumstances of the case, the proposal is an overdevelopment of the site and approval of such would set an undesirable precedent and is therefore not in the public interest.
- 22) Pursuant to the provisions of Section 4.12 of the *Environmental Planning and Assessment Act 1979*, the development is likely to result in a significant affect on the local population of a threatened ecological community.

Attachments:

- 1 Proposed Plans 10.2018.110.1 prepared by Charles Wright Architects , E2018/47198 
- 5 2 submissions received, E2018/49981 
- 3 submissions received, E2018/48613 



1. INTRODUCTION

1.1. History/Background**Lot History**

5 The current lot configuration was registered 12 February 1998. Development application 10.2017.750.1 is currently under consideration for use of an existing structure for that of a dwelling house.

10 An application DA 10.2018.81.1 for Tourist and Visitor Accommodation (Twelve (12) Cabins including Use of Existing Structures as Storage and Staff Lunchroom and Construction of Day Spa), Camping Ground (Two Hundred and Thirty Nine (239) Sites), Park Entry Office/Kiosk, New Dwelling and Recreation Facility (Indoors) - Yoga Facility was lodged with Council 23 February 2018 and was subsequently rejected.

Current Development Application History

15 Public Notification was initially advertised as being from 29 March 2018 to 11 April 2018 however given the Easter period the exhibition period was extended till 26 April 2018. Council received 312 objections and 16 submissions in support

20 Council raised concerns with the applicant pertaining to the scale of the development and other details as required to address Councils planning controls on the 20 March 2018. A second letter was issued 07 May 2018 in which the applicant was advised to withdraw the development application having regards to the scale of the development not satisfying the small scale requirements for rural tourism development. In an email dated 21 May 2018, the applicant was
25 advised yet again of the matters surrounding permissibility and the scale of the development with a strong recommendation to withdraw. To this date, no additional information or request to withdraw the application has been forthcoming.

30 No further requests for additional information were issued as the matters that arose from the completion of internal and external referrals in addition to those matters that had not been adequately addressed previously were considered excessive.

1.2. Description of the proposed development

35 This application seeks approval for Tourist and Visitor Accommodation (Twelve (12) Cabins including Use of Existing Structures as Storage and Staff Lunchroom and Construction of Day Spa), Camping Ground (Two Hundred and Thirty Nine (239) Sites), Park Entry Office/Kiosk, New Dwelling and Recreation Facility (Indoors) - Yoga Facility as demonstrated in Attachment 1.
40

1.3. Description of the site

45 Land is legally described as Lot 4 DP874348
Property address is 1897 Coolamon Scenic Drive Mullumbimby
Land is zoned part RU2 Rural Landscape / Part 1A General Rural zone.
Land area is 16.63ha
Property is constrained by Flood, Bushfire and High Conservation Value vegetation.

50 The site is a large rural allotment that contains an existing dairy bale that is currently the subject of development application for use as a dwelling house. The site has a fall of 26 metres from the north-eastern side of the lot to the south before rising another 2 metres with the site also having a large rise of 34 metres to the northern western rear corner of the site.

55 The site adjoins and is adjacent to other rural zoned allotments, some currently utilised by cattle farms (not dairy) with some R2 residential allotments located to the south as demonstrated below:



2. SUMMARY OF REFERRALS

5

Referral	Issue
Environmental Health Officer	Outstanding matters. Refer to Doc #A2018/8481.
Development Engineer	Outstanding matters. Refer to Doc #A2018/8487.
Building Surveyor	A Building Code of Australia compliance report from a suitably qualified person on the conversion of the existing structure to a staff and amenities building was requested but not provided. Refer to Doc #A2018/8495.
S64 Systems Planning Officer	The proposal includes connection to the reticulated water and sewer system. The land is categorised as RU2 Rural Landscape and therefore is not within the reticulated water and sewerage service area and connection to these infrastructure services will not be approved. Refer to Doc #A2018/8541
S94 Contributions Officer	Refer to Doc #A2018/10191.
Ecologist	The proposal is not supported with reasons for refusal provided within recommendation below. Refer to Doc #A2018/8548.
Rural Fire Service (100B)	The NSW RFS raised a significant number of issues that remain outstanding. Refer to Doc #E2018/37782.
Roads & Maritime Services	RMS offered comments to assist the consent authority in making a determination. Refer to Doc # E2018/31178.
Essential Energy	Recommended conditions provided. Refer to Doc #E2018/30370
Office of Environment & Heritage – Heritage	A number of concerns/recommendations were raised that have not been addressed. Refer to Doc # E2018/42731.
Department of Primary Industries – NSW Fisheries	Recommendations have been offered such as a 50m buffer to Chinbible Creek. The crossing of Chinbible Creek within the Chinbible Avenue Road Reserve near the south western corner of the site will require assessment by DPI Fisheries. Refer to Doc #E2018/31508.
Department of Primary	GTA's issued. Refer to Doc #E2018/46255

Referral	Issue
Industries – Office of Water	
Bundjalung (Arakwal)	No response was received at the time of this report being prepared.
Tweed Byron Land Council	No response was received at the time of this report being prepared.

3. SECTION 79BA – 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 2006. The site is bush fire prone land. Referral to the NSW RFS was undertaken with the service requesting the following information that has not yet been forthcoming:

- 1) The following details are required:
 - a) The maximum occupancy of the development;
 - b) A map showing the location of the numbered sites assessed in the Bushfire Risk Management Plan prepared by BushfireSafe (Aust) Pty Ltd, February 2018; and
 - c) Clarification of the camp sites which extend over the northern boundary of Lot 4 DP 874348.

- 2) The following details are required regarding asset protection zones and landscaping:
 - a) A site landscaping plan that shows the areas of proposed Camphor Laurel/weed management and the areas and composition of proposed revegetation; and
 - b) A dimensioned plan showing all areas of the site to be managed as an asset protection zone, including defensible space around amenities buildings and the camping areas.

- 3) The following details are required regarding access:
 - a) The main internal road from Coolamon Scenic Drive to Chinbible Avenue should be redesigned to minimise the number of curves, to allow for rapid access and egress. The road should have a minimum width of 8 metres and provide an unobstructed route through the site;
 - b) Clarification of the proposed access to Chinbible Avenue, including road/creek crossing dimensions and accessibility for visitors; and
 - c) Identification of area with unmanaged vegetation adjacent to internal roads (e.g. creek crossings) and proposed measures to ensure safe access for fire fighters and site visitors.

- 4) The following details are required regarding the camping sites:
 - a) Clarification if any sites are proposed for long term accommodation;
 - b) Identification of powered / non-powered sites and sites available for caravans and/or camper trailers;
 - c) Location of proposed glamping tents and construction details for these structures; and
 - d) Location of proposed timber platforms on sloping camp sites and construction details.

The applicant is advised that RFS Fact Sheet 1/08 ‘Holiday Parks’ provides further guidance regarding RFS policies for the placement of caravans and tents for this type of development. The Fact Sheet should be addressed with respect to the proposed land use and site layout.

- 5) A plan is required that shows the proposed location and coverage of hydrants throughout the development.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 14—Coastal Wetlands	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: SEPP 14 has been repealed since the application was lodged and is now incorporated into the Coastal Management SEPP. The area identified by the applicant as a dam is identified as being a 'Coastal Wetland'.		
State Environmental Planning Policy No 44—Koala Habitat Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: A small part of the site represents potential Koala habitat. Scats were identified but insufficient survey effort and design was undertaken to determine whether core Koala habitat is present on parts of the site. In the absence of information, the proposal cannot be considered compliant with the SEPP.		
State Environmental Planning Policy No 55—Remediation of Land	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: An evaluation is required pursuant to the requirements of <i>State Environmental Planning Policy No. 55 – Remediation of Land (SEPP55)</i> . The Statement of Environmental Effects prepared by Chris Lonergan Town Planner received by Council on 23/2/18 has not included any verifiable information to demonstrate that the subject site is uncontaminated. Previous development approvals predate SEPP55 which came into effect in 1998. No Preliminary investigations and reporting in accordance with the <i>NSW EPA Guidelines for Consultants Reporting on Contaminated Sites</i> has been supplied by the applicant.		
State Environmental Planning Policy —Coastal Management	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: The site contains mapped 'Coastal Wetlands' and 'Proximity Area to Coastal Wetlands' under the Coastal management SEPP. In accordance with the Clause 10 and Clause 11 of the Coastal Management SEPP, the avoidance of detrimental impact of the development on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland must be demonstrated. This area has already had significant works undertaken to it and the impacts of the works done or those intended by this proposal have not been addressed. The proposal does not comply with the SEPP.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: Proposal plans are inconsistent with Basix Certificate submitted.		
State Environmental Planning Policy (Rural Lands) 2008	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: The development is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development. As such, it is considered that the proposal does not comply with the SEPP.		
State Environmental Planning Policy – Infrastructure 2007	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: The proposal falls under SEPP (Infrastructure) 2007, Schedule 3, "Tourist Facility, recreation facility..." which requires a Traffic Impact Study and not a Traffic Impact Statement. This study was not submitted and therefore does not comply with the SEPP.		

5

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the *EP&A Act 1979* because it applies to the subject land and the proposed development.

10

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

- a) The proposed development is defined in the LEP 2014 Dictionary as a Dwelling, Tourist Facility, Recreation Facility, Business Premise and Retail Premise;
- b) The land is partly within the RU2 Rural Landscape and part Deferred Matter – 1A General Rural according to the Land Zoning Map. It is envisaged that works will have to occur within the area mapped as deferred matter and as such, an assessment against both LEP's and DCP's is warranted;
- c) The dwelling house, recreational facility (indoor), and campground are permissible uses in the zone;
- d) Rural tourist visitor accommodation is permissible subject to compliance with Clause 6.8 of BLEP 2014;
- e) Kiosk, Park Entry/Office, Storage and Staff room are not considered permissible uses within the zone; and
- f) Regard is had for the Zone Objectives as follows:

Zone Objective

'Encourage sustainable primary industry production by maintaining and enhancing the natural resource base, rural character of the land whilst providing a range of compatible land uses, including agriculture, tourist facilities and other small-scale rural tourism uses associated with primary production, environmental conservation consistent with the rural character of the locality and protection of significant scenic landscapes and to minimise impacts on the scenic quality of the locality'.

Consideration

The proposal diminishes the allotments ability to maintain the primary industry production of the site. Whilst the applicant proposes undetailed re-vegetation, the amount of land application areas required to facilitate the proposed development footprint will result in a significant amount of land needing to be cleared whilst resulting in limited opportunity to re-vegetate the site. It is expected that the scenic and rural nature of the site will be lost.

The remaining applicable clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the *EP&A Act 1979*. The proposed development is considered to be inconsistent with the majority of applicable clauses of BLEP 2014.

4.2A Erection of dwelling houses and dual occupancies on land in certain rural zones

The subject allotment was lawfully created before the commencement BLEP 2014, and has a 'dwelling entitlement'. However if the proposal was to be approved, the dwelling house would need to be issued with a final occupation certificate before any other structure could commence operations.

4.3 Height of buildings

All structures are less than the maximum of 9 metres permitted for the site.

5.4 Controls relating to miscellaneous permissible uses – (6) Kiosks

If development for the purposes of a kiosk is permitted under this Plan, the gross floor area must not exceed 50²m.

A kiosk is not a permitted use within the site. In addition, the gross floor area provided is 87.82m² and is a further non compliance.

5.10 Heritage conservation (8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- a) Consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of

an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and

- 5 b) Notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

Whilst no response has been received by Council from Bundjalung-Arakwal or the Tweed Byron Aboriginal Land Council, the Office of Environment and Heritage have identified a number of matters that remain outstanding which have not been considered by the applicant.

- 10 There has been an inappropriate level of consultation with the relevant Aboriginal knowledge holders (i.e. Tweed Byron Local Aboriginal Land Council and Arakwal Corporation) to gather information on, and assess the cultural significance of the subject site and design the proposal where possible to minimise harm to any identified cultural values was undertaken.

15 Disturbances arising from recent construction works within the dam and creation of internal gravel roads may have exposed Aboriginal cultural material which could be present on the site.

It is considered that an adverse impact is likely to occur in the context of the aboriginal cultural landscape in the area given that there is:

- 20 a) Anecdotal evidence from several sources noting Mount Chincogan to the north as a gender-specific ceremonial site; and
b) The property is dissected by Chinbible Creek which may have offered resources with smaller tributaries feeding into Chinbible Creek offering drinking water for potential local campsites.

Given the above, it is considered that the proposal does not comply with this Chapter.

25

6.2 Earthworks

The current proposal is expected to have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. In sufficient information has been supplied that accurately considers and/or mitigates impacts on the following:

- 30 a) Drainage patterns and soil stability in the locality of the development;
b) The quality of the fill or the soil to be excavated, or both;
c) The effect of the development on the existing and likely amenity of adjoining properties;
d) The source of any fill material and the destination of any excavated material;
35 e) The likelihood of disturbing indigenous relics; and
f) The proximity to and potential for adverse impacts on any waterway.

6.3 Flood planning

40 The objectives of this clause are to minimise the flood risk to life and property associated with the use of land and to allow development on land that is compatible with the land's flood hazard whilst avoiding significant adverse impacts on flood behaviour and the environment.

The proposal is considered incompatible with the known flood hazard of the land as:

- 45 a) Works that have already occurred and those proposed are likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties;
b) The proposal does not incorporate appropriate measures to manage risk to life from flood;
c) The proposal is expected to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses; and
50 d) The proposal is likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

6.4 Floodplain risk management

5 The objectives of this clause are to ensure that developments provide adequate evacuation or emergency response issues, to enable evacuation of land subject to flooding above the flood planning level. Development consent must not be granted to tourist and visitor accommodation unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land.

Insufficient information has been supplied in relation to evacuation measures and emergency response measures on flood affected land.

10 **Clause 6.6 Services**

Development consent must not be granted to development unless the consent authority is satisfied essential services i.e. supply of water, electricity, sewage, stormwater and access are available or that adequate arrangements have been made to make them available when required:

15 The land is categorised as RU2 Rural Landscape and therefore is not within the reticulated water and sewerage service area and connection to these infrastructure services will not be approved.

Appropriate access has not been demonstrated.

20 **6.8 Rural and nature-based tourism development**

For the purposes of this clause, the following definitions apply:

'Small scale' means a scale that is small enough to be generally managed and operated by the principal owner living on the property.

25 **'Tourism development'** includes, but is not necessarily limited to, development for any of the following purposes:

- a) bed and breakfast accommodation,
- b) camping grounds,
- c) farm stay accommodation,
- 30 d) eco-tourist facilities,
- e) home industries that provide services, or the sale of goods, on site to visitors,
- f) information and education facilities,
- g) restaurants or cafes,
- h) rural industries that provide services, or the sale of goods, on site to visitors.

35 The objective of this clause is to ensure that tourism development in rural and natural areas is **'small scale'** and does not adversely impact on the agricultural production, scenic or environmental values of the land within the RU2 Rural Landscape zone.

40 Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that:

- a) There is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed; and
- b) The development is small scale and low impact; and
- 45 c) The development is complementary to the rural or environmental attributes of the land and its surrounds; and
- d) The development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.

50 The proposed use includes tourist and visitor accommodation, camping ground, commercial premise i.e. office, business premise i.e. day spa and staff lunchroom and facilities, retail premise i.e. kiosk, some of which are uses that are not permissible within the zone.

The proposal cannot be considered to be of a scale that can be generally managed and operated by the principal owner living on the property when the proposal also includes a staffroom for 10 to 12 staff.

- 5 The *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*, stipulates that 'No more than 12 persons may be allowed to stay overnight at a dwelling site of camp site at any one time'.

10 239 camp sites equates to potentially 2868 people being able to attend the camp sites alone. The campground alone can in no way be considered to be 'small scale', in particular when other campgrounds within the shire are considered small scale and have much less than 239 sites available.

15 Considered cumulatively with the other proposed uses, the proposal is considered an excessive over development of a rural site.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

20 The proposal will result in works for the purpose of access and other bushfire matters within the areas of the site being mapped as 1A General Rural. No assessment against Byron Local Environmental Plan (BLEP) 1988 was submitted by the applicant. In the absence of this assessment, it is considered that the proposal does not and cannot be reasonably conditioned to comply with the applicable controls of this Plan.

25 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

30 The Department of Planning and Environment ('DPE') has announced a Draft Remediation of Land SEPP ('Draft SEPP') which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land ('SEPP 55'). The Explanation of Intended Effect of the Draft SEPP is on exhibition to 31 March 2018. The Draft SEPP will maintain the two categories of remediation work currently in SEPP 55:

- Category 1 – works that require development consent; and
- Category 2 – works that may be carried out without development consent.

35 Insufficient information has been submitted that demonstrates the proposal will not conflict with this Policy.

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

40 DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the *EP& A Act 1979* because it applies to the land to which LEP 2014 applies. An assessment of the applicable chapters is outlined below:

45 Chapter B2 Preservation of Trees and Other Vegetation

Chapter B2 aims to encourage the retention of trees and the planting of species endemic to the local area. Restoration works are proposed, however, their location or the provision of adequate areas for planting on site has not been demonstrated.

50 Chapter B3 Services

The proposal includes connection to the reticulated water and sewer system. The land is categorised as RU2 Rural Landscape and therefore is not within the reticulated water and sewerage service area and connection to these infrastructure services will not be approved.

The Stormwater Management Plan stipulates that there are options available to provide the required water quality. However, no details or concept design has been submitted to know what these measures could and should look like, their locations and associated extent of works is unknown.

5 The site layout shows the road alignment but does not show drainage paths, drainage swales and where the stormwater will be directed. This is important as the SWMP stipulates that *'the dam water needs to be carefully looked after otherwise it may be easily polluted and experience poor water quality'*.

10 The proposal is unable to provide adequate services and does not and cannot be reasonably conditioned to comply with this Chapter.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

15 The proposal falls under SEPP (Infrastructure) 2007, Schedule 3, "Tourist Facility, recreation facility..." which means it needs a referral to the RMS and the traffic study must then be a Traffic Impact Study and not a Traffic Impact Statement.

20 Notwithstanding the Traffic Impact Statement recommends an intersection design with a channelized right turn in however concept details of this intersection design have not been supplied.

25 No assessment has been undertaken of the intersection location with no consideration to line of sight and safety of this intersection.

The TIS recommends an intersection design with a channelized right turn in. NO detailed concept plan of this intersection design has been submitted.

30 No concept design has been submitted for the bridge crossing and connection to Chinibble Ave. It is noted that owners consent is required as the land is owned by Council.
The Traffic Impact Statement stipulates that the site can be used for 'Special Events' but the statement does not seem to provide an assessment of traffic associated with these special events. The statement identifies the recreation area being open to the public and providing 36 car spaces at this venue however the statement fails to address traffic for Special Events. It is noted that no further discussion regarding these 'events' occurs in the supporting documentation.

Chapter B5 Providing for Cycling

40 The application does not address Chapter B5 Providing for Cycling. Proposal plans do not detail proposed cycling paths for the facility.

Chapter B6 Buffers and Minimising Land Use Conflict

45 The development has the potential to impact the amenity of the neighbourhood. The applicant has not submitted a Land Use Conflict Risk Assessment (LUCRA) undertaken by a suitably qualified professional consultant. The LUCRA needed to reference the following (but not limited to) impacts that may arise by way of lighting, noise, odour, neighbourhood amenity, surrounding land uses, protection of waters and the like.

50 Further, to maintain safe access for patrons, adequate lighting would need to be provided between sunset and 12.00 PM. Given the rural setting, lighting on a large scale has the potential to generate undue glare and nuisance from the lighting installations to the neighbouring land owners and motorists. Therefore, a Lighting Assessment Report is required that demonstrates that the proposed lighting can comply with AS4282-1997: Control of the obtrusive effects of outdoor lighting and NSW Workcover OH&S requirements. This has not been provided.

Chapter B7 Mosquitoes and Biting Midges

Insufficient information has been supplied that demonstrates compliance with this Chapter.

Chapter B8 Waste Minimisation and Management

Insufficient information has been supplied that demonstrates compliance with this Chapter.

5

Chapter B9 Landscaping

Insufficient information has been supplied that demonstrates compliance with this Chapter.

Chapter B12 Social Impact Assessment

10 Inadequate information has been received that demonstrates the proposal will not have a significant social impact on the immediate locality. Campgrounds that propose more than 20 sites must supply such an assessment that has been prepared in four steps, which includes but is not limited to a Pre-Lodgement Meeting with Council. No such meeting was held nor was a request for one submitted by the applicant.

15

The development has the potential to adversely impact on the neighbourhood in terms of noise. A Noise Impact Assessment that takes into consideration all aspects of the proposed development including (but not limited to) mechanical plant, traffic, patron activities and the like based on 100% occupancy rates for patrons, guests and staff was not submitted.

20

In addition, it is considered that the 312 submissions against the proposal are a further vindication of this assessment.

Chapter B13 Access and Mobility

25 Insufficient information has been supplied that demonstrates compliance with this Chapter.

Chapter B14 Excavation and Fill

The applicant has stipulated that building pads would be provided for sloping campsites. Insufficient information has been supplied with regards to which of the 239 sites will be provided with pads with no details provided in relation to cut and fill to establish the campsites. In addition, the stormwater and flood information omit these pads from any studies undertaken.

30

The applicant has also undertaken works within the dam/wetland area. As such, a geotechnical and hydraulic study of the dam and spillway to assess the adequacy and stability of their design and construction is required.

35

Insufficient information has been supplied that demonstrates compliance with this Chapter.

Chapter C2 Areas Affected by Flood

40 An effective Flood Evacuation Plan that considers flooding in and from the Brunswick River, access to flood evacuation centres with adequate measures to manage risk to life from a flood event has not been provided.

Insufficient information has been supplied that demonstrates compliance with this Chapter.

45

Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones

The proposed dwelling is inconsistent with regards to siting, extent and nature of development as per 2.2.1 of this Chapter. In addition, essential services have not been provided to facilitate the dwelling.

50

Insufficient information has been supplied that demonstrates compliance with this Chapter.

Chapter D3 Tourist Accommodation

Based on the information supplied thus far the proposal does not comply with D3.3.3 Caravan Parks and Camping Grounds D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation of this Chapter.

- 5 Insufficient information has been supplied that demonstrates compliance or that the proposal can be reasonably conditioned to comply with this Chapter.

Chapter D4 Commercial and Retail Development

Insufficient information has been supplied that demonstrates compliance with this Chapter. Notwithstanding, the proposed commercial uses are not permissible in the zone.

Chapter E3 Mullumbimby

This Chapter applies. However, those allotments within Mullumbimby that are shown outside the Mullumbimby Urban Area Map 3.4 must be considered against DCP 2010.

No assessment of the proposal against Chapter 11 Mullumbimby of the Byron Shire Development Control Plan (BSDCP) 2010 was supplied by the applicant.

4.4B Byron Shire Development Control Plan 2010 (DCP 2010)

The proposal will result in works for the purpose of access and other bushfire matters within the areas of the site being mapped as 1A General Rural. No assessment against Byron Shire Development Control Plan (BDSCP) 2010 was submitted by the applicant. In the absence of this assessment, it is considered that the proposal does not and cannot be reasonably conditioned to comply with the applicable controls of this Plan.

4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning and Assessment Regulation 2000 Considerations

<i>Clause</i>	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
92	Yes	No	No
93	Yes	No	No
94	Yes	No	No
94A	No	N/A	N/A

4.7 Any coastal zone management plan?

	Satisfactory	Unsatisfactory	N/A
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

It is considered the proposed development will have an adverse impact on the built and natural environment due to the scale and size of the development and having regards to the information submitted.

Are there any Council Policies that are applicable to the proposed development?

Council Policy	Consideration
Management of Contaminated Land Policy	Insufficient information has been supplied demonstrating compliance with this policy.

4.9 The suitability of the site for the development

5 The proposal is of a scale that is considered to be excessive and unsuitable in the rural zone. The proposal is considered to be a gross overdevelopment of an ecologically constrained and hazardous site that does not achieve the objectives of a rural zoned allotment. In the absence of essential information and based on the plans proposed thus far, the proposal is considered unsuitable and sets an undesirable precedent in the zone.

10

4.10 Submissions made in accordance with this Act or the regulations

15 The development application was publicly exhibited with 312 submissions received against the proposal and 16 in support. A summary of the points raised by multiple submission authors against the proposal which raised concerns specific to Section 4.15 of the *Environmental Planning and Assessment Act 1979* only, is detailed below.

- 20 1) Insufficient information submitted with regards to impacts on watercourses, fish habitats, no aquatic assessment, no OSMS, no Preliminary SEPP55 report, no cycling providing

Planner’s Response

It is agreed that the proposal offers limited or no information with regards to the above matters.

- 25 2) Adverse impacts on flora and fauna

Planner’s Response

The proposal has identified the presence of koalas within the site whilst identifying a number of threatened flora species that have not been quantified given the large number present on the site.

30

It is considered that insufficient information has been submitted to demonstrate that the proposal will have a minimal impact on flora and fauna within and adjoining the site.

- 35 3) Constrained by bushfire and flood

Planner’s Response

The proposal is affected by flood and bushfire with insufficient access, evacuation procedures and other information being supplied to demonstrate that the risk to life is negligible.

- 40 4) The proposed dwelling is a bed and breakfast

Planner’s Response

The design of the proposed dwelling is indicative of a bed and breakfast style layout. However, conditions of approval with regards to its use could be imposed if the application were to be recommended for approval.

45

- 5) Use of structures for events or other functions

Planner’s Response

50 It is hinted in the Traffic Impact Statement that the site will be used for events and other functions. In the absence of critical information as detailed throughout this report, the impacts of such events cannot be assessed.

- 6) The kiosk is not a permitted use and the ‘yoga centre’ is a function centre

Planner's Response

A kiosk or function centre is not a permitted use in the zone. A 'yoga centre' is considered to be a recreational facility (indoor). The commercial kitchen within this structure enables its use as a function centre. Conditions of approval with regards to its use could be imposed if the application were to be recommended for approval.

- 7) Proposal will provide an entertainment hub and playground for the wealthy

Planner's Response

The socio-economic background of visitors to the site cannot be determined.

- 8) Proposal will be a permanent campground for the homeless

Planner's Response

All tourist and visitor accommodation within rural zones is restricted with a maximum stay period of two (2) weeks.

- 9) Affordable Rental Housing SEPP not addressed

Planner's Response

The SEPP does not apply to the proposal and an assessment against this SEPP is not warranted.

- 10) Cost of works is less than it should be

Planner's Response

Whilst the estimated total 'costs of works' was amended by the applicant, the assessing officer considers this amount to be significantly less than that identified by the applicant.

- 11) Unlawful works have already occurred. No testing of the works has been done

Planner's Response

Works that have occurred previously are not the subject of the application.

Insufficient information in the form of geotechnical reports have been received by Council to demonstrate that works that have occurred previously are sound.

- 12) Economic sustainability – there are other campgrounds and yoga halls in the LGA that are under utilized

Planner's Response

An economic viability study for the proposal is warranted.

- 13) Scale – the proposal is not small scale

Planner's Response

The proposal cannot be considered to be of a scale that can be generally managed and operated by the principal owner living on the property when the proposal also includes a staffroom for 10 to 12 staff. Considered cumulatively with the other proposed uses, the proposal is considered an excessive over development of a rural site.

- 14) Pollution in terms runoff from gravel into river system

Planner's Response

The site layout shows the road alignment but does not show drainage paths, drainage swales and where the stormwater will be directed. This is important as the SWMP stipulates that 'the dam water needs to be carefully looked after otherwise it may be easily polluted and experience poor water quality'.

In the absence of critical information, it cannot be determined that the proposal will not adversely impact on the river system.

- 15) Rural zoned land – No land use conflict assessment submitted

Planner's Response

The applicant has not submitted a Land Use Conflict Risk Assessment (LUCRA) undertaken by a suitably qualified professional consultant.

5 16) Loss of amenity of residential and rural values**Planner's Response**

It is agreed that the proposal will have an adverse impact on adjoining and adjacent residential and rural zoned allotments in terms of noise, lighting, smoke, traffic and scenic values and other features that one expects within these zones.

10

17) Waste Management**Planner's Response**

The proposal includes multiple land-uses each requiring specific waste management arrangements. The application does not include a Preliminary Waste Management Assessment.

15

18) Traffic Management – Unsafe access, evacuation in a natural hazard, increase in traffic within the site and locality, increased foot traffic and insufficient carparking within the site and locally.

20

Planner's Response

Insufficient information has been submitted that demonstrates the proposal is provided with safe access, in particular in the event of a natural hazard vehicular, cycling and pedestrian traffic or that the immediate locality is capable of handling the amount of traffic that could potentially be generated by the proposal.

25

19) Lacking toilet and shower facilities with amounts expected placing an excessive strain on existing services**Planner's Response**

The proposal is unable to connect to town water and sewer services. As such, an OSMS design is warranted. No detail in relation to this has been submitted by the applicant.

30

20) Cost to the community in terms of strain on essential services**Planner's Response**

Given the lack of information available with regards to essential services and how they would be provided, the cost to the community cannot possibly be calculated.

35

21) Security risk**Planner's Response**

Security matters have not been addressed by the applicant.

40

22) To consider the application is ridiculous**Planner's Response**

Each individual has the right to lodge a development application and to have the supporting documentation assessed against the applicable planning controls without prejudiced.

45

23) Has due process been followed - Insufficient consultation and notification**Planner's Response**

The applicant is not required to consult with adjoining land owners or the residents of the LGA prior to the preparation of such an application. Consultation occurred shortly after the lodgement of the application and in accordance with BSDCP 2014. Initially, two (2) weeks was given before being extended for another two (2) weeks to factor in the Easter period and to enable the applicants submission of further information to be publicly notified.

50

55

Notwithstanding the above, submissions can still be received and even considered up to the time the application has been determined.

Given the above, it is considered that due process has been followed by Council staff and no interested party has been prevented from lodging a properly made submission against or in support of the proposal.

5 Submissions in support of the proposal do not address planning matters as outlined in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and are therefore not addressed in this report.

10 Given the above, it is considered that the concerns raised by submission authors are valid and given the proposed design, these matters cannot be rectified through conditions of approval and are considered to adversely impact on the immediate locality.

4.11 Public interest

15 The proposed development is will prejudice and compromise the public interest by creating an undesirable precedent.

4.12 Section 5A of the EP&A Act 1979 – Significant effect on threatened species

20 Having regard to sections 5A, 5C and 5D of the *EP&A Act 1979*, there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats as a result of the proposed development as the proposal is considered over development of an ecologically
25 constrained site. The application fails to adequately demonstrate that no adverse impacts will occur on the ecological values of the site.

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

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

5. DEVELOPER CONTRIBUTIONS

35 Contributions would be levied should the application be approved.

6. Disclosure of Political Donations and Gifts

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

40 Provide Disclosure Statement register details here: Nil.

7. CONCLUSION

45 Insufficient information has been submitted that demonstrates that the proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site. The proposal is considered to be an overdevelopment of an ecologically constrained and rural property that does not achieve the objectives of the applicable zones that apply of the relevant planning controls for small scale rural tourist development. In the absence of essential information and based on the plans proposed thus far, the proposal is considered unsuitable and sets an undesirable precedent in the zone. The application is recommended for refusal.

Report No. 13.22 PLANNING - Development Application 10.2018.25.1 Subdivision two lots into three lots at 31 Blackwood Crescent and Ballina Road Bangalow

Directorate: Sustainable Environment and Economy
Report Author: Dylan Johnstone, Planner
 Noreen Scott, EA Sustainable Environment and Economy
File No: I2018/1058
Theme: Ecology
 Development and Approvals

Proposal:

DA No: 10.2018.25.1
Proposal description: Subdivision: Two (2) Lots into Three (3) Lots
 LOT: 1 DP: 1233509, LOT: 15 DP: 1238961
Property description: 31 Blackwood Crescent BANGALOW, Ballina Road BANGALOW
 268877, 269043
Parcel No/s:
Applicant: Geolink Consulting Pty Ltd
Owner: Bertoli Building Pty Ltd & Nahimsa Pty Ltd
Zoning: R2 Low Density Residential, R3 Medium Density Residential and DM Deferred Matter (1a General Rural Zone LEP 1988)
Date received: 24 January 2018
Integrated Development: No
Public notification or exhibition:

- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 8/2/18 to 21/2/18
- Submissions received: One

Delegation to determination: Council
Issues:

- SEPP1 Objection for minimum lot size – residual lot.

Summary:

Development consent is sought for Subdivision to develop Two (2) Lots into Three (3) Lots at Bangalow. In essence the development will create two residential lots of 801 m² each in the R2 Low Density Residential Zones and a larger residual lot of 4.376 ha partly zoned R3 Medium Density and 1(a) General Rural Zone under Byron LEP 1988. The proposed development complies with all of the relevant controls for residential development under Byron LEP 2014 and Byron DCP 2014.

However, the proposed residual lot with its 1(a) zoned portion does not comply with the minimum lot size provisions of 40ha under Byron LEP 1988. A SEPP 1 Objection was submitted and the Department of Planning issued concurrence for the variation. In this regard the 1(a) portion of the land will not be fragmented as part of the proposal and strict compliance with the 40ha development standard is unnecessary in this instance.

The proposed development is not likely to result in significant impacts on the existing environment. It is recommended that consent be granted subject to conditions of consent as attached.

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.

RECOMMENDATION:

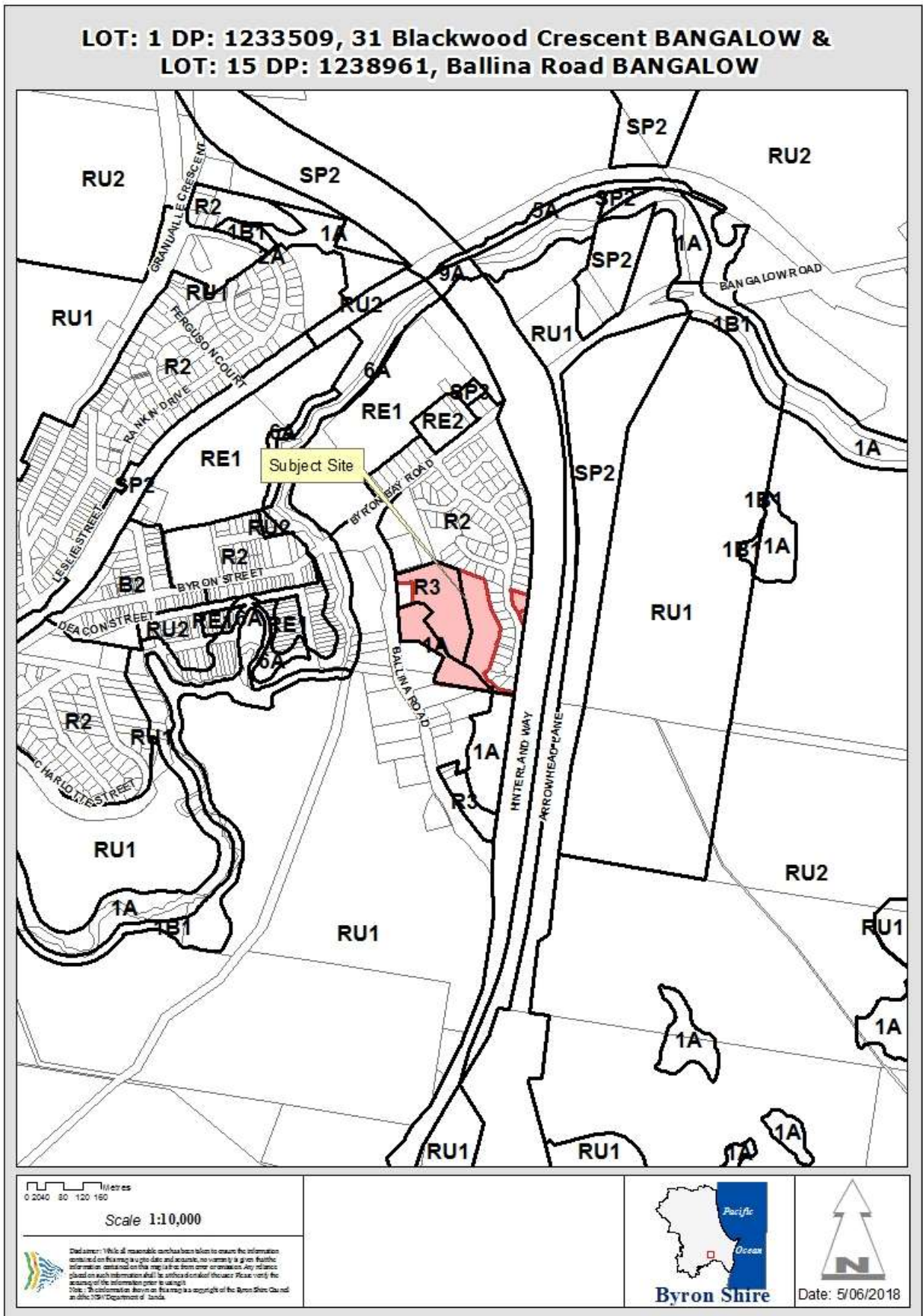
That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2018.25.1 for Subdivision of two (2) lots into three (3) lots, be granted consent subject to conditions in Attachment 3 #E2018/47431.

Attachments:

10

- 1 Proposed Plans prepared by Geolink, E2018/47498 [⇒](#) 
- 2 submission received, E2018/47470 [⇒](#) 
- 3 Conditions of consent , E2018/47431 [⇒](#) 

15



Assessment:

1. INTRODUCTION

5

1.1. History/Background

The subject lots have been created as part of the ongoing subdivision of land under DA10.2011.474.1. The lots were registered on 5/1/18.

10

1.2. Description of the proposed development

This application seeks approval for Subdivision: Two (2) Lots into Three (3) Lots. Proposed Lot 1 has an area of 801.6m² and proposed Lot 2 has an area of 801.4m². Each of proposed Lots 1 and 2 are zoned R2. Proposed Lot 3 is a residual lot with an area of 4.376ha and is zoned R2, R3 Medium Density Residential and DM Deferred Matter (1a General Rural Zone LEP 1988). As this lot contains land zoned 1a a 40ha minimum lot size requirement applies. The creation of this lot requires a SEPP1 Objection and, as the proposed variation is greater than 10%, concurrence of the Department of Planning and Environment is required.

15

20



Figure 1 Proposed Subdivision Plan (Geolink)

25

1.3. Description of the site

Land is legally described as LOT: 1 DP: 1233509, LOT: 15 DP: 1238961
 Property address is 31 Blackwood Crescent BANGALOW, Ballina Road BANGALOW
 Land is zoned: R2 Low Density Residential, R3 Medium Density Residential and 1(a)

Land area is: General Rural Zone
Total Area of 5.9792 ha
Property is constrained by: Flood Liabile Land



Figure 2 Existing lot configuration (Geolink)



Location of proposed Lots 1 and 2 viewed from Blackwood Crs looking SE



Location of proposed Lot 3 viewed from Blackwood Crs looking SW

5

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions of consent
S64 / Systems Planning Officer	No objections subject to conditions of consent
S94 / Contributions Officer	No objections subject to conditions of consent
NSW Department of Planning and Environment	SEPP1 concurrence provided dated 09/04/18. See Doc # S2018/5455

10

3. SECTION 79BA – 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 2006. The site is not bush fire prone land.

15

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

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

5

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 1—Development Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>Proposed Lot 3 is a residual lot with an area of 4.376ha and is zoned R2, R3 Medium Density Residential and DM Deferred Matter (1a General Rural Zone LEP 1988). As this lot contains land zoned 1a a 40ha minimum lot size requirement applies. The creation of this lot requires a SEPP1 Objection and, as the proposed variation is greater than 10%, concurrence of the Department of Planning and Environment is required.</p> <p>A SEPP1 Objection was submitted to support the application.</p> <p>Although the proposed subdivision and resultant Lots 1 and 2 comply with the relevant minimum lot size standard, proposed Lot 3 (being the residue lot) would be marginally reduced in size from its current form (and is already well below 40 hectares). It is also noted that proposed Lot 3 is part of a larger, already approved subdivision and residential development under DA 10.2011.474.6 (as amended). This DA provides for staged subdivision/development of the land.</p> <p>To comply with the minimum lot size requirement of 40 hectares (which affects only about one third (approximately 1.6 hectares) of the proposed residue Lot 3) is unreasonable and unnecessary in this instance for the following reasons:</p> <ul style="list-style-type: none"> • The portion of land zoned 1(a) is small and fragmented; it is unable to maintain large scale agricultural activities due to its limited area. • The portion of 1(a) General Rural Zone land would not be reduced in area or directly affected by the proposed subdivision. • Proposed Lots 1 and 2 are for residential purposes, are of adequate size to accommodated dwellings and are consistent with the objectives of the applicable zone. • The proposed subdivision is consistent with DA 10.2011.474.1 (and subsequent amendments .2 to .6) which allows further subdivision for the purposes of low density residential development within the subject land parcel identified as proposed Lot 3 (formerly Lot 22 DP 1070522). Furthermore, the Department of Planning and Environment has previously given its concurrence for subdivision of this area below the minimum lot size. • Proposed Lot 3 will only be reduced in size by approximately 800m² for the creation of proposed Lot 2. Proposed Lot 2 is zoned R2 Low Density Residential and complies with the 600m² minimum lot size requirement pursuant to Clause 4.1 of LEP 2014. The portion of proposed Lot 3 zoned 1(a) will not be reduced from its current area by the proposed subdivision (see Figure 3). • The proposal is consistent with the objectives and intent of both LEP 2014 and LEP 1988. <p>Concurrence was granted by the Department on 9 April 2018. Pursuant to the DPE Planning Circular PS18-003 requires all development applications where there has been a variation greater than 10% in standards under SEPP1 to be determined by full Council.</p>		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Satisfactory	Unsatisfactory
<p>Consideration:</p> <p>Application 10.2011.474.1 included a report titled 'Assessment of the extent of potential contamination; remedial action plan and associated validation report. Lots 22 & 23 DP 1014667 Byron Bay Road Bangalow. Soil Pacific. October 2001'. Refer to doc # 1166559. The purpose of this report was to 'determine the extent of contamination on the site from lead. A total of eight soil samples were collected from the western area of the subject property and analysed for lead with all results below ANZECC and EPA levels. The report states that the remediated site was suitable for residential use.</p> <p>The above reports reviewed by Council also confirmed the property is suitable for residential use. No further information required.</p>		
State Environmental Planning Policy (Rural Lands) 2008	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The proposal is compatible with the use of the subject land and the use of adjoining lands.		

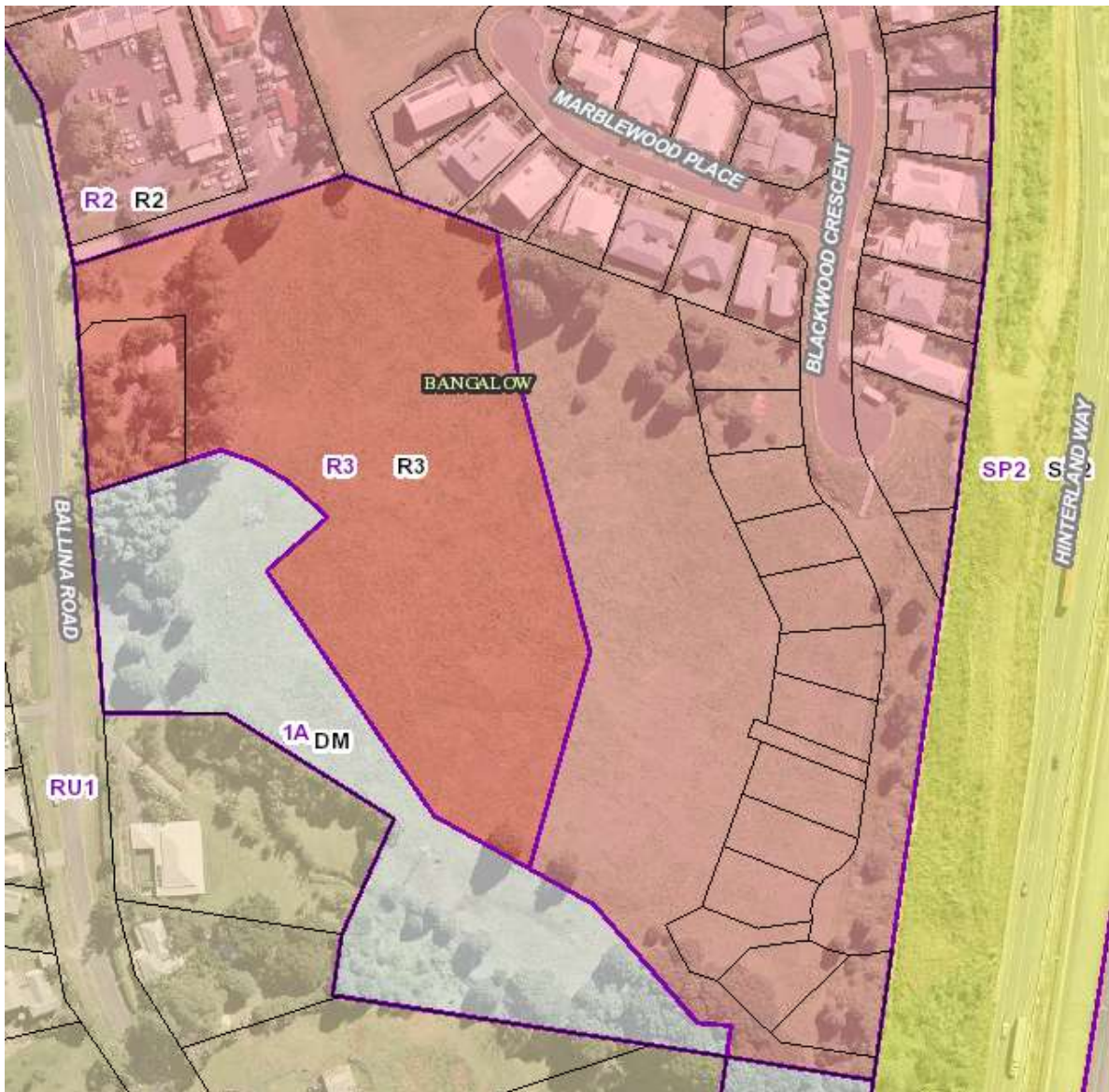


Figure 3 LEP 2014 and LEP 1988 Zone Mapping of existing lot configuration (Geocortex)

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act because it applies to the subject land and the proposed development. 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 Subdivision
- (b) The land is within the R2 Low Density Residential, R3 Medium Density Residential and DM Deferred Matter according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

R2 Low Density Residential

Zone Objective	Consideration
encourage a range of housing types	The application proposes lot sizes that are capable of accommodating single dwelling and secondary dwelling or dual occupancy development
ensure non residential uses have a domestic scale and character.	The proposal is for subdivision only

R3 Medium Density Residential

Zone Objective	Consideration
To provide for the housing needs of the community within a medium density residential environment	The application proposes lot sizes that are capable of accommodating single dwelling and secondary dwelling or dual occupancy development
To provide a variety of housing types within a medium density residential environment.	The application proposes lot sizes that are capable of accommodating single dwelling and secondary dwelling or dual occupancy development
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal is for subdivision only

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

The proposal raises no other issues under Byron LEP 2014.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act because it applies to the subject land and the proposed development. In accordance with LEP 1988 clauses 5, 8 and 9:

- (a) The proposed development is defined in the LEP 1988 Dictionary as Subdivision;
- (b) The land is within the 1(a) General Rural Zone according to the map under LEP 1988;
- (c) The proposed development is permitted with consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
-----------------------	----------------------

BYRON SHIRE COUNCIL

to encourage and permit a range of uses creating a pattern of settlement, at a scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron	The proposed subdivision is consistent with the scale and character of surrounding development
to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character,	The proposed subdivision pattern does not adversely affect the quality of life of residents and visitors and maintains the rural
to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses,	The proposal does not create any significant land use conflict issues
to allow the use of land within the zone for agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture	The land is located in close proximity to existing and future housing. The land has limited agricultural potential which will not be significantly impacted by the proposal.
to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development,	The proposal is not located on such lands
to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in road side service areas,	The proposed traffic generation is commensurate to the existing public road network
to ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry,	The land does not have any known extractive or mining industry potential
to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality	The proposal does not impact on the ability of the land to provide rural tourist accommodation.
to permit the development of limited light industries which do not pose any adverse environmental impact, (eg software manufacture and film processing)	The proposal does not impact on the ability of the land to be used for limited light industries of low impact
to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora	The proposal is not located on such lands.

Clause 11 Subdivision in rural areas for agriculture etc :

What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly
<u>Clause 11 Subdivision in rural areas for agriculture etc</u> The application proposes the creation of Lot 3 with an area of 4.376ha. The land is partially	A SEPP1 objection was submitted to support the application as discussed the above. It is considered strict compliance with the development standard is not warranted in this instance and a variation is supported to the 40 ha minimum.

zoned 1a General Rural Zone which has a minimum lot size requirement of 40ha.

The proposal raises no other issues under Byron LEP 1988.

5 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

Not applicable.

10 4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

15

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input type="checkbox"/> B2 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input type="checkbox"/> B5 <input checked="" type="checkbox"/> B6 <input type="checkbox"/> B7 <input type="checkbox"/> B8 <input type="checkbox"/> B9 <input type="checkbox"/> B10 <input type="checkbox"/> B11 <input type="checkbox"/> B12 <input type="checkbox"/> B13 <input checked="" type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1 <input checked="" type="checkbox"/> C2 <input type="checkbox"/> C3 <input checked="" type="checkbox"/> C4
Part D Chapters	<input type="checkbox"/> D1 <input type="checkbox"/> D2 <input type="checkbox"/> D3 <input type="checkbox"/> D4 <input type="checkbox"/> D5 <input checked="" type="checkbox"/> D6 <input type="checkbox"/> D7 <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1 <input checked="" type="checkbox"/> E2 <input type="checkbox"/> E3 <input type="checkbox"/> E4 <input type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7

The proposal raises no specific issues in terms of DCP 2014 and appropriate conditions of consent are recommended in relation to the subdivision as proposed.

20

4.4B Byron Shire Development Control Plan 2010 (DCP 2010)

The proposed subdivision raises no issues in terms of the subdivision controls under DCP 2010.

25 4.5 Any Planning Agreement or Draft Planning Agreement?

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

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	No	N/A	N/A
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

30 * Non-compliances and any other significant issues discussed below

4.7 Any coastal zone management plan?

<table border="1"> <tr> <td>Satisfactory</td> <td>Unsatisfactory</td> <td>Not applicable</td> </tr> </table>	Satisfactory	Unsatisfactory	Not applicable
Satisfactory	Unsatisfactory	Not applicable	

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

Impact on:	Likely significant impact/s?
Natural environment	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.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

5

4.9 The suitability of the site for the development

The site is a serviced, unconstrained property and is suitable for the proposed development.

10

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited .

There was one submission made on the development application:

15

Issue	Comment
The proposal would increase the population density and traffic pressure on the residential 'no through road' Blackwood Crs	Proposed Lots 1 and 2 comply with LEP 2014 Clause 4.1 minimum lot size. Proposed Lot 3 is a residual lot with this area being subject of consent 10.2011.474.6 to create 49 residential allotments in stages. Proposed Lot 3 contains land zoned 1(a) General Rural under LEP 1988 and does not comply with the minimum lot size of 40ha. A SEPP 1 Objection has been submitted with the application which demonstrates that compliance with the development standard is unreasonable in this instance. The Department of Planning and Environment have granted concurrence to the variation. The existing and future road networks have been constructed/ designed to adequately address traffic generation.
Reduction in lot sizes is undesirable	Proposed Lots 1 and 2 are compliant with minimum lot size requirements while proposed Lot 3 requires a variation to the 40ha minimum allotment size as outlined above. The requested variation is considered reasonable and is recommended for approval.
Decrease in surrounding land value	This is not a planning consideration, and is impossible to quantify in any case.

4.11 Public interest

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

20

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

Having regard to sections 5A, 5C and 5D of the EP&A Act, there is unlikely to be a significant effect on threatened species, populations or ecological communities, or their habitats as a result of the proposed development because the subdivision is designed to minimise environmental impacts.

5

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

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

10

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

15

5.2 Section 94 Contributions

Section 94 Contributions will be payable.

20

6. CONCLUSION

The proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

25

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

30

Provide Disclosure Statement register details here: Not applicable

8. RECOMMENDATION

It is recommended that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2018.25.1 for Subdivision: Two (2) Lots into Three (3) Lots, be granted consent subject to conditions listed in Attachment 3 # E2018/47431.

35

Report No. 13.23 **Actions from Agriculture and Farm Consultation**
Directorate: Sustainable Environment and Economy
Report Author: Tania Crosbie , Economy and Sustainability Coordinator
File No: I2018/1063
5 **Theme:** Economy
 Economic Development

Summary:

10 The Strategic Business Panel meeting on 9 May 2018 focussed on farming – the opportunities and challenges in Byron Shire, and what Council can do to ensure the long-term viability and sustainability of the sector.

15 A presentation was provided by Council’s consultant Regionality on the top line results of their engagement as part of Byron Shire’s report into agriculture.

20 The purpose of this report is to present the findings of Regionality’s agriculture and farm sector engagement and the initiatives arising from the Strategic Business Panel into farming in Byron Shire.

RECOMMENDATION:

That Council:

1. **Note the appointment of a Farm Liaison Officer is included in the 2018/19 draft budget and recruitment is progressing.**
2. **Endorse the establishment of a Farming Industry Cluster that ensures members are representative of their farming sector and reports through to the Strategic Business Panel.**
3. **Note that agricultural specialist planner training will be provided to planning staff to assist with farm specific Development Applications.**

25

Report

Background:

5 At the 23 November 2017 Ordinary Meeting, Council resolved (**Resolution 17-571**) to:

1. *Acknowledge the desktop research and SWOT analysis into agriculture and agribusiness.*
2. *Support the next steps of the Byron Shire Sustainable Agriculture and Agribusiness Project with further reports provided to Council following project milestone achievements.*
- 10 3. *Note that staff will be applying for a grant and sponsorship funding to support the Byron Shire Sustainable Agriculture and Agribusiness Project, and should this grant be successful, Council will need to commit funding of \$50,000 in the 2018/19 and 2019/20 financial years respectively.*

15 The next step required research into agriculture in Byron Shire and this was completed on 1 June 2018.

The following consultation was undertaken by Regionality (the Consultant):

- 20 • Half Day Farmers Forum at Eureka Hall on 4 April 2018 – where over 50 farmers attended to workshop opportunities, barriers, and how Council can better assist.
- Farmers' Focus Groups x 2 held in May with smaller groups of farmers to go into depth around what is farming in Byron Shire, opportunities, barriers, and solutions.
- 25 • Over 100 farmers responded to a survey during May asking questions around opportunities, challenges and farm usage.
- Byron Shire Council staff workshop on challenges farmers have working with Council.
- Workshop with NOROC planners around challenges farmers have working across the different Councils in the Northern Rivers.
- 30 • Presentation and workshop with Council and 18 farmers at the Strategic Business Panel in May where the top line consultation results were discussed and outcomes presented to Panel Members of what the farming sector needs to operate more successfully and sustainably into the future.

35 The outcomes from this research clearly identified a number of initiatives the sector would like to see Council undertake:

- Employ a full-time Farm Liaison Officer to be the one-stop-shop for all information about farming. This role would be a conduit for:
 - 40 ○ new farmers or new lifestylers to the area
 - lifestylers wanting to enable farming on their land
 - farmers wanting to connect with other farmers, producers or distribution networks
 - farmers requiring information from Council
 - Council and NOROC for farming education, communication and advocacy.
- 45 • Improve communications and the narrative around farming to show that it is valued and a vital industry in Byron Shire.
- Develop a farming in Byron Shire website to house all the latest information to assist farmers. The final report by Regionality will be placed on this website for the community to refer to.
- 50 • Protect farming land and work together to re-activate farmland that is lost to lifestylers and hobby farmers.
- Establish an Agriculture Industry Cluster that is representative of all farmers.
- Continue to improve land use and environmental mapping plus planning procedures to assist farmers negotiate regulation.
- Train planning staff on agricultural specific information.

- Work with other Councils to develop case studies to demonstrate to the NSW Planning Department and DPI how the current regulations constrain smaller Northern Rivers farmers from being innovative and successful.

5 Each of the above initiatives will be considered by staff for implementation and only where necessary reported back to Council.

Financial Implications

10 Salary support for the Farm Liaison Officer 3 days per week has been included in the 2018/19 draft budget. Should Council be successful in the Smart Farms Small Grants submission the position can be recruited as a fulltime position.

15 The funding under the Smart Farms Small Grants has not yet been confirmed.

Statutory and Policy Compliance Implications

Nil.

Report No. 13.24 **Byron Visitor Centre**
Directorate: Sustainable Environment and Economy
Report Author: Andrew Hill, Team Leader Community Enforcement
File No: I2018/1067
5 **Theme:** Ecology
 Development and Approvals

Summary:

10 To update Council on issues impacting the Byron Visitors Centre, and for Council to consider the following actions to address these issues:

- Byron Visitor Centre leased site be declared an Alcohol Prohibited Area; and
- 15 • Byron Visitor Centre leased site be approved as a designated busking site.

RECOMMENDATION:

1. That Council undertake a consultation process with the Local Area Commander of Police to recommend that Lot 1 DP 827049 being the site of the Byron Visitor Centre be declared an Alcohol Prohibited Area (at all times).
2. That if no submissions are received from the Local Area Commander of Police during the consultation process, Council declare the Byron Visitor Centre lease site an Alcohol Prohibited Area (at all times).
3. That if declared an Alcohol Prohibited Area, Council install three (3) Alcohol Prohibited Area signs within the Byron Visitor Centre leased site.
4. That Council's Busking Policy 13/002 be amended to include the Byron Visitors Centre leased site as a designated busking area.
5. That the amended Busking Policy 13/002 be placed on public exhibition for a period of 28 days, and that if no submissions are received the Policy be adopted.

Report

5 For several years now, the Byron Visitor Centre (BVC) has reported anti-social behaviour surrounding the leased site. Some of this behaviour has included drinking, intimidation of the general public and intimidation of BVC staff.

At the request of the Arakwal Corporation, a meeting was held on 20 April 2018 at Council.

10 Attendees included members of the local police, Council staff, the Arakwal Corporation and the BVC. At the meeting attendees discussed practical solutions to limit anti-social behaviour in the area including installing ‘alcohol free’ signage at the perimeter of the BVC site, and to activate the area by including the site as an approved busking area.

15 These two options are discussed in detail below.

Alcohol Prohibited Areas (APA)

20 The *Local Government Amendment (Confiscation of Alcohol) Act 2010* provides the power to Police (and to authorised Council enforcement officers) to confiscate and tip out alcohol in the possession of a person who is in an area where alcohol consumption is prohibited by a notice under section 632A of the *Local Government Act 1993* (the Act).

25 Monetary penalties no longer apply in relation to the consumption of alcohol in an Alcohol Prohibited Area (APA). Instead, the above ‘tip out’ powers will apply.

However, where a person does not comply with a request by the Police (or an authorised Council enforcement officer) to hand over alcohol in an APA, they may be charged with obstruction under the Act.

30 Section 632A(4) of the Act enables Councils to declare any ‘public place’ or part of a place to be an APA, except for those places (public roads, footpaths and car parks) which are to be dealt with under the Alcohol-Fee Zone provisions of the Act.

Under the Act, a **public place** means:

- 35 (a) a public reserve, public bathing reserve, public baths or public swimming pool, or
- (b) a public road, public bridge, public wharf or public road-ferry, or
- (c) a Crown reserve comprising land reserved for future public requirements, or
- (d) public land or Crown land that is not:
 - 40 (i) a Crown reserve (other than a Crown reserve that is a public place because of paragraph (a), (b) or (c)), or
 - (ii) a common, or
 - (iii) land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or
 - (iv) land that has been sold or leased or lawfully contracted to be sold or leased, or
 - 45 (e) land that is declared by the regulations to be a public place for the purposes of this definition.

Public land means:

any land (including a public reserve) vested in or under the control of the council, but does not include:

50

- (a) a public road, or
- (b) land to which the Crown Lands Act 1989 applies, or
- (c) a common, or
- (d) land subject to the Trustees of Schools of Arts Enabling Act 1902, or
- 5 (e) a regional park under the *National Parks and Wildlife Act 1974*.

The BVC leased site may be considered 'public land' and as such can fall within the above definition of a 'public place'.

10 Public places may be declared alcohol prohibited at all times or only for specific days, times or events. It is recommended that if declared an APA, the BVC leased site be alcohol prohibited at all times.

15 Section 632A(8) of the Act provides that an APA cannot be established without the approval of the Local Area Commander of Police for the area. Council must seek and obtain this approval prior to establishing a new APA. This process allows the Local Area Commander to consult with the relevant Community Safety Precinct Committee or similar body to help ensure that the decision to declare an APA is done transparently and in consideration of the community's wishes.

20 The Ministerial Guidelines on Alcohol-Free Zones further recommends that when considering such a declaration, the General Manager of Council will also need to liaise with the Local Area Commander of Police to determine if council enforcement officers are suitable for this role.

25 It is recommended that Council undertake the consultation process with the Local Area Commander of Police.

30 The map below depicts the BVC leased site. The black outline indicates the proposed APA being described as Lot 1 DP 827049. The red crosses indicate the proposed locations of the APA signage.



Busking at the BVC

5 Further to the above, the Arakwal Corporation has suggested activating the BVC leased site by allowing the area (depicted by a blue circle in the below photograph) to be a designated busking site. This option may assist with managing anti-social behaviour by passively encouraging persons drinking in the area to move away.

10 At the April 2018 meeting, it was noted that BVC staff were supportive of this option. Currently there are large numbers of visitors and residents that frequent this space while waiting for buses and, this type of use may serve as an effective activation of the space by community and passers by generally.

15 As such it is recommended that Council's current Busking Policy be amended to include the BVC leased site (as depicted in the photograph below) as a busking site with consideration of restricting busking to daylight hours for safety reasons if deemed appropriate.



20 **Financial Implications**

Costs for signage will be covered from existing budgets.

25 **Statutory and Policy Compliance Implications**

Local Government Act 1993
Ministerial Guidelines on Alcohol-Free Zones
Byron Shire Council Policy 13/002 Busking
2008-2018 Byron Shire Council Tourism Management Plan

Report No. 13.25 **Development of a Dogs in Public Spaces Strategy**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
 Mal Hamilton, Animal Enforcement Officer

5 **File No:** I2018/1071
Theme: Ecology
 Planning Policy and Natural Environment

10 **Summary:**

In response to feedback received through the recent Community Strategic Plan community engagement; it is proposed to prepare a Dogs in Public Spaces Strategy (DiPS) to develop a balanced policy approach for the management of dogs in Council’s public spaces.

15 The development of a DiPS will contribute to Council's Companion Animal Management Plan and will seek to encourage responsible pet ownership and compliance with relevant legislation.

20 The DiPS will be developed in three stages:

1. Initial information gathering and research;
2. Further information gathered through community consultation; and
3. Strategy development and implementation.

25 It is proposed that the DiPS will replace the Byron Shire Council Policy 5.31 Companion Animal Exercise Areas – which was last reviewed in 2011.

RECOMMENDATION:

That Council:

1. **Note the report and support the preparation of a Byron Shire Dogs in Public Spaces Strategy.**
2. **Receive a further report on Stage 1 - Byron Shire Dogs in Public Spaces Strategy (Initial information gathering and research) and a Community Engagement Plan once this work is completed.**

30

Report

The introduction of the Companion Animals Act in 1998 established a legislative framework, where dogs were limited to leashed activities except in designated off leash areas.

5 Byron Shire Council Policy 5.31 Companion Animal Exercise Areas defines areas where people may exercise their dogs.

[Current Policy 5.31 and off-leash-exercise-areas](#)

10 This Policy was last reviewed in 2011, and its currency is now in question.

15 It is proposed that a Dogs in Public Spaces Strategy (DiPS) be prepared instead of a revised policy. The DiPS will provide direction for the management of dogs in Council's public spaces. The DiPS once adopted by Council will replace Policy 5.31 with a new Dog off Leash Plan and site standards.

20 The development of the DiPs is timed to respond to the recent community feedback received about dogs and beaches, dogs off-leash areas, and the issue of dogs in public spaces generally.

Extracts from Byron Shire Council Community Strategic Plan Engagement Outcomes report below–

Q2. What is the most important thing for Council to consider as it plans for the next 10 years?

Fix the roads and police illegal campers, noisy & uncontrolled dogs, also people who ignore the noise laws.

25 **WHAT'S YOUR BIG IDEA FOR OUR FUTURE?**

- More areas to walk dogs without fear of enforcement action
- More buskers, music, fun!!!
- More dog off leash areas (not fenced yard!)
- Dogs and beaches increase at Brunswick Heads.
Increase access share times

30 **Development of the draft Dogs in Public Spaces Strategy**

35 The DiPS will be developed in three stages:

1. Initial information gathering and research

- A review of Council held dog data, including information and statistics on the number of registered dogs across the Shire;
- The number of dog related incidents responded to by Council enforcement officers;
- A review of relevant state legislation pertaining to dogs in public spaces;

- Utilisation of recent open spaces study information to develop understanding of exercise and recreation practices with dogs, specifically related dog exercise;
 - Review of previous community engagement relating to issues around dogs to identify potential issues and potential stakeholders; and
 - 5 • Determine and review the scope of the strategy document.
2. Further information gathered through community consultation
- The management and control of dogs in public open space;
 - 10 • How well the needs of dog owners are presently accommodated in parks and public spaces;
 - How well the existing off-leash areas have been operating and receive suggested improvements;
 - 15 • Obtain views about the provision of infrastructure (e.g. seating, waste bag dispenser, signage, fencing) within Council’s dog off-leash areas; and
 - Create a priority based system to plan future improvements.
3. Strategy development and implementation.
- 20 • Implement the Action Plan
 - Introduce funding priorities based on the off-leash development framework.
 - Introduce new signs and dog education campaign
 - Periodic review of strategy.

25 *Responsible dog ownership education campaign*

30 A known key issue affecting the current operation of dog off leash areas is confusion on the location, timing and boundaries of off leash areas. Further to this is the need for more responsible dog owners; this is evidenced by the increasing number of dog incidents, attacks and complaints reported to and investigated by the community enforcement team each year.

35 To kick-start the DiPS strategy project, a range of new dog communication material has been developed by staff and is to be launched locally in July/August as a ‘Dog Friendly Beaches campaign’.

40 Council is also looking to partner with local vets, BARCO, CAWI, and Friendly Dog Collars (under Council’s Sponsorship Policy) as part of this campaign to reinforce a message that people and dogs can coexist in the community but only through proactive and responsible dog ownership.

40 Examples of new communication materials below:



5

Community Engagement

- 10 A community engagement plan will be prepared for the DiPS project, and will include a range of engagement and consultation activities and methods like:
- Results of the ‘residents open space survey’ (previously undertaken)
 - Self selected ‘dog exercise survey’
- 15
- Online engagement ‘Have your Say’ and social pinpoint or collaborative map tool
 - Face to face park and public space sessions

The community engagement plan will be reported back to Council (after consideration by the Communications Panel) for endorsement. This will occur at the completion of stage one of the DiPS project process outlined above.

5 Financial Implications

Project costs to be managed within the Community Enforcement Budget.

Statutory and Policy Compliance Implications

10 The *New South Wales Companion Animals Act (1998)* requires local government to have at least one dog off leash area. Byron Shire has 8 local off-leash exercise areas at parks and beaches, (across a range of sizes, facilities, locations, and availability).

Report No. 13.26 BSC ats Dromore Properties Pty Ltd Land and Environment Court Proceedings

Directorate: Corporate and Community Services
Report Author: Ralph James, Legal Counsel
Chris Larkin, Manager Sustainable Development
File No: I2018/1059
Theme: Ecology
Development Certification

Summary:

On 8 March 2018 development application 10.2017.686.1 (DA) was received by Council. The DA sought:

Multi-dwelling housing comprising 3 dwellings, in two (2) stages as follows:

Stage 1: Alterations and additions to existing dwelling and strata subdivision to create two (2) strata lots including vacant development lot; and

Stage 2: Two (2) dwellings to create multi dwelling housing comprising three (3) dwellings and strata subdivision.

On 19 April 2018 Council refused the DA.



On 6 March 2018 the applicant commenced in Class 1 of the Land and Environment Court's jurisdiction against Council's deemed refusal of the DA.

Given the circumstances which are set out in full in the body of this report, delegation is sought for the General Manager to enter into a section 34 conciliation agreement or to go to a consent orders hearing as Council staff are of the opinion that Council's contentions in the Land and Environment Court proceedings are addressed. Initial Draft conditions are attached as is the amended proposal which is now just a two lot strata subdivision.

RECOMMENDATION:

That the General Manager be authorised to enter into consent orders or a s34 Conciliation Agreement approving Development Application 10.2017.686.1, subject to appropriate conditions to be finalised under delegation.

Attachments:

- 1 Attachment 1 Ordinary 21 June 2018 Dromore report, E2018/48100 
- 2 Attachment 2 Conditions of Consent Dromore LEC Appeal, E2018/48104 

Report

On 8 March 2018 development application 10.2017.686.1 (DA) was received by Council. The DA sought:

5

Multi-dwelling housing comprising 3 dwellings, in two (2) stages as follows:

Stage 1: Alterations and additions to existing dwelling and strata subdivision to create two (2) strata lots including vacant development lot; and

10

Stage 2: Two (2) dwellings to create multi dwelling housing comprising three (3) dwellings and strata subdivision.

The DA was subject to Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

15

The exhibition period was 21/12/2017 - 10/01/2018. Four submissions were received.

Staff assessed the proposed development as being inconsistent with provisions of the Byron LEP 2014 and DCP 2014 and likely to result in significant impacts on the existing residential environment in the Kingsley Heritage Conservation Area.

20

The proposed development was also assessed as contravening Council's adopted development standards and controls having regards to access and parking, heritage character and landscaping without sufficient justification. It was considered that approval would set a precedent for similarly inappropriate development within land zoned low density residential in a heritage conservation area and that the proposed development was not in the public interest.

25

On 19 April 2018 Council refused the DA.

30

Resolved that pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*, development application no. 10.2017.686.1 *for multi-dwelling housing in stages -*

Stage 1: Alterations and additions to existing dwelling and strata subdivision to create two (2) strata lots including vacant development lot; and

35

Stage 2: Two (2) dwellings to create multi dwelling housing comprising three (3) dwellings and strata subdivision,

be refused for the following reasons.

40

REASONS FOR REFUSAL:

a) Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with clause 4.1 *Minimum subdivision lot size* of *Byron Local Environmental Plan 2014*, which sets a 600m² minimum lot size for new lots.

45

b) Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with clause 5.10 *Heritage conservation*. The proposed development would have a significant effect upon the significance and setting of the Kingsley Street Heritage Conservation Area. The proposed roof forms, design of the proposed additions and the rear dwellings are likely to negatively impact upon the setting of the existing dwelling, and the group of single storey dwellings, streetscape and landscape setting which collectively demonstrate historical, and aesthetic significance as part of the Kingsley Street Heritage Conservation Area.

50

- 5 c) Pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with clause 6.6 of *Byron Local Environmental Plan 2014*, which requires development consent must not be granted to a development unless suitable vehicular access has been provided. The proposed vehicular access does not meet requirements in accordance with Australian Standards AS2890.1.
- 10 d) Pursuant to Section 79C (1) (a) (iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with *Byron Development Control Plan 2014*, for the following reasons:
- Chapter B2 *Preservation of Trees and Other Vegetation*
 - Chapter B3 *Services*
 - B3.2.1: *Road Access* - laneway aisle width not adequate for cars reversing out of stacked car park. Vehicular stacked parking located in building setback on laneway.
 - Chapter B4 *Traffic Planning Vehicle Parking, Circulation and Access*
 - B4.2.2: *Parking Layout Standards* -Inadequate width on Marvel Lane for cars reversing out of the stacked parking - does not comply with AS2890.1 requirements
 - Chapter B9 *Landscaping*
 - B9.3.1 *General Landscape Principles*
 - B9.4 *Multi Dwelling Housing, Attached Dwellings and Residential Flat Buildings*
 - Chapter C1 *Non Indigenous Heritage*
 - C1.3.1 *General Streetscape Context*
 - C1.4.1 *Roof Form and Chimneys*
 - C1.4.2 *Verandahs*
 - C1.4.6 *Parking, Garages and Carports*
 - C1.4.9 *Subdivision*
 - C1.6.3 *Kinsley Street Byron Bay Conservation Area*
 - D1 *Residential Accommodation in Urban, Village and Special Purpose Zones*
 - D1.2.2 *Setbacks - Minimum Street Frontage Setbacks*
 - D1.6.3 *Landscaping*
 - D1.6.4.1 *On site car parking*
- 35 e) Pursuant to the provisions of Section 79C (1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is not considered suitable for the development as proposed, as there is insufficient area to accommodate the proposed dwellings and associated vehicle access and deep soil area resulting in further removal of vegetation and an overdevelopment of the site.
- 40 f) Pursuant to the provisions of Section 79C (1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of a development which contravenes Council's adopted development standards and development controls without sufficient justification may set an undesirable precedent and is not in the public interest.

45 Land and Environment Court proceedings

50 On 6 March 2018 the applicant commenced in Class 1 of the Land and Environment Court's jurisdiction against Council's deemed refusal of the DA.

The proceedings were listed for a telephone directions hearing on 9 April 2018. On that day the Court listed the matter for a conciliation conference pursuant to section 34 (see below in Statutory and Policy implications) of the Land and Environment Court Act 1979 on 19 June 2018.

The amended proposal

5 The applicant now seeks consent only for the subdivision of the land into two strata lots as follows:

- Lot 1 – 580m²
- Lot 2 – 583 m²

10 Lot 1 contains the existing dwelling house and fronts Carlyle Street, whilst Lot 2 fronts Marvel Lane to the rear.

The Site and Locality

15 The subject property comprises two lots being Lot 14 Sec30 DP 758207 and Lot 2 DP 401710 with a total area of approximately 1163 m². The property address is 57 Carlyle street, Byron Bay and is zoned R2 Low Density residential under Byron LEP 2014. The property is also located in the Kingsley Street Conservation area.



Site boundary of subject lots

25 The property is surrounded by a mix of residential development comprising single dwelling houses and dual occupancy development. On the corner of Massinger and Carlyle Street is the top Shop, while to the west is the Byron Bay recreational Grounds. The property is within close walking and cycling distance to the CBD, the beach and other public amenities and facilities.



Streetscape character

5 Council’s contentions in the proceedings

The applicant has greatly simplified the development and is now seeking approval for a two lot strata title subdivision. With the removal of the two dwellings from the rear vacant lot, and subsequent amendments to Byron LEP 2014 by the Department of Planning in relation to Minimum lot sizes for strata subdivision, Councils contentions and reasons for refusal in the first instance fall away as follows

1. Non Compliance with Clause 4.1 of Byron LEP 2014

Byron LEP 2014 was amended by the Department of Planning with a statewide amendment to the Standard instrument on 20 April 2018. The Clause now states

Byron Local Environmental Plan 2014

4.1 Minimum subdivision lot size

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that lot sizes are compatible with local environmental values and constraints,*
 - (b) *to facilitate efficient use of land resources for residential and other human purposes.*
- (2) *This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*
- (4) *This clause does not apply in relation to the subdivision of any land:*
 - (a) *by the registration of a strata plan or strata plan of subdivision under the [Strata Schemes Development Act 2015](#), or*
 - (b) *by any kind of subdivision under the [Community Land Development Act 1989](#).*

In this regard sub-clause 4 excludes compliance with the minimum lot size map provisions of 600 m2. The two proposed lots are of a size and area that are capable of accommodating dwelling houses with Lot 1 already occupied by an existing dwelling.

2. Heritage Impacts

5 As the proposal now is for the subdivision of land only and no building work in terms of the
construction of dwellings on the vacant lot, this contention and the relevant reasons for refusal is
no longer relevant. However, it is noted that the matter will need to be considered in the future with
any applications for development on the vacant lot or other applications to works on the existing
house on Lot 1. To ensure the character of the area though is not subsequently diminished by
10 proposal that may be regarded as an overdevelopment of the site, having regards to the low
density nature of the neighbourhood, a restriction on title has been recommended limiting each lot
to a single dwelling house only.

3. Access and Parking

15 The proposal as originally designed raised issues in relation to inadequate parking and access
from the rear lane for the two additional dwellings resulting in reasons of refusal under both Byron
LEP 2014 and Chapter B4 of DCP 2014. These issues have now been removed, but any future
design for a dwelling will need to be considered against the relevant planning controls at that time.
20 In term of access, Marvel Lane can cater for a single dwelling house, whilst the proposed plan of
subdivision for Lot 2 includes access from the rear lot to Carlyle Street via a 1.2 metre wide access
handle, which is required under Councils D6 Subdivision

4. Other DCP Provisions

25 The original proposal included in adequate open space and landscaped area for the two dwellings
on the rear lot, whilst designated car parking was proposed within the setback to the rear lane. By
approving a vacant lot only which can only be developed for a single dwelling house, these matters
have been addressed. Any future application will need to be considered against the planning
30 controls at that time.

5. Tree Removal

35 The original proposal required the removal of 9 trees from the rear lot along the Marvel Lane
boundary to facilitate the construction of the proposed dwellings on this lot. This includes a mixture
of palms, two eucalypts, a mango tree and another unidentified species. As the lot is to remain
vacant at present, the need to remove vegetation with this DA is no longer required. Conditions of
consent recommended to enable the removal of non native vegetation from the property only. Any
future application to develop the vacant lot 2 will need to consider impacts on native vegetation at
40 that time

Delegations

45 Given the circumstances which are set out in full in the body of this report, delegation is sought for
the General Manager to enter into a section 34 conciliation agreement or to go to a consent orders
hearing as Council staff are of the opinion that Council's contentions in the Land and Environment
Court proceedings are addressed.

Financial implications

50 The estimated professional legal costs of defending the appeal is \$25,000 excluding GST,
assuming that the hearing in the matter only takes 1 day. If the hearing takes longer the legal costs
will be higher.

55 The estimated professional legal costs incurred to the Section 30 for conciliation conference is
\$10,780.

Statutory and Policy Compliance Implications

Section 34 Conferences

5 Conciliation in the Court is undertaken in accordance with Section 34 of the Court Act (otherwise known as a Section 34 Conference).

10 Section 34 Conferences, as articulated by the Chief Judge in (2008) 19 ADRJ 72, provide: *“for a combined or hybrid dispute resolution process involving first, conciliation and then, if the parties agree, adjudication. The conciliation involves a Commissioner with technical expertise on issues relevant to the case acting as a conciliator in a conference between the parties. The conciliator facilitates negotiation between the parties with a view to their achieving agreement as to the resolution of the dispute. If the parties are able to reach agreement, the conciliator, being a*
15 *Commissioner of the Court, is able to dispose of the proceedings in accordance with the parties’ agreement.”*

20 The Court’s practice note encourages parties to consider using Section 34 Conferences to resolve disputes or narrow the scope of issues in dispute. The parties should properly prepare for each conference with this purpose in mind.

25 In accordance with Section 34(1A) of the Court Act it is the duty of each party to proceedings where a conciliation conference has been arranged to participate, in good faith, in the conciliation conference.

Conciliation Agreement/Consent Orders

30 The differences between finalising the Court proceedings via a Conciliation Agreement compared to Consent Orders are as follows:

- 35 1. A Conciliation Agreement is between Council and the applicant ie Council stays the determining authority.

Use of a Conciliation Agreement would bring the Court cases to an end immediately and without the need for Council to include any expert witness costs or any legal costs beyond the minor costs associated with finalising the Conciliation Agreement.

- 40 2. Consent Orders are Orders issued by the Court by agreement ie the Court becomes the determining authority and has the power to refuse to issue the orders the parties are asking for and/or to make different orders instead. With a Consent Orders hearing, everything, including the proposed conditions, is open to the Court to finally determine and, for example, a Commissioner might disagree with proposed conditions and issue orders with different conditions.

45 Because the Court becomes the determining authority, Consent Orders will not be entered by the Court without a hearing. That means a hearing would need to be held (usually commencing on-site then adjourning to a local Court house) and solicitors, expert witnesses and people who lodged an objection who wished to make a verbal submission to the hearing would have to attend, and Council would incur the associated legal and witnesses costs.

50 Usually, Consent Orders Hearing are shorter than defended hearings, often only 2 - 4 hours instead of the minimum full day hearing or more, but the hearing still needs to be prepared for and attended, just like a defended hearing would be, which means that the vast majority of the costs are still incurred.

55

Due to the reduced certainty and the higher costs, this is usually not the option recommended by staff for disposal of the court cases where Conciliation Agreement option is still available, as is the case here.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.27 Biobanking for Byron Bay Bypass - Dedication Of Land

Directorate: Infrastructure Services

5 **Report Author:** Phil Warner, Manager Assets and Major Projects

File No: I2018/1051

Theme: Community Infrastructure
Local Roads and Drainage

10

Summary:

15 Council has previously resolved to dedicate Lot 66 in DP 863772 Lilli Pilli Drive, Byron Bay and Lot 2 in DP 706286 Bayshore Drive, Byron Bay for the purpose of BioBanking as an offset to the assessed impact of the construction of the Byron Bay Bypass.

The purpose of this report is to seek the further dedication of the small road reserve lots that adjoin Lot 66 which are needed to finalise the Bio Banking Agreement.

RECOMMENDATION:

That Council dedicates lots:

- Lot 7, DP 809005
- Lot 24, DP 845454
- Lot 46, DP 848543
- Lot 47, DP 854800

20 In addition to Lot 66, DP 863772 Lilli Pilli Drive, Byron Bay for the purposes of BioBanking as an offset to the impact of the construction of the Byron Bay Bypass.

Report

Council has previously resolved to dedicate Lot 66 in DP 863772 Lilli Pilli Drive, Byron Bay for the purpose of BioBanking as an offset to the impact of the construction of the Byron Bay Bypass.

5 The purpose of this report is to seek the further dedication of the small road reserve lots that adjoin Lot 66 which are needed to finalize the Bio Banking Agreement.

The lots are shown on the plan below and are:

- 10
- Lot 7, DP 809005
 - Lot 24, DP 845454
 - Lot 46, DP 848543
 - Lot 47, DP 854800

15 Whilst the additional land dedication is comparatively small, it is important in achieving the required number of biodiversity credits.

20 These lots have the same ecological characteristics as the much larger Lot 66 and are ideal for dedication for the purposes of BioBanking.

Council has now been issued the Lilli Pilli Site BioBanking Agreement by OEH for finalisation based on the land dedication of Lot 66 and the additional small lots.

25 Resolution 15-504 also dedicated Lot 2, DP 706286 in the Byron Bay STP area. This site is the subject of a separate BioBanking Agreement which is nearing finalization. Both sites have proved necessary to achieve the required BioBanking credits to offset the assessed impact of construction of the Byron Bay Bypass.



Financial Implications

- 5 Finalisation of the Lilli Pilli BioBanking agreement involves payment of the Total Fund Deposit (TFD) of \$263,995 excluding GST. Council makes this payment up front and it is held by the BioBanking Trust. An annual payment is returned to Council based on compliance with the terms of the agreement.

The value of the TFD for the Lot 2, DP 706286 site is yet to be determined.

The TFD payments are funded from the Bypass project budget.

5

Statutory and Policy Compliance Implications

BioBanking Agreements are established under the provisions of Part 7A Division 2 of the *Threatened Species Conservation Act 1995*.

10

Council and the Minister for the Environment enter into the *BioBanking Agreement* under clause 14 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* for the purpose of designating the biobanking site.

Report No. 13.28 **Update on MR 545 Transport Studies**
Directorate: Infrastructure Services
Report Author: Christopher Soulsby, Development Planning Officer S94 & S64
File No: I2018/1053
5 **Theme:** Community Infrastructure
 Local Roads and Drainage

Summary:




10 The purpose of this report is to update Councillors on the progress of the Main Road 545 (MR545) Transport Study and the design and civil works undertaken on MR 545.

15 A secondary purpose is to have Council set a budget allocation to undertake further design work to facilitate koala movement across MR545 between Belongil Creek and Bayshore Drive.

RECOMMENDATION:

1. **That Council note the update on MR 545 Transport Studies; and**
2. **That Council allocate a budget of \$60,000 from the Byron Bay urban roads developer contributions account to undertake design work for fauna fencing and underpasses on Ewingsdale Road section of the MR545.**

Attachments:

- 20 1 QTT17012 Desktop Review of MR545 Traffic Studies for Byron Shire Council (Final).pdf, E2018/46908 
- 2 QTT17012 - West Byron Report - Independent Review (101117).pdf, E2018/46906 
- 3 24.2015.48.1 from Lambert and Rehbein Ewingsdale Road B15408 Concept Design Report Draft Final Rev A - Appendix A B15408-DR-01to11_A, E2016/86687 
- 25

Report

The purpose of this report is to update Councillors on the progress of the Main Road 545 (MR545) Transport Study and the design and civil works undertaken on MR 545. A secondary purpose is to have Council set a budget allocation to undertake further design work to facilitate koala movement across MR545 between Belongil Creek and Bayshore Drive.

Council has engaged a consultant to undertake a two stage process in the updating of the MR545 Strategic Study from 2008. This was to be undertaken in two stages.

Stage 1 - Desktop Review of all previous traffic studies (Complete); and
 Stage 2 - Prepare Tender documentation to undertake modelling and prepare a new strategy

Since the issue of the contract to the consultant Council has resolved as follows:

17-359 Resolved:

1. *That Council review its plans and strategies for transport management including roadworks through the Ewingsdale transport corridor and access to the Byron Bay town centre in order to identify actions to reduce the number of cars entering Byron Bay township and strategies to increase alternative transport modes within the corridor.*

2. *That staff undertake an assessment of future transport needs through the Ewingsdale transport corridor and access into Byron Bay town centre in light of all relevant available data including, but not limited to:*
 - i) *MR545 Study*
 - ii) *Byron Bay Town Centre Masterplan*
 - iii) *Findings of the Access and Movement Strategy*
 - iv) *Current and future projections of tourist numbers*
 - v) *Byron Zero Emissions Strategy*
 - vi) *EV Strategy*
 - vii) *Any other relevant studies and data*

3. *That Council reiterates its commitment to reducing traffic in Byron Town Centre and creating opportunities for more public transport, pedestrians and bicycles. (Coorey/Cameron)*

The studies that have been considered in the desktop review are:-

Name of study & author (pages)	Scope and Purpose	Modelling	Primary data	Key appendices / additions
MR545 Strategic Study (2008) Opus	Main Road (MR) 545 road corridor from Pacific Highway, Ewingsdale to Clifford St, Suffolk Park. Review 2008 data & model to 2018/2028 growth & identify required road upgrade works to meet current and future demand along corridor plus options for a town centre 'bypass'	SATURN and SIDRA, base year 2008, forecasting to 2018 and 2028	origin-destination and volume & intersection counts.	Modelling output and updates including specific findings and diagrammatic outputs
West Byron Development Transport Study – Final Report (March, 2011) Veitch Lister Consulting (VLC)	Study based on a 855 household sub-division with est. population of 2,182, plus employment of 379 people in business & light industry located across a 108ha greenfield site adjacent to south side of Ewingsdale Rd, between Bayshore Drive and Sunrise Blvd.	VLC ZENITH model of trip generation, trip distribution, modal choice and trip assignment, plus various	Modelled volumes & observed traffic counts, demographic data incl. household, population,	Also see VLC <i>Supplementary Report on Level of Service Changes (dated March 2011)</i>

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.28

	As with MR545 Study, had 2008 base year and model/forecasting to 2018/2028 including 'bypass' options.	sub-models	employment.	
Byron Shire Central Hospital (August 2014) Taylor Thoms Witting (TTW)	Respond to the Secretary's Environmental Assessment Requirements (SEARs) Section 78A(8A) of the EPA Act by reviewing Transport and Accessibility issues such as: traffic generation, public transport review, transport management strategy, parking provisions, alternative transport (pedestrians, cyclists), and service vehicle requirements of the then proposed (but now completed) development of 3 buildings up to 2-level height with up to 180 FTE staff providing medical & specialist services located near 7km west of Byron Bay & within 500m of the Pacific Highway interchange at Ewingsdale.	SIDRA, base year 2008, forecasting to 2018 and 2028	Count data and other studies, eg West Byron & RTA (now RMS) publications	Appendices A and C
Ewingsdale Retirement Facility DCP Traffic Study Report (25/11/15) Bitzios Consulting	Development proposed on 2 lots, one either side of the hospital. Council required a DCP for the site & a study of its traffic impacts.	SIDRA, forecasting to 2028	Traffic counts (2015 data)	CRG Traffic Study (April, 2014), see s3.4 for summary
The Farm Byron Wellness Hub McGettigans Lane TIA - Ewingsdale Road Intersection Assessment Bitzios Consulting Broken Head Road / Clifford Street Intersection Traffic Analysis Report TTM Consulting	Onsite café, restaurant and produce. Vehicle access from Woodford Lane (not Ewingsdale Rd) & opposite/near above referred hospital & retirement facility. http://www.thefarmbyronbay.com.au Development application for a private hospital and day surgery Intersection modelling and road safety audit of roundabout designs.	Traffic Impact Assessment Traffic Impact Assessment SIDRA sensitivity analysis and forecasting SIDRA forecasting to 2038 for roundabout and signals	Traffic counts Traffic counts 2015, 2016 and 2017 data 2015 Traffic counts	

A copy of the desktop review of these studies is provided as attachment 1. This review confirmed that based upon the modelling Council should "maintain option to construct 4 lane divided

carriageway on Ewingsdale Road” between Bayshore Drive and Sunrise Blvd, as shown in in the concept plans for the upgrade of Ewingsdale Road E2016/86687 (Attachment 3).

- 5 In addition to the desktop review staff have had the consultant to undertake an independent review of the traffic study for the West Byron Villa World development application DA 10.2017.201.1, this is provided as attachment 2.

10 The consultant has identified the following scope of work for the study in consultation will staff, as extracted from the tender documents:

Phase 1 – Existing 2018 Road Network Review

- 15 A. *Review key strategic and local plans and studies provided by Byron Shire Council to establish an understanding of the relevant current and future land uses and approved development.*
- B. *Collate and map the land use and density (including potential increases) identified in the various plans that need to be taken into account to determine the background changes to local traffic patterns and intersection performance.*
- 20 C. *Research the impact of seasonal variations and major events on the road network to gain a clear understanding of the disruptions caused along the route throughout the year.*
- D. *Undertake traffic surveys of all intersections along the route to assess current traffic conditions. It is expected that a morning and afternoon peak period will be modelled for a weekday scenario as well as peak period scenario for a weekend (i.e. Friday afternoon, Saturday midday or Sunday midday).*
- 25 E. *Prepare the microsimulation traffic model for the base case 2018 scenarios, outlining the rationale for the methodology selected.*
- F. *Provide a visual presentation to Council outlining the results of the current situation and identifying opportunities and constraints within the network.*
- G. *Compile the findings in a Report for Council.*

30 *Phase 2 – Identify Improvements for 2028 and 2038*

- A. *Identify opportunities for improving the road network along the study corridor that will relieve congestion and improve safety.*
- 35 B. *Provide advice on the required intersection treatments including options for traffic signals and other innovative solutions. Essential to the investigation would be resolving issues at the interface with the M1 and the interface into the town centre.*
- C. *Identify and test potential changes to the network and clearly document the outcomes of each scenario including the capacity constraints for design year scenarios of 2028 and 2038.*
- D. *Solutions may also involve temporary treatments during peak period, such as bus priority lanes, parking and ride facilities and/or active transport initiatives.*
- 40 E. *Prepare concept plans outlining how to improve traffic flow and efficiency along the route, provide for incident management and seasonal fluctuations, and outline specific details on geometric and control requirements at intersections.*
- F. *Provide a visual presentation and workshop to Council outlining the results of modelling and analysis and the impact of varying seasonal scenarios. The outcomes of the traffic model and recommended improvements should identify the design life and capacity constraints of the road network to allow the scope for Phase 3 of the project to be more defined.*
- 45 G. *Complete the recommendations in a Report for Council.*

Phase 3 – Strategic Vision

- 50 A. *Define the objectives and methodology with Council prior to commencement of work. This option may involve high level planning and/or a mesoscopic traffic model to assess the impacts of alternative route options.*
- B. *Undertake a strategic study of alternative corridor options for long term planning to 2038.*
- C. *This study would investigate options for alternative routes to and from Byron Town Centre with considerations to the following;*

- 5 a. A road/vehicle corridor to a certain point, where a park and ride station could connect to train/bus services into the town centre.
- b. A green link for alternative modes of transport such as buses, pool cars.
- c. An extension to the unused train corridor with options for park and ride close to the M1.
- 5 d. An alternate corridor with innovative options to move people between the M1 and the town centre and to service seasonal variations, festivals and events.
- e. a road/vehicle corridor to a certain point, where a park and ride station could connect to train/bus services into the town centre
- 10 D. The aim would be to secure an alternate corridor with innovative and sustainable options to move people between the M1 and the town centre and to service seasonal variations, festivals and events.
- E. Prepare a visual presentation and workshop with Council to prioritise preferred options.
- F. Provide the strategic vision and options analysis in a Report for Council.
- 15 The microsimulation model as specified in Phase 1 E will incorporate pedestrian movements in the town centre.

20 Based on resolution 17-359 the outcomes of the access and movement strategy will need to be incorporated into Items A, B, C and D in phase 2 before the tender for this work can be let. The draft access and movement strategy has yet to be finalised such that it can be reported to Council for adoption. Once Council has endorsed the proposed changes to the pedestrian and vehicle network in the town centre these can then be modelled.

25 There have been a number of additional issues that have arisen on MR545 since the preparation of the draft tender documentation, these are:

- Koala movements across MR545 (Ewingsdale Road Section) between Belongil Creek and Bayshore Drive;
- Western end of MR545 and traffic queues on the motorway interchange and hospital roundabout;
- 30 • Byron Bay High School Access; and
- Clifford Street Intersection – Suffolk Park

Koalas

35 **17-080 Resolved that Council:**

1. Seek advice (in two stages) from a suitably qualified expert;
- 40 i) to find out within one month of the date of this Resolution the types of measures possible to mitigate koala road-kill along Ewingsdale Road in the vicinity of Sunrise Boulevard; and
- ii) receive within two months of the date of this Resolution details on proposed works to be incorporated into current design work for the upgrade of Ewingsdale Road to a dual lane carriageway to achieve that mitigation.
- 45 2. Seek voluntary assistance and guidance from local experts on the matter.
(Coorey/Richardson)

50 The first part of this resolution has been completed with a report prepared by Dr Steve Phillips of Biolink that encourages Council to give consideration to making provision for the safe under-road passage of koalas and other wildlife in the area between Bayshore Drive and Sunrise Blvd. These underpasses would involve the retro fitting of fauna paths in existing culverts. To ensure the effectiveness of these underpasses koala fencing will be required on both sides of Ewingsdale Road, grids at intersections and driveways and self closing gates on the cycleway / footpaths. Dr Phillips has recommended that the fencing extend from Sunrise Blvd to Bayshore Drive. Staff have evaluated the option of incorporating the fauna paths into the existing culverts and consider that there is significant potential for these to become a debris trap in storm and flood

55

events. The blockage of a cell in the major culverts on Ewingsdale Road could have significant upstream flood impacts in the Arts and Industrial estate and Sunrise residential area.

5 The location of the fences will have to have consideration for the location of the acoustic treatments and drainage requirements for the West Byron developments. Access points for cycleways and allowances for landscaping will also require consideration. It is probable that the inclusion of fencing will require additional land acquisition. A potential cost and land saving would be to incorporate the koala fencing into the acoustic barrier required by the West Byron development.

10 In a memorandum to Councillors (E2018/21312) staff indicated that the design cost would be approximately \$40,000 for fencing and fauna underpasses. This was on the basis that the fauna underpasses would be retrofitted to into existing culverts as these were extended as part of the dual upgrade of this section of Ewingsdale Road. As this option is not viable due to flood impacts additional culverts specifically for fauna underpasses will be required. Staff have not as yet received a price from the designers to undertake this work but it is a more complex design problem and will likely require a larger budget to under take this work. It is recommended that Council allocate a budget of \$60,000 to design the fauna underpasses and fencing on Ewingsdale Road. This can be allocated from the Byron Bay urban roads developer contributions account.

20 **Western End of MR545 - Ewingsdale**

25 The section of MR545 from McGettigans Lane back to the motorway interchange (M1) has become a significant safety issue for Council and Roads and Maritime Services (RMS).

There is queuing caused either by the interchange roundabout or the hospital roundabout.

30 Staff have been working with RMS on interim solutions designed to limit the duration and length of the queue onto the motorway. The RMS has recently carried out works on the off ramp, interchange and works on Council's assets on MR 545. These works are interim and have limited the queue length and duration but have not eliminated the queue on the motorway. A complete solution will involve significant upgrade works (dual lane) from the interchange through to McGettigans Lane.

35 The RMS has undertake their own modelling of this section of MR545 and this modelling has been used to inform the Council's concept designs. Council has completed concept designs to determine the extent of acquisition required on the northern side of Ewingsdale Road. Staff and RMS representatives are negotiating a planning agreement with the Farm on the acquisition / dedication of the land required as part of the assessment of the planning proposal to enable certain uses at "The Farm".

40 The upgrade works are incorporated into the tender documents for modelling but may proceed prior to the completion of the study. The final design of the upgrade works would be subject to further consultation with all stakeholders in the locality. Key stakeholders are NSW Health, RMS, Council, The Farm, Holcim (batch plant), Essential Energy and residents of Ewingsdale that access MR545 from McGettigans Lane. The reason for the upgrade works proceeding in advance of the study is that the works would be compliant with the RMS modelling and are required to mitigate against a significant safety issue.

50 The progression of the works will be dependent on funding arrangements between the State Government and Council that have yet to be determined. Upon determination of a design and funding model these issues would be brought to a workshop and then to Council for adoption.

55 **Byron Bay High School**

A number of transport issues concerning Byron Bay High school have been raised in a letter from the principal (E2018/44638).

Staff will be meeting with representatives from the school on 20 June 2018.

5 Whilst many of the issues are not directly related to MR545 as they concern Arakwal Court there are traffic, pedestrian and cyclist issues related to the intersection of Arakwal Court and MR545.

10 The function of the intersection will be considered as part of the modelling exercise and will be incorporated into the tender for the study. Options for intersection upgrades and the timing and funding of the upgrades will be explored in the study.

Clifford Street Intersection – Suffolk Park

15 A number of transport and safety issues concerning Clifford Street Intersection have been raised in the past and initial investigation reports have focused on providing a roundabout at this location to resolve the situation. The provision of a roundabout will involve land acquisition and significant road realignment and more recently the community has indicated that traffic signals could be reconsidered as an option for this intersection.

20 Council has allocated funds in the draft 2018/19 budget to install interim improvement works including a temporary closure of the left turn lane into Clifford Street and the relocation of the “Give Way” signage to improve sight lines and hopefully reduce the incidence of vehicle collisions.

25 The interim solution will be monitored and used to inform a review of the function of the intersection to be considered as part of the modelling exercise and will be incorporated into the tender for the study.

30 Council resolution 17-685 called for the consideration of alternative intersection treatments across the shire and for staff to provide a further report. Options for the intersection upgrade at Clifford Street will use a merit based approach that considers the relevant constraints and will include an analysis of various treatments including effectiveness, costs and RMS requirements as part of this study.

35 Financial Implications

There is an existing budget allocation to undertake the study and is funded from developer contributions. This budget will require to be carried over into the 2018/19 financial year due to delays caused by the completion of the access and movement strategy.

40 An additional \$60,000 of developer contributions will be required to undertake the additional design work for fauna crossing and fencing. As this can be funded from developer contributions it will not adversely impact on the balance of the budget.

45 Statutory and Policy Compliance Implications

There are no statutory or policy implications arising from this report.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Finance Advisory Committee Meeting held on 17 May 2018

5 **Directorate:** Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2018/939
Theme: Corporate Management
 10 Financial Services

Summary:

15 This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 17 May 2018 for determination by Council.

RECOMMENDATION:

1. **That Council note the notes of the Finance Advisory Committee Meeting held on 17 May 2018.**

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

Report No. 4.1 2017/18 Financial Sustainability Plan - Update on the Action Implementation Plan as at 31 March 2018
 File No: I2018/453

Committee Recommendation 4.1.1

That the update report to 31 March 2018 on the 2017/2018 Financial Sustainability Plan Action Implementation Plan (E2018/19525) be received and noted.

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

Report No. 4.2 Budget Review - 1 January 2018 to 31 March 2018
 File No: I2018/868

Committee Recommendation 4.2.1

That Council note :

1. That Council authorised the itemised budget variations as shown in Attachment 2 (#E2018/39650) which included the following results in the 31 March 2018 Quarterly Review of the 2017/2018 Budget:
 - a) General Fund – \$256,900 increase to the Estimated Unrestricted Cash Result
 - b) General Fund - \$1,734,800 increase in reserves
 - c) Water Fund - \$1,195,100 increase in reserves
 - d) Sewerage Fund - \$2,930,600 increase in reserves

2. That Council adopted the revised General Fund Estimated Unrestricted Cash Result of \$1,145,200 for the 2017/2018 financial year as at 31 March 2018.

At its Ordinary meeting held on 24 May 2018.

4. That Council adopt the following Committee Recommendation:

Report No. 4.3 Quarterly Update - Implementation of Special Rate Variation

File No: I2018/869

Committee Recommendation 4.3.1

That the Finance Advisory Committee note the quarterly update on the Special Rate Variation Implementation as at 31 March 2018.

5. That Council adopt the following Committee Recommendation:

Report No. 4.4 Funding Options for Railway Square Stage 2

File No: I2018/277

Committee Recommendation 4.4.1

That the Finance Advisory Committee recommend to Council that the funding model and budget estimate for the delivery of Railway Square, Stage 2 as set out in Option 3 of this report be adopted.

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Attachments:

- 1 Minutes Finance Advisory Committee meeting 17 May 2018, I2018/912 

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Report

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 17 May 2018 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2018/05/FAC_17052018_AGN_789_AT.PDF

The Committee considered the following items.

Report 4.1 – 2017/18 Financial Sustainability Plan – Update on the Action Implementation Plan as at 31 March 2018

A report as to the progress of implementing the 2017-2018 Financial Sustainability Plan was presented to the Committee. Of note as indicated in the report was the ongoing growth in pay parking revenue and the expected sale of the Station Street land to North Coast Community Housing prior to 30 June 2018.

Report 4.2 – Budget Review 1 January 2018 to 31 March 2018

The Committee discussed the 31 March 2018 Quarter Budget Review noting the proposed amendments to the 2017-2018 Budget and recommended their adoption to Council that occurred at the 24 May 2018 Ordinary Meeting. Of note in the report were the following major items:

1. Recovery of the proposed 2017/2018 Budget Deficit of \$256,900 to a balanced projected result as at 30 June 2018.
2. Reassessment of the overall capital works program to the extent expected to be achieved in the 2017/2018 financial year and factoring uncompleted works into the 2018/2019 Draft Budget. This is expected to reduce the extent of carryovers at the end of the 2017/2018 financial year.

The recommendation has been amended to have Council note that the Finance Advisory Committee recommendation was adopted by Council at the Ordinary meeting held on 24 May 2018.

Report 4.3 – Quarterly Update – Implementation of Special Rate Variation

The Committee were presented with a report that outlined the progress of expenditure in relation to the 2017/2018 Special Rate Variation. Provided as part of the report is a schedule of works with total funding of \$3,015,600 that includes the \$1,185,000 provided by the first year of the Special Rate Variation approved that commenced on 1 July 2017. The report identified that as at the end of March 2018, Council had expended 76.78% of the overall program and of the five capital works projects in the program, three are completed.

Report 4.4 - Funding Options for Railway Square Stage 2

The Committee considered a report that provided different funding options to complete the Railway Park renewal project for the 2018/2019 financial year. The report was in response to Council's resolution **18-111**.

The report noted that Council for this project had lodged a grant application under the Better Regions Fund (Round 2 Infrastructure) and was in the process of applying for a grant under the NSW Regional Growth – Environment and Tourism Fund at the time of preparing the report. Should Council not be successful in either grant application, two alternative funding sources were

provided for consideration either via held Developer Contributions or a combination of Developer Contributions and Pay Parking funds set aside for the Byron Bay Town Centre Masterplan.

5 A further option being option 3 was also provided to fund the Railway Park project, provide \$300,000 towards the Byron Bay Skatepark and \$160,000 to undertake drainage works to upgrade the car park to the south of Railway Park.

10 The Committee has recommended Option 3 to Council which will require the addition of the \$160,000 drainage works to the Draft 2018/2019 Budget.

The Committee Recommendations are supported by management and are provided in the attachment to this report.

15 **Financial Implications**

As per the Reports listed within the Finance Advisory Committee Meeting of 17 May 2018.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Finance Advisory Committee Meeting of 17 May 2018.

Report No. 14.2 **Report of the Audit, Risk and Improvement Committee Meeting held on 17 May 2018**

Directorate: Corporate and Community Services

Report Author: David Royston-Jennings, Corporate Governance Officer

File No: I2018/1043

Theme: Corporate Management

 Governance Services

Summary:

This report provides the minutes and recommendations of the Audit, Risk and Improvement Committee Meeting held on 17 May 2018 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Audit, Risk and Improvement Committee Meeting held on 17 May 2018.**

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

Report No. 4.1 **Local Government Performance Excellence Program - Byron Shire Council 2017 Performance Results**

File No: I2018/655

Committee Recommendation 4.1.1

That the Internal Audit, Risk and Improvement Committee note the Byron Shire Council LG Performance Excellence Program FY17 Report and that future reports be presented to the Committee.

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

Report No. 4.2 **NSW Audit Office - Local Government 2017 Financial Audit Report**

File No: I2018/866

Committee Recommendation 4.2.1

That the Audit, Risk and Improvement Committee note the contents and recommendations made in the Local Government 2017 Financial Audit from the NSW Audit Office at Attachment 1 (#E2018/35811).

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

Report No. 4.3 **Internal Activity & Progress Report - May 2018**

File No: I2018/862

Committee Recommendation 4.3.1

1. **That the Audit, Risk and Improvement Advisory Committee note the Internal Audit Activity Report – May 2018 (#E2018/39734).**

2. **That the Audit, Risk and Improvement Advisory Committee endorse the recommendation to vary the audit program and replace the planned IT User Access Review in Quarter 4 of 2017/2018 year with an audit review of Council's**

current systems and processes to ensure/test compliance with Council's six Environment Protection Licences in the Sewerage, Landfill and Quarry operations.

3. That the IT User Access review be completed no later than Quarter 2 of 2018/2019 financial year.

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

Report No. 5.1 2017/2018 External Audit Client Service Plan
File No: I2018/810

Committee Recommendation 5.1.1

1. That Council note the External Audit Client Service Plan prepared by the Audit Office of New South Wales for the year ended 30 June 2018 as outlined in Attachment 1 (#E2018/36320).
2. That the report and Attachment 1 of the closed part of the meeting remain confidential.

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

Report No. 5.2 Risk Management Framework & Business Continuity Update
File No: I2018/683

Committee Recommendation 5.2.1

That the Internal Audit, Risk and Improvement Committee note ongoing work undertaken in improving Council's risk management approach and business continuity and disaster recovery efforts across the organisation.


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

Report No. 5.3 Fraud and Corruption Control Audit Review Report
File No: I2018/654

Committee Recommendation 5.3.1

1. That the Audit, Risk and Improvement Committee note the Fraud and Corruption Controls internal audit review report.
2. That the Audit, Risk and Improvement Committee request that management implement the recommendations made in the report identified as Attachment 1 (#E2018/39530), subject to the revaluation of the rating of detailed finding 2.3 – Fraud and Corruption Policy/Framework from Medium to High.
3. That the report and Attachment 1 of the closed part of the meeting remain confidential.
4. That an update on fraud and corruption controls be presented at future meetings.

Attachments:

- 1 Minutes 17/05/2018 Audit, Risk and Improvement Committee, I2018/875 [⇒](#) 

5

Report

The Audit, Risk and Improvement Committee Meeting of 17 May 2018 considered the following items and their minutes are presented or determination by Council.

5

Report 4.1 - Local Government Performance Excellence Program - Byron Shire Council 2017 Performance Results:

10 Since adoption of the Financial Sustainability Plan, Council has been using a number of tools to monitor and measure performance. One of them is the LG Performance Excellence Program. The data from this program is used by the administration for a range of purposes including identification of improvement opportunities.

15 The Manager Organisational Development provided an overview of the Local Government Performance Excellence Program and 2017 report.

20 The Committee discussed notable statistics included in the report, including how Council's meetings compared in duration with other participants councils, and agreed that the level of information and detail included was beneficial and cost effective.

The Committee requested that future reports prepared by the Local Government Performance Excellence Program be submitted for their review and consideration.

Report 4.2 - NSW Audit Office - Local Government 2017 Financial Audit Report:

25

The Auditor-General has presented its first report on the statutory financial audits of councils to NSW Parliament. The purpose of this report is to table the report of the Audit Office of NSW.

30 The report presents a consistent view of financial performance across the New South Wales local government landscape while providing guidance and includes recommendations to councils and the Office of Local Government aimed at strengthening financial reporting, asset management, governance and internal controls.

35 The Acting Director Corporate and Community Services noted that this is the first report on the statutory financial audits of councils prepared by the Auditor-General to be presented to the NSW Parliament. It was noted that this report provides a consistent view of financial performance across the New South Wales local government landscape while providing guidance and includes recommendations to councils and the Office of Local Government aimed at strengthening financial reporting, asset management, governance and internal controls.

40

Report 4.3 - Internal Activity & Progress Report - May 2018:

45 The Internal Audit Activity Report – May 2018 was prepared by the Internal Auditor, O'Connor Marsden and Associates (OCM) and includes status of completed and planned audit reviews.

The Committee discussed the importance and relevance of conducting an audit review of Councils IT user access systems but agreed that as a number of audits have already been undertaken in this department, the audit program should be varied and this review should take place at a later date. Committee members were advised that a review of Council's Environment Protection Licences relevant to sewerage, landfill and quarry operations was recommended to be completed in the timeframe initially allocated for the review of Council's IT user access.

50

Report 5.1 - 2017/2018 External Audit Client Service Plan:

With amendments to the Local Government Act 1993 in late 2016, the NSW Government has appointed the Auditor General through the Audit Office of New South Wales as the Auditor for the Local Government sector in New South Wales commencing from the 2016/2017 financial year.

- 5 The report presented the 2017/2018 External Audit Client Service Plan for Council to the Audit, Risk and Improvement Committee.

10 Kevin Franey (TNR) and Gearoid Fitzgerald (Audit Office of NSW) teleconferenced in to the meeting and provided an overview of the External Audit Client Service Plan prepared by the Audit Office of NSW. This document was noted by the Committee.

Report 5.2 - Risk Management Framework & Business Continuity Update:

- 15 At the October 2017 Audit, Risk and Improvement Committee extraordinary meeting, a request was made for regular updates on Council's business continuity and disaster recovery planning and risk management progress.

20 Council's Strategic Risk and Improvement Coordinator provided an overview of Council's actions since the last meeting of the Committee with regards to the development of a risk management strategy, business continuity plan and disaster recovery efforts across the organisation. This included a presentation on the draft risk management policy to Council's management team, the draft Business Continuity Plan being circulated to relevant members of staff for comment and an overview of meetings held by Council's Crisis Management Team.

25 **Report 5.3 - Fraud and Corruption Control Audit Review Report:**

Council's Internal Auditors, O'Connor Marsden and Associates (OCM), conducted an internal audit review of Fraud and Corruption Controls during March 2018.

- 30 The report included the findings made by OCM and responses from Council's Management to the findings.

35 The Committee discussed the recommendations provided by OCM with regards to fraud and corruption controls and determined that detailed finding 2.3 – Fraud and Corruption Policy/Framework should be reevaluated from a medium to high risk. The Committee also requested that updates on the fraud and corruption controls be provided to them regularly at future meetings.

The full minutes for this meeting can be located on Council's website at:

- 40 https://byron.infocouncil.biz/Open/2018/05/ARIC_17052018_MIN_793.PDF

Financial Implications

- 45 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 17 May 2018.

Statutory and Policy Compliance Implications

- 50 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 17 May 2018.

Report No. 14.3 Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 31 May 2018

Directorate: Corporate and Community Services
Report Author: Lisa Brennan, EA Corporate and Community Services
File No: I2018/1078
Theme: Society and Culture
Community Development

Summary:

This report provides the minutes and recommendations of the Arakwal (Memorandum of Understanding) Advisory Committee Meeting held on 31 May 2018 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 31 May 2018.**

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

Report No. 4.1 Aboriginal Services Coalition
File No: I2018/821

Committee Recommendation 4.1.1

That the Arakwal Memorandum of Understanding Advisory Committee note the progress of this project and the priorities for 2018.

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

Report No. 4.2 Byron Shire Pest Management Plan - Consultation
File No: I2018/822

Committee Recommendation 4.2.1

1. That the Arakwal Memorandum of Understanding Advisory Committee provide feedback on the attached draft Cultural Impact (#E2018/44646). The feedback is as follows:

- Change the name of the Plan to include the word "Animal" in the title

2. That feedback on the Plan be sought from the Arakwal Corporation, and received by mid June 2018.

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

Report No. 4.3 Illegal Campers at Ironbark Avenue and Vegetation on Council Land
File No: I2018/823

Committee Recommendation 4.3.1

That the Arakwal Memorandum of Understanding Advisory Committee recommend that Council staff conduct a site meeting with Council Engineers (drainage issues) and Arakwal representatives, including discussion on signage, as a matter of priority. The Committee noted there is an allocation in the draft 2018/19 budget for the works.

5. That Council adopt the following Committee Recommendation:

Report No. 4.4 Byron Town Centre Masterplan - Ongoing Consultation with Arakwal
File No: I2018/824

Committee Recommendation 4.4.1

1. That the Arakwal Memorandum of Understanding Advisory Committee establish Byron Bay Town Centre Masterplan as a Standing Item on the agenda until the project is implemented.
2. That Claire McGarry attend an Arakwal Corporation Board meeting, on a date to be determined, to discuss the Masterplan.

6. That Council adopt the following Committee Recommendation:

Report No. 4.5 Master Plan Mullumbimby
File No: I2018/882

Committee Recommendation 4.5.1

That Council staff attend a Special Board Meeting of the Arakwal Corporation to discuss the Masterplans for Mullumbimby, Bangalow, and Byron Bay.

5

Attachments:

- 1 Minutes of the Arakwal (MoU) Advisory Committee meeting held on 31 May 2018, I2018/1047 

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Report

5 The attachment to this report provides the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting of 31 May 2018 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2018/05/AMUAC_31052018_AGN_785_AT.PDF

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

Financial Implications

15 As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 31 May 2018.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 31 May 2018.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.4 Report of the Local Traffic Committee Meeting held on 16 May 2018

Directorate: Infrastructure Services

5 **Report Author:** Stephanie Tucker, Traffic and Transport Assistant

File No: I2018/948

Theme: Community Infrastructure
Local Roads and Drainage

10 **Summary:**

The Local Traffic Committee held an extraordinary meeting electronically between 16 May 2018 and 23 May 2018 to deal with matters considered to be of an urgent nature as a consequence of
15 Police member representatives not be available to attend the meeting previously scheduled for the 15 May 2018. Members representatives present on 15 May 2018 held an informal meeting with staff to provide initial feedback and comments on the Draft Constitution of the Local Traffic Committee 2018 (LTC) document being developed by staff.

20 Three items were reported to the extraordinary meeting for consideration being:-

1. *Report 6.1 – Byron St Connection and Jonson St Works, Byron Bay;*
2. *Report 7.1 – DA – Festival of the Stone 2018; and*
3. *Report 7.2 - Mercato - Byron Bay Woolworth Site re-development request for variation to*
25 *traffic management arrangements.*

Items 1 and 2 above were determined by Council at the ordinary Council meeting 24 May 2018 as matters of urgency (**see Res 18-346**) whilst Council determined that item 3 was not a matter of
30 urgency and therefore would need to be held over until the next available ordinary meeting of Council.

This report deals specifically with item 3 being *Report 7.2 - Mercato - Byron Bay Woolworth Site re-development request for variation to traffic management arrangements*

35 Council's action on the LTC advice will be:

(a) If Council is in agreement with the LTC unanimous support then the proposal may be approved. In these cases there is no conflict between Council and the advice of the LTC, consequently there is no need for Council to inform the RMS or the NSW Police representatives of the decision.
40

(b) If Council is in agreement with the LTC unanimous support, but no longer wants to proceed, the proposal may still be rejected.

(c) If Council is in agreement with the LTC unanimous decline then the proposal may be rejected. Again there is no conflict between Council and the advice of the LTC. Consequently there is no need for Council to inform the RMS or the NSW Police representatives of the decision.
45

(d) If Council decides to proceed with a proposal where the advice of the LTC is not unanimous support, then the Council must first advise the RMS and the NSW Police representatives in writing of their intention to approve the proposal. The RMS or the NSW Police may then lodge an appeal to the Regional Traffic Committee (RTC).
50

(e) If Council decides to proceed with a proposal where the advice of the LTC is a unanimous decline, then the Council must first advise the RMS and NSW Police representatives in writing of

their intention to approve the proposal. The RMS or the NSW Police may then lodge an appeal to the RTC.

5 Due to the fact that the RMS and the NSW Police have the power to appeal certain decisions of the Council, the LTC cannot provide its advice to Council until both the RMS and the NSW Police have provided their vote on the issue.

RECOMMENDATION:

1. That Council note the minutes of the Local Traffic Committee Meeting held on 16 May 2018.

10

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

Report No. 7.2 Mercato - Byron Bay Woolworth Site re-development request for variation to traffic management arrangements

File No: I2018/908

RECOMMENDATION:

That Council support the use of Butler Street, Byron Bay for construction access for concrete deliveries until the re-development works are completed or Council commences the construction of the Byron Bay Bypass, which occurs earliest.

15

Report

5 The comments and recommendations contained within the minutes of the Local Traffic Committee Meeting of 16 May 2018 for determination by Council, as they relate to Report 7.2 specifically, are reproduced below

Committee Comments

10 *P. Stevens: RMS supports the modified traffic management plan to use Ewingsdale Road and Butler Street for construction access. RMS is progressing the implementation of Regularity Signage at William Flick Lane to prohibit right turns out of William Flick Lane. Consultation with the batch plant operator confirmed that right turn onto Ewingsdale Road is impractical for delivery trucks which now made a U-turn at the interchange roundabout.*

15 *D.Brigg: Police have no objection to this change*

T.Smith: If Police and RMS support this plan, then I also support.

Management Comments

20 *There were no Management comments.*

The committee comments and recommendations above are supported by management.

Financial Implications

25 As per the Reports listed within the Local Traffic Committee Meeting of 16 May 2018.

Statutory and Policy Compliance Implications

30 As per the Reports listed within the Local Traffic Committee Meeting of 16 May 2018.

Report No. 14.5 **Report of the Water, Waste and Sewer Advisory Committee Meeting held on 31 May 2018**

Directorate: Infrastructure Services
Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services
File No: I2018/1079
Theme: Community Infrastructure
Water Supplies

Summary:

The attachment to this report provides the minutes of Water, Waste and Sewer Advisory Committee Meeting held on 31 May 2018 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 31 May 2018.

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

Report No. 4.1 Sewage Treatment Plant EPA Licence Sites
File No: I2018/619

Committee Recommendation 4.1.1

1. That the Council note the report.
2. That the Council note that the Oceans Shores Constructed Wetland is a serpentine channel.

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

Report No. 4.2 Mullumbimby Sewerage System Inflow and Infiltration Programme - update
File No: I2018/645

Committee Recommendation 4.2.1

1. That Council support the Inflow and Infiltration (I/I) Project as outlined in the report (page 17 of the Agenda) and recognising the social impact on dwellings that are invited to participate, including at least that participants will:-
 - (a) provide space for a sewer pump pod;
 - (b) allow connection to the electricity supply;
 - (c) run the risk of water logging of their or their neighbours' yards due to storm water not entering sewers; and
 - (d) participate with Council in remediating in water logging.
2. That Council consider allocating a resource to ensure social and ecological aspects resulting from the project are considered in conjunction with works

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

Report No. 4.3 Recycled Water Strategic Management Strategy

File No: I2018/646

Committee Recommendation 4.3.1

That Council put the Recycled Water Strategic Management Strategy (Rev 3. Attachment #E2018/43453) on public exhibition for 28 days and, if no submissions are received, adopt it or, if submissions are received, send to Council.

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

Report No. 4.4 Data on bins that have fallen over in rural areas

File No: I2018/647

Committee Recommendation 4.4.1

That Council note the report and the subsequent information that 25 rural bins over 3 years period have fallen over prior to collection.

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

Report No. 4.5 Legislation relating to the Domestic Waste Management Charge

File No: I2018/897

Committee Recommendation 4.5.1

That Council note the report.

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

Report No. 4.6 Murtagh Wetlands Report


File No: I2018/952

Committee Recommendation 4.6.1

1. That Council review the state and performance of the West Byron STP Constructed Wetlands and 24 Ha Melaleuca Wetland and advise on future management.
2. That a report on scoping of water sensitive design and whole of catchment plan to integrate all works involving West Byron STP, Cape Byron Marine Park, Union Drain Trust and the community come to the next meeting WWSAC.
3. That the WWSAC receive a report on the current status of the old sand mining drain/path and its impact on the Belongil catchment.

5

Attachments:

- 10 1 Minutes 31/05/2018 Water, Waste and Sewer Advisory Committee, I2018/967 

Report

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 31 May 2018 for determination by Council.

5

The agenda for this meeting can be located on Council's website at:-

https://byron.infocouncil.biz/Open/2018/05/WWSAC_31052018_AGN_801_AT.PDF

10 **Committee Recommendation**

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

15 **Financial Implications**

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 31 May 2018.

20 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 31 May 2018.

Report No. 14.6 **Report of the Local Traffic Committee Meeting held on 31 May 2018**
Directorate: Infrastructure Services
Report Author: Evan Elford, Team Leader Infrastructure Planning
 Stephanie Tucker, Traffic and Transport Assistant
5 **File No:** I2018/1106
Theme: Community Infrastructure
 Local Roads and Drainage

Summary:

10 This report contains the recommendations of the Local Traffic Committee from the meeting as held on the 31 May 2018.

15 This meeting was conducted electronically, where advice, information and decision of members was sought via email, as per point 5.3.1 of the Guidelines to the Delegation to Councils for the Regulation of Traffic (including the operation of Traffic Committees)

RECOMMENDATION:

20 1. **That Council note the minutes of the Local Traffic Committee Meeting held on 31 May 2018.**

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

Report No. 6.1 Events - Byron Writers Festival 2018 - Road Closure
File No: I2018/906

Committee Recommendation 6.1.1

1. **That Council endorse the Byron Bay Writers Festival to be held on 3-5 August 2018, that includes the installation of temporary regulatory signage including No Stopping, No Parking and Disability Parking Signs between 8am and 6pm, subject to conditions at:-**
 - a. **Bayshore Drive, Byron Bay.**
2. **That the approval provided in Part 1 is subject to:-**
 - a. **separate approvals by NSW Police and RMS being obtained;**
 - b. **implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation;**
 - c. **that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;**
 - d. **the event be notified on Council's webpage;**

e. the event organiser:

- i. undertake consultation with community and affected businesses including adequate response/action to any raised concerns;**
- ii. undertake consultation with emergency services and any identified issues addressed; and**
- iii. hold \$20m public liability insurance cover which is valid for the event.**

**Smith, Cameron, Brigg and Makejev voted in favour of the motion.
Nil voted against the motion.**

Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 31 May 2018 for determination by Council. The agenda for this meeting can be located on Council's website at:

<https://www.byron.nsw.gov.au/Council/Council-meetings/Agendas-Minutes>

Committee Recommendation

L. Makejev: RMS offers the following comments:

- *Recently completed minor changes at the Ewingsdale interchange have been effective in improving traffic flow and merging in Ewingsdale Road and have significantly reduced congestion on the M1*
- *It would be beneficial if the promotor installed VMS for both eastbound and westbound traffic along Ewingsdale Road for 2 weeks in the lead up to the Byron Writers Festival to inform the community of the potential traffic impact during the festival*
- *RMS does not use the M1 message boards to inform on special events*
- *Council is requested to negotiate with the construction contractor at the Bayshore Drive roundabout to minimise congestion and traffic disruption during the festival.*

D.Brigg: Police are in agreement with the TMP as is stands and in particular the direction of traffic from the site to the Sunrise Boulevard roundabout

Management Comments

The committee recommendations are supported by management and RMS comments will be provided to the event organiser and to the Bayshore Drive contractor.

Financial Implications

The event organisers have a Council Memorandum of Understanding (Item 2.1 Councils role and responsibilities) which waives fees for the relevant Approval of Road Events pursuant to s144 of the Roads Act fee as per the Fees & Charges 2017/18.

Council has in the past provided financial assistance for the event but only where Council has utilised the event as part of the community engagement and awareness program associated with a Council project.

There are no current or proposed budget allocations to provide financial support for this event.

Statutory and Policy Compliance Implications

Delegated to council for authorisation in conjunction with:

- Actions required to control traffic- Part 8 (Sections 114 to 124) Roads Act, 1993.
- Prescribed traffic control devices - division 1 of Part 4 (Sections 50 to 55) Road Transport (Safety and Traffic Management) Act, 1999.

QUESTIONS WITH NOTICE

Question with Notice No. 15.1 Brunswick Valley Sewerage Treatment Plant
File No: I2018/1036

5

At Council’s Ordinary Meeting held on 24 May 2018, Patricia Warren tabled the following question which was taken on notice:

What were the design parameters for the successful tender/contract for the construction of the Brunswick Valley Sewerage Treatment Plant with specific reference to:

- a) *Average Dry Weather Flow (ADWF) in ML/day and how was this determined?*
- b) *Design Capacity:-*
 - (i) *ADWF in ML/day*
 - (ii) *buffer in ML/day above ADWF and how was this determined and for what purpose?*
 - (iii) *total design capacity in ML/day*
- c) *hydraulic design capacity in volume and velocity (litres/sec) at the head of the plant?*

Response Director Infrastructure Services:

- a) *Average Dry Weather Flow (ADWF) in ML/day and how was this determined?*

The design inflows for the Brunswick Valley STP were based on population and flow projections for the Mullumbimby and Brunswick Heads townships for the year 2025.

The Average Dry Weather Flow (ADWF) calculated on this basis is 3.8 ML/day.

The following table was included in the Tender Documents:-

Table 1 Population and flow projections for Mullumbimby-Brunswick Heads STP (MBHSTP)

Population Group	2002	2025	ADWF (ML/day)
Permanent Population	5143	8805	2.70
Overnight Guests	2453	4502	0.90
Day Trippers	2250	4750	0.14
TOTAL	9846	18057	3.80

- b) *Design Capacity:-*
 - (i) *ADWF in ML/day*

The ADWF is 3.8 ML/day

- (ii) *buffer in ML/day above ADWF and how was this determined and for what purpose?*

The design report for the facility states the STP is capable to provide full biological treatment at the maximum sustained flow rate of 22 ML/day (5.8 x ADWF) and the maximum instantaneous flow rate of 27 ML/day (7.1 x ADWF).

The 5.8 ratio was derived by applying a Peak Wet Weather Flow to Average Dry Weather Flow ratio of 7 x ADWF for the Mullumbimby Catchment and 5 x ADWF for the Brunswick Heads catchment.

When applied to the differing ADW flows in each catchment an average of 5.8 x ADWF for the combined

catchments is obtained.

(iii) total design capacity in ML/day

The design capacity for the Brunswick Valley STP is 3.8 ML/day for Average Dry Weather Flow and a Peak Wet Weather Flow capacity of 22 ML/day (3.8 x 5.8) and an instantaneous flow rate of 27 ML/day (3.8 x 7.1).

Since the Brunswick Valley STP has been in operation the plant has never been hydraulically overloaded and remains comfortably within its design parameters.

Council, however, has been monitoring the flow patterns and has included in its latest business plan a dedicated flow mitigation project for Mullumbimby and other areas in the Shire. This project has been included in the latest budget which is currently on exhibition.

c) hydraulic design capacity in volume and velocity (litres/sec) at the head of the plant?

The design report for the facility states hydraulic design capacity for the inlet works in volume and velocity (litres/sec) at the head of the plant is $7.1 \times \text{ADWF} + 150$ l/s for the Return Activated Sludge (RAS).

This is equivalent to 27 ML/day which is equivalent to 314 litres per second plus 150 litres per second for the RAS.

The total design velocity is therefore 464 litres per second.

Question with Notice No. 15.2 Potholes
File No: I2018/1037

At Council's Ordinary Meeting held on 24 May 2018, Matthew Lambourne asked the following question which was taken on notice:

If a pothole 1 metre long by 1.8 metre wide across the middle of a 4.8m seal is not big enough to be repaired by Council, how much longer does it need to get before Council will repair it?

Response Director Infrastructure Services:

The issue raised in Mr Matthew Lambourne's question has been investigated and has identified inconsistencies in several processes at Council, both at Mullumbimby office and the depot, as follows:-

1. receipt of hard copy customer request taken at the counter at Mullumbimby office
2. handover by operational staff when taking leave of completed and uncompleted works

Mr Lambourne lodged hard copy customer request forms at the customer service area at the Mullumbimby office on two separate occasions being, 12 April and 4 May 2018.

After the lodgement of the customer request on 12 April 2018:

- CRM #59822 was created on 12 April, which was initially actioned by depot staff on 13 April; an inspection undertaken and a defect with a calculated target date for completion entered into the electronic system, Reflect, used to manage the identification and accomplishment of such defects.
- The formal customer request was not saved into Council's document management system until 18 April

After the lodgement of the customer request on 4 May 2018:-

- no additional CRM was raised
- the formal customer request was saved into the document management system and viewed by depot staff within five days, where it was determined that a defect in Reflect had already been raised and a second defect record was not required.

It is a performance target of the Draft 2018/19 Delivery Plan and Operational Plan to have all separate customer requests entered into the CRM system, even if multiple requests are received from the same person or there are multiple requests about the same matter.

On 21 April 2018, Council's normal operator of the pothole patching machine commenced leave and there was an incomplete handover to the relief operator, who was unaware that all the potholes on Main Arm Road had not been completed. Unfortunately the relief operator was directed to other roads to fill potholes not knowing that the large pothole on Main Arm Road was uncompleted.

Mr Lambourne was advised on Friday 25 May, the day after the Council meeting, of the two issues that resulted in this pothole being missed. The pothole was filled on Tuesday 29 May 2018.

The investigation of the issues raised has allowed revised procedures to be implemented to stop these problems re-occurring in the future.

Question with Notice No. 15.3 Report 13.9 of 24 May 2018 Ordinary Meeting Agenda
File No: I2018/1038

At Council's Ordinary Meeting held on 24 May 2018, John Anderson asked the following question which was taken on notice:

Could either Shannon Burt or Ralph James please provide:

- a) *An explanation of item 13.9 of today's agenda in terms of what is meant by "Strict compliance with the provisions of Clause 4.6 will result in no change to the built form on the site and will merely prevent the sale of individual dwellings on the allotment"*
- b) *A legal precedent for allowing variations to development standards far greater than 10% (i.e. decisions made on upheld by the Land and Environment Court).*
- c) *Some clue as to the identity of the author of report 13.9.*

Response Director Sustainable Environment and Economy:

- a) *An explanation of item 13.9 of today's agenda in terms of what is meant by "Strict compliance with the provisions of Clause 4.6 will result in no change to the built form on the site and will merely prevent the sale of individual dwellings on the allotment"*

Clause 4.6 of the Standard Instrument allows a consent authority to grant consent to a proposed development "even though the development would contravene a development standard". In circumstances where it applies, clause 4.6 replaces the power previously found in State Environmental Planning Policy No. 1 – Development Standards.

The consent may only be granted if:

- the applicant has prepared a written request demonstrating that (clause 4.6(3)):
- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- there are sufficient environmental planning grounds to justify contravening the development standard; and
- the consent authority is satisfied that (clause 4.6(4)):
- the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3), and
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The development standard as varied is the minimum lot size planning control of 600m² applicable to this site under LEP 2014 clause 4.1. The development proposal was deemed compliant with all other built form controls for a multi dwelling development, except for this. In the circumstances, following an assessment under clause 4.6, and having regard to the applicable case law at the time, the variation was deemed acceptable. Note that determination of clause 4.6 variations over 10% are made by the council and not staff.

Link below to Department of Planning circular to advise councils of arrangements for when councils may assume the Secretary's concurrence to vary development standards, and clarify requirements around reporting and record keeping where that concurrence has been assumed.

<http://www.planning.nsw.gov.au/~media/Files/DPE/Circulars/planning-circular-ps-18-003-variations-to-development-standards-2018-02-21.ashx?la=en>

- b) *A legal precedent for allowing variations to development standards far greater than 10% (ie decisions made on upheld by the Land and Environment Court).*

It had been widely assumed that the minimum lot size development standard in clause 4.1 of the *Standard Instrument – Principal Local Environmental Plan* ('Standard LEP') does not apply to strata subdivision.

However the Land and Environment Court held that this is not the case. Unless the proposed subdivision is of a lot in an existing strata plan or community development scheme, the proposed subdivision will be subject to the minimum lot size standard.

The case of *DM & Longbow Pty Ltd v Willoughby City Council* [2017] NSWLEC 1358 concerned a development application seeking consent to subdivide an existing two-storey house into two dual occupancy units. The minimum lot size for the land imposed by clause 4.1 of the *Willoughby Local Environmental Plan 2012* ('WLEP') was 650 m². The proposed subdivision would have resulted in two strata lots each having an area of approximately 300m².

The question for the Court was whether the minimum lot size development standard in clause 4.1 of WLEP applied to the proposed strata subdivision.

Clause 4.1 of WLEP relevantly provided that:

- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

...

- (4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.'*

The Applicant submitted that the minimum lot size development standard contained in clause 4.1(3) of WLEP was not directed to strata subdivision but rather to the ordinary subdivision of land and that clause 4.1(4) should be read as applying to the proposed strata subdivision thus having the effect of making it exempt from compliance with the minimum lot size development standard.

The Council, on the other hand, argued that because the definition of '*subdivision of land*' contained in s4B (2) (b) of the EPA Act includes '*the procuring of the registration in the office of the Registrar-General... of a strata plan or a strata plan of subdivision*', it must follow that the words '*subdivision of any land*' appearing in cl4.1 (2) of WLEP operated to make the proposed strata subdivision subject to the minimum lot size development standard in clause 4.1(3) of WLEP unless it was exempted by clause 4.1(4).

Despite some reluctance about the lack of any planning logic to cl4.1(4), Commissioner Dixon agreed with the Council's interpretation.

The Court held that the exemption in clause 4.1(4) only applies where there is an existing strata plan. A strata plan only comes into existence when the requirements set out in the *Strata Schemes Development Act 2015* are satisfied. As there was no existing strata plan in the present case, the proposed strata subdivision did not relevantly involve the subdivision of any individual lot or lots in a strata plan within the meaning of clause 4.1(4) of WLEP.

The decision was affirmed on appeal by Preston CJ in December 2017.

However, the *Standard Instrument – Principal Local Environmental Plan* ('Standard Instrument') has now been amended to clarify that the minimum lot size development standard does not apply to either the subdivision of land by the registration of strata or community plans, or the subdivision of lots within an existing strata or community scheme.

This changes the position back to what many councils thought the position was before the Court's decision in *Longbow*.

However, the *Standard Instrument (Local Environmental Plans) Amendment (Minimum Subdivision Lot Size) Order 2018* (Order) amends clause 4.1 (4) so it states:

This clause does not apply in relation to the subdivision of any land:

(a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or

(b) by any kind of subdivision under the Community Land Development Act 1989.

This makes it unambiguously clear that the minimum lot size standard does not apply to a subdivision effected by the registration of a strata plan or community plan.

The Order also amends clause 4.1AA which continues to apply to community title schemes in certain zones despite the amended clause 4.1.

Under s 3.20(4) of the *Environmental Planning and Assessment Act 1979*, the amended clause 4.1 will immediately be incorporated into those LEPs around the state which include a declaration that they adopt the provisions of the Standard LEP. These LEPs will not require any further amendment to incorporate the amended clause 4.1.

However, the change will not apply to development applications lodged but not determined before the Order commenced. The Order commenced on 20 April 2018.

c) Some clue as to the identity of the author of report 13.9.

Report No. 13.9 PLANNING - State Environmental Planning Policy No. 1 - Variations to development standards - 1 October 2017 to 31 December 2017 prepared by Manager Sustainable Development – Chris Larkin.

Report No. 7.7 PLANNING - 10.2017.270.1 Multi dwelling housing comprising eight (8) dwellings, Strata Title subdivision to create eight (8) Strata Lots and Common Property and Tree Removal (17 trees) at 6 and 6A Canowindra Court South Golden Beach was reported to the ordinary meeting of council 28 November 2017 prepared by Team Leader Planning Services – Greg Smith.

Attachments:

1 John Anderson Question taken on Notice 24 May 2018, E2018/45664  

5

Question with Notice No. 15.4 Brunswick Valley STP Overflow
File No: I2018/1080

Alan Dickens asks the following question:

With regards to the overflow incidents at the Brunswick Valley STP in 2012 and 2015, what action and/or repairs were carried out so this can not occur again?

Response Director Infrastructure Services:

The walls of the inlet chamber to the UV plant were raised by 590mm.

This provides two benefits:

- The top of the chamber is a localised high point and cannot overflow if similar circumstances presented again; and
- The increased head provides a self cleaning function for the UV tubes.

The weekly lubrication and inspection maintenance task for the site was updated to include:

- *Check the **UV water tube** entrances in the UV feed box for algae etc. blocking the tubes;*
- *Sweep the entry plate clean after any high rainfall/flow event or if dirty; and*
- *Remove debris from the feed box.*

CONFIDENTIAL REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 16.1 **CONFIDENTIAL - Mullumbimby Administration Building - Solar Installation**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Ronnie Lawton, Sustainability and Emissions Reduction Officer
 James Brickley, Manager Finance

File No: I2018/530

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

Summary:

15 The installation of solar systems to mitigate Council's use of electricity will contribute to the goal of net zero emissions and sourcing electricity from renewables (**Resolution 17-086**).

20 The Mullumbimby Administration Building is one of the highest energy users, based on the 2017 calendar year bills. Consideration of a proposal by Council to implement a solar installation will have the ability to substantially reduce the electricity consumption of the Mullumbimby Administration Building.

25 This report is provided to Council to consider the modelling and allocation of funding to advance the project.

RECOMMENDATION:

30 1. **That pursuant to Section 10A(2)(c) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Mullumbimby Administration Building - Solar Installation.**

35 2. **That the reasons for closing the meeting to the public to consider this item be that the report contains:**
 a) **information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business**

40 3. **That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:**

Disclosure of the information in this report may provide commercial information that could confer a commercial advantage to a prospective supplier.

Attachments:

45 1 Confidential - Attachment to report I2018/530 BCA for Admin Building, E2018/47068

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.2 **CONFIDENTIAL - Tender Assessment Report - Belongil Entrance Opening Strategy**

5 **Directorate:** Infrastructure Services
Report Author: James Flockton, Drain and Flood Engineer
Chloe Dowsett, Coastal and Biodiversity Coordinator
File No: I2018/932
Theme: Community Infrastructure
10 Water Supplies

Summary:

15 On 13 March 2018 the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2017-0061 Belongil Creek Entrance Opening Strategy.

20 The Request for Tender was advertised from 23 March 2018 to 24 April 2018. Tenders were received from the following organisations:

- Alluvium Consulting
- Australian Wetlands Consulting
- BMT WBM
- 25 • Manly Hydraulics Laboratory

Tenders have been assessed in accordance with the provisions of the *Local Government (General) Regulations 2005*. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2017-0061 Belongil Creek Entrance Opening Strategy.

RECOMMENDATION:

- 35 1. That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Tender Assessment Report - Belongil Entrance Opening Strategy.
- 40 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
 - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
- 45 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

To enter a new line, hit ctrl enter.

Example reasons only - delete/change as required (and delete these first 2 lines):

- 50 (a) disclosure could prejudice the Council's position in litigation; and (b) disclosure could adversely impact Council's position in the upcoming negotiations.

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

55

RECOMMENDATION:

- 5
1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender Assessment Report - Belongil Entrance Opening Strategy are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d)i of the Local Government Act 1993.
 2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 10
- 1 Confidential - 24.2009.10.1 Belongil Creek Entrance Opening Strategy - EOS - Request for Tender - Evaluation Panel Recommendation Report - Signed version, E2018/46572

15

Report No. 16.3 **CONFIDENTIAL - 2017-0050 EOI: Redevelopment of 1 Broken Head Road, Byron Bay**

Directorate: Infrastructure Services
Report Author: Nikki Bourke, Project Officer
File No: I2018/867
Theme: Community Infrastructure
 Projects and Commercial Opportunities

5

10 **Summary:**

At its meeting on 14 December 2017 Council resolved (**17-699**) as follows:

15

1. *Progress the EOIs for the former South Byron STP and Lot 12 Bayshore Drive sites as separate EOIs.*
2. *Adopt the proposed EOI Vision, Purpose, Aims and Objectives, Council Requirement and Anticipated Development statements for the former South Byron STP site.*
3. *Defer the issue of the Lot 12 Bayshore Drive EOI until after 30 June 2018 or following the completion of the former South Byron STP EOI process if it occurs before this date.*

20

This Expression of Interest relates to the South Byron Sewage Treatment Plant (STP) site noted in the resolution above and is the first stage of a two-stage procurement process. Following the EOI stage, short-listed proponents will be invited to submit a tender with a more detailed proposition including site details, business cases and financial plans.

25

The Request for Expressions of Interest was advertised from 19 March to 27 April 2018. Expressions of Interest (EOI) were received from the following organisations:

30

- Byron Residents Group
- Costello, Terence John
- KOHO Projects Pty Ltd
- National Affordable Housing Consortium Ltd
- The Living School Byron Bay Pty Ltd
- The Trustee for Cromack Family Trust & The Trustee for Elford Family Trust & The Trustee for PJTJ Trust & The Trustee for Payne Investment Trust (Ardill Payne & Partners)
- Powerwrap Limited (Archiblox Pty Ltd)
- Taylor Thompson Whitting (NSW) Pty Ltd
- The Trustee for Harrison Developments Discretionary Trust (The Village Retirement Group)

35

The EOIs have been assessed in accordance with the provisions of the *Local Government (General) Regulations 2005*. This report summarises the background and assessment of the EOIs and provides a recommendation of the short-listed proponents to proceed to be invited to participate in the selective request for tender stage.

40

45 **RECOMMENDATION:**

1. **That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report 2017-0050 EOI: Redevelopment of 1 Broken Head Rd, Byron Bay .**
2. **That the reasons for closing the meeting to the public to consider this item be that the report contains:**
 - a) **commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it**

50

3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

5 the evaluation report contains information that, if disclosed, could prejudice the commercial position of the person who supplied it.

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

RECOMMENDATION:

- 15 1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, 2017-0050 EOI: Redevelopment of 1 Broken Head Rd, Byron Bay are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

20 **Attachments:**

- 1 Confidential - 2017-0050 CONFIDENTIAL signed EOI Evaluation Report - 1 Broken Head Rd Redevelopment, E2018/44394

25

Report No. 16.4 **CONFIDENTIAL - Expression of Interest 2017-0069 Bioenergy Project**
Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2018/1052
5 **Theme:** Community Infrastructure
 Sewerage Services

Summary:

10 On 22 November 2017 the General Manager, under delegated authority, approved the use of the open tender method to call for Expressions of Interest for Contract 2017-0069 for the Bioenergy Technology options.

15 The Expression of Interest was advertised from 18 December 2017 to 15 February 2018. Expressions of Interest were received from the following organisations:

- Aquatec Maxcon
- Biogas Renewables
- 20 • Earth Systems
- ENV Solutions (Ballina; teamed with Id Gasifiers, Australia)
- Finn Biogas
- Francis Grey
- Frontier
- 25 • HZ-Inova (representing Kompogas dry digesters)
- Inovin
- Lipp System (Australia)
- Lycopodium
- McKee Co (Lismore)
- 30 • Opec Systems
- Skala (teamed with Bekon dry digesters)
- Solo
- Stark Group (teamed with Cambi wet digesters)

35 Submissions have been assessed in accordance with the provisions of the *Local Government (General) Regulations 2005*.

40 This report summarises the background and assessment of the Expressions of Interest and provides a recommendation to proceed to tender to prepare a Bankable Feasibility Design for the preferred technology.

RECOMMENDATION:

- 45 1. That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Expression of Interest 2017-0069 Bioenergy Project.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - 50 a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

the evaluation report contains information that, if disclosed, could prejudice the commercial position of the person who supplied it.

5

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

RECOMMENDATION:

- 10
1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Expression of Interest 2017-0069 Bioenergy Project are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.
 2. That Council adopt the recommendation set out on the final page of the Report.
- 15

Attachments:

- 20
- 1 Byron Shire Bioenergy Project Pre Feasibility Study (Rev 0) 20180531.pdf, E2018/47199
 - 2 Evaluation Panel Recommendation Report - Byron Shire Council Bioenergy Projects - Ref # 2017-0069, E2018/47408