



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 20 September 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
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

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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** **An Official Byron Shire Australia Day event that reflects an inclusive, reasonable and reflective Australia**
File No: I2018/1712

I move that Council:

1. **Hold its Australia Day event on 25 January**
2. **Invite local custodians to assist in the development and management of the event**

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Background Notes:

15 Currently, Australia Day symbolises great sorrow and pain amongst indigenous mobs whilst many non-aboriginal Australians feel uneasy or conflicted celebrating our nation on this day.

20 The debate around this is occurring rapidly and divisively and is not going away. I believe Byron, by adopting a reasonable, rational and mature approach, has an opportunity to help the nation make the transition away from the historical problem of this date, whilst still honouring the needs and values of those who enthusiastically wish to celebrate our successes as a nation and our communities within Australia.

Historical considerations

25 I believe we, as a nation, have a lot to celebrate and a lot for which to be thankful. However, we have chosen a date that is not historically accurate nor reflective of the diverse cultural tapestry that make up our nation. Historically, if we were choose a date that signified the first of many waves of settlers on our land, we would start with the First Australians. On the 26th, we are celebrating the arrival of British settlers - it was a day that the English came with British convicts to
30 establish an English colony - if we are content as a nation to do this, it would then be more appropriate and accurate to call the day - 'Colonisation day', or 'British Arrival day'. This would be accurate, but rightfully unacceptable, as it wouldn't reflect our diverse and wonderful nation.

35 Thus, both symbolically and historically, it would be more appropriate to acknowledge a time before white man arrived, when the first people settled on the land were indeed, the First Australians. So, why not the night before? The evening of the 25th.

Inclusive considerations

40 Thus, the historical inaccuracy of celebrating on the 26th is obvious and even more obvious is the inappropriateness of this date when it is known that it causes significant grief to a section of our community. Why would we, being a nation that prides itself in the values of a 'fair go', equality and 'mateship', willingly choose a date that is not fair, hurts our fellow Australian mates and suggests that some Australians are more equal than others? An evening tradition of celebrating Australia
45 day on the 25th could symbolise the richness and importance of the first Australians, it would directly and clearly symbolise that, across our towns and cities, the Australia we are celebrating began with our local mobs. We would focus on a positive time for our indigenous history-rather than a day that pinpoints the start of their collective sorrow. I would love my family to celebrate our country in a way that includes and honours all our stories- whatever our skin colour, ethnicity or
50 origins.

Until an obvious date became apparent, (most likely the date of when we finally become a republic), changing the date to celebrate 24 hours earlier would be more historically accurate and more inclusive of all members of our nation. A small step, but a reasonable and respectful one.

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Contemporary considerations

10 Currently, a day of celebration to that marks the end of Summer is a great modern cultural fit for us and changing the date that acknowledges this current reality makes sense. Putting the feelings of conflict many feel about the 26th to the side, so many of us love the Australia Day long weekend - it seems a natural fit in our lives, and so keeping that intact whilst adjusting the actual day of celebration seems reasonable and logistically sensible. Changing the date to one that marks the concept or reality of 'Australia' narrows down to very few options. We could explore dates when Henry Parkes made a famous speech about establishing 'Australia' or some other date of significance, though, this would mean a fair load of change, debate, angst and difficulty and perhaps never reach a consensus. The best of a bad lot is the day of Federation - January 1st. This doesn't work in a practical sense because Australians being Australians - New Years Day is already a holiday - losing a holiday and double dipping on another would be 'un-Australian'.

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20 Utilising the current social acceptance and convenience of this date, the 26th would still be a public holiday, but like Christmas, we can celebrate it the night before and leave the day for people to do what they wish individually - from having a bbq, being with family and friends, acknowledging the survival aspect, or holding citizenship ceremonies (if this is sacrosanct for politicians). Those who celebrate Christmas the night before have no less a powerful and wonderful experience as those who do it on the actual day, so too communities formally celebrating Australia Day the evening before and informally on the 26th for those who enthusiastically wish to support the 'traditional' Australia day date.

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30 I'd love my kids to also continue to acknowledge their British roots and origins and it's cultural significance of Australia's past, and for them to respect those who feel strongly and nationalistically that this day is one to pay respect for those who fought and died in the name of 'Australia' and who wish to honour our achievements of the last two hundred years

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35 On Australia day, we are celebrating Australia and what it means to be Australian and celebrating our diversity and different cultural backgrounds. So, let's start with the first cultural community that has become part of our mix-the indigenous community- rather than the second group-the Anglo Saxons. Let's move a date in a small practical and reasonable way that signifies that we as a nation are prepared to acknowledge the past and show we are mature and active enough to shift a little to grow a lot.

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40 For many Australians, Australia Day is not much more than a holiday and the mark of the end of the Summer holiday. For the remaining Australians, it is probably split evenly between those who think it is the correct day and correct way to celebrate our country's achievements both past and present and those like me who feel it is an inappropriate way and day to celebrate when it is also the day the cultural decimation and denigration of the first Australians began. Decimation and denigration that we still have not rectified, learnt from, or paid penance. Our national wound remains and moving Australia Day one day earlier would mean our apology was honest.

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How We Celebrate

50 As time for organising this years' event is short, how we celebrate is a conversation and decision for another day and for future years. For this year, the venue may be more formal but we should still work with our local mob more collegially, to the degree they wish, to start to shift the format and style of the event. Eventually, for me, Byron Bay is 'Cavvanbah'- the meeting place- and so let's once more look to meet and gather and celebrate and corroborree. Imagine a few hundred people

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sitting in circle in the grassed space within the Sandhills area or main beach. The night will still have the great local awards component-though this time with more attendees enjoying and watching it. The council funded lunch can be changed to a council funded dinner- a relaxed open feast and one that the Arakwal could have a say in what is offered, allowing for bush tucker etc.

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As locals sit and chat, cultural groups can bring their music and colour to the circle, one after another-after the local mob have started the dance up.

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Mary Flick chronicled in 1906 how on most Saturday nights, the local Byron Bay community would often pay sixpence to attend the local Arakwal painting up and dancing corroboree style in the Sandhills area- most probably where the library currently sits. There is local historical significance for this area to hold a space for white fellas and black fellas to come together.

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When my family joins me at the various events on Australia day, I'd love them to be part of events and ceremonies co-created by our local mob-instead of them only invited to welcome us to their country and then have them sit to the side for the formalities or leaving to celebrate Survival day.

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I imagine celebrating an Australia Day with my kids starting at dusk on the 25th, consisting of an indigenous feast, music and celebration from many ethnicities and our usual community awards acknowledging great actions by our locals. I imagine circles of locals- together for one beautiful moment a year- acknowledging our collective past, present and future.

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I'd love to a part of that. I'd love my kids to be a part of that. I'd love the diverse country I love to be a part of that.

Is the proposal consistent with any Delivery Program tasks?

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This Mayoral Minute is encapsulated in one of our key Vision's within Council's COMMUNITY VISION AND COUNCIL VALUES: We foster the arts and cultural activities, respect and acknowledge our first peoples and celebrate and embrace diverse thinking and being.

Key connections to the Community Strategic Plan Include:

Objective 2:	We cultivate and celebrate our diverse cultures, lifestyle and sense of community
Strategy 2.1:	Support and encourage our vibrant culture and creativity
Action 2.1a)	Support a range of inclusive events that encourage broad community participation and promote social inclusion
Action 2.1d)	Support Aboriginal cultural vibrancy within the Shire
Action 2.1f)	Develop strong and productive relationships between the Aboriginal community and Council

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Definition of the project/task:

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Holding the Council Official Australia Day event on 25 January.

Signed: Cr Simon Richardson

NOTICES OF MOTION

Notice of Motion No. 9.1 Anti-Vaccination Groups**File No:** I2018/1699

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I move:

1. **Does not accept bookings at any council facility from anti-vaccination groups or individuals, and in particular the Australian Vaccination Risks Network, formerly known as the Australian Vaccination Sceptics Network for the purposes of promoting an anti- vaccination message.**
2. **Applies this restriction while ever the Public Warning issued by the Health Care Complaints Commission is in place.**

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Signed: Cr Paul Spooner**Councillor's supporting information:**

15 The Federal Department of Health states: "Immunisation is the most significant public health intervention in the last 200 years, providing a safe and effective way to prevent the spread of many diseases that cause hospitalisation, serious ongoing health conditions and sometimes death.

20 Since the introduction of vaccination for children in Australia in 1932, deaths from vaccine-preventable diseases have fallen by 99 per cent, despite a threefold increase in the Australian population over that period. Worldwide, it has been estimated that immunisation programs prevent approximately three million deaths each year.

25 Immunisation is critical for the health of children and the wider community. For immunisation to provide the greatest benefit, a sufficient number of people need to be vaccinated to halt the spread of bacteria and viruses that cause disease - this is known as herd immunity or community immunity. The proportion of the population that has to be immune to interrupt disease transmission differs for each vaccine preventable disease, but is around 90 per cent for most diseases. For a highly infectious disease like measles, this is up to 95 per cent of the population. This emphasises
30 the need to stay vigilant and ensure high coverage rates, are achieved, not only at the national level, but also at the local level. "

35 With reported rates in recent years within the Byron Shire as low as 48.4% this creates a growing and immediate public health risk for babies and children in our community. (Source: Australian Institute of Health and Welfare).

40 The rate of vaccination within parts of the Byron Shire is at a lower rate than the latest available figures for South Sudan (59%), Afghanistan (81%), Iraq (85%) and Nauru (87%). The global average for immunisation is 85% (Source: World Health Organisation).

The Health Care Complaints Commission (HCCC) acts to protect public health and safety by resolving, investigating and prosecuting complaints about health care in NSW. It was established under the Health care Complaints Act 1993.

45 On the 30 April 2014 the HCCC issued the following warning that remains current today:

Public statement – warning about the Australian Vaccination-skeptics Network, Inc. ('AVN'), formerly known as Australian Vaccination Network Inc.

30 Apr 2014

5 The NSW Health Care Complaints Commission has completed an investigation into the Australian Vaccination-skeptics Network, Inc. ('AVN'), formerly known as Australian Vaccination Network Inc and under section 94A(1) of the *Health Care Complaints Act* has decided to make the following public statement and warning.

10 AVN was established in 1994 in New South Wales by a group of people concerned about the lack of scientifically-based information cautioning against vaccination. AVN states on its website that the government and the medical community, in general, "exaggerate the safety and benefit profiles of vaccinations whilst downplaying their risks." AVN states it was formed with the purpose of:

- 15 • providing medically-referenced information on vaccine safety and effectiveness
- lobbying to ensure that vaccinations are never made compulsory for Australian children
- supporting those who have chosen not to vaccinate or to vaccinate selectively.

AVN disseminates information to the public via a variety of mediums. These include its website, www.avn.org.au, the magazine entitled 'Living Wisdom' (which ceased publication in January 2013), its Facebook page, Twitter account and YouTube. Meryl Dorey, the former President, has also held a number of radio interviews.

The Commission investigated whether information published and disseminated by AVN may be misleading or inaccurate. The investigation focussed on information provided on AVN's website and some information disseminated on AVN's Facebook page.

The investigation found that AVN provides information on vaccination that is misleading to the average reader because it is either incorrect, inaccurately represented or because it has been taken out of context. Specifically:

- 30 • AVN makes specific assertions about the efficacy of the Gardasil vaccine used to prevent cervical cancer caused by the Human Papillomavirus (HPV). It states that:
 - 35 ○ the connection between HPV and cervical cancer is tenuous at best and incomprehensive at worst
 - the vaccine contains only four of the 100 strains of HPV and therefore its use is a "shot in the dark"
 - it is an experimental vaccine with no proven record of safety or effectiveness.
- 40 • AVN does not qualify that:
 - Gardasil contains the four strains of HPV that have the greatest potential to cause cancer
 - the link between HPV and cervical cancer has been established beyond reasonable doubt
 - significant research went into assessing the probable safety and efficacy of Gardasil before it was ever used in humans
 - 45 ○ since its use, extensive worldwide data on its safety and efficacy has been collected supporting its safety.
- 50 • AVN asserts that the pertussis vaccine used to prevent whooping cough cannot protect against a new strain of pertussis, and that 84% of cases in the community are caused by this new strain. Further, AVN claims that the administration of the new acellular vaccine sometimes requires surgery at the injection site and attributes this as the reason for the change in the vaccination schedule with the removal of the 18-month booster. It is incorrect to state that the vaccine cannot offer any protection against the new strain; and there is no evidence of severe local reactions to the administration of the acellular vaccine that requires

surgical intervention at the injection site. Further, the removal of the 18-month booster dose from the vaccination schedule was based on a study that evidenced protection from pertussis was maintained until six years of age when the primary vaccine course is given at two, four and six months of age.

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- In relation to Diphtheria-Tetanus-Pertussis (DTP) vaccines AVN asserts that “all whole cell DTP vaccines contain mercury in the form of thiomersal” and that it is one of the most toxic substances known to man and has been linked with autism. In the past, the whole cell DTP vaccine used in Australia did contain thiomersal, however even if the maximum possible number of doses were given, it is unlikely that the World Health Organisation’s (WHO) recommended limit of exposure per kilogram of body weight would have been exceeded. In 2012, the WHO’s Global Advisory Committee on Vaccine Safety reviewed available information on the safety of thiomersal and concluded that the levels of thiomersal attained in the body from cumulative doses of vaccines do not reach toxic levels, making a causal association between thiomersal in vaccines and autism implausible. Further, thiomersal is not present in any of the vaccines on the current National Immunisation Program for young children.

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- AVN states that many of the Anti-D injections recommended for pregnant women with a negative blood group who have babies with a positive blood group, and that prevent the mother’s immune system from making antibodies to the baby’s positive cells thus preventing harm to the baby, contain thiomersal. They also state that late cord clamping and lotus birth minimises or completely eliminates the exchange of blood after birth. The Anti-D injections used in Australia are made from Australian plasma and are free from thiomersal. Further, late cord clamping and lotus birth do not completely eliminate the exchange of blood after birth; there can still be contamination of the maternal system by foetal blood. There is also an increased risk of post-partum haemorrhage and foetal jaundice.

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- AVN provides links on its website to 68 journal studies that AVN states support the alleged vaccine/autism causation. However, the studies mostly describe an association between autism or other neurological disorders with vaccines or other environmental exposures, but they make no claim of causality. The subject of any link between vaccines and autism has been examined by a number of expert professional groups, including the Institute of Medicine, none of which have substantiated any link. A study carried out by the Institute of Medicine in 2011 rejects a causal relationship between the measles, mumps and rubella (MMR) vaccine and autism.

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- AVN states that “vaccine ingredients” and “vaccines” have never been tested, either individually or in combination. This statement is incorrect as all vaccines available in Australia must pass stringent safety testing before being approved for use by the Therapeutic Goods Administration (TGA). This testing is required by law and is usually done over many years during the vaccine’s development. There is also ongoing review of both vaccine safety and efficacy through post-marketing clinical trials and surveillance of disease and vaccine adverse events. This includes multivalent vaccines and the administration of more than one vaccine at a time. Further, much of the understanding of the safety of vaccine components comes from the use of the components and their lack of association over many years with reported significant adverse events. For components such as mercury and aluminium, conservative safety limits at most ages have been published by a number of reputable agencies, including the Environmental Protection Agency (USA) and the WHO.

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- AVN uses data from the United States Vaccine Adverse Event Reporting System (VAERS) on its website, without qualifying that no cause-and-effect relationship has been established. This is because VAERS collects data on any adverse event following vaccination and it is specifically stated that any report of an adverse event to VAERS is not a causal link that a vaccine caused the event.

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- On the AVN website there is the headline ‘Nurses don’t trust vaccines’, under which an article from the Vaccine journal about a study conducted into the low rates of vaccinations among nurses who treat infants is referenced . AVN summarised the study conducted as conveying that a large number of nurses are saying no to vaccination because they don’t trust the way in which vaccines have been promoted. The study was performed on a small group of 25 nurses in Israel. Due to the small sample size and unique context under which the study was conducted, the results cannot be generalised without caution. The authors of the article “suggest” that low rates of vaccinations among nurses in Israel who treat infants are “embedded deep in the mistrust nurses have towards health authorities and the nurses’ desire for autonomy”.

Warning

The Commission has established that AVN does not provide reliable information in relation to certain vaccines and vaccination more generally. The Commission considers that AVN’s dissemination of misleading, misrepresented and incorrect information about vaccination engenders fear and alarm and is likely to detrimentally affect the clinical management or care of its readers.

Given the issues identified with the information disseminated by AVN, the Commission urges general caution is exercised when using AVN’s website or Facebook page to research vaccination and to consult other reliable sources, including speaking to a medical practitioner, to make an informed decision.

The Commission has recommended that AVN amend its published information with regard to the above issues and the Commission will monitor the implementation of these recommendations.

Further Information

Read the related [media release](#). For further information, contact the the Health Care Complaints Commission on 9219 7444 or send an email to media@hccc.nsw.gov.au. *The information in this media release is correct at the time of publication. Orders may change; for example, conditions may no longer apply. For current information, please [contact the Commission](#).*

Footnotes:

1. *WHO is the directing and coordinating authority for health within the United Nations system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries and monitoring and assessing health trends.*
2. *GACVS was established in 1999 by the World Health Organisation to respond promptly, efficiently, and with scientific rigour to vaccine safety issues of potential global importance. Its members are acknowledged experts from around the world in the fields of epidemiology, statistics, paediatrics, internal medicine, pharmacology and toxicology, infectious diseases, public health, immunology and autoimmunity, drug regulation and safety.*
3. *The United States Institute of Medicine is an independent, non-profit organisation that works outside of government to provide unbiased and authoritative advice to decision-makers and the public. It was established in 1970 and it is the health arm of the National Academy of Sciences.*
4. *Baron-Epel et al. (2012). What lies behind the low rates of vaccinations among nurses who treat infants? Vaccine, 30, 3151-3154.*

Staff comments by James Brickley, Acting Director Corporate and Community Services, Corporate and Community Services:

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

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Council's guidelines for venue bookings

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Council's adopted Guidelines for Halls and Venues for Section 355 Management Boards and Committees (<https://www.byron.nsw.gov.au/files/assets/public/hptrim/corporate-management-meetings-informal-ad-hoc-meetings-with-the-community-2018/w20181186-halls-and-venues-guidelines-for-section-355-management-committees-and-boards.pdf>) outlines the booking procedure for venues.

15

Section 7 notes that conditions of hire must be formalised with a hirers agreement and based on the principle of inclusion "...the Management Committee are acting on behalf of Council, and it is important to uphold the principles of equity, accessibility and inclusivity, providing for the whole community".

20

The template hirer's agreement (<https://www.byron.nsw.gov.au/files/assets/public/hptrim/corporate-management-meetings-informal-ad-hoc-meetings-with-the-community-2016/template-information-and-user-hire-conditions-plus-booking-form.pdf>) outlines responsibilities including:

25

- Bond payment
- Licences for alcohol
- Licences for broadcasting music
- Security
- Noise
- Public liability insurance

30

The guideline or template hirer's agreement does not stipulate what the hall/venue can and cannot be used for.

Council's position on recent screening of anti-vax film

35

An August 2018 screening of the anti-vax film 'Sacrificial Virgins' generated some comments from the community. At the time Council responded:

40

"Council received messages from concerned community members via Facebook regarding the screening of the film "Sacrificial Virgins" at Mullumbimby Civic Hall on 9 August. The Venue Coordinator also received several emails.

45

The film was booked in accordance with Council's adopted Guidelines for Halls and Venues for Section 355 Management Boards and Committees – which includes that statement that 'it is important to uphold the principles of equity, accessibility and inclusivity providing for the whole community'. Hire conditions and other safeguards are in place to protect Council's asset.

50

When contacted by members of the community, the venue coordinator advised the community members that any hirer of the hall does not reflect the views of Council or the Board of Management. Council has responded in the same vein.

55

Council advised patrons (via large signs on display on the entry to the hall and within the hall) that "The views expressed at this event are in no way any reflection of the views of Byron Shire Council or Mullumbimby Civic Hall. This event is not hosted by, or promoted by, Mullumbimby Civic Hall or Byron Shire Council."

Guideline revision

5 Should Council wish to update the guidelines to reflect what Council’s venues and halls can be used for, it could be perceived that this would be removing the empowerment from Committees to manage the facility and limiting free speech. Such an approach could be seen as Council allowing bias or pre-judgment.

10 If Council resolved to restrict bookings, a clause could be included to provide discretion to Council and the General Manager, rather than singling out a particular organisation. The clause could be worded as “bookings may be cancelled or refused at the General Manager’s discretion”.

Financial/Resource/Legal Implications:

15 The updating of the guidelines would have minimal financial implications.

There may be instances where venues and halls could loose bookings based on new requirements.

20 There may be legal implications with regard to prohibiting certain groups from booking venues.

25 It is noted that the Local Government Act envisages that the elected Council will primarily be involved in the creation and review of the Council’s (as defined in the (LGA) Dictionary) policies and objectives. In that vein, Council could give the General Manager guidance on matters which the General Manager might consider in exercising his discretion, rather than direct operational management of Council’s services.

Is the proposal consistent with any Delivery Program tasks?

30 Council’s Community Strategic Plan 2028 “Our Byron, Our Future” includes:

Objective 2:	We cultivate and celebrate our diverse cultures, lifestyle and sense of community
Strategy 2.1:	Provide accessible, local community spaces and facilities
Action 2.3b)	Support effective management of community buildings

Notice of Motion No. 9.2 **Drainage concern about stormwater flowing under Ewingsdale Road, from the Byron Industrial Estate**
File No: I2018/1700

5

I move:

That, in relation to drainage concerns raised by Belongil residents south of Ewingsdale Road, Council:

- a) undertake an immediate review of current and possible drainage paths for catchments leading to land at Melaleuca Drive and the Bayshore Drive intersection and investigate options for alleviating or removing impacts and report to the October 2018 Council meeting;**
- b) prepare a "Belongil Catchment Issues Study" with the goal of then preparing a Belongil Catchment Management Plan that addresses, amongst other issues, that of drainage south of Ewingsdale Road and whether fill over large areas will not cause waterlogging downstream;**
- c) allocate \$30,000 to prepare Belongil Catchment Issues Study for presentation to Council in February 2019.**

Attachments:

- 1 Attachment to NoM - Vidal Property & Drainage Lines, E2018/74735 
- 10

Signed: Cr Jan Hackett

Councillor's supporting information:

15 Council has recently completed maintenance works on a culvert under Ewingsdale Road and re-routed drainage around the Bayshore Drive roundabout. This has raised concerns from downstream landowners who are experiencing increased flooding on their land. (Refer Attachment)

20 Staff met on Friday 31 August 2018 at the Cavanbah Centre with affected Belongil residents, Drainage Union Members and some members of the Coastal Estuary Panel regarding the concerns.

25 The concerns also extended to other catchment related issues that have been highlighted further since Council completed maintenance works on the culvert and re-routed drainage around the Bayshore Drive roundabout works.

30 Staff consider that stormwater flows have always drained in this direction, albeit through a poorly maintained drain and that recent works have restored this drainage path resulting in water reaching the drain more efficiently.

35 These works have raised an issue that needs further investigation and resolution. The above meeting highlighted the need for a whole of catchment review and a solution is considered necessary to address this issue and numerous other issues across the catchment. Some of these issues are currently being addressed separately through other processes while others are not currently being addressed.

That a report on scoping of water sensitive design and whole of catchment plan to integrate works involving West Byron STP, Cape Byron Marine Park, Union Drain Trust and the community come to the next meeting WWSAC.

5 Staff will need to ensure these 2 bodies of work are complementary.

Financial/Resource/Legal Implications:

The funds for the variation work to be taken from the Sewer reserve fund.

10

Is the proposal consistent with any Delivery Program tasks?

Yes

15

SUBMISSIONS AND GRANTS

Report No. 11.1 **Byron Shire Council Submissions and Grants as at 29 August 2018**

Directorate: Corporate and Community Services

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

File No: I2018/1698

Theme: Corporate Management
Corporate 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 (#E2018/74102) for the Byron Shire Council Submissions and Grants as at 29 August 2018.

20 **Attachments:**

1 Byron Shire Council Submissions and Grants as at 29 August 2018, E2018/74102 

25

Report

This report provides an update on grant submissions.

5 Unsuccessful Applications

- Agricultural Outreach, National Landcare Program: Smart Farms, Small Grants, Commonwealth Department of Agriculture and Water
- Railway Square Park, Growing Local Economies, NSW Regional Growth Fund
- 10 • The Refurbishment of Byron’s Tennis Facilities, Infrastructure Grants – Sports and Recreation Stream, NSW Office of Responsible Gambling

Additional information on the grant submissions is provided in Attachment 1 – Submissions and Grants report as at 29 August 2018.

15

Financial Implications

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

20

Requested funds from funding bodies	12,945,930
Council cash contribution	4,294,356
Council in-kind Contribution	62,266
Other contributions	8,610,853
Funding applications submitted and awaiting notification (total project value)	25,913,405

25

Statutory and Policy Compliance Implications

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.

30

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **Classification of Lots 188 DP 728535, Lot 1 DP 1159861 and Lot 138 DP 755722, (the former Mullumbimby Hospital site).**

5 **Directorate:** General Manager
Report Author: Ralph James, Legal Counsel
File No: I2018/1598
Theme: Corporate Management
10 Community Development

Summary:

15 At its Ordinary Meeting on 3 August 2017 Council resolved that Council give notice for not less than 28 days of the following proposed resolution

 pursuant to Section 34 of the Local Government Act 1993:

20 “That Lot 188 DP 728535 and lot 1 DP 1159861 and lot 138 DP 755722, the former Mullumbimby Hospital site, be classified “operational” under the Local Government Act 1993.”

 The proposed resolution was publicly advertised on 24 August 2017 and 7 September 2017. No objections were received.

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

30 The provisions of Section 31 of the Local Government Act provide that before a council acquires land, or within 3 months after it acquires land, a council may resolve that the land be classified as community land or operational land. Any land acquired by a council that is not classified under the section is, at the end of the period of 3 months, taken to have been classified under a local environmental plan as community land.

35 Section 34 of the Local Government Act provides for public notice.

 Reclassification is a two step process – a proposed resolution and notice followed by a formal resolution.

40

RECOMMENDATION:

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

45

Report

At its Ordinary Meeting on 3 August 2017 Council received, considered and resolved in respect of a report titled *Report No. 13.7 Classification of land - former Mullumbimby Hospital site Lot 188 DP 728535, Lot 1 DP 1159861 and Lot 138 DP 755722.*

Council resolved as follows:

that Council give notice for not less than 28 days of the following proposed resolution:

pursuant to Section 34 of the Local Government Act 1993:

“That Lot 188 DP 728535 and lot 1 DP 1159861 and lot 138 DP 755722, the former Mullumbimby Hospital site, be classified “operational” under the Local Government Act 1993.”

The proposed resolution was publicly advertised on 24 August 2017 and 7 September 2017 in the following terms:

CLASSIFICATION OF LAND AT MULLUMBIMBY TO OPERATIONAL

At its meeting of 3 August 2017 Council resolved that:

Council give notice for not less than 28 days that Lot 188 DP 728535 and Lot 1 DP 1159861 and lot 138 DP 755722, the former Mullumbimby Hospital site, be classified “operational” under the Local Government Act 1993.

Any objections to this land being classified as operational should be forwarded to the General Manager by 20 September 2017.

Submissions close: 4.00pm 20 September 2017
Enquiries: Mark Arnold 02 6626 7000

No objections were received.

On 23 August 2018 Council resolved to purchase the Mullumbimby War Memorial Hospital site from Health Administration Corporation on the terms and conditions set out in the contract submitted by the Health Administration Corporation but subject to amendments being made to the contract.

Council authorised the General Manager to take all steps necessary to enter into the contract, as amended, and to sign and counter-sign all documents associated with the purchase of the site, including the affixing of the Council seal to all documents that may require it.

A Project Reference Group has been formed with 21 members (including 4 councillors) with the purpose of providing advice and recommendations to Council on the best outcome for the site, considering the wellbeing of the whole community, the environment and future generations. Their core value is to create benefit and collective wellbeing for the whole community.

The PRG seek to ensure that what happens on the site is community initiated and implemented however this does not preclude members of the business community.

PRG members are keen to explore all ideas that a) do no harm b) contribute to all four aspects of a QBL approach and as such are not opposed to commercial activity that is fit for purpose

5 In order to ensure that the remediation costs are recouped it is essential that the capacity for income generation from some activities based at the site is not excluded. There is strong community and PRG support to realise the social, environmental, civic and economic potential of the site and to ensure financial sustainability and guarantee that future generations are not financially burdened.

On 23 August 2018 Council also resolved to authorise borrowings through an Expression of Interest (EOI) process prior to 30 June 2019 to fund demolition and other associated costs.

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

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

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

Council also considered the proposed uses of the site. They are:

- 25 • affordable housing
- centre-based child care facilities
- commercial premises
- community facilities
- early education and care facilities
- 30 • educational establishments
- environmental facilities
- function centres
- group homes
- information and education facilities
- 35 • markets
- mixed use development
- public land
- recreation areas
- recreation facilities
- 40 • residential care facilities
- respite day care centres
- schools
- school-based child care
- seniors housing; and/or
- 45 • any other use which, in the purchaser's reasonable opinion, has similar characteristics to the above uses.

50 For Council to deal with the land and to use the land in accordance with the purposes listed above (and as referred to in the contract for the sale and purchase of the land) it is necessary that the land classification be "operational land".

In addition, the land ought to be classified as operational land given that the Catholic Healthcare Ltd facility is commercially operated on the land. The facility has the benefit of a lease for operation on the land until the end of 2022. As such the sale to Council is subject to Council agreeing to

allow Catholic Healthcare Ltd to continue occupation of the property under the same terms as the existing leases – until they expire.

5 Clause 4.4 of the contract for sale and purchase binds Council to a Deed regarding that part of the land presently occupied by Catholic Healthcare Ltd. The Deed provides that upon acquisition of the land Council will promptly arrange for the land to be subdivided to create a separate Lot for the part of the land subject to the leases.

Financial Implications

10 The resource implications of carrying out the recommendation for the classification of the land are minor.

15 The 'Operational Land' classification would maximise the options for the use of the property, with no restrictions on leasing of the site. The Deed requires Council to subdivide lease expiring in 2022 for the operation of the Coolamon Villa Aged care facility. This lease would replace the current lease in place for the same period.

20 This special condition special in the contract for sale regarding Catholic Healthcare Ltd is best managed under the 'Operational land' classification.

Statutory and Policy Compliance Implications

25 The Local Government Act provides that all Council land be classified and that there are two classifications: operational and community.

The Act provides that before council acquires land, or within 3 months after it acquires land, council may resolve that the land be classified as community land or operational land.

30 Any land acquired by council that is not classified is, at the end of the period of 3 months after it acquires land, taken to have been classified under a local environmental plan as community land.

35 How public land is classified determines the ease or difficulty a council can have dealings in public land, including its sale, leasing or licensing. It also provides for transparency in council's strategic asset management or disposal of public land.

40 The general position is that there are no special restrictions on councils' powers to manage, develop or dispose of operational land, subject to the provisions of relevant environmental planning instruments (i.e. Local Environmental Plans).

45 Community land on the other hand cannot be sold or otherwise disposed of by council. There are also restrictions on the use of community land (through Plans of Management), on the grant of leases and licences (not more than 21 years and only more than 5 years if public notice is given) and disposal (cannot be sold).

Community land would ordinarily comprise land such as a public park.

50 Operational land can later be reclassified as community land by council resolution, after public submissions have been considered.

Local Government Act

25 All public land must be classified

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

26 What are the classifications?

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

27 How are the classifications made?

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

31 Classification of land acquired after 1 July 1993

- (1) This section applies to land that is acquired by a council after the commencement of this Division, other than:
 - (a) land to which the *Crown Lands Act 1989* applied before the acquisition and continues to apply after the acquisition, and
 - (b) land that is acquired for the purpose of a road.
- (2) Before a council acquires land, or within 3 months after it acquires land, a council may resolve (in accordance with this Part) that the land be classified as community land or operational land.
- (2A) Any land acquired by a council that is not classified under subsection (2) is, at the end of the period of 3 months referred to in that subsection, taken to have been classified under a local environmental plan as community land.

34 Public notice to be given of classification or reclassification by council resolution

- (1) A council must give public notice of a proposed resolution to classify or reclassify public land.
- (2) The public notice must include the terms of the proposed resolution and a description of the public land concerned.
- (3) The public notice must specify a period of not less than 28 days during which submissions may be made to the council.

35 What governs the use and management of community land?

Community land is required to be used and managed in accordance with the following:

- the plan of management applying to the land
- any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land
- this Division.

Report No. 13.2 **Consolidation of 12 Lots in DP 4974 into two new Lots**
Directorate: General Manager
Report Author: Deanna Savage, Roads and Property Officer
File No: I2018/1527
5 **Theme:** Corporate Management
 Corporate Services

Summary:

10 To enable works, funded by the Stronger Country Communities Fund Grant, to be carried out to the Bangalow Heritage House in accordance with development consent 10.2017.598.1, Council is required to consolidate all separate parcels of land, which the House spans, into one single allotment.

15 It is recommended that Council consider that part Lots 1-5 Section 12 in DP 4974 be consolidated into one lot with all remaining land consolidated into a second lot.

RECOMMENDATION:

1. **That Council endorse the Consolidation of twelve (12) Lots into two (2) allotments with the first allotment to cover part of Lots 1-5 and the second allotment to cover all remaining land as per image 1 for the purposes of complying with condition 21 of development consent 10.2017.598.1.**
2. **That Council allocate a budget of \$8,000, with funding provided from the Property Development Reserve, to fund the work required for the consolidation of 12 lots in DP 4974 into two new lots.**

Attachments:

- 1 Bangalow Historical Society - 10.2017.598.1 - Notice of Determination - Approval, A2018/5141 

Report

Background:

5 The Bangalow Heritage House building currently spans part of three separately registered land parcels being part of Lots 3-5 in Section 12 DP 4974. All parcels being Byron Shire Council community land.

10 On 23 February 2018 the Bangalow Heritage Society was granted development consent 10.2017.598.1 for the alteration and additions to the existing Heritage House Museum and Restaurant/Tea Rooms. The works are fully funded by a Stronger Country Communities Fund grant.

15 Condition 21 of development consent 10.2017.598.1 requires that:
All separate parcels of land are to be consolidated into one allotment and registered with the NSW Department of Lands.

20 To enable a construction certificate to be issued for the development, Council needs to comply with condition 21 of development consent 10.2017.598.1.

25 It is recommended that the best option for the consolidation was to consolidate twelve (12) Lots into two (2) allotments with the first allotment to cover part of Lots 1-5 and the second allotment to cover all remaining land. The advantage of this option is a lease for a term exceeding three years can be registered over the first allotment with the second allotment wholly containing the car park and other land for community use.

Image 1



30

Financial Implications

5 As outlined above the works being undertaken to Bangalow Heritage Society development consent 10.2017.598.1 are being fully funded by a Stronger Country Communities Fund grant. The funds granted will not extend to the consolidation of the parcels of land into 2 lots. It is estimated that a budget of \$8,000 will be required to complete the work to consolidation of 12 lots in DP 4974 into two new lots. Funding for the required \$8,000 can be provided by the Property Development Reserve should Council approve the consolidation of lots as indicated in this report.

10 **Statutory and Policy Compliance Implications**

The site is subject to the Generic Plan of Management for Community Land Categorised as General Community Use – Community Facilities.

15 *Local Government Act 1993*

Report No. 13.3 **Lease for Massinger Street treehouse**
Directorate: General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2018/1685
5 **Theme:** Corporate Management
 Corporate Services

Summary:

10 Council resolved (**18-271**) to advertise a proposed twelve month lease to Ms Coppin over an unused portion of road reserve adjoining 77 Massinger Street Byron Bay. Council also resolved that if submissions were received then Council must consider the submissions and determine whether to grant the lease. Council received two submissions as a result of the public notice.

15 The resolution also required Ms Coppin to provide requisite insurance, an engineering certificate attesting to the structural integrity of the treehouse structure and an arborist report. Ms Coppin has provided all three documents that validated the structural integrity of the treehouse, confirmed the trees appeared to be healthy and evidenced public liability insurance over the treehouse.

20 Staff recommend that Council, after considering all submissions received, grants a twelve month lease to Ms Coppin over the unused public road being that part of the public road adjoining the property at 77 Massinger Street Byron Bay.

25

RECOMMENDATION:

1. **That Council consider all submissions received in attachment 4 (E2018/72737) from the public notice on the proposed lease to Ms Coppin over an unused portion of road reserve adjoining 77 Massinger Street Byron Bay; and**
2. **That Council consider documents provided by Ms Coppin in attachments 1 to 3 (E2018/72552, E2018/72554, E2018/72557); and**
3. **That Council delegate the General Manager authority to enter into a twelve month lease over the unused public road being that part of the public road adjoining the property at 77 Massinger Street Byron Bay in accordance with s153(1) of the *Roads Act 1993 (NSW)*.**

Attachments:

- 30 1 Confidential - Insurance policy - Childrens treehouse lease to Mell Coppin, E2018/72552
2 Structural Engineers Certificate: Lease treehouse to Mell Coppin 77 Massinger St, E2018/72554 
3 Aborist report: Lease treehouse to Mell Coppin 77 Massinger St, E2018/72557 
4 Submissions on proposed lease for treehouse 77 Massinger St Byron Bay, E2018/72737 

35

Report

Council resolved (**18-271**) on 19 April 2018:

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

In complying with resolution (**18-172**):

30 Ms Coppin provided Council with:

- a) public liability insurance current to 31 March 2019 for \$20 million Confidential attachment 1 (E2018/72552);
- 35 b) structural engineers certificate validating the structural building integrity of the structure for a period of two years Attachment 2 (E2018/72554); and
- c) an arborist report confirming appeared health of both trees and recommended ongoing inspection every 12-24 months Attachment 3 (E2018/72557).

40 In accordance with s154 (1) of the *Roads Act 1993* (NSW) the proposed lease was advertised for a period of 28 days between 2 and 30 August 2018. Council received two submissions which form Attachment 4. These submissions are not the subject of a confidential attachment because it was advised in the advertising that submissions received would be made public. They have been redacted to remove personal contact detail.

45 The submissions are summarised below:

Submission	Council reply
1. Without a constructed footpath the submission asked if the pedestrian access across the land in front of 77 Massinger Street would remain open due to Massinger Street becoming a major bypass from the southern side of town to access the CBD. As a consequence of road use and narrowness of the road it is	<ul style="list-style-type: none"> The proposed lease is over a section of unused road reserve that the tree house is constructed between two existing street trees. The leased area will not prevent or obstruct pedestrian access through that portion of unused road reserve.

Submission	Council reply
not safe to walk on the road way. If Council's intends to close the informal footpath than the submitter would not agree to the lease. (E2018/68124)	
2. The submission supports the retention of the treehouse and requests Council executes the lease and immediately withdraw any directions to remove the treehouse.(E2018/69126)	<ul style="list-style-type: none"> • Council staff has recommended the lease be granted. • Council staff complied with resolution18-271/5.

As Council received no objections to the granting of a lease over an unused portion of road reserve adjoining 77 Massinger Street and that Ms Coppin has provided all documents as required by resolution 18-271, Council staff recommend that Council, after considering all submissions received, grant Ms Coppin a 12 month lease over the unused public road being that part of the public road adjoining the property at 77 Massinger Street Byron Bay in accordance with s153(1) of the *Roads Act 1993* (NSW).

Financial Implications

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

Statutory and Policy Compliance Implications

Roads Act 1993 (NSW)

153 Short-term leases of unused public roads

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

154 Public notice to be given of proposed lease

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

156 Decision on proposed lease

- (1) After considering any submissions that have been duly made with respect to the proposed lease, the roads authority may grant the lease, either with or without alteration, or may refuse to grant the lease.

- (2) If the roads authority grants a lease, the roads authority must cause notice of that fact to be published in a local newspaper.

157 Special provisions with respect to short-term leases

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

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.4 **Election of Deputy Mayor 2018-2019**
Directorate: Corporate and Community Services
5 **Report Author:** Heather Sills, Corporate Governance Officer
File No: I2018/1360
Theme: Corporate Management
 Councillor Services

10 **Summary:**

15 In accordance with Section 231 of the *Local Government Act 1993* Councillors can elect a Deputy Mayor. Normal practice for Byron Shire is to elect their Deputy Mayor for a period of 12 months at the first meeting in September each year.

RECOMMENDATION:

1. **That Council elect a Deputy Mayor for the period from 20 September 2018 until the first meeting of Council in September 2019.**
2. **That the method of election of the Deputy Mayor be by way of ordinary ballot.**

20 **Attachments:**

- 1 Byron Shire Council Nomination Form Deputy Mayor 2018, E2018/60931 

Report

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

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

Term of the Deputy Mayor

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

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

Returning Officer

30 Schedule 7(1) of the Local Government (General) Regulation 2005 states that the “*General Manager (or a person appointed by the General Manager) is the Returning Officer.*”

Nomination

35 Schedule 7(2) of the Local Government (General) Regulation 2005 states that:

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

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

Election

55 Schedule 7(3) of the Local Government (General) Regulation 2005 states:

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

5

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

- (4) *In this clause:*

10

“ballot” has its normal meaning of secret ballot;

“open voting” means voting by a show of hands or similar means.

15 Traditionally this Council has determined that the election for Deputy Mayor should be by ordinary ballot. The following additional information is provided in respect to an election by preferential ballot and by ordinary ballot.

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

25 Ordinary ballot – this is the usual method adopted in New South Wales. Ballots are secret with only one candidate’s name written on a ballot paper.

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

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

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

40

Financial Implications

On 12 June 2014, Council resolved **(14-304)** in part 3: *"That Council in accordance with its current practice not determine a fee payable to the Deputy Mayor."*

45

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

- (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.*

50

Therefore the Deputy Mayor when acting in the role of Mayor, in instances where the Mayor has leave of absence endorsed by Council, would be paid a fee calculated on a pro-rata basis of the annual Mayoral allowance, which would be deducted from the amount of the monthly Mayoral allowance paid to the Mayor, in accordance with Section 249 of the Local Government Act 1993.

55

Statutory and Policy Compliance Implications

5 The Deputy Mayor will undertake the Mayor's role at the request of the Mayor and in situations where the Mayor is prevented by illness, absence or other reasons from exercising the functions of the position. The role of the Mayor is defined by Section 226 of the *Local Government Act 1993*. Section 226 states that:

10 *The role of the mayor is as follows:*

- 10 (a) *to be the leader of the council and a leader in the local community,*
- (b) *to advance community cohesion and promote civic awareness,*
- 15 (c) *to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,*
- (d) *to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,*
- 20 (e) *to preside at meetings of the council,*
- (f) *to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,*
- 25 (g) *to ensure the timely development and adoption of the strategic plans, programs and policies of the council,*
- (h) *to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,*
- 30 (i) *to promote partnerships between the council and key stakeholders,*
- (j) *to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,*
- 35 (k) *in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,*
- 40 (l) *to carry out the civic and ceremonial functions of the mayoral office,*
- (m) *to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,*
- 45 (n) *in consultation with the councillors, to lead performance appraisals of the general manager,*
- (o) *to exercise any other functions of the council that the council determines.*

Report No. 13.5 **Report of the Public Art Panel Meeting 3 August, including proposed amendments to the Public Art Chapter of the Development Control Plan**

Directorate: Corporate and Community Services

5 **Report Author:** Joanne McMurtry, Community Project Officer
Steve Daniels, Project Officer - Planning Reforms

File No: I2018/1436

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

Summary:

15 An Public Art Panel meeting was held on 3 August 2018 to consider the selection of an artist for the Bayshore Drive Roundabout Public Art Project; to shortlist artists for the Railway Square Public Art Project; to consider the Brunswick Nature Sculpture Walk event and proposed permanent sculptures; and to consider a proposed amendment to the Public Art Chapter of the Development Control Plan.

20 The Panel made three recommendations to Council. Due to time constraints for the Bayshore Drive Roundabout Public Art Project, a report was provided to Council at the 23 August 2018 meeting to endorse the selection of the artist to commission for the project. The other two recommendations are provided in this report.

RECOMMENDATION:

That with respect to the Public Art Panel meeting held on 3 August 2018, Council:

1. **Note that the Public Art Panel has considered each artwork submission for the Brunswick Nature Sculpture Walk, for consistency with the Council's Public Art Policy, Strategy and Guidelines and Criteria.**
2. **Note that the event organisers have engaged structural engineers (Ardill Payne and Partners) to assess the installation of the artworks prior to the event opening and access by the general public.**
3. **Accept the two proposed permanent artworks as a legacy of the Brunswick Nature Sculpture Walk - Allen Horstmanhoff's *Artefact of Things Past* and the *Labyrinth* in the locations identified, noting that:**
 - a) **an agreement has been reached with the artist for the Labyrinth that the artist will maintain the artwork once installed**
 - b) **the judges for the permanent acquisition prize, to which Council contributed financially, include members of the Public Art Panel.**
4. **Note that the Public Art Panel has recommended an amendment to Byron DCP 2014 Chapter D8 – Public Art.**
5. **Receive a Strategic Planning Workshop to consider the proposed DCP amendment followed by a further report to Council.**

25 **Attachments:**

- 1 Public Art Panel minutes 03082018, E2018/67521

Report

A Public Art Panel meeting was held on 3 August 2018 to consider:

- 5 1. The selection of an artist for the Bayshore Drive Roundabout Public Art Project;
2. a shortlist of artists for the Railway Square Public Art Project;
3. the Brunswick Nature Sculpture Walk event and proposed permanent sculptures; and
4. a proposed amendment to the Public Art Chapter of the Development Control Plan.

10 A copy of the Agenda for the Public Art Panel meeting of 3 August 2018 can be found at the following link: https://byron.infocouncil.biz/Open/2018/08/PAP_03082018_AGN_823_AT_WEB.htm

15 The Panel made three recommendations to Council. Due to time constraints for the Bayshore Drive Roundabout Public Art Project, a report was provided to Council at the 23 August 2018 meeting to endorse the selection of the artist to commission for the project.

20 The other two recommendations relating to Brunswick Nature Sculpture Walk and an amendment to the Public Art Chapter of the Development Control Plan are provided on the first page of this report. A recommendation regarding the Railway Square Public Art project will be provided to Council on selection of the final artist for the project later this year.

Public Art Chapter of the Development Control Plan

25 The newly adopted Public Art Strategy includes a strategy to “build strength into the Development Control Plan [with regards to public art]”. The Public Art Panel have considered proposed amendments to *Byron Development Control Plan (DCP) 2014* – Chapter D8 Public Art at both the 26 April Public Art Panel meeting and a draft amendment at the 3 August Panel meeting.

30 The draft amendment proposes the following changes:

- Update to the aims of the Chapter considering the revised Public Art Policy and new Public Art Strategy
- Updates to Section D8.2.1, including revised developer contribution values, details to be addressed in a Public Art Plan, and design considerations for public art proposals
- 35 • A new section on the requirements for a development application (DA) for the provision of public art
- A new section on the provision of murals

40 Consequential amendments would also be required to Byron DCP 2014 Part A – Preliminary. These amendments are minor in nature and include updates to the definition of ‘public art’, and inclusion of a definition of ‘murals’. The definitions would be taken from the Public Art Policy and new Public Art Strategy.

45 Given the complexities, Staff recommend that a Strategic Planning Workshop be held with Councillors to discuss the proposed amendments to DCP 2010, Chapter D8 - Public Art. The draft amendment proposes significant changes to the existing chapter which need to be fully understood and considered by Council. Following the Strategic Planning Workshop, it is recommended that Council receive a further report to consider the draft amendment and public exhibition of the amendment.

50 **Financial Implications**

55 The Public Art Panel did not make any recommendations this meeting to spend any public art funds.

Statutory and Policy Compliance Implications

Public Art Policy, Public Art Strategy and Public Art Guidelines and Criteria.

5

Report No. 13.6 **Investments August 2018**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2018/1593
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 August 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 August 2018 be noted.**

Report

In relation to the investment portfolio for the month of August 2018, Council has continued to maintain a diversified portfolio of investments. At 31 August 2018, the average 90 day bank bill rate (BBSW) for the month of August was 1.96%. Council's performance to 31 August 2018 is 2.72% 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 August 2018:

Schedule of Investments held as at 31 August 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	Y	BBB+	28/10/19	Y	FRN	3.17%	655,144.56
24/03/17	1,000,000	NAB Social Bond (Gender Equality)	Y	AA-	24/03/22	N	B	3.25%	1,017,387.17
31/03/17	1,000,000	CBA Climate Bond	Y	AA-	31/03/22	N	FRN	3.25%	1,000,000.00
16/11/17	750,000	Bank of Queensland	Y	BBB+	16/11/21	N	FRN	2.63%	750,000.00
30/08/18	500,000	Bank Australia Ltd (Sustainability Bond)	Y	BBB+	30/08/21	Y	FRN	3.26%	500,000.00
06/03/18	2,000,000	My State Bank	Y	BBB	06/09/18	Y	TD	2.65%	2,000,000.00
06/03/18	1,000,000	Bananacoast Credit Union	Y	NR	06/09/18	Y	TD	2.60%	1,000,000.00
16/03/18	1,000,000	The Capricornian Credit Union	Y	NR	17/09/18	U	TD	2.80%	1,000,000.00
04/04/18	2,000,000	Police Credit Union Limited (SA)	Y	NR	03/10/18	Y	TD	2.86%	2,000,000.00
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 Bank	Y	A	02/10/18	N	TD	2.60%	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
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
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	Y	NR	29/10/18	Y	TD	2.83%	1,000,000.00
15/05/18	1,000,000	Maitland Mutual Building Society	N	NR	15/10/18	Y	TD	2.85%	1,000,000.00
17/05/18	1,000,000	Hunter United Employees Credit Union	Y	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

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.6

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel ADI	Type	Interest Rate Per Annum	Current Value
24/05/18	1,000,000	ME Bank	Y	BBB	21/09/18	Y	TD	2.60%	1,000,000.00
28/05/18	1,000,000	B & E Ltd (Bank of Us)	Y	NR	28/11/18	U	TD	2.85%	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 Bank	N	A	25/02/19	N	TD	2.80%	1,000,000.00
01/06/18	1,000,000	Police Credit Union Limited (SA)	N	NR	21/09/18	Y	TD	2.82%	1,000,000.00
05/06/18	1,000,000	NAB	N	AA-	03/10/18	N	TD	2.70%	1,000,000.00
08/06/18	2,000,000	ME Bank	N	BBB	07/12/18	Y	TD	2.84%	2,000,000.00
08/06/18	1,000,000	Suncorp	Y	A	09/10/18	Y	TD	2.82%	1,000,000.00
12/06/18	1,000,000	Bankwest	Y	AA-	12/09/18	N	TD	2.70%	1,000,000.00
14/06/18	2,000,000	Suncorp	N	A	12/09/18	Y	TD	2.75%	2,000,000.00
15/06/18	1,000,000	Suncorp	N	A	15/10/18	Y	TD	2.80%	1,000,000.00
18/06/18	2,000,000	Beyond Bank	Y	BBB	18/12/18	Y	TD	2.75%	2,000,000.00
18/06/18	1,000,000	Gateway Credit Union	Y	NR	18/12/18	Y	TD	2.90%	1,000,000.00
26/06/18	1,000,000	Bankwest	N	AA-	24/09/18	N	TD	2.80%	1,000,000.00
03/07/18	1,000,000	B & E Ltd (Bank of Us)	N	NR	31/10/18	U	TD	3.00%	1,000,000.00
04/07/18	2,000,000	ME Bank	N	BBB	27/09/18	Y	TD	2.70%	2,000,000.00
04/07/18	1,000,000	NAB	N	AA-	08/10/18	N	TD	2.57%	1,000,000.00
05/07/18	1,000,000	Hunter United Employees Credit Union	N	NR	03/10/18	U	TD	2.90%	1,000,000.00
05/07/18	1,000,000	NAB	N	AA-	03/10/18	N	TD	2.76%	1,000,000.00
09/07/18	1,000,000	Beyond Bank	N	BBB	10/12/18	Y	TD	2.75%	1,000,000.00
23/07/18	1,000,000	AMP	N	A	21/01/19	N	TD	2.80%	1,000,000.00
23/07/18	1,000,000	NAB	N	AA-	22/10/18	N	TD	2.68%	1,000,000.00
23/07/18	1,000,000	Bankwest	N	AA-	22/10/18	N	TD	2.65%	1,000,000.00
24/07/18	1,000,000	ME Bank	N	BBB	22/10/18	Y	TD	2.73%	1,000,000.00
30/07/18	2,000,000	ME Bank	N	BBB	29/10/18	Y	TD	2.73%	2,000,000.00
01/08/18	1,000,000	Defence Bank	Y	BBB	30/01/19	U	TD	2.75%	1,000,000.00
01/08/18	2,000,000	Bankwest	N	AA-	30/10/18	N	TD	2.65%	2,000,000.00
01/08/18	1,000,000	Bank Vic	Y	NR	30/10/18	Y	TD	2.82%	1,000,000.00
03/08/18	2,000,000	AMP	N	A	30/01/19	N	TD	2.80%	2,000,000.00
03/08/18	1,000,000	B & E Ltd (Bank of Us)	N	NR	02/11/18	U	TD	2.80%	1,000,000.00
06/08/18	2,000,000	NAB	N	AA-	05/11/18	N	TD	2.67%	2,000,000.00
07/08/18	1,000,000	Gateway Credit Union	N	NR	07/12/18	Y	TD	2.78%	1,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.6

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel ADI	Type	Interest Rate Per Annum	Current Value
07/08/18	2,000,000	ME Bank	N	BBB	04/02/19	Y	TD	2.70%	2,000,000.00
07/08/18	1,000,000	Coastline Credit Union	Y	NR	05/11/18	U	TD	2.80%	1,000,000.00
08/08/18	1,000,000	AMP	N	A	08/02/19	N	TD	2.80%	1,000,000.00
13/08/18	1,000,000	Bank of Us	N	NR	12/11/18	U	TD	2.75%	1,000,000.00
15/08/18	1,000,000	Police Credit Union Limited (SA)	N	NR	15/11/18	Y	TD	2.70%	1,000,000.00
20/08/18	1,000,000	Maitland Mutual Building Society	N	NR	19/11/18	Y	TD	2.70%	1,000,000.00
22/08/18	1,000,000	Suncorp	N	A+	22/08/18	Y	TD	2.65%	1,000,000.00
30/08/18	1,000,000	Suncorp	N	A+	28/11/18	Y	TD	2.65%	1,000,000.00
30/08/18	2,000,000	NAB	N	AA-	14/12/18	N	TD	2.63%	2,000,000.00
31/08/18	2,000,000	Suncorp	N	A+	31/08/18	Y	TD	2.65%	2,000,000.00
N/A	2,082,036	CBA Business Online Saver	N	A	N/A	N	CALL	1.40%	2,082,036.39
12/01/18	1,012,903	NSW Treasury Corp	Y	AAA	N/A	Y	CALL	2.16%	1,012,903.22
Total	76,994,939						AVG	2.72%	77,017,471.34

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.

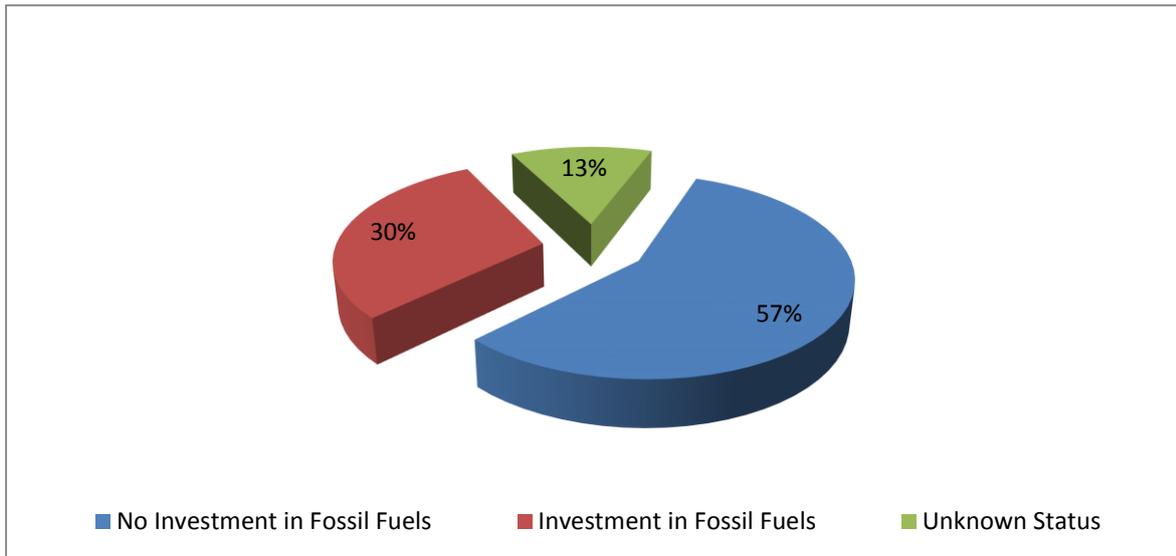
Environmental and Socially Responsible Investing

5 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.

5 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 Council’s website via the following link:

10 [https://www.byron.nsw.gov.au/Council/Your-right-to-Council-information/Policies?dlv_OC%20CL%20Public%20DocLib%20Relative=\(pageindex=6\)](https://www.byron.nsw.gov.au/Council/Your-right-to-Council-information/Policies?dlv_OC%20CL%20Public%20DocLib%20Relative=(pageindex=6))



15 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. \$1,000,000 investment with the National Australia Bank maturing on 24 March 2022 known as a Social Bond that promotes Gender Equity.
- 20 2. \$1,000,000 investment with Commonwealth Bank maturing on 31 March 2022 known as a Climate Bond.

New Sustainable Investment

25 Council on 21 August 2018 secured interest in a new investment by Bank Australia known as a ‘Sustainability Bond’. The investment is for a three year period that settled on 30 August 2018. It will pay a return to Council on a floating basis at a rate established each quarter by the three month bank bill swap rate plus a fixed margin of 1.30%. This rate is currently around 3.25% per annum.

30 The investment offer from Bank Australia will use the proceeds from investors to fund the following:

- Loans to not for profit organisations and specialist accommodation housing.
- Loans for affordable housing.
- 35 • Loans for the construction of green buildings.
- Loans for conservation backed construction.
- Ongoing mortgage loans for energy efficient homes.

40 The Sustainability Bond offer from Bank Australia was originally a total investment pool of \$100million. It was expanded to \$125million but offers exceeded \$250million. As the investment

was oversubscribed, Council sought a \$1million investment into the Sustainability Bond but was allocated \$500,000.

- 5 For the month of August 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 August 2018

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
70,000,000.00	Term Deposits	70,000,000.00	0.00
2,900,000.00	Floating Rate Note	2,905,144.56	5,144.56
2,082,036.39	Business On-Line Saver (At Call)	2,082,036.39	0.00
1,012,903.22	NSW Treasury Corp (T Corp)	1,012,903.22	0.00
1,000,000.00	Bonds	1,017,387.17	17,387.17
76,994,939.61		77,017,471.34	22,531.73

- 10 The current value of an investment compared to the principal value (face value or original purchase price) provides an indication of the performance of the investment without reference to the coupon (interest) rate. The current value represents the value received if an investment was sold or traded in the current market, in addition to the interest received.
- 15 The table below provides a reconciliation of investment purchases and maturities for month of August 2018 on a current market value basis.

Movement in Investment Portfolio – 31 August 2018

Item	Current Market Value (at end of month) \$
Opening Balance at 31 July 2018	73,513,731.83
Add: New Investments Purchased	23,500,000.00
Add: Call Account Additions	1,000,000.00
Add: Interest from Call Account	1,898.03
Less: Investments Matured	20,000,000.00
Add: T Corp Additions	0.00
Add: Interest from T Corp	1,841.48
Less: Call Account Redemption	1,000,000.00
Add: Fair Value Movement for period	0.00
Closing Balance at 31 August 2018	77,017,471.34

Investments Maturities and Returns – August 2018

5

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000	NAB	TD	06/08/18	9191	2.64%	13,163.85
2,000,000	NAB	TD	30/08/18	122	2.64%	17,648.22
2,000,000	ME Bank	TD	07/08/18	91	2.60%	12,964.38
1,000,000	Banana Coast Credit Union	TD	07/18/18	153	2.55%	10,689.04
1,000,000	Defence Bank	TD	01/08/18	153	2.50%	10,479.45
2,000,000	AMP	TD	03/08/18	184	2.60%	26,213.70
1,000,000	Rural Bank	TD	02/08/18	181	2.62%	12,992.33
1,000,000	Gateway Credit Union	TD	07/08/18	182	2.55%	12,715.07
1,000,000	AMP	TD	08/08/18	181	2.60%	12,893.15
1,000,000	Police Credit Union SA	TD	15/08/18	181	2.61%	12,942.74
1,000,000	ME Bank	TD	27/08/18	91	2.60%	6,482.19
1,000,000	Coastline Credit Union	TD	07/08/18	90	2.80%	6,904.11
1,000,000	Maitland Mutual Building Society	TD	15/08/18	92	2.85%	7,183.56
1,000,000	Maitland Mutual Building Society	TD	20/08/18	82	2.80%	6,290.41
1,000,000	Maitland Mutual Building Society	TD	20/08/18	81	2.80%	6,213.70
1,000,000	Suncorp	TD	30/08/18	90	2.65%	6,534.25
20,000,000						182,446.77

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 August 2018 the table below identifies the overall cash position of Council as follows:

10

Dissection of Council Cash Position as at 31 August 2018

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	70,000,000.00	70,000,000.00	0.00
Floating Rate Note	2,900,000.00	2,905,144.56	5,144.56
Business On-Line Saver (At Call)	2,082,036.39	2,082,036.39	0.00
NSW Treasury Corp (T Corp)	1,012,903.22	1,012,903.22	0.00
Bonds	1,000,000.00	1,017,387.17	17,387.17
Total Investment Portfolio	76,994,939.61	77,017,471.34	22,531.73

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Cash at Bank			
Consolidated Fund	2,561,749.59	2,561,749.59	0.00
Total Cash at Bank	2,561,749.59	2,561,749.59	0.00
Total Cash Position	79,556,689.20	79,579,220.93	22,531.73

Financial Implications

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

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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.

10

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

15

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

20

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

25

given the site currently comprises two existing lots of approximately 418m² each. The applicant's variation request is supported and the development application is recommended for approval.

The proposed development is not inconsistent with the provisions of the Byron LEP 2014 and DCP 2014 and is unlikely impact on the existing residential amenity or heritage character of the neighbourhood. It is recommended that the application be approved subject to conditions of consent.

NOTE TO COUNCILLORS:

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

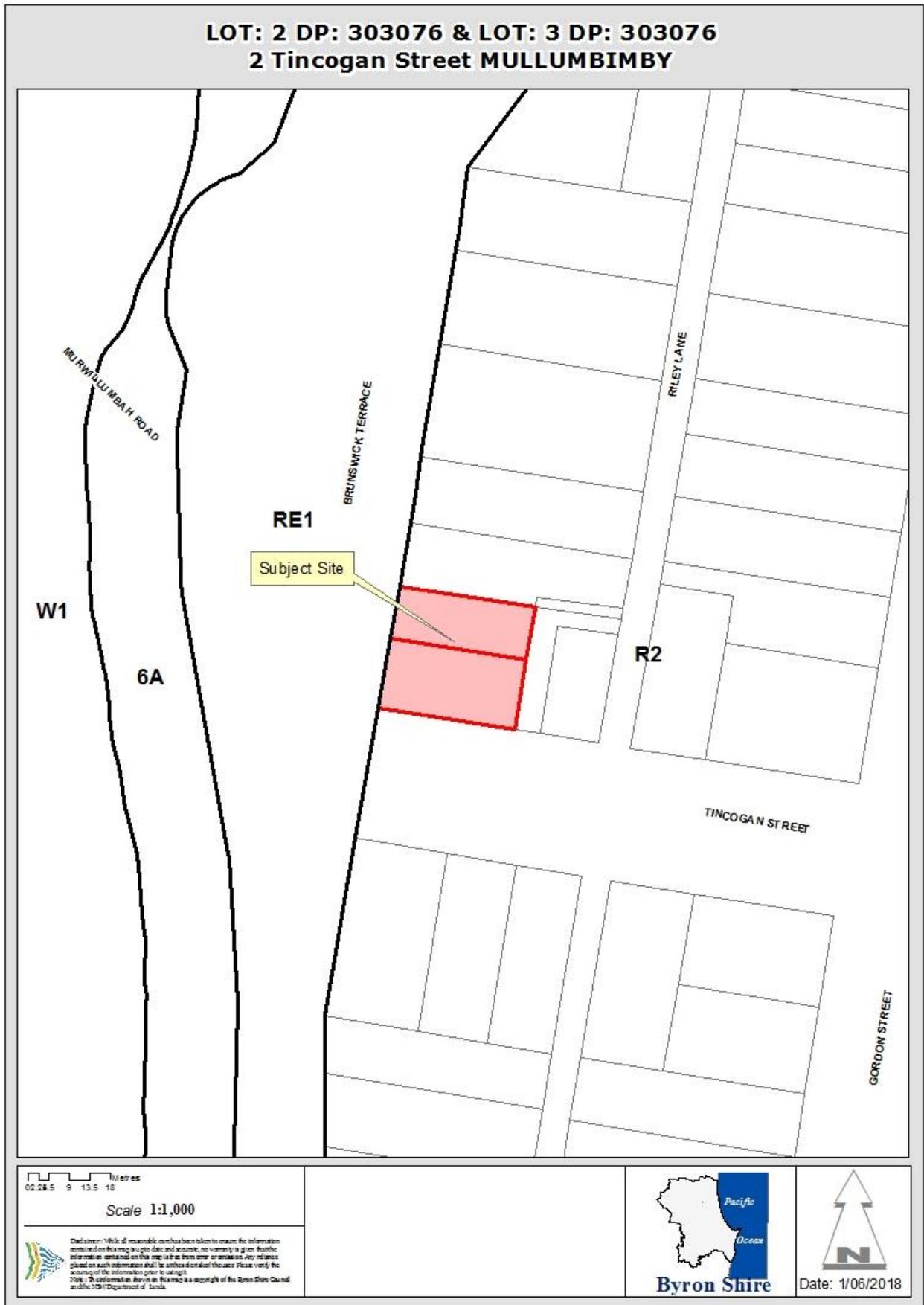
10

RECOMMENDATION:

Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2017.683.1 for Stage 1: boundary adjustment subdivision to create two (2) lots and demolition of existing swimming pool; Stage 2: alterations and additions to existing dwelling house, new dwelling house and studio above existing garage on proposed lot 2, be granted consent subject to the attached conditions of consent (#E2018/72625).

Attachments:

- 15 1 Proposed Plans, E2018/72565 
- 2 Conditions of consent , E2018/72625 
- 3 submissions received, E2018/72628 



Assessment:

1. INTRODUCTION

5 1.1. History/Background

The site is subject to a number of previous approvals including the following:

	6.1992.2572.1	Alterations and Additions	Approved	18.11.1992
	10.2003.53.1	Swimming Pool and Carport	Approved	04.03.2003
10	10.2003.53.2	s96 to Cond 3 requiring fence to pool	Approved	18.07.2003
	10.2014.736.1	Fence within Front Setback	Approved	19.01.2015

15 1.2. Description of the proposed development

This application seeks approval for Stage 1: Boundary Adjustment Subdivision to Create Two (2) Lots and Demolition of Existing Swimming Pool. Stage 2: Alterations and Additions to Existing Dwelling House, New Dwelling House and Studio above Existing Garage on Proposed Lot 2

20 **Stage 1** will consist of:

Reconfiguration of two (2) into two (2) lots

Lot 1 will command an area of 444.5m² with 17.5m frontage to Tincogan Street and 25.4m to Brunswick Terrace. Access to the site will be gained via a Right of Way over Lot 2 to the north of the site.

25 **Lot 2** will command an area of 391.2m² with vehicular access to Brunswick Terrace and primary street frontage of 13m to Tincogan Street. No vehicular access is to be gained from Tincogan Street.

30 The existing pool will be in-filled to ensure there is no boundary encroachment.

All works required to service the lots including hardstand parking and associated driveways for proposed Lot 1 will be undertaken as part of Stage 1. No access will be granted from Tincogan Street as there are insufficient sightlines to enable safe egress and ingress to the site.

35 **Stage 2** will consist of the following:

Lot 1 Alterations and additions to the existing dwelling will include conversion of the existing closet into an en-suite and changes to the existing bathroom layout.

40 **Lot 2** New dwelling being a single storey dwelling with an enclosed loft area containing a single bedroom. A studio will be constructed above the existing garage and will consist of a toilet and large open room with deck facing to the west. Screening will be conditioned along the northern elevation of the deck area to protect the privacy of neighbouring dwellings.

45 1.3. Description of the site

Land is legally described as	LOT: 2 DP: 303076, LOT: 3 DP: 303076
Property address is	2 Tincogan Street MULLUMBIMBY
Land is zoned:	R2 Low Density Residential
Land area is:	836m²
Property is constrained by:	Flood Liable Land Acid Sulfate Soils - Class 4



2. SUMMARY OF REFERRALS

5

Referral	Issue
Development Engineer	No objections subject to conditions. Refer to Doc #A2017/31651
S64 / Systems Planning Officer	No objections subject to conditions. Refer to Doc # A2017/31653
Heritage Consultant	No objections subject to conditions. Refer to Doc #E2018/1584

* Conditions provided in the above referral are included in the Recommendation of this Report below

Access and Sightlines

10 Access is not permitted to Tincogan Street for either lot as there are insufficient sightlines to allow safe entry and exist manoeuvres into the site.

3. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

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

3.1 State Environmental Planning Instruments

20

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site has been used for residential occupation since the construction of the heritage dwelling onsite was completed in 1928. There is no previous knowledge of contamination of the site and there is no visual sign of contamination present.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Satisfactory	Unsatisfactory
Consideration: – No public access to the coastal foreshore will be impeded or diminished as part of the proposal – No effluent is proposed to be disposed other than to Council's sewerage system. – Stormwater is to be discharged to the existing discharge point and will not be directly into the coastal environment.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A BASIX certificate has been provided with the application.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

5 LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.5 <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input type="checkbox"/> 1.8A <input checked="" type="checkbox"/> 1.9 <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1 <input checked="" type="checkbox"/> 2.2 <input checked="" type="checkbox"/> 2.3 <input checked="" type="checkbox"/> Land Use Table <input type="checkbox"/> 2.4 <input type="checkbox"/> 2.5 <input checked="" type="checkbox"/> 2.6 <input type="checkbox"/> 2.7 <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1 <input type="checkbox"/> 3.2 <input type="checkbox"/> 3.3
Part 4	<input checked="" type="checkbox"/> 4.1 <input type="checkbox"/> 4.1A <input type="checkbox"/> 4.1AA <input type="checkbox"/> 4.1B <input type="checkbox"/> 4.1C <input type="checkbox"/> 4.1D <input type="checkbox"/> 4.1E <input type="checkbox"/> 4.2 <input type="checkbox"/> 4.2A <input type="checkbox"/> 4.2B <input type="checkbox"/> 4.2C <input type="checkbox"/> 4.2 <input type="checkbox"/> 4.3 <input type="checkbox"/> 4.4 <input type="checkbox"/> 4.5 <input checked="" type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1 <input type="checkbox"/> 5.2 <input type="checkbox"/> 5.3 <input type="checkbox"/> 5.4 <input type="checkbox"/> 5.5 <input type="checkbox"/> 5.6 <input type="checkbox"/> 5.7 <input type="checkbox"/> 5.8 <input type="checkbox"/> 5.9 <input type="checkbox"/> 5.9AA <input checked="" type="checkbox"/> 5.10 <input type="checkbox"/> 5.11 <input type="checkbox"/> 5.12 <input type="checkbox"/> 5.13
Part 6	<input checked="" type="checkbox"/> 6.1 <input type="checkbox"/> 6.2 <input checked="" type="checkbox"/> 6.3 <input type="checkbox"/> 6.4 <input type="checkbox"/> 6.5 <input checked="" type="checkbox"/> 6.6 <input type="checkbox"/> 6.7 <input type="checkbox"/> 6.8 <input type="checkbox"/> 6.9

- 10 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 Dictionary as Subdivision, Dwelling House and Studio;
 - (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
 - (c) The proposed development is Permitted with Consent; and
- 15 (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment.	The proposed alterations and additions to the dwelling house and subdivision will provide a range of housing types in the locality and maintains the existing character of the residential area.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	Not Applicable

20 The remaining underlined clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act. The proposed development complies with all of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to clause which is considered further as follows:

What clause does the development not comply	Further consideration, including whether
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with and what is the nature of the non-compliance?	the development application is recommended for approval or refusal accordingly
<p>4.1 Minimum subdivision lot size</p> <p>(1) <i>The objectives of this clause are as follows:</i></p> <p style="padding-left: 40px;">(a) <i>to ensure that lot sizes are compatible with local environmental values and constraints,</i></p> <p style="padding-left: 40px;">(b) <i>to facilitate efficient use of land resources for residential and other human purposes.</i></p> <p>(2) <i>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.</i></p> <p>(3) <i>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.</i></p> <p>(4) <i>This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.</i></p>	<p>See assessment below.</p>

4.1 Minimum subdivision lot size

Clause 4.1 of LEP 2014 is accessible via:

5 <https://www.legislation.nsw.gov.au/#/view/EPI/2014/297/part4/cl4.1>

Matters under subclause (3) are addressed as follows:

10 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. In this regard the minimum lot size is 600m².

15 The existing dwelling house straddles two lots with areas of 418m² each and a combined total area 836m². The proposal will realign the existing boundaries of the existing 2 lots into 2 lots.

Lot 1 will command an area of 444.5m² with 17.5m frontage to Tincogan Street and 25m to Brunswick Terrace. Access to the site will be gained via a Right of Way over Lot 2 to the north of the site.

20 **Lot 2** will command an area of 391.2m² with vehicular access to Brunswick Terrace and primary street frontage of 13m to Tincogan Street. No vehicular access is to be gained from Tincogan Street.

25 The Applicant has submitted a clause 4.6 variation request (refer to Doc #S2017/21062). The clause 4.6 variation request is considered with reference to relevant matters as follows:

a) Introduction – Summary of proposed development

30 The development application proposes a boundary realignment of two (2) lots into two (2) lots, and will result in Lot 1 having 521m² and Lot 2 with 314m².

b) Clause 4.6 Exceptions to Development Standards

Clause 4.6 of Byron LEP 2014 is accessible via:

<http://www.legislation.nsw.gov.au/fragview/inforce/epi+297+2014+pt.4-cl.4.6+0+N?tocnav=y>

5 c) The Development Standard to be varied

The development standard to be varied is contained in LEP 2014 subclause 4.1(3), which is accessible via: <https://www.legislation.nsw.gov.au/#/view/EPI/2014/297/part4/cl4.1>

10 The Minimum Lot Size planning control is a development standard in accordance with the applicable definition in the Dictionary and clause 4.5 of the Environmental Planning and Assessment Act 1979 because it is provisions of an environmental planning instrument in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, requirements or standards in respect of setting a minimum lot size for any land and is not to be less than the minimum lot size shown for the land on the [Minimum Lot Size Map](#)

d) Extent of Variation to the Development Standard

20 The Statement of Environmental Effects indicates that the existing site comprises two (2) individual lots which command a total area of 836m². The proposal seeks a boundary realignment to reconfigure the existing lots into two (2) lots

Lot 1 will command an area of 444.5m² with 17.5m frontage to Tincogan Street and 25.4m to Brunswick Terrace. Access to the site will be gained via a Right of Way over Lot 2 to the north of the site.

25 **Lot 2** will command an area of 391.2m² with vehicular access to Brunswick Terrace and primary street frontage of 13m to Tincogan Street. No vehicular access is to be gained from Tincogan Street.

30 The subdivision will result in Lot 1 being 25% below and Lot 2 being 35% below the minimum lot size requirements.

35 The proposal will however maintain a similar subdivision alignment along Tincogan Street, whilst undersized residential allotment's in the Mullumbimby township are not unusual. (eg 10-14 Tincogan Street are three undersized residential lots)

e) Objective of the Development Standard

40 The objectives of the development standard are stated in LEP 2014 subclause 4.1(1) which states:

- (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*

f) Objectives of the Zone

45 The objectives of the R2 Low Density Residential Zone which applies to the location of the proposed boundary realignment are stated in the Land Use Table to LEP clause 2.8, which states:

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

55 g) Assessment – the specific questions to be addressed:

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

5 The site currently consists of two (2) non-compliant lots. Requiring compliance with the development standard is unnecessary in this instance as there will be no further intensification of the development potential of the site and will maintain the lot sizes of the existing lots with the resultant lots each commanding an area of 444.5m² and 391.2m².

- 10
- 15
- a. The boundary realignment/reconfiguration is a two into two lots development.
 - b. There currently exists the ability to develop a single dwelling house on each of the existing lots, the current proposal will not increase this development potential and will provide a better and more functional lot layout for future dwellings on the proposed Lot 2.
 - c. The lots sizes are consistent within the streetscape and character of the surrounding low density residential area.

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

25 The proposed realignment of property boundaries will result in lots which maintain the subdivision lot pattern of the Mullumbimby Conservation Area and will maintain lot sizes which are similar in size. The layout will remove the – just a change of alignment to the existing dividing lot boundary will remove an existing boundary encroachment.

There are sufficient grounds to justify the proposal on environmental planning grounds as follows:

- 30
- 35
- 40
- 45
- No reduction in the number of lots from the current situation (2 into 2 lots)
 - The development will enable the retention of the exiting dwelling house in its current setting on the site. (whilst ensuring the house is located on a single lot);
 - The Lot sizes are consistent with the surrounding neighbourhood which is typified with lots of similar sizes to the current proposal;
 - Given the site is only partially located within a Flood Prone Area there will be no increase in intensity of development as a result of this proposal.
 - the proposed reconfiguration enables the allotments to contain an building envelope measuring 12m x 15m;
 - the proposed Lot 2 is to be provided vehicular and pedestrian access to Brunswick Terrace;
 - the site is located within an existing urban area with close proximity to the Mullumbimby business district and with a level topography, pedestrian and cycling is a common form of transport;
 - pedestrian accessibility and service provision (garbage collection, postal services) are able to be provided from the street frontages of the new lot;
 - the existing dwelling and structures on the proposed reconfigured allotments are able to comply with the floor space ratio of 0.5:1.

50 There are sufficient environmental planning grounds to justify contravening the development standard.

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

The proposal provides an opportunity to provide a more suitable lot layout which is capable of contain a building envelope measuring 12m x 15m and will enable the more efficient use of land through enabling a vacant lot of land for development without having the existing dwelling straddling both existing lots.

5 The proposal will enable the future contribution to the provision of residential housing in close proximity to the Mullumbimby town centre whilst preserving, and minimising impacts on, infrastructure provision and maximising utilisation of these resources.

10 Further the proposal is consistent with the objectives of the development standard and the zone. The proposal will not create an undesirable precedent in the circumstances given there are a number of similar developments proximate to the site which have created similar boundary realignments.

15 The proposed development is not significantly contrary to the public interest because it will not adversely affect the welfare and wellbeing of the broader public.

20 The proposed lot sizes are not in accordance with Clause 4.1 of Byron LEP 2014. The development application is supported by a request for a variation pursuant to clause 4.6 of the LEP. The circumstances of the case warrant a more flexible approach to application of the minimum lot size given the site currently comprises two existing lots totalling 836m² (approx. 418m² each lot). The common boundary of the existing lots is located directly beneath the existing dwelling house and the proposed subdivision will remove the existing boundary encroachment. The Applicant's variation request is supported and the development application is recommended
25 for approval despite the non-compliance.

6.1 Acid Sulfate Soils

30 The subject land is identified as comprising Class 4 ASS being two metres below the surface. It is considered the potential for ASS is highly unlikely to be disturb. Further investigation is not required.

6.3 Flood Planning

35 A condition has been recommended requiring the FFL to be constructed to 5.81m AHD as the Flood Planning Level for this site.

5.10 Heritage conservation

40 The proposal will retain the existing heritage item onsite in a prominent corner location and will retain the existing landscaping to each street frontage. The application has been assessed by Councils Heritage Advisor who has concluded:

45 *“it is considered that the proposed dwelling is not likely to have an adverse impact upon the significance of the existing heritage item or the Mullumbimby Conservation Area. The proposed new dwelling is not likely to dominate the streetscape or detract from the established character and heritage significance of the Conservation Area.”*

50 The reconfiguration of 2 existing lots will retain the subdivision pattern of the conservation area and will enhance the Tincogan Street streetscape.

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

55

Not Applicable.

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

- 5 DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<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 type="checkbox"/> B6 <input type="checkbox"/> B7 <input checked="" 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 checked="" type="checkbox"/> C1 <input checked="" type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D1 <input type="checkbox"/> D2 <input type="checkbox"/> D3 <input type="checkbox"/> D4 <input type="checkbox"/> D5 <input type="checkbox"/> D6 <input type="checkbox"/> D7 <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1 <input checked="" type="checkbox"/> E2 <input type="checkbox"/> E3 <input type="checkbox"/> E4 <input type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7

- 10 These checked Parts/Chapters 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 is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).
- 15

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
B4.2.5 Car Parking Requirements	Yes The single car parking space provided to Lot 1 will retain the existing heritage values of the site, reduce the detrimental effects of parking (visually) and will provide a single parking space onsite for future residents. The site is also located on a corner allotment with significant street frontage and on-street parking available in this instance.	Car parking is required to be provided in accordance with Table B4.1 of the DCP which requires two spaces per dwelling. The proposal will provide two spaces for the new dwelling on Lot 2, however the existing dwelling will have access to a single parking space only. The single car parking space for Lot 1 (existing dwelling) is considered acceptable in this instance as it retains the landscape curtilage of the heritage item. Proposal is considered acceptable in this instance.
C1.2.2 Assessment Requirements (4)	Subdivision applications involving a Heritage Item, located within a Heritage Conservation Area or in the vicinity of a Heritage Item or Heritage Conservation Area.	Reciprocal rights of carriageway are proposed from the driveway to reduce hard stand areas for the two properties and restricts vehicle access to a shared driveway. Yes The proposed development will result in consistent lot frontages along Tincogan Street which will maintain the rhythm of buildings in the streetscape of the Heritage Conservation Area.

<p>C1.3.3 Gardens and Landscape</p>	<p>The proposal is a reconfiguration of 2 into 2 lots which will maintain a similar lot frontage onto Tincogan Street which will maintain the existing and heritage streetscape of the street.</p>	<p>Yes The existing dwelling retains the existing frontage setbacks with the significance of the item being the dwelling itself and the corner setting of the dwelling. This will not change with the reconfiguration of the existing two lots.</p>
<p>C1.4.7 Fences</p>	<p>Yes The development will not alter the landscape corner setting of the existing dwelling.</p> <p>The proposed lot 2 and dwelling on this site will maintain the dominance of the heritage item and will reinforce the subdivision pattern of the street. The existing front fence will be retained and the landscaping and gardens will not be greatly altered as a result of this development.</p>	<p>Yes The subdivision pattern will retain the existing settlement pattern and will also compliment the rhythm of buildings in the streetscape.</p>
<p>C1.4.9 Subdivision</p>	<p>Yes The development will retain the exiting 1.8m high fence along the Tincogan Street frontage of proposed Lot 2. This was previously approved and is not part of this application.</p>	<p>Yes Fence heights must be consistent with the heights of the predominant fences in the street. Generally height should be 1.2m forward of the front building setback, and 1.8m elsewhere.</p> <p>The development will retain the exiting 1.8m high fence along the Tincogan Street frontage of proposed Lot 2. This was previously approved and is not part of this application.</p>
<p>C1.4.9 Subdivision</p>	<p>Yes The development will retain the development and subdivision pattern of the Heritage Conservation Areas including their characteristic rhythm and spacing of the built form.</p>	<p>Yes The allotment and building spacing, including frontage widths, side and front boundary setbacks must not impact adversely on vistas and views to and of heritage items and Heritage Conservation Areas. In particular the principal elevations of buildings must not be interrupted or obscured.</p> <p>The proposal will retain the existing heritage dwelling in its current position onsite with all main elevations being retained on the streetscape.</p> <p>The new dwelling will be retain the existing dominance of the heritage item and will be slightly further setback than the existing dwelling and will be of a similar scale as the heritage item and other dwellings in the streetscape.</p>

C1.6.1 General Policy	<p>Yes The overall intent of C1.6.1 and Chapter E3.3 is achieved in this instance by maintaining the low rise character of the area and its surrounds. In addition the new dwelling will be set behind the front setback of the heritage item to reinforce the item as the significant structure on this corner location</p>	<p>Yes The proposed dwelling will consist of a ground floor and mezzanine floor for the single bedroom, in this instance the number of 'storeys' is not as important as the overall height and scale of the building. The existing dwelling has a ridge height of 6.2m AHD with the proposed dwelling having a ridge height of 6.0m AHD (below the existing dwelling) which will maintain the dominance of the heritage item in the streetscape. The overall intent of Chapter E3.3 is achieved in this instance by maintaining the low rise character of the area and its surrounds. In addition the new dwelling will be set behind the front setback of the heritage item to reinforce the item as the significant structure on this corner location.</p>
C1.6.8 Mullumbimby Conservation Area	<p>Yes The design of the new dwelling on lot 2 the proposal will maintain the low set, horizontal emphasis of existing buildings. As the development will have similar ridge and eave heights of the adjoining heritage item on Lot 1.</p>	<p>This is further reinforced through the eave heights which are within 10% of the existing dwelling onsite and through the use of appropriate roof pitches to mimic the roof form of the heritage item.</p>
D1.2.1 Building Height Plane	<p>The design and setbacks of the new dwelling will ensure the new development is compatible in character, height and scale with the existing pattern of development in Tincogan Street.</p> <p>Yes – The development will not have a detrimental impact on in terms of loss of privacy or access to sunlight</p>	<p>The proposed garage and studio above will have a ridge height of 6.6m which is above the existing dwelling, however there are existing highset dwellings to the north of the site and the proposed garage is set at the rear of the site without dominating the streetscape.</p> <p>Ridge Heights</p> <ul style="list-style-type: none"> • Existing dwelling: 6.20m nom. • Proposed dwelling: 6.00m nom. • Proposed garage/studio: 6.60m nom.
		<p>Yes The proposed dwelling will consist of a ground floor and mezzanine floor for the single bedroom, in this instance the number of 'storeys' is not as important as the overall height and scale of the building.</p>
		<p>The existing dwelling has a ridge height of 6.2m AHD with the proposed dwelling having a ridge height of 6.0m AHD (below the existing dwelling) which will maintain the dominance of the heritage item in the streetscape.</p>
		<p>Yes The proposed studio above the garage will extend into the BHP by up to 2.3m on the northern and eastern elevations, however</p>

<p>D1.2.2 Setbacks from Boundaries</p>	<p>for adjoining properties.</p>	<p>given the orientation of the lots north-south the property to the east will maintain adequate sunlight.</p>
<p>D1.2.5 Fences</p>	<p>Yes – Complies</p>	<p>Yes Complies – The proposed new dwelling over Lot 2 will be setback 7.5m to ensure that the new dwelling is subordinate to and maintains the dominance of the heritage item in the streetscape.</p>
<p>E3.3 Character, Bulk and Scale of Development</p>	<p>Yes – Previously approved 1.8m high front fence under 10.2014.736.1.</p>	<p>All side setbacks comply with the minimum setbacks under D1.2.2. The garage and studio will be setback 900mm from the eastern and northern boundaries. No The site contains an existing 1.8m high fence to Tincogan Street which was a requirement for the previous swimming pool and was approved under 10.2014.736.1.</p>
<p>E3.5 Infill Development in Precincts 2 and 3</p>	<p>Yes The overall intent of C1.6.1 and Chapter E3.3 is achieved in this instance by maintaining the low rise character of the area and its surrounds. In addition the new dwelling will be set behind the front setback of the heritage item to reinforce the item as the significant structure on this corner location</p>	<p>The overall intent of Chapter E3.3 is achieved in this instance by maintaining the low rise character of the area and its surrounds. In addition the new dwelling will be set behind the front setback of the heritage item to reinforce the item as the significant structure on this corner location. This is further reinforced through the eave heights which are within 10% of the existing dwelling onsite and through the use of appropriate roof pitches to mimic the roof form of the heritage item.</p>
<p>E3.5 Infill Development in Precincts 2 and 3</p>	<p>Yes The development is an appropriate form of subdivision and infill development in accordance with E3.5 which states – <i>The existing subdivision pattern in Precincts 2 and 3 is dominated by long narrow lots often with houses located across two lots with large rear yards with laneway access. These properties provide opportunities for infill housing in the form of [...]boundary adjustment or re-subdivision</i></p>	<p>Yes The proposed 2 into 2 lot subdivision is consistent in shape and form to that of the surrounding subdivision pattern and will be compatible with the existing housing and streetscape and will not impact on the privacy of neighbouring dwellings.</p>

The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

	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

<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	Yes	Yes
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

5 * Non-compliances and any other significant issues discussed below

4.7 Any coastal zone management plan?

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

10 **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.

15 Are there any Council Policies that are applicable to the proposed development? None

Council Policy	Consideration
Building over pipelines and other underground structures Policy	Appropriate easements have been provided for sewer extension to service the existing lot.

4.9 The suitability of the site for the development

20 The site is a serviced, unconstrained property and is suitable for the proposed development.

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited. Two submissions were received.

Submission	Comment
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<p>This development will almost completely fill the curtilage of the property even though the DA is also asking for a boundary adjustment from 2 lots to 2 modified lots to accommodate the new building and studio.</p>	<p>The site as identified in the SHI Sheets of Councils Heritage Study indicate the Criteria that the listing was based is:</p> <p><i>The bungalow is designed in an unusual and distinctive style with prominent front gable verandah giving the building a distinctive character and welcome aspect to the street.</i></p> <p>The remainder of the physical description of the item states:</p> <p><i>An unusual gable roof bungalow built with a wide entrance verandah with a prominent gable roof supported on paired timber posts with Art Nouveau inspired brackets forming a distinctive lyre shape. The house is built a large, prominent corner block opposite Federation Bridge approach.</i></p> <p>The prominent corner location of the dwelling will not be altered by this proposal and the existing dwelling is located over two existing lots.</p> <p>The proposal has been assessed by Councils Heritage Advisor who has provided the following comments:</p> <p><i>“it is considered that the proposed dwelling is not likely to have an adverse impact upon the significance of the existing heritage item or the Mullumbimby Conservation Area. The proposed new dwelling is not likely to dominate the streetscape or detract from the established character and heritage significance of the Conservation Area.”</i></p> <p>In this instance it is considered that the proposal will not have a detrimental impact on the item or the streetscape in terms of subdivision pattern.</p>
<p>This proposal should be referred to the Heritage Panel for consideration and an extension of the public exhibition time so other people can make a submission due to holidays</p>	<p>The Heritage Panel terms of reference does not include direct comments in relation to individual Development Applications.</p>
<p>The proposal is inconsistent with the low rise character and scale of Mullumbimby.</p>	<p>The proposed dwelling will consist of a ground floor and mezzanine floor for the single bedroom, in this instance the number of ‘storeys’ is not as important as the overall height and scale of the building. The existing dwelling has a ridge height of 6.2m AHD with the proposed dwelling having a ridge height of 6.0m AHD (below the existing dwelling) which will maintain the dominance of the heritage item in the streetscape. The overall intent of Chapter</p>

	<p>E3.3 is achieved in this instance by maintaining the low rise character of the area and its surrounds. In addition the new dwelling will be set behind the front setback of the heritage item to reinforce the item as the significant structure on this corner location.</p> <p>This is further reinforced through the eave heights which are within 10% of the existing dwelling onsite and through the use of appropriate roof pitches to mimic the roof form of the heritage item.</p> <p>The proposed garage and studio above will have a ridge height of 6.6m which is above the existing dwelling, however there are existing highset dwellings to the north of the site and the proposed garage is set at the rear of the site without dominating the streetscape.</p> <p>Ridge Heights</p> <ul style="list-style-type: none"> • Existing dwelling: 6.20m nom. • Proposed dwelling: 6.00m nom. • Proposed garage/studio: 6.60m nom. <p>It is considered the proposal is consistent with the character and scale of residential development in Mullumbimby</p>
<p>The Landscape, garden setting and curtilage area of this heritage item is not retained. DCP Heritage CH C1.2.2 4(d) Subdivision Applications “settings of the heritage Item and a satisfactory curtilage including important landscape and garden elements are retained“</p>	<p>The existing dwelling retains the existing frontage setbacks with the significance of the item being the dwelling itself and the corner setting of the dwelling. This will not change with the reconfiguration of the existing two lots.</p> <p>The subdivision pattern will retain the existing settlement pattern and will also compliment the rhythm of buildings in the streetscape.</p>
<p>Second Storey buildings are not permitted in this Heritage Conservation Area. (DCP Heritage CH C1.6.1 (3) “developments in all areas must remain single storey in height to maintain the visual character and unity of the streetscape .”</p>	<p>C1.6.1 incorporates a general policy intent with further built form intents in Chapter E3 Mullumbimby which state:</p> <p><i>E3.3 Character, Bulk and Scale of Development “Development Applications must demonstrate that the character, bulk, scale and density of proposed development will be compatible with and will enhance the low rise character and scale of Mullumbimby”</i></p> <p><i>E3.1 Aims of this Chapter To promote compatible, innovative urban development of a high design quality that reflects and reinforces the low rise, heritage character and scale of Mullumbimby.</i></p>

	<p>The proposed dwelling will consist of a ground floor and mezzanine floor for the single bedroom, within the pitched roof cavity, in this instance the number of 'storeys' is not as important as the overall height and scale of the building. The existing dwelling has a ridge height of 6.2m AHD with the proposed dwelling having a ridge height of 6.0m AHD (below the existing dwelling) which will maintain the dominance of the heritage item in the streetscape. The overall intent of Chapter E3.3 is achieved in this instance by maintaining the low rise character of the area and its surrounds. In addition the new dwelling will be set behind the front setback of the heritage item to reinforce the item as the significant structure on this corner location.</p>
<p>Notification of this DA inadequate.</p>	<p>This DA was previously exhibited from 14 December 2017 to 10 January 2018 and then re-exhibited from 25 January 2018 to 7 February 2018.</p>

4.11 Public interest

5 The proposed development is unlikely to prejudice or compromise the public interest or create a dangerous precedent

5. DEVELOPER CONTRIBUTIONS

10 As the proposal will re-subdivide two existing residential lots into two residential lots no additional S7.11 Contributions or Water and sewer Levies are required.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

<p>Has a Disclosure Statement been received in relation to this application</p>	<p align="center">No</p>
<p>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.</p>	<p align="center">No</p>

15 Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

20 Development consent is sought for Stage 1: Boundary Adjustment Subdivision to Create Two (2) Lots and Demolition of Existing Swimming Pool. Stage 2: Alterations and Additions to Existing Dwelling House, New Dwelling House and Studio above Existing Garage on Proposed Lot 2 located at 2 Tincogan Street, Mullumbimby.

25 The re-subdivision of the land from two lots into two lots relies upon a variation to the minimum lot size requirements of 600m² under Clause 4.6 of Byron LEP 2014. The circumstances of the case warrant a flexible approach to application of the minimum lot size given the site currently comprises

two existing lots of approximately 418m² each. The Applicant's variation request is supported and the development application is recommended for approval.

- 5 The proposed development is not inconsistent with the provisions of the Byron LEP 2014 and DCP 2014 and is unlikely impact on the existing residential amenity or heritage character of the neighbourhood. It is recommended that the application be approved subject to conditions of consent.

STATEMENT OF REASONS

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Development Control Plan 2014. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.
The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Development Control Plan 2014.

How community views were addressed

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.
To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

Report No. 13.8 **Bushfire Prone Land Mapping**
Directorate: Sustainable Environment and Economy
Report Author: Sharyn French, Manager Environmental and Economic Planning
File No: I2018/1122
5 **Theme:** Ecology
 Planning Policy and Natural Environment

Summary:

10 Council considered a report at the 22 March 2018 meeting on the revised Bush Fire Prone Land Map. The revised map includes a new vegetation category (Category 3) that maps grassland greater than 10cm as a medium fire risk.

15 A number of key concerns with the mapping were reported to Council including:
• there are large areas of grassland in Byron Shire that are now captured in this mapping
• the NSW Rural Fire Service (RFS) Guide maps grassland in the Shire as a medium risk when RFS have advised that this is an exaggerated risk
• that proceeding with the mapping will impose an additional impost on landowners whose land
20 is now mapped as bush fire prone when lodging a development application for their property
• the increased workload on Development Assessment Staff and potentially increased turnaround timeframes as many DAs will require referral to RFS
• the mapping potentially undermines the integrity of Council's mapping processes and accuracy

25 Due to concerns with the RFS state wide mapping methodology, Council resolved to defer submitting the map for certification until such time as a further meeting with RFS is held to discuss the issues identified in the report, and a scientific justification provided for the mapping methodology that has been applied to Byron Shire.

30 Council also resolved to seek ground truthing of the category 3 grassland sites in Byron Shire by the Rural Fire Service to ensure an evidence based Bushfire Prone Map is produced and that a further report be provided on the resolution outcomes.

35 This Report tables the outcomes of the further discussion with RFS and proposes that Council proceed with submitting the mapping to RFS for the Commissioners certification.

RECOMMENDATION:

That Council submit the Bush Fire Prone Land Map (Attachment 1 - E2018/16059) to NSW Rural Fire Services for the Commissioner's certification.

40
Attachments:
1 Bush Fire Prone Land Map in accordance with RFS Guide for Bush Fire Prone Land Mapping, Nov 2015 Version 5b, E2018/16059 
45 2 NSW Rural Fire Service - Grassland Deeming Provisions - Development Application in Grassland Fact Sheet, E2018/60961 

Report

Council at the 22 March 2018 meeting considered a [report](#) on the revised Byron Shire Bushfire Prone Land Mapping and resolved:

5

18-189 Resolved:

1. *That Council acknowledge that there is a new vegetation category (category 3) grassland in the Guide for Bushfire Prone Land Mapping.*
- 10 2. *That due to concerns with the one size fits all approach to the mapping of category 3 grassland, Council defers the submission of the new Bushfire Prone Map (Attachment 1 - E2018/16059) to the NSW Rural Fire Service for certification, until such time as a further meeting with Rural Fire Service is held to discuss the issues identified in the report, and a scientific justification provided for the mapping methodology that has been applied to Byron Shire.*
- 15 3. *That as a result of 2, Council seek ground truthing of the category 3 grassland sites in Byron Shire by the Rural Fire Service to ensure an evidence based Bushfire Prone Map is produced.*
- 20 4. *That Council receive a further report once 2 and 3 have occurred.*

20

A meeting was held on 11 May 2018 with NSW Rural Fire Service (RFS) representatives and the following matters were tabled:

25

- The RFS have been updating bush fire prone land maps across the state to reflect the current requirements of the National Construction Code (through Australian Standard AS3959, Construction of buildings in bushfire-prone areas).
- 30 • AS3959 identified that grasslands greater than 10 centimetres in height needed to be addressed and this informed the development of Category 3
- The mapping of grasslands has resulted in an increase of land being captured as bush fire prone
- 35 • AS 3959 is being reviewed and when adopted in 2019 it is expected to remove uncertainty around what should be mapped as grassland. The RFS Guide for Bushfire Prone Land Mapping version 5b November 2015 will then be revised in line with the new Australian Standard
- The impact on Development Applications (DAs) for properties in Category 3.

Twenty-three of the 128 NSW Councils have been certified to the new mapping requirements. To ascertain the impact on development application referral numbers RFS contacted certified councils that had significant grassland areas. Responses were received from 6 Councils: Lake Macquarie, Fairfield, Cessnock, Moree Plains, Warren, Port Macquarie –Hastings. RFS concluded that the responses are not considered to indicate a clear trend in the impacts of added grassland mapping on development assessment requirements.

40

RFS have drafted grassland deeming provisions for Category 3 Bushfire Prone Land with Department of Planning and Environments input to simplify the approval process, refer to Attachment 2. In summary dwellings with an Asset Protection Zone (APZ) of:

45

- 50m won't require bushfire protection measures
- 20m and more that have a bush fire attack level of BAL 12.5, will require bush fire protection measures such as access, services, landscaping and emergency management

- less than 20 metres will require a full site assessment to determine the bush fire attack level (BAL) and apply all the bush fire protection measures, such as access services, landscaping and emergency management

5 The grassland deeming provisions are yet to be switched on; they are pending the publishing of the pre-release version of Planning for Bush Fire Protection 2018. Therefore, the assessment for grassland areas will continue to be in accordance with AS-3959 until such time as RFS switch on the deeming provisions.

10 During the 2017/18 period 730 DAs were lodged with Byron Shire Council. Of these 202 applications would be affected by Category 3 bushfire prone land. Council records are not able to ascertain the size of these properties APZ to determine what level of protection measures will be required under the proposed deeming provisions. Currently most landowners won't have to apply any protection measures, but once the map and deeming provisions comes into effect there will be costs to those property managers who have an APZ less than 50m.

- 15 • RFS were amenable to ground-truthing grassland sites should specific areas be identified in Byron Shire.

20 Council has a statutory obligation to update our bush fire prone land map every 5 years. The map (Attachment 1) has been updated in accordance with the NSW Rural Fire Services Guide for Bush Fire Prone Land Mapping version 5b November 2015. The amount of land in the Shire now mapped as Bushfire Prone Land has significantly increased due to the new Category 3 grassland mapping criteria. The Bushfire Prone Land Map is used when considering development on the land.

25 Should Council proceed with the mapping, additional assessment of affected DAs will be required and this may affect assessment timeframes. A Frequently Asked Questions document has been developed to assist landowners and media awareness on the new mapping will be undertaken.

30 It is recommended that Council submit the Bush Fire Prone Land Map (Attachment 1) to RFS for the Commissioners certification in accordance with our statutory obligations.

Financial Implications

35 Council has already spent up to \$10,000 in up skilling staff through completion of the Planning for Bushfire Protection Course through University of Technology Sydney in anticipation of the new mapping.

There will likely be additional costs to applicants when lodging a DA for land mapped as bush fire prone as well as resultant construction costs in these areas.

40 **Statutory and Policy Compliance Implications**

Environmental Planning and Assessment Act 1979

146 Bush fire prone land

45 (1) *If a bush fire risk management plan applies to land within the area of a council, the council must, within 12 months after the commencement of this section (and before the end of the period of every 5 years after the commencement):*

- (a) *request the Commissioner of the NSW Rural Fire Service to designate land (if any) within the area that the Commissioner considers, having regard to the bush fire risk management plan, to be bush fire prone land, and*

50 (b) *must record any land so designated on a map.*

- (2) *The Commissioner of the NSW Rural Fire Service must, if satisfied that the land designated by the Commissioner has been recorded by the council on a map, certify the map as a bush fire prone land map for the area of the council.*
- 5 (2A) *The Commissioner of the NSW Rural Fire Service may, in accordance with the regulations, review the designation of land on a bush fire prone land map for an area at any time after the map is certified and revise the map accordingly. The revised map:*
- (a) becomes the bush fire prone land map for the area on being certified by the Commissioner, and*
- (b) is to be provided to the council by the Commissioner.*
- 10 (3) *Land recorded for the time being as bush fire prone land on a bush fire prone land map for an area is bush fire prone land for the area for the purposes of this or any other Act.*
- (4) *The bush fire prone land map for an area is to be available for public inspection during normal office hours for the council.*
- 15 (5) *In this section: bush fire risk management plan has the same meaning as it has in the Rural Fires Act 1997.*

Report No. 13.9 PLANNING - 26.2017.6.1 Byron Bay Town Centre Planning Controls - Results of Preliminary Community Engagement

Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
File No: I2018/1175
Theme: Sustainable Environment and Economy
Planning Policy and Natural Environment

Summary:

At the ordinary meeting of 23 November 2017, Council resolved **(17-599)**:

1. *That Planning Proposal 26.2017.5.1 (excluding that part relating to the Butler Street Reserve) be approved by Council to proceed to gateway determination and for public exhibition.*
2. *That the balance of Planning Proposal 26.2017.5.1 (relating to the Butler Street Reserve) and Planning Proposal 26.2017.6.1 be deferred for public consultation including the following:*
 - a) *conducting community information sessions and collating feedback.*
 - b) *issuing a media release and Council website post at least two weeks prior to the first information session to advise the community of the planning proposals with notice of all information sessions.*
3. *That following completion of the information sessions and other community consultation, a report be received by Council, no later than the March Ordinary meeting, with a review of the community meetings and consultation.*

This report relates to items 2 and 3 of the above resolution. It provides a detailed summary of the results of community engagement activities undertaken in relation to Planning Proposal 26.2017.6.1, which deals with a range of development controls applicable to the Byron Bay Town Centre, aimed at facilitating better buildings in the town.

Resolution **17-599** also addressed proposed planning controls relating to the Butler Street Reserve, which were primarily aimed at permitting a bus interchange on that land. The State Government's project regarding the delivery of that bus interchange is no longer pursuing Butler Street Reserve as the location for that facility. Therefore there is no need to continue with that aspect of the Planning Proposal.

Community engagement was undertaken in relation to Planning Proposal 26.2017.6, addressing matters of zoning, building height control, and building design. Concurrently, potential DCP amendments were explored, relating to further detail of building height and building design and provisions relating to car parking controls for the Town centre. The potential to introduce car sharing in Byron Bay was also discussed.

In relation to building height, the recommendations that flow from community engagement strongly support the community's preference to limit new development to a maximum of three storeys and ensure that new buildings reflect and preserve the character of the town.

While there was general community support for a change of zoning from B2 Local Centre to B3 Commercial Core, there was no strong consensus about whether that zoning should apply to the whole of the area currently zoned B2, or to a more contracted "core". Similarly, there was no consensus regarding the balance between allowing residential and/or tourism uses within the B3 zone.

There was strong support for controls that improve building design and sustainability, particularly where they can facilitate smaller footprint developments. There was also support for minimising car parking in new developments and providing for car share in the centre.

5 The key amendments to Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014, recommended from the outcomes of the community engagement, are:

- Change the zoning of the Town Centre from the current B2 Local Centre, to B3 Commercial Core, and apply that zoning to the entirety of the area currently zoned B2.

10 Limit permitted tourist development in the new B3 zone to *hotel or motel accommodation or serviced apartments only (backpackers accommodation would become prohibited in the Town Centre)*. Shop top residential housing would remain permissible in the B3 zone.

The change of zone will differentiate Byron Bay from the smaller local centres of Bangalow, Brunswick Heads, Mullumbimby, and Ocean Shores.

- 15 • Maintain the current maximum building height at 11.5m within the LEP and introduce new provisions within Byron DCP 2014 to clarify that the maximum height will be three (3) storeys. Amend Clause 4.6 of the LEP to specify that variations to the 11.5m building height can only be considered where the proposed building is no more than three (3) storeys.

20 Amend the LEP to provide that, for flood prone land within the Town Centre, the 11.5m maximum building height is measured from the applicable Flood Planning Level rather than natural ground level.

- Amend the Building Heights Map to extend the area within which a maximum height of 11.5m applies to land bounded by Lawson Street to the south, Bay Lane to the north, Jonson Street to the west and Middleton Street to the east.

Do not extend the 11.5m limit to any other areas suggested in the Town Centre Masterplan.

- 25 • Introduce new provisions within the DCP to clearly state the building height limit at 3 storeys, and to set minimum floor to ceiling heights for mixed use buildings in the Town Centre.

- Amend the Floor Space Ratio Map to remove the control from within the Byron Bay Town Centre.

- 30 • Amend the LEP to introduce new clauses requiring that applications for new buildings demonstrate Design Excellence, and that streets and laneways are activated at ground level.

- 35 • Amend the car parking provisions within the DCP, in relation to the Town Centre, to specify a maximum rather than minimum number of spaces for residential and / or tourist accommodation proposed above ground level, with the option for developers to 'opt out' of providing any parking for those uses, in exchange for practical measures that will provide and promote sustainable transport alternatives. (Current parking rates will continue to be applied for ground floor commercial uses).

40 The recommended DCP changes would be incorporated into a new Byron Bay Town Centre Chapter, which will also include a Character Statement to assist in facilitating better design for new development.

Further details and explanation of the recommendations are outlined in the body of this report.

45 A draft Planning Proposal has been prepared (see Attachment 1), together with a draft DCP Chapter (Attachment 2). It is recommended that Council resolve to send the Planning Proposal to the Department of Environment and Planning to obtain a Gateway Determination that would allow for the public exhibition of the Planning Proposal and draft DCP Chapter.

50

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:**

1. **Forward the Planning Proposal at Attachment 1 (#E2018/72394) to the NSW Department of Planning and Environment for a Gateway Determination, to amend Byron Local Environmental Plan 2014 in relation to various town planning controls applicable to the Byron Bay Town Centre.**
2. **Agree that staff can proceed to public exhibition of the Planning Proposal and government agency consultation based on the Gateway Determination.**
3. **For the purposes of community engagement, endorse the proposed amendment to Byron Development Control Plan 2014 at Attachment 2 (#E2018/72398), to introduce a new Chapter dealing with the Byron Bay Town Centre, to provide more detailed design and building height controls, together with the appropriate amendments to Part A of the DCP, and exhibit the draft Town Centre Chapter in conjunction with the Planning Proposal.**

10

Attachments:

- 1 Planning Proposal v.1 - BBTC Planning Control Review - Gateway Version, E2018/72394 
- 2 DCP Chapter E9 Byron Bay Town Centre - Draft Exhibition Version, E2018/72398 
- 15 3 Engagement recording charts - Future Byron Planning Workshop, E2018/68568 

Report

Background

5 The visions and suggestions put forward in the Byron Bay Town Centre Masterplan recommend a review and update for some existing planning controls applicable to that area.

The outcomes from such a review, as envisaged in the Masterplan, include:

- facilitating well designed development of appropriate height and scale, in line with community vision;
- defining the edges of the Town Centre 'business zone';
- 10 • protecting the character and vibrancy of the town; and,
- easing congestion and making the Town Centre more 'people friendly'.

15 In November 2017, Council resolved (**17-599**) to conduct community engagement relating to the planning controls, prior to further consideration of a formal Planning Proposal.

Community Engagement - Background

The aim of the community engagement was to obtain input from the community regarding key planning controls such as zoning, building height, design and car parking.

20 Two community workshops were held prior to Council staff developing a planning proposal. Notwithstanding the previous Council report, a semi 'blank page' approach was adopted for the engagement, rather than presenting a completed Planning Proposal for review and comment.

25 The intention was for the community's views and ideas to shape the Planning Proposal.

Two workshops were held at the Byron Community Centre, with approximately 60 attendees in total. Two workshops were held with students from Byron Bay High School (approximately 80 students). The community workshops were widely advertised in advance, including:

- Invitation letters posted to Byron Bay Town Centre landowners,
- 30 • Invitation letters hand delivered to every commercial premises in Byron Bay Town Centre,
- Media release,
- Social Media,
- Staff presence at Byron Bay farmers markets on two occasions;
- Council website, and
- 35 • Direct emails sent to:
 - Byron Residents Group
 - Byron Youth Residents Group
 - Arakwal Corporation
 - Byron Chamber of Commerce
 - 40 ○ Those who made submissions to PP 26.2017.5.1

45 The workshops were well attended, with a diverse range of the community present. Over the two community workshops we heard from business owners and managers, land owners, real estate agents, architects, urban designers, residents, solicitors, developers and councillors from both Byron Shire and Tweed Heads.

For those who identified interest and/or expertise but were unable to come to the public workshops, one-to-one meetings were conducted. The Arakwal Staff and Board and the Byron Bay Guidance group were also engaged via individual meetings.

Community Engagement - Content

5 The workshops were run on a 'World Café' style, whereby four tables were set up, each with a topic and a table facilitator. After an introduction, participants were invited to a table of their choice to discuss and debate the topic.

10 The role of the table facilitator was not to give answers, but to give lead in information, guide participants to stay on track and to ask questions. Participants moved between the tables to provide input for each of the four topics.

The individual table topics were:

- Zoning
- Building Heights
- Design Excellence
- 15 • Parking

The subtopics and questions for the community relating to these topics were:

Zoning of the Town Centre	Where do you consider the 'core' of the Town Centre? What uses should be prioritised within, and outside of, this 'core'?
Height of Building	Should we retain the current limit? Where should the three-storey limit apply - all of Town Centre or part of it? (specifically examining two of the areas suggested in the Masterplan for an increase in height limit from 9.0m to 11.5m – being land at the southern end of Jonson Street, eastern side; and land north of Lawson Street). Should the planning controls allow for varied roof structures to preserve historic character?
Floor Space Ratio	Is this necessary? Can it be used to limit bulky buildings?
Design Excellence	How can we ensure developments are suitable for Byron Bay?
Active Street Frontages	Should we encourage shop fronts and the like on back lanes as well as main streets?
Ancillary Car Parking	What car parking controls can be used to limit the number of cars in town to reduce congestion?
Car Share	What is it? Should we introduce this to Byron Bay?

Community Engagement – What We Heard

20 A detailed 'download' of all comments captured at the two community workshops and the Byron High School session is contained in Attachment 3. The key responses from participants are summarised below.

1. Zoning

25 Currently, Byron Bay Town Centre is zoned B2 Local Centre, which is applicable to the area shown in Figure 1 (below).



Figure 1: Extent of existing B2 zone

Change of zone:

- 5 The B2 Local Centre zone is also applicable in Bangalow, Brunswick Heads, Ocean Shores and Mullumbimby.

To reflect the position of Byron Bay as the primary commercial centre in the Shire, and to ensure that changes made regarding permissible land uses in Byron Bay do not affect the other town centres, it was suggested that the zoning of the Byron Bay Town Centre be changed from B2 Local Centre to B3 Commercial Core.

The B3 zone, while 'available' as part of the Standard Template LEP, has not yet been used in Byron Shire. Introducing it for the Byron Bay Town Centre would allow Council to specify permitted development for the town to guide desired outcomes, particularly relating to residential and tourist uses (see further detail below).

The objectives of the B2 and B3 zones, as outlined in the Standard Template LEP, are very similar. Council is able to add to these objectives, and it is recommended that the following be added as an objective of the (new) B3 zone:

5 *To encourage a vibrant centre by permitting residential accommodation, serviced apartments and hotel or motel accommodation above commercial premises and community uses, as part of a mixed use development.*

A majority of the workshop participants support the change to B3 Commercial Core.

10 Extent of zone:

Currently, the Town Centre is defined by the extent of the B2 zone, as shown in Figure 1 (above).

15 Many workshop participants noted that the southern end of Jonson Street, in its current form, is not fully commercial in nature, and has a character quite different to the area to the north.

20 A number of participants expressed the view that the B3 zoning should only apply to the northern part of the town, from the beach front, with suggestions down to locations between Marvel Street and Kingsley Street as the southern cut-off. It was suggested that the southern precinct could be zoned B4 Mixed Use or R3 High Density Residential.

25 These suggestions were based on existing character and conditions. When prompted to take a more strategic, longer term view, it was generally recognised that changing the zoning boundary is not such a clear cut decision and many participants remained undecided (although it is noted that others remained of the view that the southern precinct should not be part of a Commercial Core).

30 Interestingly, the high school students agreed that the B3 zoning should encompass the current boundaries, noting, however, that more should be done to encourage the southern precinct to develop to be more like the northern area, with public transport and pedestrianisation helping to link the town.

35 Permissible land uses:

Participants were also asked to consider the land uses that should be prioritised within the B3 zone, particularly in respect to residential and/ or tourist accommodation uses of upper levels (retail and commercial should be at ground floor).

40 There were mixed views within the community whether either of these uses should be restricted or whether a mixture of both should be encouraged throughout the town. The idea of ensuring that buildings are well designed to be flexible enough to change between office and/or residential and/or tourist accommodation in the future was valued.

2. Building Height

Maximum building height:

45 The Town Centre Masterplan showed strong support for a maintaining a three (3) storey height limit in the Town Centre.

50 Byron LEP 2014 sets the maximum building height at 11.5m for the majority of the town, as shown below in Figure 2. This is based on the State Government's "standard template", which does not allow building heights to be controlled in storeys; stipulating instead that it be controlled by a measurement in metres above existing ground level, or a vertical distance from the Australian Height Datum to the highest point of the building.



Figure 2: Height of Buildings Map

5 An important aspect of building height relates to the internal floor to ceiling heights for each of the storeys. Appropriate floor to ceiling heights ensure flexible spaces at ground level and comfortable, liveable and sustainable interiors, by maximising natural ventilation and lighting.

State guidelines suggest the following:

- Ground floor, floor-to-ceiling height: 4.0m
- Upper floors, floor-to-ceiling height: 2.7m, with a suggestion that first floors be increased to 3.3m floor to ceiling, to maximum future flexibility of use.

Allowing for these recommended minimum floor to ceiling heights, a three-storey building can comfortably fit within the current 11.5m height limit.

15 Assuming an allowance of 300mm for floor thickness between levels, these guidelines provide for:

Ground floor:	4.0m	
ceiling	0.3m	
First Floor:	3.3m	
ceiling	0.3m	
Second floor:	2.7m	
	10.6m	to ceiling of top floor

20 Currently, however, controls setting minimum ceiling heights are not in either the LEP or DCP. Currently, therefore, a four-storey building can be proposed, meeting the maximum 11.5m maximum height, but with compressed floor to ceiling heights (Building Code of Australia suggests 2.4m as minimum).

A second potential issue relates to roof form. Complying with the recommended minimum floor to ceiling heights and providing a hipped roof, similar to some of the key historic buildings in Byron Bay, cannot be achieved within the 11.5m limit.

- 5 Potentially, therefore, maintaining the 11.5m maximum could lead to a majority of new buildings with flat or skillion roofs.

Support for a maximum of 3 storeys within the Town Centre was a strong response from the majority of participants at the community workshops and at individual meetings.

- 10 The Department of Planning and Environment has, to date, advised that Councils are not able to establish building height limits within an LEP based on the number of storeys. Given this, participants were asked to consider what the maximum building height in metres should be.

- 15 There was no real consensus around this. Some participants indicated support for an increase to 12.5m to allow for variety in roof forms, as long as there were strong design and development controls. Others believed that the extra 1m is neither important, necessary nor worth the potential risk of the 12.5m then being 'pushed' with the result of even higher buildings.

- 20 While roof features were felt to be important for the character of the town, the preference for retaining 3 storeys seemed to outweigh the desire to move to 12.5m and risk taller buildings.

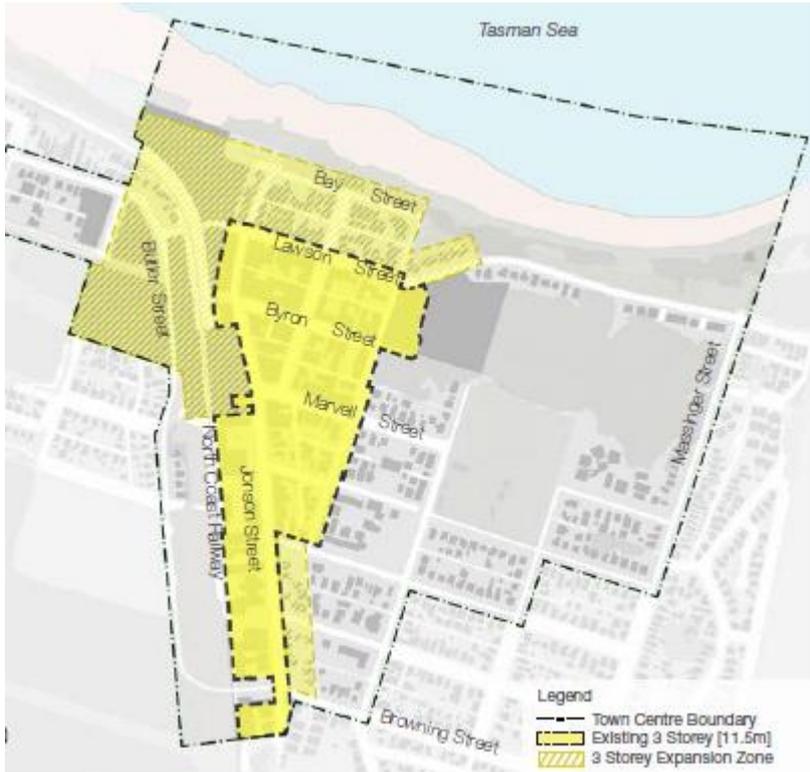
- 25 The majority of participants, however, did agree that, if the State Government could not be convinced to allow an LEP control expressed in storeys, the DCP should strongly state the limit of 3 storeys as well as the recommended minimum floor to ceiling heights.

- 30 Others suggested that the 11.5m maximum should remain, with a provision stipulating that a breach of that limit would only be considered for a character roof structure, providing the resultant building is no more than 3 storeys. This suggestion seemed to be favourable amongst most participants.

- 35 The high school students were tasked with an activity to be developers, some with the instruction to make money and push controls, and others with the goal of fitting in to the Byron landscape. Interestingly, 10 of the 12 designs included buildings to the maximum height, with flat roofs and many with some sort of roof structure such as greenhouse, green roof or pool.

Potential extension of area subject to 11.5m maximum height:

The Town Centre Masterplan included a suggestion to expand the area subject to the existing 11.5m building height maximum, as shown in the extract below:



For the purposes of this review of planning controls, the only areas examined for potential height increase were:

- 5 1. North of Lawson Street to Bay Street, between Jonson and Middleton Streets; and
2. Southern end of Jonson Street – east side.

Both of these areas are currently subject to a 9.0m maximum building height.

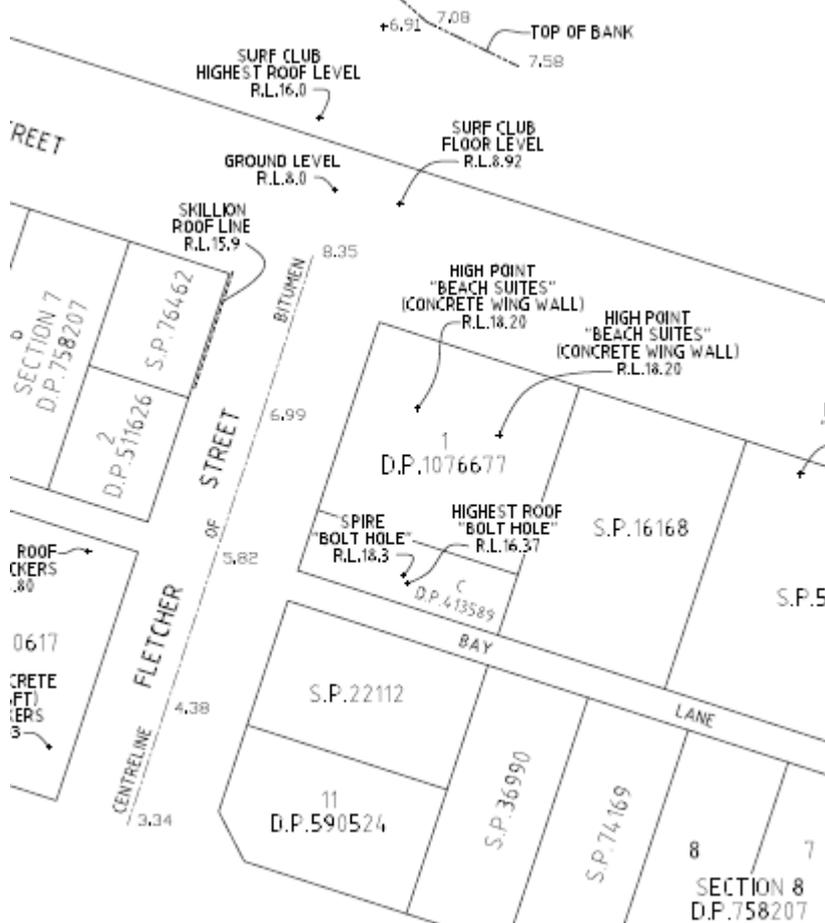
10 **North of Lawson Street**

Current control (green = 9.0m max; yellow = 11.5m max)

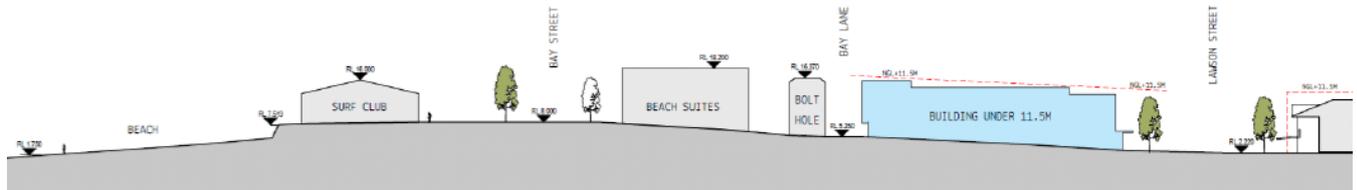


- 15 The reason for a lower building height in this area is to minimise impact of taller buildings on the beachfront. This remains a valid planning objective.

Existing ground levels throughout this area are shown in the survey plan extract below:



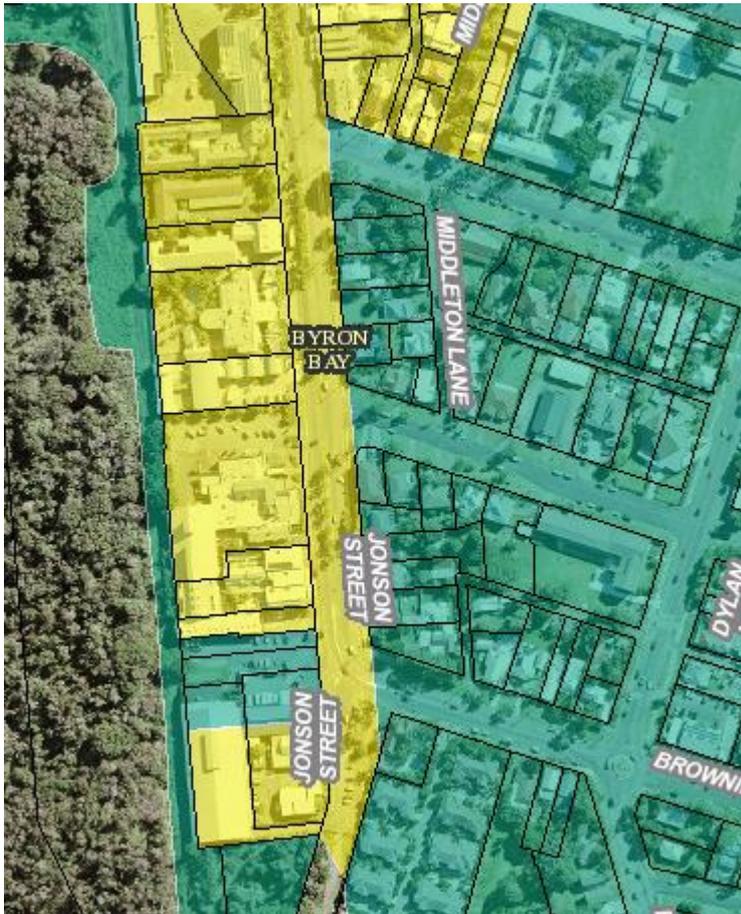
- 5 Existing ground levels slope up from the beachfront to Bay Street, and then fall toward the south, from Bay Street toward Lawson Street. Based on the Fletcher Street ground levels shown in the survey, a two-storey building fronting Bay Street, built to the maximum 9.0m limit, would have a maximum elevation at around Bay Lane of approx. RL 15.0m AHD.
- 10 A three-storey building located between Bay Lane and Lawson Street, built to the 11.5m limit, would have a maximum elevation of between RL 16.5m AHD toward Bay Lane and RL 15.5m at Lawson Street.
- 15 Given that elevations at the beachfront are around RL 7.0m AHD, three-storey buildings located between Lawson Street and Bay Lane would not be visible from the beachfront, as illustrated below:



- 20 Most people at the community workshops were satisfied that the building height could be increased in this area, from 9.0m to 11.5m, but were of the view that the 9.0m limit should remain in place north of Bay Lane.

Southern end of Jonson Street

Current control (green = 9.0m max; yellow = 11.5m max)



- 5 Currently, the 9.0m maximum building height applies on the eastern side of Jonson Street, from Kingsley Street south. This area is currently zoned the same as land on the western side of Jonson Street - B2 Local Centre, and is recommended to be included within the new B3 zone.

- 10 The majority of participants at the workshops were of the view that, because this area borders residential land, retention of the 9.0m height limit was appropriate.

3. Design Excellence

- 15 The community workshops had two components for this topic. The first was to identify the key characteristics of the Town Centre (particularly focussing on built form), and the second was to suggest ways in which Council could develop design controls to maintain and enhance those characteristics.

The key characteristics valued by the participants at the workshops were:

- 20 • Natural feel, including landscaping;
- Traditional roof forms;
- Variety of built form;
- Active spaces that enable human interaction, busking etc; and
- Good pedestrian access.

- 25 Participants were generally in support of controls that enforce design excellence for new buildings, addressing design for our climate and variety within the built form. Many suggested that a Town Centre specific DCP should be developed.

Within design excellence the community also discussed the concept of active street frontages. In particular, participants were asked whether ground floor components of new buildings should provide active frontage to laneways as well as the primary street frontages.

5 Overwhelmingly the concept and encouragement of active street frontages was supported, with part of the community believing it should be applied to all streets and lanes and others believing some laneways, or sides of laneways, should be exempt due to access issues.

10 **4. Parking**

As noted earlier, reducing congestion and ensuring Byron Bay can be a people friendly Town Centre was a key priority from the Masterplan.

15 A suggestion explored at the community workshops was to amend car parking requirements for new development in the Town Centre by:

- reducing the number of parking spaces required for the residential and/ or tourist accommodation components of mixed use (re)developments; and
- specifying this reduced number of spaces as a *maximum* requirement, rather than a *minimum* number as currently required; and
- 20 • providing an opportunity for development to 'opt out' of providing any on-site parking for those components of a mixed use building (Note: parking would still be required for commercial or retail building components).

The ability to 'opt out' would be subject to the submission of a Sustainable Travel Plan where the developer would outline commitments to alternative travel options for the development, such as car share spaces, bicycle parking and associated facilities, or other modes of transport that would succeed in reducing the use of cars in the Town Centre.

Some participants were not in favour of the suggested change; the reasons given:

- Personal resistance to letting go of private car usage; and
- 30 • Concern that they would no longer be able to find parking in the town.

However, a majority of participants were in favour of the change and believed that the change should be done as soon as possible. Many also noted that this step on its own will not make enough of an impact and would like to see further actions to parking and the ability to drive in the town.

40 When questioned on what it is that the community would want alongside this change and from development proposals in exchange for less parking, a range of suggestions were identified, including public transport, park and ride facilities, and improved infrastructure.

It was also suggested that new development should provide car and/or bike sharing facilities/infrastructure, safe bicycle storage, motorcycle/scooter parking, contribution to electric car parking points.

45 Recommendations

A draft Planning Proposal has been prepared based on the responses to the community engagement (Attachment 1).

50 The following table summarises the suggested clauses and provides commentary.

Recommendation	Comments
Zoning	
<p>1. Amend Land Zoning Map by altering the area within the Byron Bay Town Centre currently zoned B2 Local Centre, to B3 Commercial Core.</p>	<p>The B3 Commercial Core zone will differentiate Byron Bay from the smaller local centres of Bangalow, Brunswick Heads, Mullumbimby, and Ocean Shores in Byron Shire.</p>
<p>2. Add the new B3 Commercial Core land use table and zone objectives into the LEP</p>	<p>The key difference, in terms of permitted land uses, between the recommended B3 zone and the current B2 zone is:</p> <ul style="list-style-type: none"> • Options of tourist and visitor accommodation are restricted, with only <i>hotel or motel accommodation</i> or <i>serviced apartments</i> permissible in the B3 zone (<i>backpackers' accommodation</i> and <i>bed and breakfast accommodation</i> are currently permissible in B2, but would become prohibited in the Town Centre); and <p>Residential accommodation, in the form of <i>shop-top housing</i> and/or <i>boarding houses</i>, remain permitted with development consent, with other forms of residential accommodation, such as <i>residential flat buildings</i> or <i>multi dwelling housing</i>, prohibited. This does not change with the introduction of the new zone.</p>
<p>3. Amend various provisions of the LEP, which currently reference the B2 zone, to include a reference to the new B3 Commercial Core zone.</p>	<p>Clause 6.7 <i>Affordable housing in residential business zones</i> will be updated to include a reference to the new B3 Commercial Core zone, as will relevant items within Schedule 2 Exempt Development.</p>
Building Height	
LEP:	
<p>1. Maintain the current maximum building height</p>	<p>It is recommended that the current maximum building height of 11.5m be maintained. 11.5m reflects the community's desire for a maximum of 3 storeys. 11.5m can comfortably allow 3 storeys, and the DCP will set parameters for the internal floor-to-ceiling heights.</p>
<p>2. Amend the Building Heights Map to extend the area within which the maximum height of 11.5m applies to land bounded by Lawson Street to the south, Bay Lane to the north, Jonson Street to the west and Middleton Street to the east.</p>	<p>Given existing topography, a 11.5m building on the southern side of Bay Lane would not be visible from the beach above the 9m buildings on Bay Street. Extending the building height map northwards to Bay Lane will mean that both sides of Lawson Street will now have 11.5m building height maximums. As Lawson Street is a principle street in the Town Centre, it is expected that having buildings of 11.5m on either side would create a streetscape to reflect its prominence.</p>
<p>3. Add a new clause for development on flood prone land, providing that building height can be measured from the</p>	<p>Parts of the Byron Bay Town centre are flood prone. In those areas, new development must achieve a specified minimum ground floor level, to reduce the impact of flooding on occupiers of buildings.</p> <p>The required minimum floor level, called Flood Planning Level, is</p>

Recommendation	Comments
<p>flood planning level, rather than from existing ground level.</p>	<p>derived from a detailed flood study of the Belongil Creek catchment. The adopted level accounts for longer term sea level rise.</p> <p>The result is that, for areas within the Town Centre that are flood prone, ground floor levels will need to be set above existing ground levels (varying from 0.4 - 1.2m). As the definition of building height is based on existing ground levels, development in these flood prone areas is unreasonably restricted.</p> <p>A new clause is therefore proposed to be added to LEP 2014 to address this, by providing that, in these cases, building height can be measured from a specified Australian Height Datum (AHD) level, rather than from existing ground level. A new Building Height Allowance Map is proposed, which will specify the applicable AHD levels across the flood prone parts of the Town Centre. The AHD levels shown on the Map will be the Flood Planning Levels derived from the Belongil Creek flood study.</p>
<p>4. Amend Clause 4.6 to ensure building height can only be varied where the building contains no more than 3 storeys.</p>	<p>Clause 4.6 allows a development application to vary controls within the LEP. The intention of amending this clause is to ensure that the maximum building height control cannot be varied, and breached, unless the building maintains only 3 storeys. This reinforces the importance of a maximum 3 storeys while also allowing for varied roof structures.</p>
<p>DCP: Within a new Byron Bay Town Centre Chapter, specify:</p>	
<p>1. A maximum building height not exceeding 3 storeys; and</p>	<p>The new DCP chapter will prescribe a maximum of 3 storeys for all development, new and renewal, within the Town Centre. This is reflective of the character of the town and the community's strongly held view.</p>
<p>2. Minimum floor to ceiling heights, measured from finished floor level to finished ceiling level, of: Ground Floor: 4.0m First Floor: 3.3m Second Floor: 2.7m</p>	<p>Internal floor to ceiling heights will assist in the maintenance of 3 storey buildings. Internal floor to ceiling heights will also assist in high quality building design by creating flexible spaces for ground and first floors, as well as comfortable habitable spaces which are less reliant on artificial lighting and ventilation.</p>
<p>Floor Space Ratio</p>	
<p>1. Removal of Floor Space Ratio from the LEP.</p>	<p>Floor Space Ratio is the ratio of the gross floor area of a development to the site area, expressed as a factor of 1. For example, a development with a gross floor area of 200m² on a site with an area of 400m² would have an FSR of 0.5:1.</p> <p>FSR's are shown on the Floor Space Ratio Map, with the associated control established at Clause 4.4 of Byron LEP 2014.</p> <p>The Floor Space Ratio Map currently shows an FSR of 1.3:1 as applicable for the Town Centre.</p> <p>Unlike design controls for building height envelope, building alignments, setbacks, privacy distances, roof forms or landscaped areas, a maximum FSR is a poor planning mechanism for achieving built form when the objective is to conserve and enhance character and local amenity.</p> <p>It is more appropriate in low density residential areas, to encourage private open space and lower building heights.</p>

Recommendation	Comments
	FSR unintentionally results in stacking of building mass in a smaller part of a site and a dominance of at grade parking in vacant spaces between buildings.
Additional Local Provisions	
<p>Add new Local Provisions to Part 6 of the BLEP2014, addressing:</p> <ol style="list-style-type: none"> 1. Compatible mixed use development in B3 2. Design Excellence 3. Active Street Frontages 	<p>1. Compatible mixed use development</p> <p>Residential development in the Town Centre is restricted to <i>shop top housing</i> (this would not change with a new B3 zone)</p> <p>The Standard Template definition of <i>shop top housing</i> is: <i>one or more dwellings located above ground floor retail premises or business premises</i></p> <p>The intention is to ensure that ground floor development within the Town Centre remains retail/ commercial in nature.</p> <p>However, the definition is restrictive in that such housing can only be considered above retail or business premises.</p> <p>The new clause proposes to allow residential development above a wider range of uses, including <i>Child care centres; Commercial premises; Community facilities; Educational establishments; Information and education facilities; Medical centres; and Public administration building</i>, all of which are permissible land uses in the B3 zone.</p> <p>2. Design excellence</p> <p>The new provision will require that all new development or substantial additions to existing development will need to be designed to meet a number of stated requirements, relating to sustainability and consistency with existing character.</p> <p>This draft clause responds to the Department of Planning and Environment’s push for a design led approach to developing policy that acknowledges and protects local character.</p> <p>3. Active street frontages</p> <p>This is a model clause prepared by the Department of Planning and Environment, aimed at providing active, people-oriented streets within town centres.</p> <p>It will introduce a new map into the LEP identifying streets and lanes in the Town Centre where the new provision will apply.</p> <p>The clause will require that the ground floor of proposed buildings facing the identified street or laneway is used for the purposes that will result in pedestrian movement in and out of the building (e.g. uses such as child care centres; commercial premises; community facilities; educational establishments; information and education facilities; medical centres; or public administration buildings)</p>
Ancillary car parking	
LEP & DCP	
<p>Introduce a new provision to identify the maximum number of ancillary car parking spaces that may be provided to service particular land uses as a part of a mixed use development</p>	<p>The primary objective of the new clause is to minimise the amount of vehicular traffic generated because of new development in the Town Centre.</p> <p>The provisions will relate only to the residential and/or tourism accommodation components on mixed use development in the Town Centre, and specify a maximum provision of parking as:</p> <ul style="list-style-type: none"> • Shop to Housing:

Recommendation	Comments
within B3 zone.	<p>1 space per unit, plus 1 visitor space per 5 dwellings</p> <ul style="list-style-type: none"> • Hotel or motel accommodation or serviced apartments: 1 space per unit, plus 1 space for an on-site manager. <p>Given that these are maximum requirements, it will be possible for a developer to 'opt out' of providing any on-site parking spaces for these uses.</p> <p>In that case, the new provisions will require the submission of a Sustainable Travel Plan which outlines the provisions to be provided within the development to address the transport needs of future occupants.</p> <p>It is expected that these provisions would include a combination of things, such as bicycle parking, car share arrangements, etc.</p>

In addition to these provisions, it is recommended that the amendment to the DCP be undertaken by way of a new Byron Bay Town Centre Chapter (Attachment 2). This new Chapter would outline the desired future character for the Town Centre, and include a range of development controls to manage uses, street character, built form, car parking and the like.

5 Summary and conclusions

The attached Planning Proposal seeks to rezone land and introduce development standards and local planning provisions for the Byron Bay Town Centre to implement the strategic objectives of the Town Centre Masterplan.

10 The proposals will have positive social and economic effects by offering additional employment and trading opportunities for local people and businesses. Numerous social and economic benefits are likely through increasing the efficient use of developable lands for jobs and mixed used development including housing in an existing centre.

15 The proposed zoning changes are consistent with the North Coast Regional Plan 2036 and Council's Community Strategic Plan 2028. The land is identified as an existing urban area. An assessment of the planning proposal indicates that it is consistent with relevant SEPPs. It is consistent with all relevant s117 Directions.

20 There is sufficient information to enable Council to support the planning proposal and forward it to the Department of Planning and Environment for a Gateway determination.

Financial Implications

25 Should Council resolve to progress the Planning Proposal, it would require Council commitment for staff resources and any costs associated with community engagement and additional studies, if required by Gateway.

30 Statutory and Policy Compliance Implications

The relevant policy considerations are addressed above and would be further assessed in consideration of the Planning Proposal should Council resolve to proceed to Gateway.

35

Report No. 13.10 **PLANNING - 26.2017.5.1 Planning Proposal to activate the Rail Corridor Byron Bay: Post Exhibition Report**

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Major Projects Planner

5 **File No:** I2018/1408

Theme: Sustainable Environment and Economy
Planning Policy and Natural Environment

10

Summary:

At the ordinary meeting of 23 November 2017, Council resolved to exhibit a Planning Proposal to activate the rail corridor within the Byron Bay Town Centre (**17-599**).

15

That Proposal sought an amendment to the Byron LEP 2014 to enable a range of land uses on that land, including community uses and certain retail and office uses. The Planning Proposal (26.2017.5.1) was publicly exhibited in March 2018 and attracted 6 submissions of objection.

20

The Planning Proposal was amended to remove reference to the commercial uses, and reported to the ordinary meeting of 24 May 2018, where Council resolved to seek an amended gateway to allow for the public exhibition of the amended Planning Proposal (**18-298**).

25

The amended Planning Proposal was publicly re-exhibited from Thursday 12 July, until Friday 3 August 2018. Three submissions of objection were received, two from individual community members (Attachment 2) and one from the Heritage Division of the Office of Environment and Heritage (Attachment 3).

30

A further submission was received from NSW Rural Fire Service, with recommendations regarding future management of bush fire risk (Attachment 4).

35

The community objections relate to the flexibility of the planning proposal in allowing for 'community use', particularly relating to land uses potentially allowed under the definition of 'community facility'. The objections also opposed allowing commercial activities of any sort within the old Station building.

40

The Planning Proposal provides that development consent may be granted to community facilities in the wider corridor and in the Station building. In the case of the Station building, the clause specifies that such a use could include "*a commercial activity undertaken by a not-for-profit organisation or social enterprise*".

Any proposed future uses would be subject to a Development Application process, which would include public exhibition. Council also has control as the holder of the licence over the land.

45

The concerns expressed, therefore, can be adequately managed.

50

The Heritage Division of Office of Environment and Heritage (OEH) have advised that they do not support the Planning Proposal at this stage, recommending that it be put on hold pending completion of a Conservation Management Plan (CMP) for the corridor, which is listed as a State Heritage area.

Work on the preparation of the CMP has commenced, and is anticipated to take up to 2-3 months to complete.

55

Any use of this State Heritage listed area will require, in addition to planning approvals, approval under S60 of the Heritage Act 1977, with OEH the approval authority. The completed CMP will

provide the framework for such approval, which will not be able to be granted in the absence of the CMP. The proposed amendment to the LEP has no effect on this.

5 It is considered that the proposed amendment to the LEP can continue at the same time as the CMP process, rather than needing to wait until that Plan has been completed and approved.

10 It is recommended, therefore, that Council resolve to proceed with Planning Proposal 26.2017.5.1, as exhibited, and advise the Department of Planning and Environment that the comments of OEH should be noted, but that the proposed amendment should not be delayed by the CMP process.

NOTE TO COUNCILLORS:

15 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.

20

RECOMMENDATION:

That Council:

1. **Forward Planning Proposal 26.2017.5.1 to amend Byron LEP 2014, as exhibited and included at Attachment 1 (E2018/72385) to this report, to the Department of Planning and Environment requesting that a draft LEP be prepared.**
2. **Advise the Department of Council's view that the proposed amendment to Byron LEP 2014 should proceed despite the objection raised by the NSW Office of Environment & Heritage given that the amendments proposed do not impact on the need for future development to obtain approvals under the provisions of the Heritage Act 1977.**

Attachments:

- 25
- 1 Planning Proposal (as exhibited) - without Annexures, E2018/72385 
 - 2 26.2017.5.1 Community Submissions, E2018/70818 
 - 3 NSW Office of Environment & Heritage, Heritage Division Submission, E2018/67615 
 - 4 NSW Rural Fire Service Submission, S2018/10901 

30

Report

At the ordinary meeting of 23 November 2017, Council resolved **(17-599)**:

- 5 1. *That Planning Proposal 26.2017.5.1 (excluding that part relating to the Butler Street Reserve) be approved by Council to proceed to gateway determination and for public exhibition.*
2. *That the balance of Planning Proposal 26.2017.5.1 (relating to the Butler Street Reserve) and Planning Proposal 26.2017.6.1 be deferred for public consultation including the following:*
- 10 a) *conducting community information sessions and collating feedback.*
- b) *issuing a media release and Council website post at least two weeks prior to the first information session to advise the community of the planning proposals with notice of all information sessions.*
- 15 3. *That following completion of the information sessions and other community consultation, a report be received by Council, no later than the March Ordinary meeting, with a review of the community meetings and consultation. (Ndiaye/Richardson)*

The Planning Proposal sought an amendment to the Byron LEP 2014 to enable a range of land uses on that land, including community uses and certain retail and office uses. These commercial provisions were aimed at enabling small innovative local businesses to become established, as start-up projects, in the Town Centre.

The Proposal was publicly exhibited in March 2018. It received 6 formal submissions of objection. Additional objections were expressed by the Byron Bay Town Centre Masterplan Guidance Group. The objections were all centred on the proposal to enable commercial use of the railway corridor, and most expressed the view that this would lead to unfair competition in relation to existing businesses in the Centre.

Based on these objectives, the Planning Proposal was amended to remove the proposed amendments relating to commercial uses of the wider corridor. The remaining proposals sought to amend the LEP to allow *community facilities* and *information and education facilities* to be considered, subject to development consent, within the wider corridor. It included a provision that development consent may be granted to development of the Station Building, previously used as a ticketing office for the rail station, and the adjacent railway platform, for the purposes community facility that includes a commercial activity undertaken by a not-for-profit organisation or social enterprise.

The amended Proposal was reported to Council at the May ordinary meeting. At that meeting, Council resolved **(18-298)**:

- 40 1. *Forward the revised planning proposal (Attachment 1) to the NSW Department of Planning and Environment to advise of the re-exhibition.*
2. *Agree that staff can proceed to public exhibition of the planning proposal and government agency consultation, based on any subsequent advice from the NSW Department of Planning and Environment, and report back to Council as part of post-exhibition reporting.*
- 45

The amended Proposal was publicly re-exhibited from Thursday 12 July, until Friday 3 August. Three submissions of objection were received, two from individual community members (Attachment 2) and one from the Heritage Division of the Office of Environment and Heritage (Attachment 3).

50 A further submission was received from NSW Rural Fire Service, with recommendations regarding future management of bush fire risk (Attachment 4).

The community objections expressed concerns regarding the flexibility of the planning proposal in allowing for 'community use'. The objections also opposed allowing commercial activities of any sort within the old Station building.

5 Byron LEP defines *community facility* as:

a building or place:

(a) *owned or controlled by a public authority or non-profit community organisation, and*

(b) *used for the physical, social, cultural or intellectual development or welfare of the community,*

10 *but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.*

Information and education facility means:

15 *a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.*

At this time, Council does not have any specific proposals for the use of the rail corridor, other than concept plans for landscaping, removal of existing fences, and the provision of west to east pedestrian pathways connecting Butler Street to the Town Centre.

The LEP definitions of *community facility* and *information and education facility* were chosen as they provide for future proposals that might allow the use of the space for a range of community, cultural and educational uses of the space, to benefit the wider community and facilitate the activation of what is currently an unused space.

Any specific future proposals would be subject to the development application process. The proposed amendment to the LEP merely facilitates that process, allowing proposals to be considered.

30 It is also noted that Council retains control over the land as the holder of the licence for use of the space, effectively acting as land owner in that regard. In that capacity, Council can therefore determine whether specific proposals proceed to development application.

35 It is considered, therefore, that there is sufficient control in place to address the concern expressed.

The Planning Proposal provides, by way of a new Local Provision within Byron LEP 2014, development consent may be granted to community facilities in the wider corridor and in the Station building. In the case of the Station building, the clause specifies that such a use could include "a *commercial activity undertaken by a not-for-profit organisation or social enterprise*".

45 Objections have been submitted to this provision, amongst other things, that it does not guarantee sufficient social outcomes and that there remains strong potential to impact on existing local business.

One submission strongly suggests that Council consider use of the building for a Byron Bay museum, arguing that:

- 50
1. *A building that informed and celebrated the local history would be entirely suited to this historic precinct and would be a way to help preserve the area's historical bounty. It would be an invaluable local educational resource and could house a genealogy facility.*
 2. *A museum would be consistent with the aim of making Railway Park a community and family friendly area and would be a valuable addition to the range of uses and attractions of the park.*

3. *With the right controls on activities a museum would enhance rather than threaten local trade. Admission and other charges could be used to maintain the building.*
4. *It could be part of broadening Byron Bay's profile, catering to a more diverse tourist trade.*
5. *It is possible that a museum, with the right adaptations and retractable/removable enclosure of the platform area (eg cafe blinds) could also provide an additional community and cultural facility.*

The Planning Proposal, as currently drafted, would allow such a use, subject to development consent.

Other objections are summarised and addressed in the table below:

Concern	Comment
The objective of the Planning Proposal is to facilitate future actions as recommended in the Town Centre Masterplan – the objector does not accept the validity of the Masterplan or the extent of community support for its implementation.	The Masterplan has been adopted by Council.
Relocation of markets is no longer required, therefore such commercial activity should not be pursued for the rail corridor.	Temporary relocation may be required during construction of the Butler Street Bypass.
The proposal eliminates the sites future use for rail transport.	Any use, landscaping or activity will be designed to retain the potential to use the corridor for rail transport.
The proposal eliminates the station building from use as servicing future rail transport	Council, in considering potential future uses, would be mindful of this concern.
There is no identification of actual proposed use of the station building.	Council has not determined a use for that building at this time.
The proposal to allow single one-off events and ceremonies on public reserves and roads is not supported as these matters should be subject to development assessment and public notification processes.	Entertainment and events on public roads are currently exempt development in the LEP. The proposed amendment merely provides greater certainty about the nature of events and extends the exemption to other public land.
The proposed developments have not demonstrated compliance with the site's heritage listing.	Any proposed uses of the rail corridor, which is part of a State listed heritage area, would be subject to approvals under the Heritage Act, in addition to planning approval. Nothing in this proposed amendment removes that process.
The existing Conservation Management Strategy does not account for endangered and critically endangered species that inhabit adjacent vegetation.	The Conservation Management Strategy relates to European Heritage only. Notwithstanding, the Planning Proposal specifically excludes the area of high environmental value vegetation within the rail corridor. As such, the amendments proposed would not facilitate any use within that area.
Allowing Concept Landscape Plans to be implemented without consent removes the community's ability to review and comment on detailed construction plans.	Notwithstanding this provision, Council can choose to seek input into landscape plans if it chooses.

The Heritage Division of Office of Environment and Heritage (OEH) have advised that they do not support the Planning Proposal at this stage, recommending that it be put on hold pending completion of a Conservation Management Plan (CMP) for the corridor, which is listed as an area State Heritage.

- 5 Work on the preparation of the CMP has commenced, and is anticipated to take up to 2-3 months to complete. It would then be submitted to OEH for endorsement by the Heritage Council of NSW.
- 10 Any use of this State Heritage listed area will require, in addition to planning approvals, approval under S60 of the Heritage Act 1977, with OEH the approval authority. The completed CMP will provide the framework for such any approvals, which will not be able to be granted in the absence of the CMP. The proposed amendment to the LEP has no effect on this and would not authorise or facilitate any development of the land outside of the CMP and Heritage Act approval process.
- 15 It is considered, however, that there is no valid reason why the proposed amendment to the LEP cannot continue concurrently with the CMP process, rather than needing to wait until that CMP has been completed and approved. This would avoid significant delays without eroding the overriding heritage protections in place.
- 20 It is recommended, therefore, that Council resolve to proceed with Planning Proposal 26.2017.5.1 as exhibited.

Financial Implications

- 25 As a Council initiated Planning Proposal, the administration costs has been met by Council.

Statutory and Policy Compliance Implications

- 30 Council has followed the statutory process to amend Byron LEP 2014 through this Planning Proposal. Council should now decide whether to proceed to finalise the Proposal, with or without amendments.

Report No. 13.11 Report of the Planning Review Committee Meeting held on 9 August 2018

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 **File No:** I2018/1516

Theme: Ecology
Development and Approvals

10 **Summary:**

This report provides the outcome of the Planning Review Committee Meeting held on 9 August 2018.

15

RECOMMENDATION:

That Council note the report of the Planning Review Committee meeting held on 9 August 2018.

20

BYRON SHIRE COUNCIL

Report:

The meeting commenced at 4:15pm and concluded at 4:40pm.

- 5 Present: Crs Richardson, Spooner, Martin, Hackett, Ndiaye, Hunter
 Staff: Chris Larkin (Manager Sustainable Development).
 Apologies: Nil

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

10

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2018.305.1	Bayview Land Development Pty Ltd	77 Tuckeroo Avenue MULLUMBIMBY	Subdivision to Create Thirty-Two (32) Lots (Tallowood Ridge Stage 7)	Level 2 12/7/18 to 8/8/18	The perceived public significance of the application. Council
10.2018.259.1	Joe Davidson Town Planning	320 McAuleys Lane MYOCUM	Use of Site as Landscaping Material Supplies	Level 2 21/6/18 to 4/7/18 10 submissions	The number of public submissions. Council
10.2018.137.1	Balanced Systems Planning Consultants	149 Federal Drive EUREKA	Rural Land Sharing Community (Multiple Occupancy) consisting of Fifteen (15) Dwelling Sites	Level 2 26/4/18 to 9/5/18 34 submissions	The number of public submissions. Council
10.2018.342.1	Mr K Gillespie	5 Luan Court BYRON BAY	Secondary Dwelling	Level 1 20/7/18 to 2/8/18 4 submissions	The validity of the matters raised in the public submissions

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

15

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2006.738.5	Planners North	5/6 Durrumbul Road MAIN ARM	S4.55 to Delete Condition 28(a) and Permit More than One (1) Dwelling Per Neighbourhood Lot	Level 2 24/5/18 to 6/6/18 No submissions	Under Staff Delegation
10.2017.402.2	Bayview Land Development Pty Ltd	77 Tuckeroo Avenue MULLUMBIMBY	S4.55 to include an area for Temporary Stockpile of Unsuitable Material	Level 1 16/7/18 to 29/7/18 1 submission	Under Staff Delegation
10.2016.189.2	Koho Projects	116 Stuart Street MULLUMBIMBY	S4.55 to Amend Condition 17 for Road Works	Level 2 12/7/18 to 25/7/18 No submissions	Under Staff Delegation

Report No. 13.12 **Local Heritage Places Grants 2018-19**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
 Nancy Tarlao, Planner
5 **File No:** I2018/1518
Theme: Ecology
 Development and Approvals

10 **Summary:**

This report seeks Council endorsement of the funding recommendations made by the Heritage Panel on 30 August, 2018 for the 2018-19 Local Heritage Places grants.

15

RECOMMENDATION:

1. **That Council receive the information in the report on Local Heritage Places Grants 2018-19 and endorse the funding recommendations made by the Heritage Panel on 30 August, 2018.**

2. *That staff notify all of the grant applicants of Council's decision.*

Attachments:

- 20 1 Confidential - Project Application Local Heritage Places Fund 2018/19 - Prince Street, Mullumbimby, E2018/69097
- 2 Confidential - Project Application Local Heritage Places Fund 2018/19 - Station Street, Mullumbimby, S2018/9868
- 25 3 Confidential - Project Application Local Heritage Places Fund 2018/19 - 28 Dalley Street, Mullumbimby, S2018/9785
- 4 Confidential - Project Application Local Heritage Places Fund 2018/19 - 136 Dalley Street, Mullumbimby, S2018/9867
- 5 Confidential - Project Application Local Heritage Places Fund 2018/19 - 392 Middle Pocket Road, Billinudgel, S2018/9869
- 30 6 Confidential - Project Application Local Heritage Places Fund 2018/19 - 355 Coopers Shoot Road, Coopers Shoot, S2018/9648
- 7 Confidential - Project Application Local Heritage Places Fund 2018/19 - Terrace Reserve, Brunswick Heads, S2018/9949
- 8 Confidential - Project Application Local Heritage Places Fund 2018/19 - 21 Fingal Street, Brunswick Heads, S2018/9682
- 35 9 Confidential - Project Application Local Heritage Places Fund 2018/19 - 5 Lismore Road Bangalow , E2018/71866
- 10 Confidential - Project Application Local Heritage Places Fund 2018/19 - 3 Granuaille Crescent Bangalow , E2018/71873
- 40 11 Confidential - Project Application Local Heritage Places Fund 2018/19 10 Marblewood Place Bangalow , E2018/71877

45

50 **Report**

5 The Local Heritage Places Grants program is jointly funded by Council and the NSW Heritage Division as part of its commitment to heritage management and tourism within Byron Shire. The purpose of the fund is to provide small grants to support owners of heritage items or draft heritage items in maintaining their heritage property.

There is a total of \$12,000.00 in the 2018-19 fund made up of a grant from the Heritage Division of the NSW Office of Environment of \$6,000.00 and \$6,000.00 from the Council.

10 Up to \$3,000 is available for each project from a total funding pool. The main conditions are that property owners need to provide one dollar for every dollar contributed jointly by Council and the Heritage Division and that the work must be completed before or by March, 2019.

15 Eleven (11) applications were received this year. Each proposal was assessed by Council's Heritage Advisor against the required Heritage Division criteria. (Grant applications are confidential attachments 1 – 11).

[file:///fapmho2/users\\$/sburt/Downloads/E201851035-Local-Heritage-Fund-Guidelines-2018-19.pdf](file:///fapmho2/users$/sburt/Downloads/E201851035-Local-Heritage-Fund-Guidelines-2018-19.pdf)

20	<p>Funding available for</p>	<p>Heritage items that are either</p> <ul style="list-style-type: none"> • Listed as a heritage item in the Local Environmental Plan, or • Included in a conservation area in the Local Environmental Plan, or • Supported by Council's heritage officer / planner as being of heritage significance.
	<p>Priorities</p>	<p>Projects that are:</p> <ul style="list-style-type: none"> • For heritage item/s in a well maintained heritage streetscape or landscape setting. For a heritage item/s with public access and visibility • For urgent maintenance works to avert management risks (e.g. severe deterioration, demolition, or demolition by neglect) • Part of a heritage group or precinct • Fire, service and access upgrade for Building Code Australia compliance for ongoing or adaptive reuse of your heritage items/s • Have not received previous council funding support in the last 5 years.
	<p>Projects that will NOT be funded</p>	<ul style="list-style-type: none"> • New buildings • Routine maintenance (e.g. lawn mowing, gutter cleaning or carpet cleaning) • Projects where adequate funding is available from the applicant or other sources. • New commemorative monuments or works Purchase of heritage buildings • Relocation of buildings or work to relocate buildings • Private headstones. unless there is no possibility of descendent support for the project • Flood lighting of heritage buildings Purchase of equipment • Movable railway heritage items
	<p>Common selection criteria for all projects</p>	<p>Funding is targeted to projects with</p> <ul style="list-style-type: none"> • Sustainable long term heritage benefit • Public benefit and enjoyment • Innovation and leadership • Funding equity and cost effectiveness

The focus for the 2018-2019 Local Heritage Places Grants is conservation works that enhance individual places, buildings and historic streetscapes including buildings in conservation areas that will promote and foster community appreciation of the history of the Shire.

- 5 After consideration by the Heritage Panel members along with Council's Heritage Adviser and staff, a total of 9 projects that met the criteria have been recommended to Council for funding this year. (Successful Applications are attachments 1-6, 8, 10 & 11). Three (3) applications will receive \$2,000 each, with the remaining six (6) to receive \$1000 each.
- 10 The funding of these projects will support over \$60,000 worth of work to be carried out in this financial year on heritage property restoration.

Financial Implications

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

Statutory and Policy Compliance Implications

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

Report No. 13.13 **PLANNING - Development Application 10.2018.233.1 Mobile Telecommunications Facility including 35 metre Monopole, Six (6) antennae and ancillary equipment at Wilsons Creek Road, Wilsons Creek**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Greg Smith, Team Leader Planning Services
 Noreen Scott, EA Sustainable Environment and Economy
File No: I2018/1564
Theme: Sustainable Environment and Economy
 10 Development and Certification

DA No: 10.2018.233.1
Proposal description: Mobile Phone Telecommunications Facility including 35 Metre High Monopole, Six (6) Antennae and Ancillary Equipment
Property description: LOT: 1 DP: 202997
 Wilsons Creek Road WILSONS CREEK
Parcel No/s: 99360
Applicant: Service Stream
Owner: Telstra Corporation Ltd
Zoning: 7(c) (Water Catchment Zone)
Date received: 16 May 2018
Integrated Development: No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 7/6/2018 to 12/7/2018
- Submissions received: 114 individual submissions, plus a petition indicated to contain 1304 signatures on pro forma letters
- Submissions are publically available from the following link: www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information/

Delegation to determination: Council

Issues:

- Bush fire prone land
- High environmental value vegetation, Very high ecological values, Threatened species, populations and ecological communities, High Biodiversity Values on the Biodiversity Values Map under the Biodiversity Conservation Act 2016.
- Council cannot approve Part 4 development without a Biodiversity Development Assessment Report (BDAR).
- Flora and Fauna assessment report and Assessment of Significance not submitted.
- EME radiation impacts on wildlife.
- Building height under LEP 1988 clause 40, with SEPP 1 objection submitted (development standard is 9m, total height is 36.3m).
- Development not demonstrated to be appropriate to the location, surrounding development and environmental characteristics of the land. SEPP 1 objection not well founded and does not demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- Not consistent with objective (d) of the 7(c) (Water Catchment Zone).

- Conflicts with existing overhead 11kV powerlines, LV overhead powerlines and a 11kV / LV pole substation.
- Application not supported by a site plan identifying the closest residences contained in EME Report to determine the impact of the proposal on these dwellings.
- Application fails to address on-site sewage management.
- Public submissions (114 individual submissions, plus a petition indicated to contain 1304 signatures on pro forma letters).

Summary:

The DA proposes Mobile Phone Telecommunications Facility including 35 Metre High Monopole, Six (6) Antennae and Ancillary Equipment.

The proposal raised a significant level of objection from the community in terms of siting, environmental impacts, health and amenity impacts, electro magnetic radiation, visual impacts, proximity to power lines and surrounding residential properties.

It is considered that the development does not meet Councils planning controls or standards, having regards to the height provisions within Byron LEP 1988, and the objectives of the 7(c) Water Catchment Zone. Further having regards to the number of objections it is considered the proposed telecommunications tower is not in the public interest.

The application is recommended for refusal.

5

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2018.233.1 for Mobile Phone Telecommunications Facility including 35 metre high monopole, six (6) antennae and ancillary equipment, be refused for the following reasons:

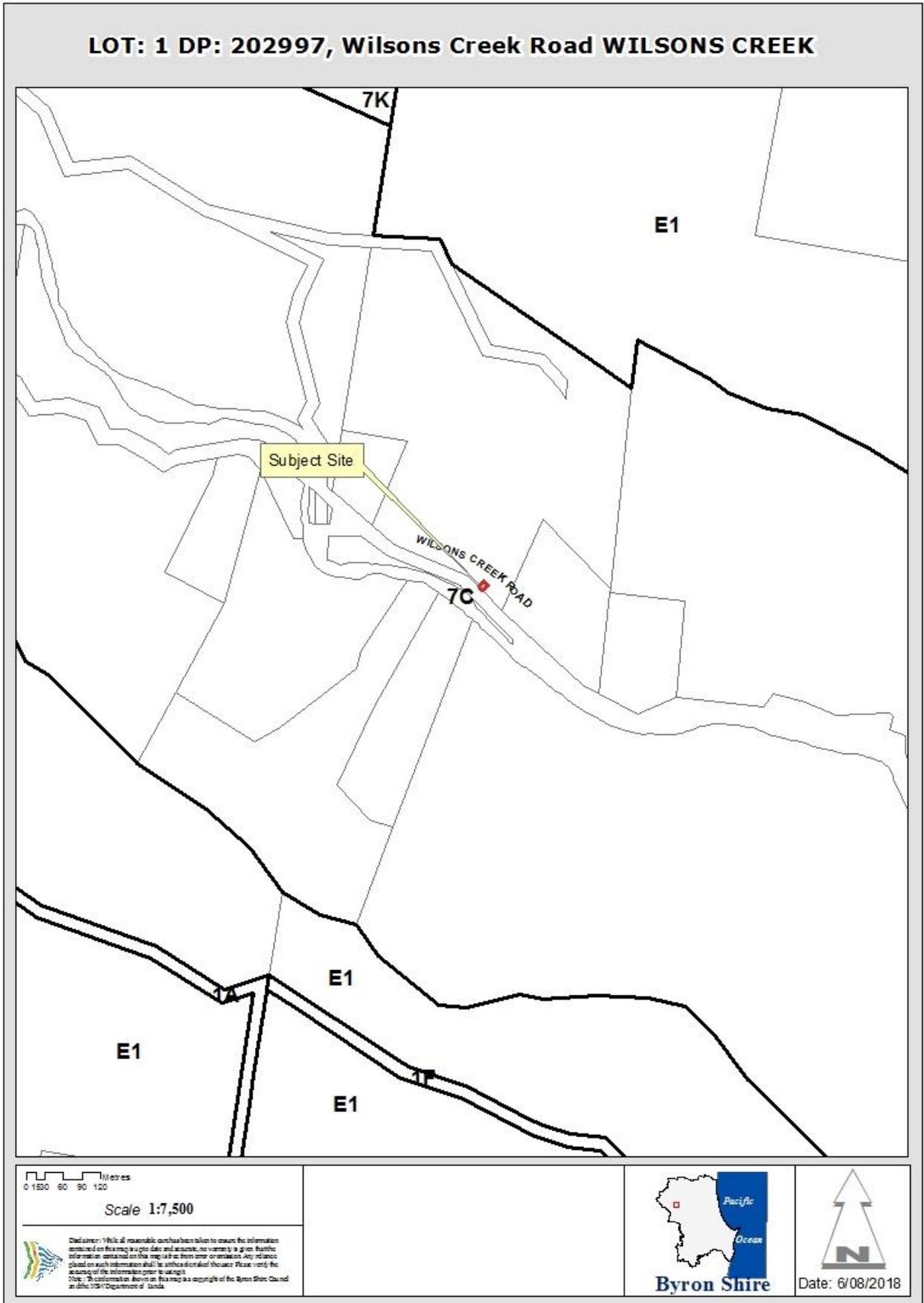
1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development fails to comply with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007, having regards to its proximity existing overhead power lines.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with objective (d) of the 7(c) Water Catchment Zone as insufficient information has been provided to demonstrate that the use is appropriate in terms of conserving or enhancing the environmental amenity of the locality.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Cause 40 (Height) of Byron LEP 1988 and the SEPP 1 Objection has failed to demonstrate that compliance with the development standard

is unreasonable or or unnecessary in the circumstances of the case.

4. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development fails to satisfactorily address the environmental impacts of the proposal including impacts on threatened species, populations and ecological communities, nor does it meet the requirements under the Biodiversity Conservation Act 2016.
5. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is considered unsuitable for the proposed development having regards to the ecological values of the site and its proximity to surrounding properties.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest having regards to the level of community objection to the telecommunication tower.

Attachments:

- 1 Proposed Plans, E2018/68630 
- 5 2 Confidential - further submissions dated 23/8/18, E2018/71816
- 3 Legal Advice received from objectors dated 23 August 2018, E2018/71820 



1. INTRODUCTION

1.1. History/Background

There is no approval history according to Council's records for this site.

1.2. Description of the proposed development

This application seeks approval for Mobile Phone Telecommunications Facility including 35 Metre High Monopole, Six (6) Antennae and Ancillary Equipment.

1.3. Description of the site

Land is legally described as LOT: 1 DP: 202997
 Property address is Wilsons Creek Road WILSONS CREEK
 Land is zoned: 7(c) (Water Catchment Zone)
 Land area is: 132.8m²
 Property is constrained by: Bush fire prone land, High environmental value vegetation

The site is owned by Telstra and accommodates an existing compound including an existing equipment shelter.



2. SUMMARY OF REFERRALS

25 Natural Resources Access Regulator

The NSW Natural Resources Access Regulator advises that a controlled activity approval may be required where any works are proposed on water front land as provided by Section 91 of the Water Management Act 2000.

30 Rural Fire Service

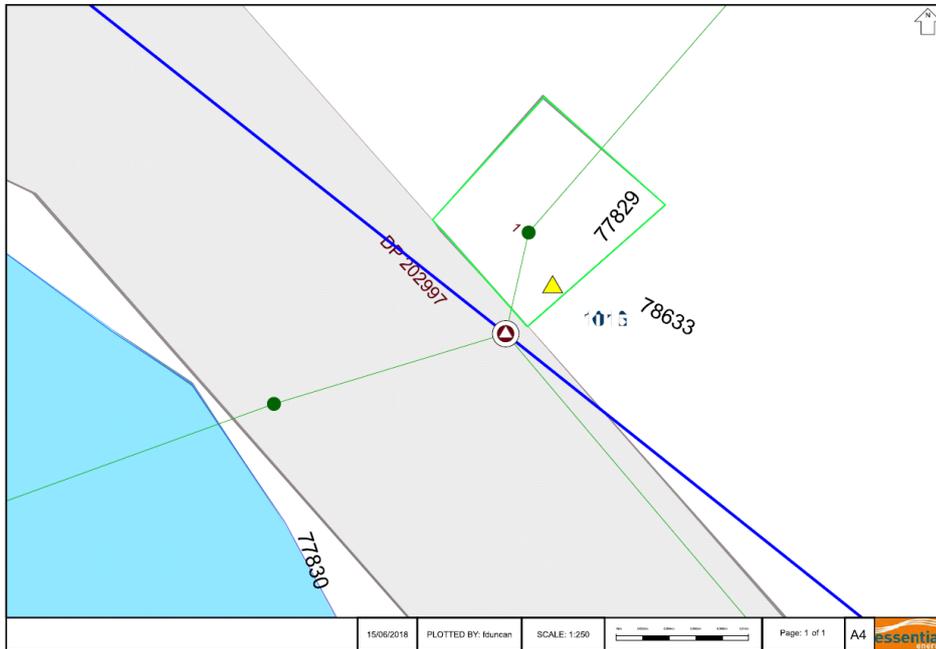
The property is located in a Bushfire Prone Area. The proposal was referred to the NSW Rural Fire Service who raised no objection to the development. Conditions would apply should the application be approved.

35 Essential Energy

The proposal is located in close proximity to overhead power lines and was referred to Essential Energy who advised as follows:

Essential Energy notes that existing overhead 11kV powerlines, LV overhead powerlines and a 11kV / LV pole substation are impacted by the proposed development (approximate location shown on the attached Smallworld map). Essential Energy has safety concerns in relation to the proximity of the proposed development to its existing infrastructure.

5



Any development in proximity to Essential Energy’s electrical infrastructure should comply with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure.

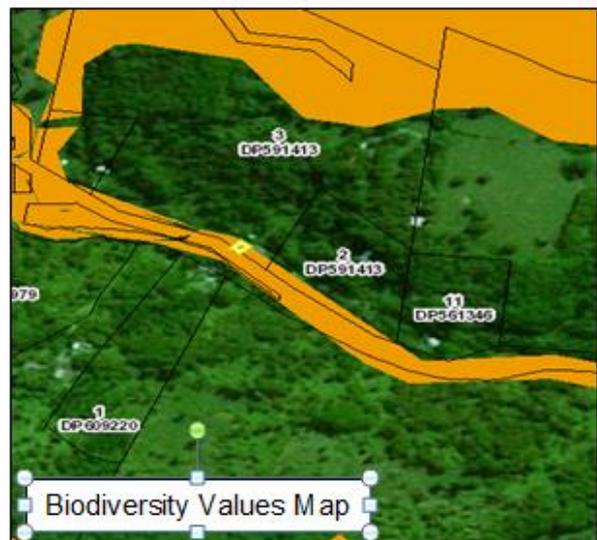
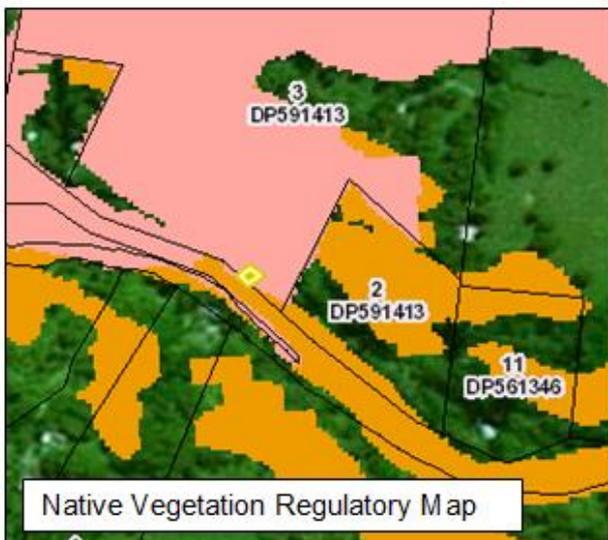
10

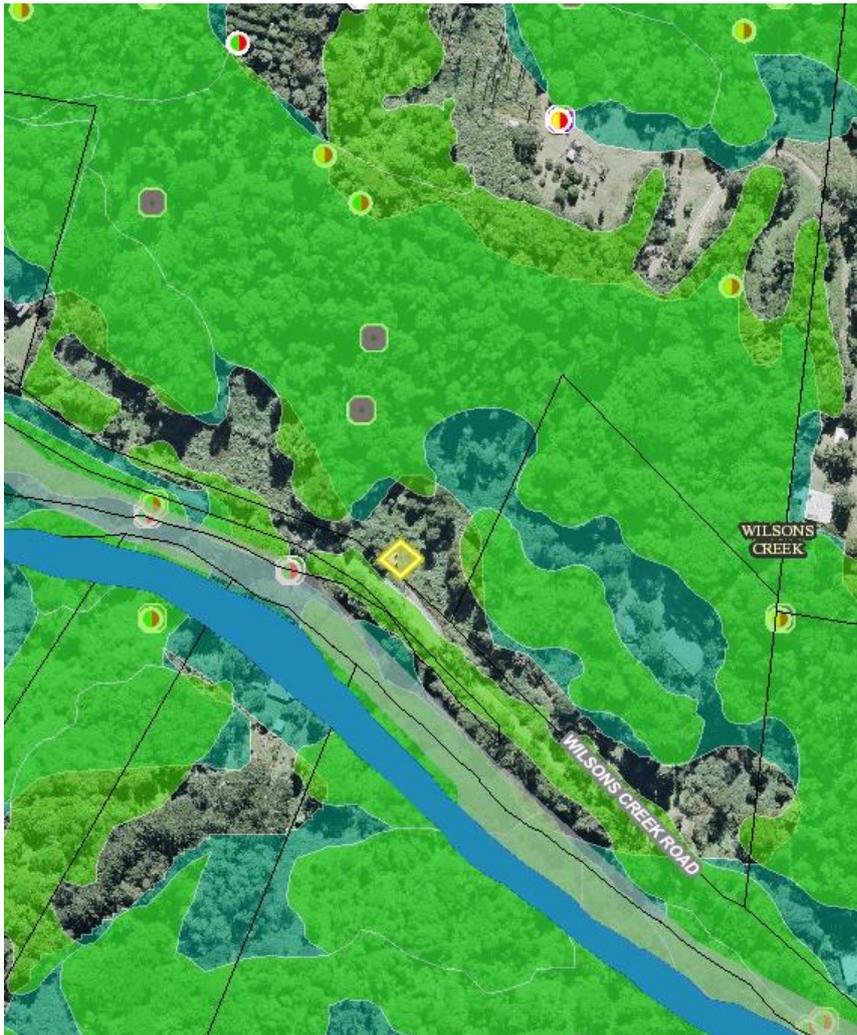
Having regards to the above it is considered the proposals fails to satisfy Clause 45 of SEPP Infrastructure nor meets Essential Energy’s requirements. The application does not address these requirements and is recommended for refusal.

15 **Ecological Planner**

The site is mapped as both Sensitive and Vulnerable Regulated Land on the Native Vegetation Regulatory map and the Biodiversity Values Map

20





The area surrounding the site is also mapped as HEV and threatened fauna habitat.

5 “The application states:

It is acknowledged that the area around Huonbrook and surrounds is generally high in natural vegetation, with Goonengerry National Park and Whian Whian State Conservation located nearby.

In light of this Telstra does not propose the disturbance of any natural vegetation, including tree removal associated with the establishment of this facility. All works will be carried out within Telstra’s existing compound.

Based on the assessment above, the proposal will have minimal adverse impact on the local environment, including on populations of vulnerable species. Telstra do not consider the proposal to have a significant adverse environmental impact.

10 Despite this acknowledgement, no flora and fauna assessment has been provided with the application so it is not possible to adequately assess the ecological impacts. Such a report is required. In addition, recent survey work in Nightcap National Parks indicates adverse wildlife effects arising from mobile phone towers. In such a high environmental value area as proposed, these matters require adequate consideration”.

The following matters are of importance

- 15 1. The location of the proposed phone tower is within an area of very high ecological values. The site is mapped as High Biodiversity Values on the Biodiversity Values Map under the

Biodiversity Conservation Act 2016. Council cannot approve any Part 4 development without a Biodiversity Development Assessment Report (BDAR).

- 5 2. A Flora and Fauna assessment report is required which considers the Subject Site and the Study Area in accordance with OEH guidelines and assesses the likelihood of threatened species, populations and ecological communities on and in proximity to the site and provides Assessment of Significance to determine whether the impact is likely to be significant.
- 10 3. Given recent research findings on local wildlife effects at Mount Nardi (see link below) and other research undertaken overseas which appears to indicate adverse wildlife impacts arising from EME radiation. This has not been addressed
<https://ehtrust.org/science/bees-butterflies-wildlife-research-electromagnetic-fields-environment/>
- 15 The application does not address the above matters and is recommended for refusal.

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

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

3.1 State Environmental Planning Instruments

25

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Council’s Environmental Health Officer advises as follows: “The subject land is currently owned by Telstra and contains an existing Telstra Facility. The development does not result in an increased sensitivity of land use. No further investigation is considered to be necessary”.		
State Environmental Planning Policy (Infrastructure) 2007	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: The proposed telecommunications facility is permitted with consent pursuant to clause 115 of the Infrastructure SEPP.		
However, the development application is not satisfactory having regard to clause 45 of State Environmental Planning Policy (Infrastructure) 2007 because, having regard to the advice provided by Essential Energy:		
<ul style="list-style-type: none"> (a) there are existing overhead 11kV powerlines, LV overhead powerlines and a 11kV / LV pole substation that are impacted by the proposed development; (b) there are safety concerns in relation to the proximity of the proposed development to its existing infrastructure; (c) the application fails to demonstrate that the development, which is in proximity to Essential Energy’s electrical infrastructure, complies with the latest industry guideline currently known as <i>ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure</i>; and (d) the application is not supported by plans certified by a suitability qualified person (showing distances from the proposed development to Essential Energy’s existing infrastructure) together with any other relevant information for further consideration demonstrating that the proposed development complies with ISSC20. 		
The application is recommended for refusal accordingly.		

	Satisfactory	Unsatisfactory
State Environmental Planning Policy (Rural Lands) 2008	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: There are no significant issues under the Rural Lands SEPP.		

4.2 Byron Local Environmental Plan 1988 (LEP 1988)

5 LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development.

10 The land is within the 7(c) Water Catchment Zone according to the map under LEP 1988. The proposed development is defined as a telecommunications facility under the Infrastructure SEPP as indicated above. The proposed development is permitted with consent in accordance with clause 115 of the Infrastructure SEPP. The proposed development is consistent (or not consistent) with the objectives of the 7(c) Zone for the following reasons:

Zone Objective	Consideration
<i>(a) to prevent development within the catchment of existing or future water supply systems which would have a significant detrimental effect on the quality or quantity of the water supply</i>	The proposed development is not of such a scale, intensity or water quality polluting potential that would have a significant impact on existing or future water supply systems , quality or quantity.
<i>(b) to ensure that development maintains the rural character of the locality and minimises disturbances to the landscape through clearing, earthworks and access roads so as to avoid erosion</i>	The proposed development will not have a significant impact upon the broader rural character of the locality, and minimises disturbances to the landscape through clearing, earthworks and access roads so as to avoid erosion.
<i>(c) to ensure that development does not create unreasonable or uneconomic demands, or both, for provision or extension of public amenities or services</i>	The proposal does not create unreasonable or uneconomic demands for provision or extension of public amenities or services, but instead adds to existing amenities and services.
<i>(d) to enable the carrying out of appropriate uses on the land within the zone in a sound manner which conserves or enhances the environmental amenity of the locality</i>	<p>The DA does not demonstrate that the proposal will be carried out in a sound manner to conserve / enhance the environmental amenity of the locality for the following reasons:</p> <ul style="list-style-type: none"> • The location of the proposed phone tower is within an area of very high ecological values; • The DA is not supported by a Biodiversity Development Assessment Report (BDAR); • A Flora and Fauna assessment report is not submitted in support of the DA, assessing the likelihood of threatened species, populations and ecological communities on and in proximity to the site and providing an Assessment of Significance to determine whether the impact is likely to be significant; • The DA does not demonstrate that there

	would not be significant adverse wildlife impacts arising from EME radiation; The proposal is not consistent with the zone objective. The DA is recommended for refusal accordingly.
<i>(e) to ensure land uses which use pesticides and herbicides or other pollutants are kept to a minimum to maintain the quality of run off water</i>	The proposed land use does not use pesticides, herbicides or other pollutants that are expected to have a significant impact on the quality of run off water, subject to appropriate erosion and sediment control measures being installed during construction.
<i>(f) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem</i>	The development is able to employ careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem as required.

5 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 of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to which considered further as follows:

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
40. Height	The proposed development exceeds the 9m maximum vertical distance between the topmost part of the building and the existing ground level below requirement. A SEPP 1 objection in this regard is considered below.

Clause 40 – Height

10 Subclause 40(2) of LEP 1988 states that the council must not consent to the erection of any building on land within any zone other than Zone No. 3(a), if the vertical distance between the topmost part of the building and the existing ground level below exceeds 9m. The proposed building has an overall height of 36.3m. Accordingly, the development application does not meet the 55m front setback requirement and the DA is supported by an objection pursuant to SEPP 1.

15 The Land Environment Court judgment in *Wehbe v Pittwater Council* [2007] identified requirements needed in order to uphold a SEPP 1 objection, and these are addressed in the circumstances of this particular case as follows:

20 ***Is the requirement a development standard?***

The 9m height requirement is a development standard as defined by section 1.4 of the Environmental Planning and Assessment Act 1979, because it is a provision of an environmental planning instrument in relation to the carrying out of development, being a provision by or under which requirements are specified and standards are fixed in respect of the height of a building.

25 ***Is the objection in writing, is it an objection “that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case” and does it specify “the grounds of the objection”?***

30 The Applicant submitted a written objection under SEPP 1 (refer to Doc #S2018/7774) dated 6/6/2018. It is an objection that compliance with the development standard is unreasonable and

unnecessary in the circumstances of the case and specifies the grounds of the objection as follows:

“Compliance is Unnecessary

5 Clause 40 of the BLEP 1988 provides guidance on Development Standards on height for works within the LGA, particularly in relation to building height. While the proposal is located in an area under which the vertical distance between the topmost portion of a building and the ground level must not exceed 9 metres, the proposal does not consist of a building. The use of the term building within the BLEP 1988 relates to habitable structures within which a variety of uses are undertaken and equipment/machinery is housed. The Dictionary of the BLEP 1988 includes multiple uses of the word building which is consistent with the
10 aforementioned statement. Furthermore the BLEP has no special provisions for telecommunication facilities. The proposed facility is considered as telecommunications infrastructure, and the monopole has a very minimal footprint and surface area. Based on this inconsistency Telstra consider the proposed facility as not constituting of a building as per the BLEP 1988. In this instance the only building is the existing equipment shelter which itself is already complies with the height requirement. Consequently the objective of Clause 40 of the BLEP 1988 is considered not relevant to the proposed development and in this case strict compliance is considered unnecessary.

Compliance Is Unreasonable

By their nature, telecommunications facilities are unable to comply with prescriptive height restrictions because, to function they must protrude above the surrounding area including topographical features, buildings and vegetation. Additionally this telecommunications pole is being proposed as part of the Federal Government's Mobile Black Spot Program. One of the key purposes of the MBSP is to improve the safety for people who live, work and travel in regional and remote areas. The ability for drivers, motorcyclists, cyclists and other road users to be able to call for help in the event of a breakdown, road accident or other emergency is critically important to the Federal Government. Currently, the only option available to people who require assistance in a mobile black spot is to flag down a passing motorist, send them to an area with adequate mobile phone coverage and trust that person to call for help. Extending beyond road safety, mobile phone coverage is important for providing an additional level of safety to tradespeople and farmers who sustain injuries while working in remote areas without access to a landline, such as a paddock or job site, or for people enjoying the natural beauty of an area by hiking or other outdoor activities which can all pose a risk of injury or getting lost. In these circumstances, mobile phone coverage enables communication with emergency services, as well as access to navigation tools and first aid information. As such Telstra considers this facility is as an important part of infrastructure in the area and its ability to function effectively is dependent on its protrusion above the surrounding environment. Additionally this telecommunications monopole is of a slimline nature and has been designed and will be finished in a manner that will not negatively affect surrounding development or the environmental characteristics of the land. As such compliance with the General Provision contained in Clause 40 of the BLEP would be unreasonable for a telecommunications facility”.

45 In addition, the SEPP 1 objection states that the development standard has been abandoned and provides planning justification for the variation as follows:

“The Development Standard has previously been abandoned

50 Within the Byron LGA there are 3 communications facilities zoned 7D Scenic Escarpment pursuant to the BLEP 1988, at St Helena Road, Mcleods Shoot NSW 2479. The first is a 40m NSW Police Force Lattice Tower at Lot 1 DP 441480, RFNSA site number 2479004. The second is an Axicom Lattice Tower also on Lot 1 DP 441480, RFNSA site number 2481001. The third is a 53m Telstra owned Lattice Tower plus 12m Extension on an
55 unidentified lot that can be recognized as being within the road reserve of St Helena Road,

RFNSA 2479002. These identified structures significantly penetrate the 9m Development Standard identified under Clause 40 of the BLEP 1988. They are considerably larger than the proposed facility (a 35m monopole) both in height and scale, however due to the nature of communications infrastructure their size is warranted and they form a part of important infrastructure.

Planning Justification pursuant the BLEP 1988

The proposal does not impede on the objectives of 7C Water Catchment zone particularly because it is a small footprint in an existing Telstra compound that has already been disturbed for the purposes of its establishment. The primary objective of the zone is to prevent development which negatively affects the environment through significant disturbance of the landscape leading to the damaging of existing or future water supply systems. The earthworks for the establishment of the new facility would be minimal and requiring no additional vegetation clearing. The proposal will form a reliable public service by improving communication and providing access to services that previously were available. This will not create any unreasonable demands to Council for the provision of public amenities. Furthermore the proposal does not impinge on the ability of any existing activities being carried out on the land or affect the conservation of the natural environment. The proposal does not involve an activity that utilises herbicides or any other pollutants. As such the quality of run-off water will not be negatively affected. Telecommunications facilities by nature require minimal maintenance. In addition this facility will be maintained by measures that are likely not to be significantly detrimental to the native ecosystem. As such from a planning perspective it is Telstra's opinion that there are no grounds by which the proposal will break away from the objects of the zone.

The SEPP 1 objection concludes as follows:

“Conclusion

Consequently with respect to the proposed DA the objective of General Provision 40 of the BLEP 1988 is considered not relevant to the proposed development and strict compliance is considered unnecessary and unreasonable.

Telstra consider there is clear justification for the facility to exceed the 9 metre building height restriction in this area based on the above discussion. Accordingly, we request that Council consider the proposal under Clause 6 of the SEPP1 (Development Standards) given:

- The proposed development is not considered a building as per the use of the term within the BLEP 1988. There is no reference to telecommunications facilities within this instrument and therefore this inconsistency renders the development standard unnecessary to the proposal. For telecommunications facilities, compliance with this height restriction is unreasonable.
- Telecommunications facilities provide an essential service in the case of emergencies and are considered a normal part of modern infrastructure and in order to function must extend above their existing environment therefore compliance is unreasonable.
- There are existing structures zoned under the BLEP 1988 that significantly exceed the 9m building height standard contained in Clause 40, that form part of important infrastructure within the LGA.
- As the proposal does not impinge on the objectives of the relevant zone there are sufficient environmental grounds to contravene the development standard”.

It should be clarified that the proposed development is a “building” having regard to the applicable definition in section 1.4 of the Environmental Planning and Assessment Act 1979, which is:

***building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a*

manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993.

Is “the objection well founded” and will “granting of consent to the development application be consistent with the aims of SEPP 1 as set out in clause 3”?

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in one of a variety of ways (according to the above mentioned judgment). These are:

1. *Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable and unnecessary.*
5. *The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and compliance with the standard in that case would also be unreasonable or unnecessary.*

Clause 40 provides the following stated objectives.

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,
- (b) to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

Objective (a) of the development standard is achieved for the following reasons:

- (a) The height of the proposed structure is necessary to achieve it’s intended purpose. Council has approved various telecommunications facilities in the Shire which exceed the 9m maximum requirement. The proposed building design exceeds the specified maximum height above the surrounding tree line so as to achieve it’s intended purpose to provide functional infrastructure.

However compliance with the development standard is not unreasonable nor unnecessary because compliance with objective (b) of the development standard is not achieved for the following reasons:

- (b) The application fails to demonstrate that the height and scale of the proposal are appropriate to the location, surrounding development and environmental characteristics of the land because
 - (i) it fails to demonstrate that it will not have significant impacts in terms of conservation and enhancement of the environmental amenity of the locality, threatened species, populations and ecological communities on and in proximity to the site and adverse wildlife impacts arising from EME radiation; and
 - (ii) it is not supported by a Biodiversity Development Assessment Report (BDAR), flora and fauna assessment report and Assessment of Significance to determine whether the impact is likely to be significant.

For these reasons the SEPP 1 objection is not well founded and the application is recommended for refusal.

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

There are no draft environmental planning instruments of significant influence in relation to the proposal.

4.4 Byron Shire Development Control Plan 2010 (DCP 2010)

DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988.

Chapter 1 Part H Landscaping

A condition could be imposed on any consent requiring the provisions of appropriate landscaping.

Chapter 1 Part N Stormwater Management

Council's Development Engineers have recommended consent conditions in relation to stormwater management.

Chapter 21 Social Impact Assessment

The proposal is not considered to be one of the types of proposals listed in A5 which require the submission of a Social Impact Assessment with the development application.

The proposed development is considered to meet the relevant Objectives of DCP 2010 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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"/>
Consideration: Not applicable.		

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

4.7 Any coastal zone management plan?

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: Not applicable.			

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	Yes. The application has failed to demonstrate that the proposal will not have significantly adverse impacts on the natural environment of the locality for the reasons given elsewhere in this Report, and the application is recommended for refusal accordingly.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	Having regards to the level of objection from the community ti considered approval of the tower may have a negative social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

5

Are there any Council Policies that are applicable to the proposed development.

Council Policy	Consideration
Management of Contaminated Land Policy	The subject land is currently owned by Telstra and contains an existing Telstra Facility. The development does not result in an increased sensitivity of land use. No further investigation is considered to be necessary.
On-site Sewage Management Systems in Reticulated Sewer Area	Should the application be approved further detail would be required in relation to on-site sewage management.

4.9 The suitability of the site for the development

10

The application is supported by the following Site Selection analysis:

“3 Site Selection and Justification

15

As part of Telstra's site acquisition procedure, a comprehensive site selection process has been undertaken in order to find an appropriate location for a new facility in Wilsons Creek. This included looking for 'colocation' opportunities, in accordance with Chapter 4 Part 3 Clause 4.13 of the Telecommunications Code of Practice 1997, as well as low impact solutions and new greenfield sites.

20

A number of disciplines are involved in the site selection process including site acquisition consultants, engineers and town planners, as well as specialist experts where needed, such as ecologists, geotechnical engineers and other relevant consultants. Each potential candidate is assessed under the following considerations:

25

Planning

30

- *In accordance with the relevant Acts and Environmental Planning Instruments (EPI);*
- *Acceptability of the proposal by Byron Shire Council and community;*
- *Location in relation to sensitive land uses such as schools, child care centres, hospitals, nursing homes;*
- *Visual aspect and amenity;*
- *Compliance with the EME standards mandated by the Australian Communications and Media Authority (ACMA); and*
- *Opportunities to collocate facilities where possible.*

Property

- Willingness by the owner to enter into a tenure agreement and provide access during construction and operation.

5

Engineering:

- Feasibility of construction (including assessment of soil conditions, slope and flood proneness) and availability of infrastructure such as access and power.

Radio frequency coverage and objectives:

- Ability to be linked to the existing Telstra network and meet the radio frequency coverage objectives for the area.

3.1 Options Considered

3.1.1 Opportunities to Collocate

State, Federal and Local government legislation encourages the use of existing telecommunication facilities for the collocation of new antennas to avoid the proliferation of telecommunication towers. Where possible, Telstra endeavour to co-locate on existing telecommunications facilities if these are available.

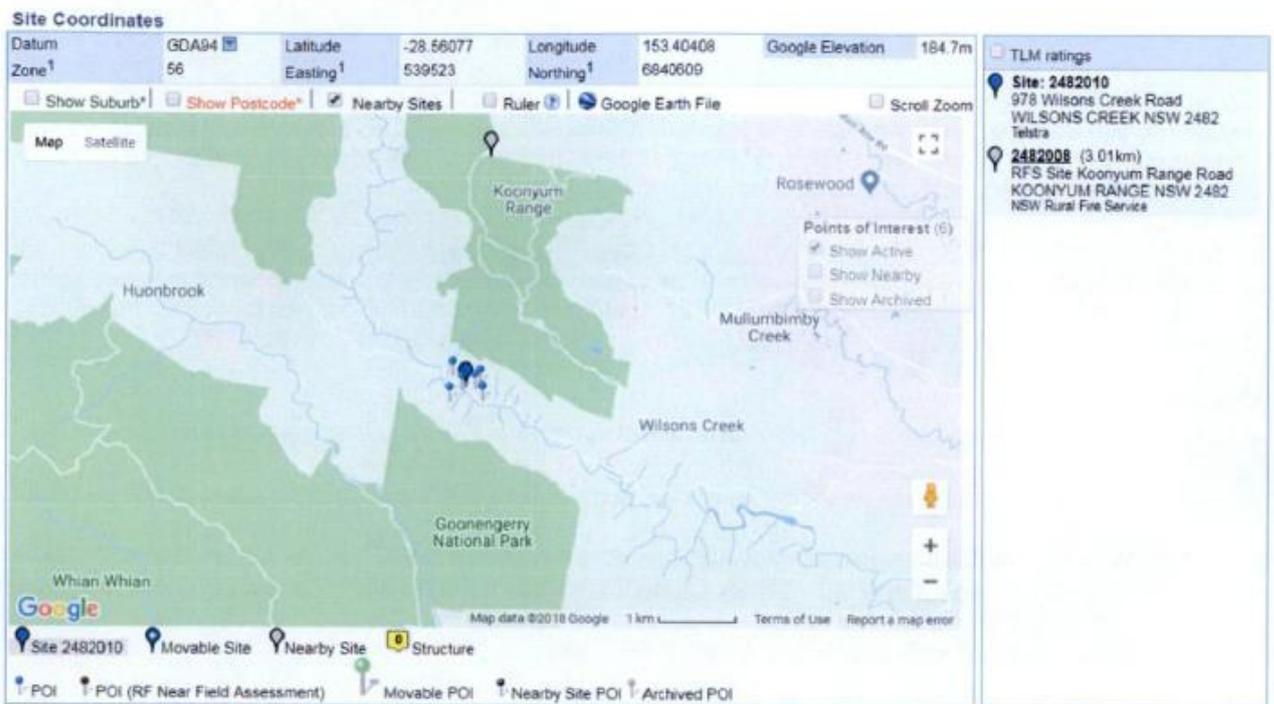
20

In this case, there were no existing telecommunications facilities nearby which were considered feasible for co-location.

25

In summary, a thorough examination of potential telecommunications base station sites in Huonbrook and the surrounding area has been undertaken. As depicted in Figure 7 below - there were no suitable options for co-location (for further information on the site, see www.rfnsa.com.au).

Figure 7: Collocation Opportunities



3.1.2 Low Impact Solutions

Where existing telecommunications facilities are not present, Telstra explore other potential co-location or 'co-siting' options such as radio towers, power stanchions or tall buildings.

30

Co-location options may not be available In all circumstances - there may be no existing vertical structures in the area, or no rooftops high enough to provide a feasible co-location option. The site assessment process revealed no Low Impact options were available. In this case, Telstra concluded a new 'greenfield' facility is required.

5

3.1.3 Greenfield Sites

Given there were no viable opportunities to co-locate or co-site within the locality a number of Greenfield options were explored.

10

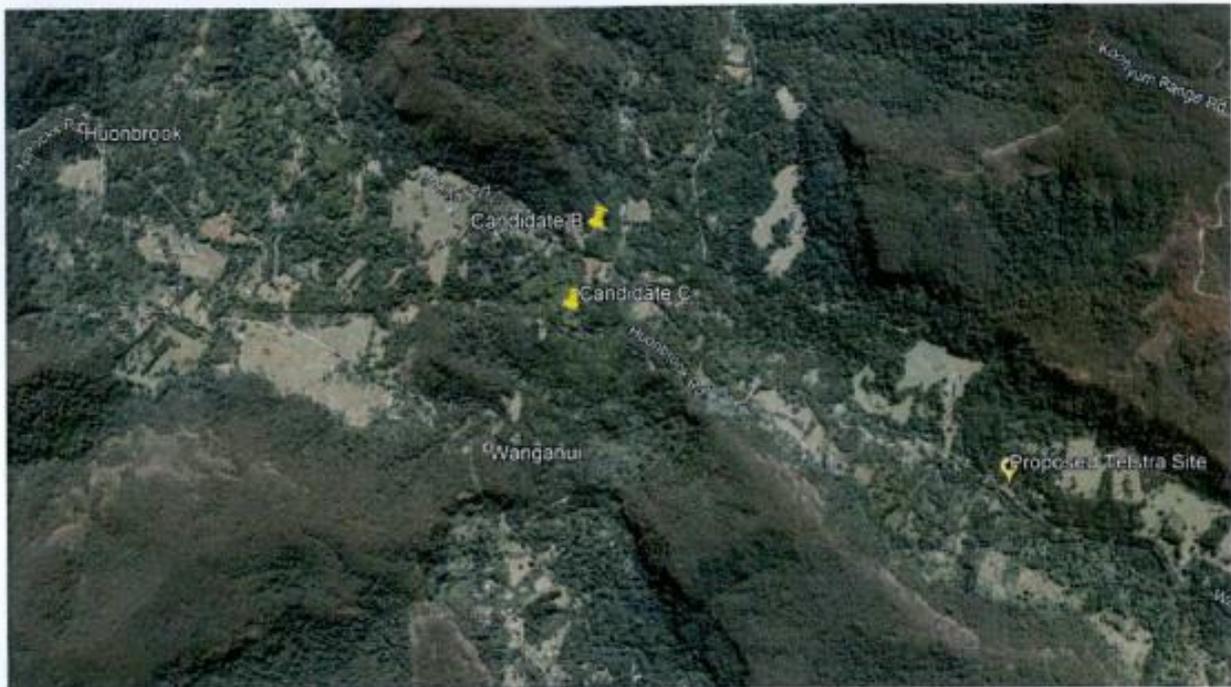
After initial site scoping it was evident the area provided a paucity options given its remoteness and high natural vegetation value. As such a total of three (3) candidates were selected for in-depth investigation including an on-site inspection. Taking into consideration that the Huonbrook area has rural residential developments, the site investigation predominantly focused on isolated rural areas with very little development. Additionally, site investigations also focused on special requirements for the construction of such a facility as well as access for maintenance purposes and access to power and fibre.

15

20

Figure 8 and the Table 1 below identify the potential candidates explored and determine why they were discounted in lieu of the chosen location presented in this Development Application.

Figure 8: Potential Greenfield candidates (from Google Earth)



25

A summary analysis of each investigated candidate is set out on Table 1 below including a description of the opportunities and constraints that each site afforded:

Candidate	Site Details	Facility Type	Description
A Proposed Telstra Site	Telstra SCAX Wilson's Creek Road, Wilson's Creek 2482 Lot 1 / DP202997	35m monopole	<p>The subject site is a Telstra owned exchange within a cleared lot.</p> <p>The candidate was favourable for a variety of reasons as it achieves a suitable level of coverage with minimal impact on visual amenity albeit from directly adjacent to the facility. This site is also previously cleared therefore no disturbance of vegetation would be proposed.</p> <p>From a technical perspective this site achieves desired levels of network coverage. The site was also considered favourable from a cost and build feasibility perspective given availability of power and access.</p> <p>The site was selected on this basis.</p>
B	80 Huonbrook Road, Huonbrook 2482 Lot 1 / DP601329	35m monopole	<p>Telstra investigated a new tower within this privately owned rural residential property.</p> <p>The candidate was favourable as it achieves a suitable level of coverage with minimal impact on visual amenity as the site is well screened by the existing trees. This site was also favourable from a planning perspective as the proposed location of the facility is zoned RU2 Rural Landscape. As such provisions of the ISEPP 2007 would prevail enabling Complying/Exempt development.</p> <p>However Telstra's attempts to secure tenure were unsuccessful as the site acquisition negotiations failed.</p>

C	153 Huonbrook Road, Huonbrook 2482 Lot 3 / DP611091	35m monopole	<p>Telstra investigated a new tower on privately owned land.</p> <p>The candidate was favourable as it also achieves a suitable level of coverage with very minimal impact on visual amenity as the site is well screened by the existing trees. This site was also favourable from a planning perspective as the proposed location of the facility is zoned RU2 Rural Landscape. As such provisions of the ISEPP 2007 would prevail enabling Complying/Exempt development.</p> <p>However this site was discounted from a cost and build feasibility perspective for a number of reasons. These included the difficult terrain and access issues increased by the thick vegetation which would require some clearing for the establishment of the facility. From an environmental perspective this candidate would result in much more significant impact.</p> <p>In addition to the above, the site was rejected as all attempts to reach the landowner failed.</p>
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5 3.2 Preferred Option

The site selection process highlighted the following about the proposed site:

- *it is considered to be consistent with the environmental and planning requirements, and it is expected to have minimal environmental Impacts during construction and operation;*

- *it will meet the radio frequency objectives of Telstra's network, giving the required coverage within the area by allowing all three sectors to operate effectively.*

5 *Potential greenfield sites were ruled out either because of environmental and planning issues, tenure grounds or difficulty of design and construction.*

10 *In conclusion, Telstra has identified that Candidate A is the most appropriate location for the installation of a new facility - therefore, on behalf of Telstra, we submit this application for a new telecommunications facility to Byron Shire Council”.*

However the application fails to demonstrate that the site is suitable for the proposed development for all of the reasons outlined in this Report and is recommended for refusal accordingly.

4.10 Submissions made in accordance with this Act or the regulations

15 Public submissions are available from www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information/

20 The development application was publicly exhibited. 114 individual submissions have been received, most of which are based on two pro forma type letters. A petition of pro forma type letters has also been submitted, the cover letter of which advises in part as follows:

25 *“This petition letter (copy below) has been signed by 1304 people, 316 from Wilsons Creek itself, 851 Byron Shire and 137 out side Byron Shire, this a clear indication the proposed Telstra tower does not have public support and is against the clearly expressed will of the people. The sole purpose of government is to act and administer services in accordance with the will of the people, ...”*

30 No submissions have been submitted in favour of the proposal. Issues raised in the submissions are summarised as follows:

Ecological Impacts, Impacts of EME / EMR on wildlife, Impacts on wildlife in environmentally sensitive area, No species impact statement submitted, Height

35 Comment: The application is recommended for refusal in relation to significant impacts in terms of conservation and enhancement of the environmental amenity of the locality, threatened species, populations and ecological communities on and in proximity to the site and adverse wildlife impacts arising from EME radiation. The application is not supported by a Biodiversity Development Assessment Report (BDAR), flora and fauna assessment report and Assessment of Significance to determine whether the impact is likely to be significant. The application fails to demonstrate that
40 the height and scale of the proposal, which exceeds the maximum height development standard under clause 40 of Byron Local Environmental Plan 1988, are appropriate to the location, surrounding development and environmental characteristics of the land in accordance with objective (b) of the height development standard. The application is not supported by a well
45 founded SEPP 1 objection demonstrating that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case.

50 ***Impacts of EME / EMR on humans, Health risks, Links to cancer, Inevitable co-location of additional telecommunication services will lead to increased radiation levels, Exposure may constitute assault or trespass under Common Law, Cumulative impact of 5G on all power poles and on all houses, Proximity to dwellings, 70m from nearest dwelling***

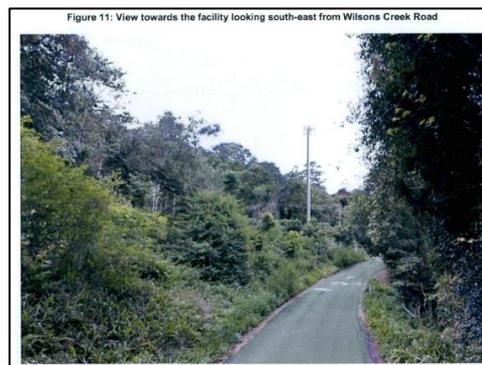
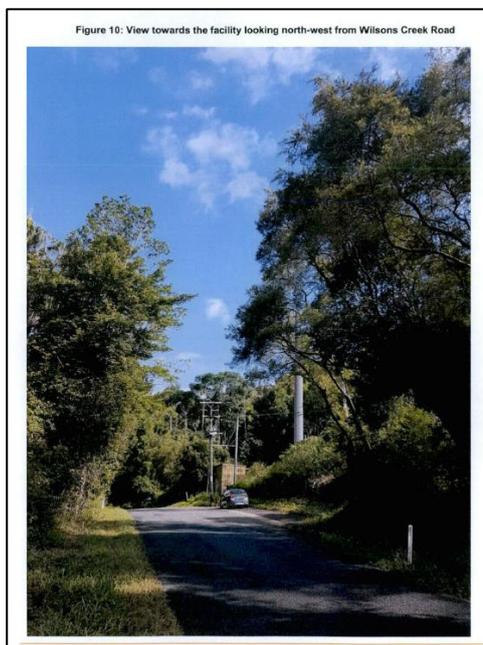
55 Comment: The application is not supported by a site plan identifying the closest residences contained in EME Report to determine the impact of the proposal on these dwellings, and is recommended for refusal accordingly.

Residents chose to live in an area without mobile phone reception

5 Comment: This is not a matter of such significance as to warrant inclusion in the recommended reasons for refusal.

Visual impacts, Loss of scenic and visual amenity, existing trees are not 35m high to screen the tower

10 Comment: The telecommunications facility at the proposed location would be less visual than one at the top of a ridgeline or escarpment. The proposed telecommunications facility would not be as visible when viewed along the Wilsons Creek Road approaches beyond an estimated 150-200m to the east and west of the site given the presence of vegetation, other than intermittent glimpses. The telecommunications facility would not be excessively visible from the public perspective other than in front of the site. The telecommunications facility is expected to be visible from other
15 properties nearby.



20 However these matters are not considered to be of such significance as to warrant inclusion in the list of reasons for refusal, also having regard to the number of other more visually prominent telecommunication facilities throughout the Shire.

Impact on land saleability

25 Comment: This is not a matter for Councils consideration.

Flood impacts, Soil stability, Landslips, Adjacent to sink hole, No geotechnical assessment lodged with application, No evidence that structure will be on bedrock

30 Comment: The site is not flood prone land. Council's Development Engineer advised that the proposal is satisfactory having regard to geotechnical hazards. The Development Engineer recommends a condition requiring a certificate from a professional Engineer experienced in Geotechnical Science to be provided to the Principal Certifying Authority, certifying that the site is
35 stable and will not be affected by landslide or subsidence at, above or below the site when the building is erected. The certificate must be prepared in accordance with AS 1726.

Prohibited development in the zoning

5 Comment: It is not the 7(c) Zone under Byron Local Environmental Plan 1988 which permits the proposed development. The proposed telecommunications facility is permitted with consent in accordance with clause 115 of the Infrastructure SEPP, which states:

115 *Development permitted with consent*

10 (1) *Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.*

Fire plan not provided to deal with electrical faults and lightning strikes

15 Comment: If necessary, this could be required by way of a condition of consent.

No indication of public liability insurance, Many insurers now have policy exclusions for damage or injury due to EME, it is unlikely Telstra or Council are properly covered for this substantial risk

20 Comment: Public liability insurance is not a matter for consideration in the assessment of this application, but is rather a matter for the entities mentioned to negotiate with their respective insurers.

Potential contamination of the site, presence of asbestos, lead and industrial chemicals

25 Comment: The subject land is currently owned by Telstra and contains an existing Telstra Facility. The development does not result in an increased sensitivity of land use. No further investigation is considered to be necessary in relation to contamination.

30 **No indigenous heritage assessment has been submitted in support of the application, adequacy of AHIMS search**

35 Comment: The standard procedure in relation to Aboriginal heritage is to conduct an AHIMS search. If this identifies anything in the vicinity of the site then the assessment progresses to a more detailed assessment. A condition could be imposed on the consent if granted, along the lines of the following:

Aboriginal heritage – unexpected finds protocol

40 If Aboriginal objects are uncovered during earthworks or disturbance; work in the immediate area of the unexpected finds must stop immediately and the North Coast Regional Operations Branch of the OEH and the Registered Aboriginal Parties are to be consulted before work can re-commence.

45 Note. OEH means the *New South Wales Office of Environment & Heritage*, and *Registered Aboriginal Parties* is defined in the *National Parks and Wildlife Regulation 2009*.

Impact on local power grid

50 Comment: Essential Energy raised concerns in relation to the location of the proposed telecommunications facility in relation to poles and wires, but not in relation to the capacity of the network to accommodate the proposed power usage

Manly Council was successful in stopping a tower in Balgowlah

55 Comment: This application in Manly Council has not been reviewed, the circumstances of the subject Wilsons Creek proposal are what is relevant.

Estimated cost is actually \$870,000

Comment: The Applicant submitted a cost estimate as follows:

5




Development Cost Estimate: Wilsons Creek Telecommunications Facility
 Development Cost between \$100,000 and \$3,000,000

Our Reference:	Huonbrook
Date:	23/07/2018
Development Application No:	DA10.2018.233.1
Construction Certificate No:	NA
Applicant's Name:	Service Stream Network Construction
Applicant's Address:	L1, 29 Christie Street, St Leonards, NSW 2065
Development Name:	Mobile Telecommunications Facility
Development Address:	Lot 1 DP 202997 Wilsons Creek Road, Wilsons Creek

Estimated Cost of Works:

Site Establishment	\$10,000
Structure - Pole	\$55,000
Civil Works – Footings & related works	\$45,000
Civil Works – Driveway & related works	\$25,000
Electrical Works	\$35,000
Equipment Installation Works	\$30,000
Ancillary Install & Plant Hire Services	\$35,000
Sub-Total	\$235,000
GST	\$23,500
TOTAL DEVELOPMENT COST	\$258,500

Motorists on mobile phones will be an additional traffic hazard on already dangerous roads

10 Comment: The use of mobile phones whilst driving is governed by road rules and laws, and this consideration is beyond the scope of assessment of this application.

The proposal would not be in the public interest

15 Comment: For the refusal reasons given below, approval of the development application would not be in the public interest.

Inadequate public consultation by Telstra

20 Comment: Council does not set standards in relation to public consultation by Telstra. The application was publicly exhibited, advertised and notified by Council in accordance with Development Control Plan requirements with the period of exhibition exceeding the minimum requirement under the DCP.

25 **Poor location in bottom of valley, so more towers will be required**

Comment: Noted

4.11 Public interest

30

Having regards to the level of objection by the community it is apparent there is little support for the development which would serve that community. As such it is considered the proposal is not in the public interest.

35

5. DEVELOPER CONTRIBUTIONS

Section 7.11 Contributions would be payable 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

5

Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

10

The proposed Mobile Phone Telecommunications Facility has generated significant opposition from the local community, whilst the application lacks detail in addressing environmental and amenity issues pertaining to the site and the surrounding locality.

15

The development application is recommended for refusal for the reasons provided in the Recommendation of this Report.

Report

On 26 October 2017 Council resolved (**Resolution 17-453**) to adopt the Flying-fox Camp Management Plan (the Plan) to guide future management of five urban flying-fox camps within Byron Shire Council Local Government Area (LGA). The 2018-19 Operational Plan identifies the implementation of the Plan as a key activity. One of the first actions of the Plan is to form a 'Working Group' (now referred to as a Project Reference Group (PRG)) to work in partnership with Council to increase the understanding of issues relating to the management of flying foxes particularly in an urban setting:

The establishment of a flying-fox working group comprised of Council staff, community, Aboriginal land council, wildlife carers, and relevant government agencies to seek funds, prioritises actions, determine new and emerging issues and increase awareness about living with flying-foxes (Section 8, Table 8.1 action 1.11).

The **intent** of the PRG is for Council to seek continual engagement with the community and vested stakeholders in assisting with the management of identified flying-foxes camps as per the Plan

The **scope** of the PRG, is to provides advice, advocacy, reporting, community feedback and suggestions to Council in relation to matters of on-ground actions and education and awareness strategies. The PRG will report to the Biodiversity Advisory Committee (BAC) on the progress and effectiveness of the management approach.

The **objectives** of the PRG are:

1. To provide a vital communication linkage to and from Council to interest groups, state agencies and the community in general.
2. To assist with prioritising on-ground actions and education and awareness strategies
3. To inform Council of the community's aspirations and expectations in regard to on-ground actions and raising awareness and education about flying foxes
4. To engage with the broader community during future direction setting on its strategic approach to the management of flying-foxes and their habitat

Membership to the PRG will be voluntary with no reward or remuneration provided.

The maximum number of members suggested for the PRG is 14. This includes the following:

- Ten (10) community representatives (2 community representatives from each of the subject urban camps. These community representatives will also be from within 300m of each of the subject urban camps, and not represent an animal welfare group).
- One (1) representative from a suitable animal welfare group.
- One (1) representative each from the relevant NSW State Government agencies including Office of Environment & Heritage and Department of Industry – Crown land.
- Council representative as deemed necessary by General Manager.

Councillors are invited to nominate an elected member to attend the PRG meetings although the PRG will report to the Biodiversity Advisory Committee in which three (3) Councillors are members.

Consultation:

The proposed PRG has been discussed with and supported in principal by Governance.

5 Community members from within 300m of each of the subject urban camps were invited in writing to lodge an Expression of Interest (EOI) to be a part of the PRG in January and June 2018, with a deadline of 13 July 2018 for responses. Emails were also sent to suitable animal welfare groups and relevant NSW State Government agencies.

Nine (9) community members lodged EOIs to be a part of the PRG (*Attachment 1 E2018/70597*).

10 No EOI was submitted from community members living within 300m of the camp located at Butler Reserve in Byron Bay. The EOI did attract an almost even representation of community members that are either supportive of flying foxes or learning to live with flying foxes.

15 Representative from the Northern Rivers Wildlife Carers and WIRES Northern Rivers submitted an EOI to represent a suitable animal welfare group. This membership will be a shared position between the Northern Rivers Wildlife Carers and WIRES Northern Rivers.

20 One (1) representative each from the Office of Environment & Heritage and Department of Industry – Crown land has also been identified.

For the sake of effectiveness, efficiency and manageability of the PRG it is recommended that Council appoint a maximum of 14 members including a maximum of 10 community representatives (i.e. 2 community individuals from each of the 5 subject camps) to join the PRG.

25 It is also recommended that eight (8) of the nine (9) community members that have lodged an EOI by the closing date be appointed as part of the PRG (*Attachment 1 E2018/70597*). This allows for two (2) community representatives from Bangalow, Mullumbimby, Suffolk Park and Byron Bay as well as even representation of community members that are either supportive of flying foxes or learning to live with flying foxes.

30 Additionally, Council staff will continue to identify two (2) community representatives of Butler Reserve in Byron Bay.

35 The group's first meeting will be held in September / October 2018 where the draft constitution of the group will be confirmed (*Attachment 2 E2018/69378*)

Financial Implications

40 The administrative functions associated with the PRG will be undertaken using existing staff resources in the Environment and Economic Planning section.

Potential costs associated with the PRG may include catering and room hire estimated at \$1,000. In 2018-19FY, these costs could be met through the relevant Governance budget.

45 If this funding scenario cannot be achieved then an alternate funding scenario will be Environmental Strategic Studies (2605.074).

Statutory and Policy Compliance Implications

50 Nil.

Report No. 13.15 **PLANNING - Development Application 10.2017.742.1 Alterations and Additions to Existing Dwelling House including New Swimming Pool and Spa, New Dwelling House to Create a Dual Occupancy (detached) and Two (2) Studios at 219 The Saddle Road Brunswick Heads**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Dylan Johnstone, Planner
File No: I2018/1602
Theme: Sustainable Environment and Economy
10 Development and Certification

Proposal:

DA No: 10.2017.742.1

Proposal description: Alterations and Additions to Existing Dwelling House including New Swimming Pool and Spa, New Dwelling House to Create a Dual Occupancy (detached) and Two (2) Studios

Property description: LOT: 4 DP: 810118
219 The Saddle Road BRUNSWICK HEADS

Parcel No/s: 137160

Applicant: Greg Alderson & Associates Pty Ltd

Owner: Koresoft Pty Ltd

Zoning: RU2 Rural Landscape

Date received: 27 December 2017

Integrated Development: No

Public notification or exhibition:

- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 18/1/18 to 31/1/18
- One submission was received.

Delegation to determination: Council

Issues:

- Chapter B14 of DCP 2014 – Excavation and Fill
- Chapter D2.7.1 of DCP 2014 – Studios
- Relocation of overhead power lines

Summary:

15 This application seeks development consent for alterations and additions to an existing dwelling house including new swimming pool and spa, construction of a new dwelling house to create a dual occupancy (detached), and construction of two (2) studios (one associated with each dwelling).

20 The application originally proposed the new dwelling house to be located at a distance of 365m from the existing house, which does not comply with the maximum separation distance of 100m required by the development standards of Clause 4.2D of LEP 2014. It was considered that there were insufficient grounds to vary the standard pursuant to Clause 4.6, and the application was
25 reported to the 2 August 2018 Ordinary meeting with the recommendation being refusal of the application. Council resolved that the item be deferred until the 20 September 2018 Ordinary meeting in order for Council and the proponents to consider an alternative site approximately within 100m of the existing site, for example the site identified as site F in the application.

30 Additional information has been submitted by the applicant which proposes to locate the new dwelling at site F with a compliant separation distance of approximately 70m as per Clause 4.2D of

Byron LEP 2014. A variation to the development standard pursuant to Clause 4.6 is not longer required.

5 The proposed development is satisfactory in terms of Byron LEP 2014 and DCP 2014. The proposed development is unlikely to have an impact on the existing built or natural environment and the site is considered suitable for the development. It is recommended that the development application be approved subject to conditions of consent.

10 NOTE TO COUNCILLORS:

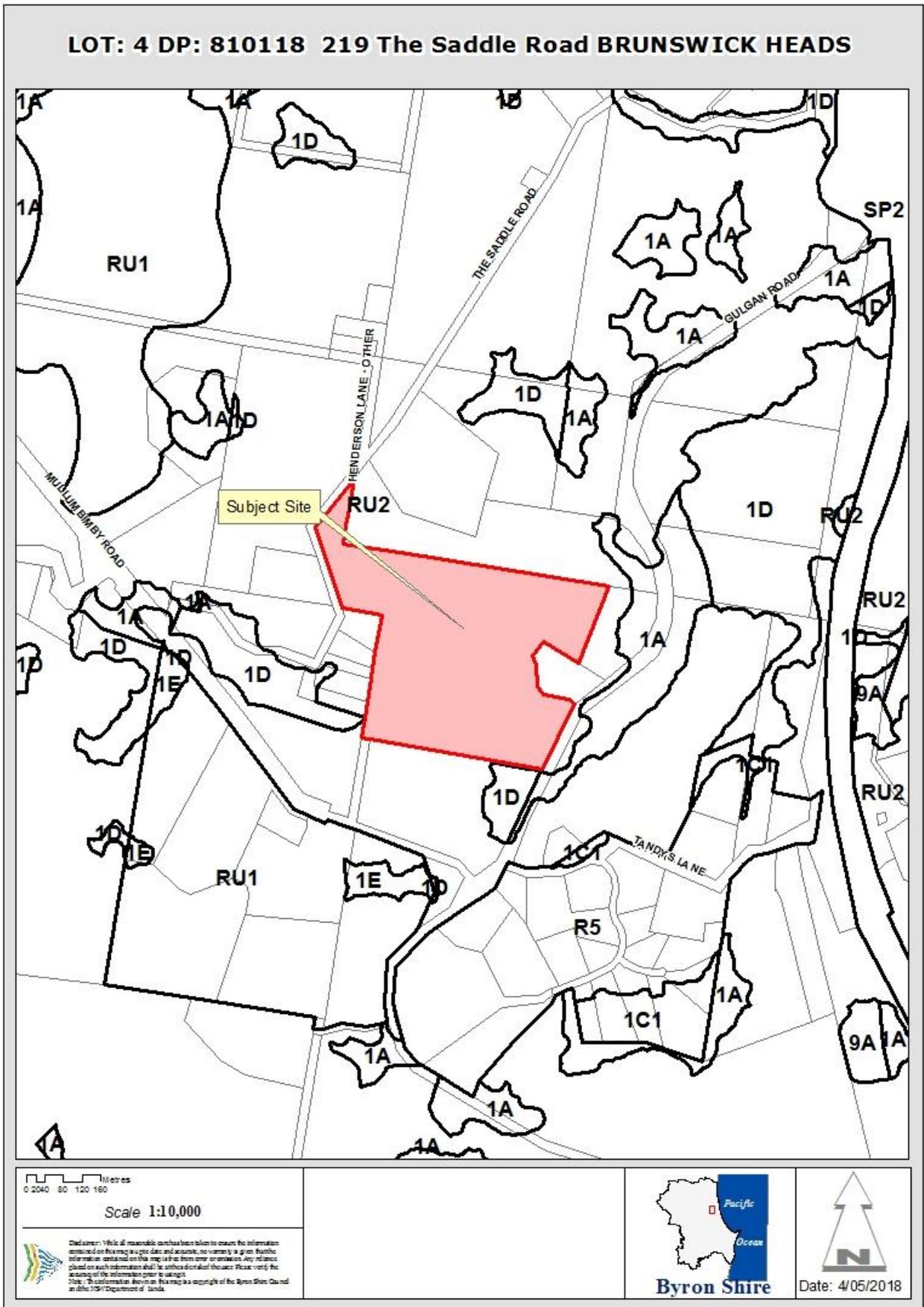
15 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes 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 & Assessment Act 1979, Development Application 10.2017.742.1 for alterations and additions to existing dwelling house including new swimming pool and spa, new dwelling house to create dual occupancy (detached) and two (2) studios be granted consent subject to attached conditions.

20 **Attachments:**

- 1 Plans of Studio, E2018/73762 
- 2 Plans Dwelling Alterations & Additions, E2018/73761 
- 3 Plans Dual Occupancy, E2018/73759 
- 25 4 Conditions of consent , E2018/73885 
- 5 Letter of Support , E2018/73757 



Assessment:

1. INTRODUCTION

5 1.1. History/Background

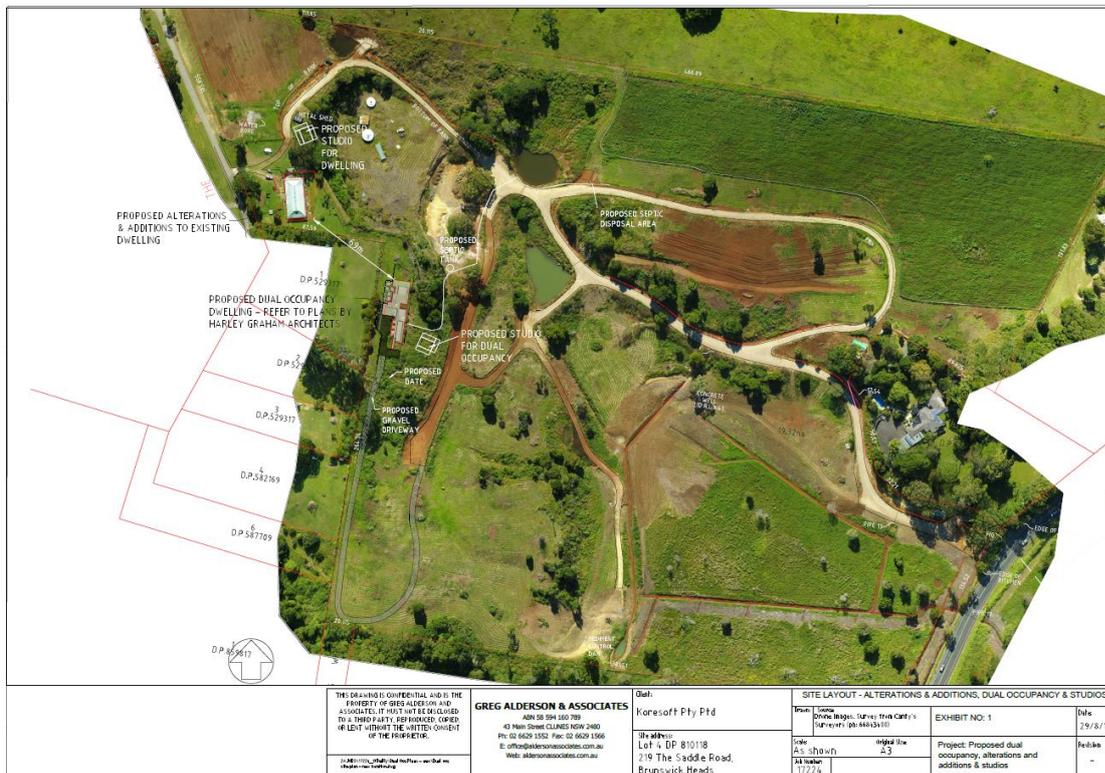
5.1991.123.1 – Dwelling House and Carport – approved 08/05/91

10 Borrodales basalt quarry was operated by the NSW Department of Public Works under a series of non-exclusive licence agreements in 1959, 1963 and 1969.

1.2. Description of the proposed development

15 This application seeks approval for alterations and additions to an existing dwelling house including new swimming pool and spa, construction of a new dwelling house to create a dual occupancy (detached), and construction of two (2) studios, one associated with each of the dwellings.

The layout of the proposed development on the site is shown below.



20 **Figure 1 Site Layout (Greg Alderson & Associates)**

Existing Dwelling

The proposed alterations and additions to the existing dwelling house include:

- 25
- New covered balcony
 - New enclosed verandah with indoor swimming pool
 - New carport, undercover driveway and storage
 - New deck with spa
 - New bedroom, study, gym and rumpus room
- 30
- Convert existing garage to underfloor storage and workshop area

Dual Occupancy (detached)

It is proposed to construct a new three-bedroom, single-storey dwelling, located approximately 70m southeast of the existing dwelling, as indicated in Figure 1 above.

5 Studios

Two non-habitable studios are proposed to be constructed in conjunction with each of the dwellings. The studio associated with the existing dwelling is proposed for use as a home occupation, for the production of naturopathic remedies. The studio associated with the new dwelling is proposed to be used for the purposes of private exercise (yoga and pilates).

10

1.3. Description of the site

Land is legally described as LOT: 4 DP: 810118
Property address is 219 The Saddle Road BRUNSWICK HEADS
Land is zoned: RU2 Rural Landscape
Land area is: 19.32ha
Property is constrained by: Acid Sulfate Soils Class 3 (very small area in SE corner – not affected by development)
Bush Fire Prone Land (proposed development outside of mapped areas)
High Environmental Value Vegetation
Koala Habitat (potential)
Regionally Significant farmland (non-contiguous)

15



Location of proposed studio associated with existing Dwelling House (Looking NE)



Existing Dwelling House (Looking E)

- 5 The application includes a plan of a “share farming” arrangement on the land to demonstrate existing and future use of the site.

2. SUMMARY OF REFERRALS

10

Referral	Issue
Environmental Health Officer	There is sufficient land area for disposal of wastewater on the site
Development Engineer	No objections to the proposal subject to conditions.
S64 / Systems Planning Officer	No objections to the proposal subject to conditions.
S94 / Contributions Officer	Section 94 contributions applicable for dual occupancy development
Essential Energy	No objections to the proposal subject to advisory comments.
Tweed Byron Land Council	<p>The application was referred to TBLALC who recommended that, if approved, they undertake a site visit and report to further investigate significant aboriginal cultural heritage thought to be located in the area.</p> <p>A site visit was undertaken by TBLALC on 21/06/18. Subsequently a Cultural Heritage Sites Inspection Report was prepared by TBLALC dated 21/06/18 and submitted to Council on 23/07/18. The report concluded that “there is nothing at this stage to halt or delay the proposed work on this site”. The report recommended that the <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW</i>, published by the DECCW OEH, be applied. Procedures to be applied in the case of unexpected finds (including even suspected ACH objects) were also recommended.</p>

3. SECTION 79BA – BUSH FIRE PRONE LAND

5 Under section 79BA 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 lot is mapped as containing bushfire prone land however the proposed development site within the lot is not bush fire prone land therefore no further assessment is required.

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

10 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.

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Part of the land is mapped as containing Tertiary Habitat. However, the application does not propose development within this area and no vegetation removal is proposed on the site.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A preliminary contaminated land investigation was undertaken by the applicant in accordance with Section 7. A site history review was conducted for the investigation area (being the entire site). The history review found that there is no evidence that the investigation area was subject to cropping or plantations or that any other contaminating activities had occurred. It is considered that the land is suitable for residential use.		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BASIX Certificate required for: <ul style="list-style-type: none"> • New dwellings • Alterations > \$50,000.00 • Pools > 40,000 kl BASIX certificate has been provided.		
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Plans have been submitted with the application indicating a number of structures to be undertaken as exempt development including a windmill and wind turbines. Note: The applicant has acknowledged that some of these structures may not be undertaken as exempt development and a future Development Application is to be lodged separate to this application.		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Clause 45 requires that development carried out within 5m of an exposed overhead electricity power line must give written notice to Essential Energy and consider their comments prior to determination of a development application. The applicant proposes to relocate the existing power line to accommodate the proposed development and Essential Energy have advised that development consent may be granted on the condition that the powerlines are relocated in accordance with their requirements.		
Clause 101 requires that Council must not grant consent to development on land that has a		

	Satisfactory	Unsatisfactory
frontage to a classified road unless it is satisfied that, where practicable, vehicular access to the land is provided by a road other than the classified road (Gulgan Rd). The application proposes that vehicular access to each dwelling will be provided by a single access point to The Saddle Rd.		
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Borrodales basalt quarry was operated by the NSW Department of Public Works under a series of non-exclusive licence agreements in 1959, 1963 and 1969. Any use rights of previous extractive activity on the site have since been abandoned.		
State Environmental Planning Policy (Rural Lands) 2008	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: Clause 7 identifies the following Rural Planning Principles: (a) <i>the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,</i> (b) <i>recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,</i> (c) <i>recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,</i> (d) <i>in planning for rural lands, to balance the social, economic and environmental interests of the community,</i> (e) <i>the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,</i> (f) <i>the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</i> (g) <i>the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,</i> (h) <i>ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.</i>		
The proposal is considered to be consistent with the Rural Planning Principles.		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

5 LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act because it applies to the subject land and the proposed development. The following LEP 2014 clauses are of relevance to the proposed development:

Land Use Table:

- 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 Dual Occupancy (detached). Studios are not separately defined in the LEP, and are considered to be ancillary to the dwellings houses that make up the dual occupancy.
 - (b) The land is within the RU2 Rural Landscape according to the Land Zoning Map.
 - 15 (c) Dual occupancies are permitted with consent. As outlined above, the studios are considered ancillary to the dwellings, and are therefore permissible with consent.
 - (d) The development as proposed is considered to be inconsistent with the Zone Objectives, for the reasons as outlined below:

Zone Objective	Consideration
<i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base</i>	The proposed development is located in an area of the site that is not suitable for primary industry production and is considered an appropriate use of land.
To maintain the rural landscape character of the land	The location of the proposed new dwelling within 70m of the existing dwelling maintains the rural landscape character of the land. The proposed dwelling is located in close proximity to an existing cluster of dwellings and its design, including lowering below the existing ground level via earthworks, further reduces any potential visual impact. Alterations and additions to the existing dwelling and the proposed two studios are of a design and scale that is consistent with the existing rural landscape.
To provide for a range of compatible land uses, including extensive agriculture.	The proposed development is located in an area of the site that is not suitable for primary industry production and is considered an appropriate use of land.
To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.	The application proposes residential use only.
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The proposal does not have a significant impact on the scenic quality of the locality

Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

5 The property has an area of 19.32 hectares, which satisfies the requirement for a minimum lot size of 4,000m² for a Dual Occupancy (detached) in the RU2 zone.

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

10 The land contains an existing dwelling, approved by Council consent 5.1991.123.1. A dual occupancy is permitted on the land with Council consent.

Clause 4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2

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
<p>4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2</p> <p>(1) <i>The objectives of this clause are as follows:</i></p> <p>(a) <i>to provide alternative accommodation for rural families and workers,</i></p> <p>(b) <i>to ensure that development is of a scale</i></p>	<p>The proposal complies with the objectives of this clause as it provides accommodation for a rural family and is of a scale and nature that is compatible with existing land uses and existing development in the locality.</p>

<p><i>and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,</i></p> <p>(c) <i>to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.</i></p> <p>(2) <i>Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that:</i></p> <p>(a) <i>the development will not impair the use of the land for agriculture or rural industries, and</i></p> <p>(b) <i>each dwelling will use the same vehicular access to and from a public road, and</i></p> <p>(c) <i>any dwellings will be situated within 100 metres of each other, and</i></p> <p>(d) <i>the land is physically suitable for the development, and</i></p> <p>(e) <i>the land is capable of accommodating the on-site disposal and management of sewage for the development, and</i></p> <p>(f) <i>the development will not have an adverse impact on the scenic amenity or character of the rural environment.</i></p>	<p>Each dwelling will be accessed from an existing driveway crossing to Saddle Rd and dual occupancy dwellings will be located within approximately 70m of each other. The land is physically suitable for the development and the land is demonstrated to be capable of accommodating on-site disposal and management of sewage.</p>
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Clause 4.3 Height of Buildings

5 The maximum height of proposed alterations and additions to the existing dwelling are approximately 8m. The maximum height of the proposed new dwelling is approximately 4.4m and the proposed studios have a building height of 4.0m. All proposed buildings comply with the permitted 9.0m maximum building height.

Clause 5.10 Heritage Conservation

10 The application was referred to the Tweed Byron Local Aboriginal Land Council (TBLALC) to consider the potential impacts of the proposed development on Aboriginal objects and/or Aboriginal places of heritage significance.

15 A site visit was undertaken by TBLALC on 21/06/18. Subsequently a Cultural Heritage Sites Inspection Report was prepared by TBLALC dated 21/06/18 and submitted to Council on 23/07/18. The report concluded that “there is nothing at this stage to halt or delay the proposed work on this site”. The report recommended that the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*, published by the DECCW OEH, be applied. Procedures to be applied in the case of unexpected finds (including even suspected ACH objects) were also recommended.

20 Clause 6.1 Acid Sulfate Soils

The south eastern corner of the site is subject to potential Acid Sulfate Soils Class 3. However, all works are proposed on portions of the site with an elevation of approximately 40-50m AHD. Therefore no further assessment is required.

Clause 6.6 Essential Services

5 Potable water is proposed to supply the development through rainwater tanks located at each dwelling with backup supplies in the form of an existing water bore and mains connection to Rous water supply.

10 Electricity is proposed to be supplied to the new dwelling and studio by 20KV of solar panels mounted on the new dwelling and farm buildings along with 2 x 10KV wind turbines and a Lithium battery bank. It is also proposed to install Three Phase power for back up and to feed renewable wind and solar energy back into the grid.

There is sufficient land area for disposal of wastewater on the site and roof water will be collected in rainwater tanks with an overflow dispersion trench.

15 Vehicular access is achieved via an existing driveway crossing to Saddle Rd. Existing access to Gulgan Rd does not appear to have Council approval.

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

20

Draft SEPP (Coastal Management) 2016

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

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

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

- 30
- coastal wetlands and littoral rainforests area
 - coastal environment area;
 - coastal use area; and
 - coastal vulnerability area.

35 The subject site is mapped within the 'coastal use area'. The draft provisions for consideration of development within this area generally reflect the existing matters for consideration currently outlined in SEPP 71.

40 The proposal is considered to be acceptable having regard to the provisions of the Draft SEPP particularly Divisions No.2, 4 & 5. The proposed development is not in a wetland, littoral rainforest, or coastal environment area.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

45 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 following DCP 2014 chapters are of relevance to the proposed development:

50 A14 Public Notification and Exhibition of Development Applications

The application was advertised in accordance with Level 1 Notification. Adjoining landowners were notified with one submission received during the notification period. Public submissions are addressed in section 4.10 of this report.

5 **B3 Services**

The application has demonstrated that the proposed development will be adequately serviced including the provision of an onsite sewage management system.

B6 Buffers and Minimising Land Use Conflict

10 The proposed new dwelling house is located adjacent to small rural holdings that are not utilised for any significant primary production purposes. Therefore the proposal is unlikely to present any significant land use conflict issues.

B14 Excavation and Fill

15 The application proposes approximately 2.0m of excavation works which does not comply with the 1.0m maximum prescriptive measure of the DCP. A recommended condition attached to this report will require a certificate from a professional Engineer experienced in Geotechnical Science to demonstrate that the site is stable and suitable for the proposed development prior to issue of any Construction Certificate

20

D2.7.1 Studios

The application proposes two new studios: one for the existing dwelling and one for the proposed dwelling. The DCP requires that studios do not contain a kitchen and are not to be used for separate habitation. The studio floor plans indicate a toilet and bathroom with shower. The studio plans also contain a kitchen sink.

25

Additional information submitted by the applicant includes references to case law from Victoria whereby the tribunal ruled that a sink does not constitute a kitchen in the absence of food preparation facilities such as a microwave, hot plate or oven. However, the bathroom in each of the proposed studios contains a sink and Council planning staff consistently require the removal of a sink that could potentially be used as part of a kitchen within a studio. To prevent the studios from being used for separate habitation it is considered reasonable to require the removal of the sink in each studio as per plans attached to this report.

30

35

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

40 The proposal raises no issues under the regulations for consideration.

4.7 Any coastal zone management plan?

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

45

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.

Are there any Council Policies that are applicable to the proposed development?

Council Policy	Consideration
<u>Development Policy</u>	In accordance with this policy the application has been assessed with consideration for the relevant legislation, environmental plans, development codes and the public interest.
<u>Management of Contaminated Land Policy</u>	A SEPP55 contaminated land assessment submitted by the applicant has concluded that the land is suitable for residential use.
<u>Water and Sewer Equivalent Tenement Policy</u>	The Subject lot is not serviced by Council reticulated water or sewer. Rous Water supplies bulk water. Equivalent Tenements applicable to the development to be determined by Rous Water.

5

4.9 The suitability of the site for the development

The land is a serviced, unconstrained property.

10

4.10 Submissions made in accordance with this Act or the regulations

The development application was originally publicly exhibited from 18/1/18 to 31/1/18.

15

There was one submission made on the development application during that period. A summary of the issues raised within the submission is made below:

Issue	Comment
No landowners consent contained in exhibition material	Landowners consent has been provided from the directors of Koresoft Pty Ltd to Greg Alderson & Associates to lodge the application.
DCP requirements for studios have not been addressed	Additional information has been received that addresses the requirements of Chapter D2.7.1 of DCP2014.
Concern that studios will be of commercial use and not ancillary to residential use given reference of wastewater assessment to staff	The wastewater report makes reference to staff in relation to farm worker's amenities, not in relation to studios.
Use of one of the studios for naturopathy is prohibited development	The use of the studio for naturopathy would only be for the production of naturopathic remedies and not as a medical centre or health services facility as there will be no patients coming to the site.
The studio for pilates and exercise is unwarranted given the amount of space in the associated dwelling.	The applicant has argued that the studio for yoga/pilates use requires a quiet and peaceful environment that will not be available within the proposed house.

Issue	Comment
Proposed studios appear to be small dwellings	The studio floor plans indicate a number of partitioned rooms including an “air conditioned preservation room”, toilet and bathroom with shower. The studio plans also contain a kitchen sink which is not permitted by the DCP. In order to approve such studios the kitchen sink is required to be removed.
Windmills shown on plans cannot be undertaken as exempt development	A development application for the windmill and other proposed agricultural structures which require Council consent is being prepared, and will be submitted to Council as soon as possible.
Separation distance between dwellings	This issue has been addressed above.
Impact of the proposal on the agricultural potential of the land	The applicant has argued that “the dwelling has been strategically located between two of the agricultural areas which are part of a share farming licence agreement”. Further, “this will ensure that the residents of the proposed dual occupancy can easily manage the horticultural activities and provide security to the farming activities and equipment through passive surveillance”. The proposal would have some impact on the agricultural potential of the land by alienating the land that would be occupied by the new dwelling, studio and associated curtilage.
Only one wind turbine is permitted as exempt development	Plans submitted with the application indicate two wind turbines to be erected as exempt development. However only one of these is permitted as exempt development and the other will require development consent under a separate application.
Potential impacts on aboriginal heritage	TBLALC have recommended a site visit and report to further investigate significant aboriginal cultural heritage thought to be located in the area. A site visit was undertaken by TBLALC on 21/06/18. Subsequently a Cultural Heritage Sites Inspection Report was prepared by TBLALC dated 21/06/18 and submitted to Council on 23/07/18. The report concluded that “there is nothing at this stage to halt or delay the proposed work on this site”. The report recommended that the <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW</i> , published by the DECCW OEH, be applied. Procedures to be applied in the case of unexpected finds (including even suspected ACH objects) were also recommended.

5 Additional information was submitted by the applicant to demonstrate a new location for the proposed new dwelling. This information included a letter from the immediately adjoining neighbour supporting the location and design of the proposed new dwelling. Given this support, it is considered that re-advertising the application is unnecessary.

4.11 Public interest

10 The proposed development is not contrary to the public interest.

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

15 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 of its location within cleared agricultural land.

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.

5. DEVELOPER CONTRIBUTIONS

The proposal will require a Certificate of Compliance from Rous Water confirming that all Developer Charges payable to Rous Water have been provided to Rous Water.

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

7. CONCLUSION

This application seeks development consent for alterations and additions to an existing dwelling house including new swimming pool and spa, construction of a new dwelling house to create a dual occupancy (detached), and construction of two (2) studios (one associated with each dwelling).

Having regards to the amended plans for the dual occupancy the proposal is satisfactory in terms of Councils planning controls with the two dwellings sited 70 metres apart. The proposed development is not likely to result in significant impacts on the existing environment. It is recommended that the Development application be approved subject to conditions of consent.

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

Statement of Reasons

The proposed development will not have significant adverse impacts on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed

The DA was advertised in accordance with Level 1 notification as per Development Control Plan 2014. All issues raised within submissions have been taken into consideration in determining this application.
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Report No. 13.16 Approval to Operate a Caravan Park and Camping Ground application under section 68 of the Local Government Act 1993 and Regulations 2005 for The Terrace Reserve Holiday Park

Directorate: Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy
Stephen McCarthy, Building Certifier

File No: I2018/1682

10 **Theme:** Sustainable Environment and Economy
Development and Certification

Summary:

15 Council considered **Report 13.17 – Update on Resolution 17-184 – Brunswick Heads Holiday Parks** https://byron.infocouncil.biz/Open/2017/09/OC_21092017_AGN_610.PDF at the ordinary meeting of 21 September 2017, and resolved to receive an Approval to Operate (ATO) a Caravan and Camping Ground application under section 68 of the Local Government Act 1993 and Regulations 2005 (Act and Regulations) for The Terrace Reserve, Brunswick Heads subject to the conditions contained in **Resolution 17- 418**.

20 An ATO application was lodged on 6 November 2017 and has been the subject of further resolutions of Council including **Resolutions 17-523 and 18-325**, subsequent amendments to address these resolutions, and a statutory assessment under the Act and Regulation as discussed in the report.

25 The ATO application for The Terrace Reserve Holiday Park is recommended for approval subject to conditions. The conditions proposed are twofold: standard regulatory conditions and special conditions.

30 With regard to the special conditions - Council is presented with the choice of two options (A or B) in the report for a special condition to be imposed on the use of the Southern Area Precinct where the Coastal Cypress Pine community is located and where short term and camping site use is proposed in the ATO application. Option A provides for restrictions on short term and camping site use in the area; Option B does not permit any site use in the area.

35 Reflections Holiday Parks has formally rejected the Option B – no use or activity in the Southern Area Precinct.

40 Should Council resolve to adopt the rejected option above, the ATO will be submitted to the Minister for Local Government for determination as per the Act.

RECOMMENDATION:

That Council grant approval under Chapter 7 of the Local Government Act, 1993 and the Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulations 1995 to operate a caravan park or camping ground on the property known as The Terrace Reserve Holiday Park subject to the conditions in the staff compliance assessment report (Attachment 11 (#E2018/74849), with the inclusion of special condition Option A below, imposed on the use of the Southern Area Precinct where a coastal cypress pines community a known endangered ecological community is located.

OPTION A

- 1. The total number of short term powered and camp sites unpowered permitted in the Southern Area Precinct – Coastal Cypress Pines Community is restricted to a**

maximum of 30 (18 short term powered and 12 camp sites unpowered) at any time.

2. To address any potential biodiversity impacts on the Coastal Cypress Pine Community a known endangered ecological community: no new works or activities are to occur in the Southern Area Precinct of The Terrace Reserve Holiday Park without the appropriate planning consent / approvals in place. The various pathways for this to be determined are provided in the note below:

Note: Subject to legislative change.

Part 4 EP&A Act

- I. ***The applicant must clearly demonstrate whether or not the proposal requires development consent under Part 4 of the EP&A Act. This includes considering the land uses that require such consent in the RE1 zone under the Byron LEP.***
- II. ***If development consent is required, then the Byron Shire Council expects a development application to be lodged and to be determined to satisfy 2 above.***

Part 5 EP&A Act

- I. ***If development consent is not required, then the applicant must clearly demonstrate that it has ministerial authority in writing to act as a public authority.***
- II. ***If this can be established, then the council expects an assessment of the activity under Part 5 of the EP&A Act to be undertaken (usually via a Review of Environmental Factors), a determination made, and then any subsequent approvals obtained, such as an approval from the council under its DCP for the vegetation clearing, to satisfy 2 above.***

Vegetation SEPP

- I. ***If development consent or an activity determination is not required for the proposal, then the Vegetation SEPP may apply.***
- II. ***If the applicant establishes that the proposal triggers the biodiversity offset scheme thresholds, then under the Vegetation SEPP approval for the clearing will need to be obtained from the Native Vegetation Panel to satisfy 2 above.***

Attachments:

- 1 Application for Approval to Operate 55.2017.1144.1 - Application and supporting documentation dated 6/11/17, E2017/106317 
- 2 Letter Steve Edmonds from Reflections Holiday Parks dated 20 July 2015, E2018/73071 
- 5 3 Letter ADW Johnson Planning Advice dated 7 June 2018, E2018/73053 
- 4 E mail from Dimitri Young OEH dated 7 June 2018, E2018/73060 
- 5 Review of Environmental Factors - Tree Management and Vegetation Works Terrace Holiday Park Southern Precinct prepared by Ecological Consultants Australia dated June 2018, E2018/73067 
- 6 Biodiversity Assessment of proposed Vegetation Management Terrace Holiday Park Southern Precinct prepared by Ecological Consultants Australia dated June 2018, E2018/73055 
- 10 7 Letter from Peter Parker Environmental Consultants dated 18 July 2018, E2018/73058 
- 8 E-mail from Nick Batson Inspiration Trees dated 29 June 2018, E2018/73063 
- 9 Photos examples of Installations in Byorn Shire of Load Cell Systems , E2018/73081 
- 10 Planning Resolutions Chris Pratt Independent Advice Reveiw of Part 5 Assessment , E2018/72966 
- 15 11 Compliance Assessment 55.2017.1144.1 along with recommended conditions , E2018/74849 
- 12 Revised Application Terrace Reserve Caravan Park 55.2017.1144.1 - Further information and ATO and mapping, E2018/74851 

- 13 Email from Trent Gearside Reflections Holiday Parks 55.2017.1144.1 - dated 31 August 2018 - maps , E2018/73155 

Background

5 Council considered **Report 13.17 – Update on Resolution 17-184 – Brunswick Heads Holiday Parks** https://byron.infocouncil.biz/Open/2017/09/OC_21092017_AGN_610.PDF at the ordinary meeting of 21 September 2017, and resolved as follows:

17-418 Resolved:

1. That Council notes the following Concept Parameters as shown in Attachment 1 (#E2017/86763) and detailed below for the purposes of amending the Plans of Management for Terrace Reserve for the purposes of public exhibition of the Crown Reserves Plan of Management:
 - a) Southern Cypress Pine Precinct is to be restricted to short-term camping sites with no permanent residents or cabins to be relocated to the area.
 - b) Camping practices in Southern Cypress Pine Precinct will observe and protect structural root zones of the Cypress Pines as part of an ongoing monitoring program.
 - c) The Trust will negotiate to form a consolidated central permanent residents' precinct which will be made to comply with the 3m set back from top of bank to any structure as a minimum. The Trust will make endeavours to achieve 10m set back from top of bank to any structure wherever feasible.
 - d) Remaining permanent residents will be relocated to north western precinct.
 - e) With the exception of the central permanent residents' precinct addressed in item 1c, Terrace Reserve operational boundary will be established to achieve 7m set back from top of bank to any short-term camp sites and 10m set back from top of bank to any dwelling sites in providing a continuous foreshore walkway.
 - f) the Southern Cypress Pine Precinct is acknowledged as a place of reflection and remembrance.
 - g) Any areas of Indigenous cultural significance be recognised and protected.
2. That Council supports NSWCHPT in seeking Ministerial approval to exhibit the proposed changes to the PoM for Terrace Reserve as per the parameters above.
3. That:
 - a) Council impose a condition on any Approval to Operate issued by Council in respect of the applications for Terrace Reserve that the operation of the caravan park/camping ground and any building or work associated with its operation must comply with all applicable standards imposed by the Local Government (Manufacture Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, and;
 - b) where there is any non-compliance with the Local Government (Manufacture Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005, NSWCHPT commit to doing all acts and things necessary to resolve the non-compliance issues as part of the development and works programme of the relevant Holiday Park in accordance with the timing schedule and staging plan known as Schedule of Compliance Works and Activities which will form part of the Approval to Operate.
4. That in order to enable the development and works program set out in the Schedule of Compliance Works and Activities as per 3b and included as a condition in any Approval to Operate, the Approval to Operate be issued for a period of three years.

Council considered **Report 13.25 Heritage and Environmental Assessment Reports – Coastal Cypress Pines at The Terrace Reserve,**

https://byron.infocouncil.biz/Open/2017/10/OC_26102017_AGN_611.PDF

at the ordinary meeting of 26 October 2017, and resolved as follows:

5

17-523 Resolved:

1. The area of Coastal Cypress Pines within the 2014 approved POM for the Terrace Holiday Park be listed on Byron Shire Council's LEP Schedule 5 under Environmental Heritage.
- 10 2. Council pursue the listing of the significant area in the southern part of the Terrace Holiday Park under section 25 (2) of the NSW Heritage Act 1977.
3. Council pursue a nomination to the Heritage Division of the Office of Environment and Heritage (OEH) for listing of the significant area on the State Heritage Register.
- 15 4. Council acknowledge the findings in the ecologist's report advising that preservation and conversation of the Coastal Cypress Pines in the southern area of the Terrace Holiday Park is best managed by removing all existing infrastructure and use of the area and restricting all activities to the northern area. Council formally advises NSW Crown Holiday Parks of these findings.
- 20 5. Council formally advises NSW Crown Holiday Parks Trust of the ecologist's recommended tree management strategies and works with them to achieve this.
- 25 6. That Council note the pressing issue of the Aboriginal cultural heritage issues raised in the recommendation of the Arakwal Memorandum of Understanding Advisory Committee meeting of Friday, 22 September 2017:

30 "That Council write to Crown Lands as a matter of urgency with regards to requesting that a barrier be erected to protect the aboriginal cultural heritage site in the precinct (maps to be provided) with letters of support sought from Brunswick Valley Landcare, Tweed-Byron Land Council and the Arakwal Corporation."

35 Council considered Report Update - **Resolution 17-184 Brunswick Heads Holiday Parks and Resolution 17-523 Heritage and Environmental Assessment Reports - Coastal Cypress Pines at Terrace Reserve Brunswick Heads**

https://byron.infocouncil.biz/Open/2018/04/OC_19042018_AGN_774.PDF

at the ordinary meeting 19 April 2018, and resolved as follows:

40 **18-266** Resolved:

1. That Council defer this report to the 24 May Ordinary Meeting.
- 45 2. That Council request an urgent meeting (within 28 days) with NSWCHPT and their consultants, as well as Robert Kooyman and two representatives from the Brunswick Community, with respect to the recommendations made in the Arboricultural Impact Assessment prepared by Arborsafe 2018 (Attachment 1 E2018/30243) as to specific conditions required on site to meet resolution 17-418.

50 Council considered Report Update – Resolution 18-266 The Terrace Reserve Holiday Park, Brunswick Heads https://byron.infocouncil.biz/Open/2018/05/OC_24052018_AGN_775.PDF at the ordinary meeting of 24 May 2018, and resolved as follows:

18-325 Resolved that Council:

1. Note the report.
- 5 2. That Council note that Resolution 17-523 is still live and reiterates the positions outlined therein.
3. Acknowledge recent community submissions made about the Coastal Cypress Pines, and, need for the issues raised in these, to be addressed by Reflections Holiday Parks in a formal response to Council.
- 10 4. (a) Request Reflections Holiday Parks to submit a Biodiversity Development Assessment Report in accordance with the Biodiversity Assessment Method under the Biodiversity Conservation Act 2016 to inform the current Approval to Operate application for The Terrace Holiday Park.
- 15 (b) This report is to address the biodiversity impacts of the activity/s proposed on site, and is to determine which approval pathway (development consent, native vegetation clearing approval or permit) applies in the circumstances to the site activity/s proposed.
- 20 5. Receive a further staff report on the Approval to Operate for The Terrace Holiday Park once items 3 and 4 above are received.
- 25 6. Notify the Minister for the Environment, The Hon Gabrielle Upton and Minister for the Crown Lands, The Hon Paul Toole, Tamara Smith MP and Ben Franklin MLC of the resolution of Council and Council's intention to support the ongoing protection and rehabilitation of the EEC of Cypress Pines.

30 Since this resolution in May, further information and reports to address points 3 and 4 above have been provided by NSW Crown Holiday Parks Trust now known as Reflections Holiday Parks.

In the most recent correspondence from Reflections Holiday Parks, 20 July 2018, a formal request was made for Council to determine The Terrace Reserve Holiday Park ATO. Extract below – all attachments listed are included as attachments to the report. Attachments 2-9.

20 July 2018

Byron Shire Council
c/o: Mark Arnold
PO Box 219
MULLUMBIMBY NSW 2482

Attention: Councillors

Subject: Approval to Operate application for The Terrace Holiday Park, Brunswick Heads

Dear Councillors,

Further to the Trusts' submission with regards to the above matter on both 4 & 7 June 2018 and subsequent correspondence received by both parties from Dimitri Young of the Office of Environment & Heritage (OEH) on 7 June 2018; the Trust provides the following submissions for your information and consideration:

- Planning advice from ADW Johnson;
- Email from OEH regarding planning pathway requirements;
- Completed Biodiversity Assessment (BDA);
- Completed and approved Review of Environmental Factors (REF);
- Reference with regards to installation of Load Cells, in and around, Coastal Callitris Pines in the Byron Shire region from:
 - o Certificate 3 Arborist; and
 - o Independent Ecologist
- Photographic examples of installations in the Byron Shire evidencing the success of the Load Cell system from:
 - o Cypress, Luxury Byron Holiday House Estate, Broken Head, NSW
 - o Byron Shire Council (Norfolk Pines), Bay Street Byron Bay, NSW

Planning advice received from ADW Johnson has confirmed that Part 5 of the *Environmental Planning & Assessment Act* (EP&A Act) is the appropriate planning pathway for the proposed works at Terrace as there is an adopted Plan of Management in place.

Correspondence received from OEH, clarified the requirements applicable to Part 5 of the EP&A Act. We note that this advice was also provided to Council Staff.

The Trust note there are to be two issues for consideration:

- Renewal of the Trust's license to **operate** the Terrace Holiday Park; and
- The **proposed works** to the Southern Precinct of the Terrace Reserve.

Based on the requests received from Council it is noted that there are concerns, surrounding the application of the *Biodiversity Conservation Act 2016*.

For clarity, following professional review and consultation, we confirm, that with respect to our **Operations**:

- The Trust have a responsibility to comply with the *Biodiversity Conservation Act 2016*
- Pursuant to Section 2.8 of the *Biodiversity Conservation Act*; the Trust are entitled to rely upon on the activity being authorised by Planning Approval
- The Operational activities at the Terrace Reserve:
 - o Are carried out in accordance with the Byron Shire Council's LEP zoning of RE1 (Public Recreation); for which Camping grounds & Caravan parks are Permitted with Consent

- o Are carried out in accordance with, and are not inconsistent with, an approved Plan of Management pursuant to Section 5 of the *Environmental Planning and Assessment Act 1979*
- o Are carried out in accordance with the Vegetation Management Plan which forms part of the approved Plan of Management

For clarity, following professional review and consultation, we confirm, that with respect to our **Proposed Works:**

- The Trust have made several proposals in consultation to improve the status of the ecological community at the Terrace Reserve, including but not limited to:
 - o Continued arboricultural inspections;
 - o Improved site designation and reduced site use;
 - o Implementation of a regeneration program;
 - o Installation of Ground Protection;
 - o Installation of Mulching;
 - o Improved educational programs; and
 - o Continued review of control measures

As identified in the BDA and REF the proposed works will improve EEC.

- The proposed works to improve the status of the ecological community also comply with the approved Plan of Management and existing Vegetation Management Plan;
- The Trust now provide an approved REF and may rely on Part 5 of *Environmental Planning and Assessment Act 1979* for Planning Approval of the works;
- The REF considers all matters relevant to the preservation and conservation of the EEC in accordance with the *Biodiversity Conservation Act*.

We trust this closes out any concerns and provides clarification required to allow you to progress the matter. We respectfully request that the Council now process the Trusts' Application for, and issue a License to Operate a Caravan Park at the existing Terrace Reserve Holiday Park site, Fingal Street, Brunswick Heads 2483 NSW

Should you wish to discuss please do not hesitate to contact me directly.

Yours sincerely



Steve Edmonds
CEO

Attachments:

1. **ADW Johnson:** Letter (07 June 2018)
2. **OEH, Dimitri Young:** Email (07 June 2018)
3. **Review of Environmental Factors – Tree Management and Vegetation Works; Terrace Holiday Park: Southern Precinct** (June 2018) (Ecological Consultants Australia);
4. **Biodiversity Assessment of proposed Vegetation Management; Terrace Holiday Park: Southern Precinct** (June 2018) (Ecological Consultants Australia);
5. **Peter Parker Environmental Consultants:** Reference Letter, 18 July 2018
6. **Inspiration Trees, Nick Batson, Certificate 3 Arborist,** Reference email 29 June 2018
7. **Photo 1;** Cypress, Luxury Byron Holiday House Estate, Broken Head, NSW
8. **Photo 2;** Byron Shire Council (Norfolk Pines), Bay Street Byron Bay, NSW

5 In response to this letter and the information submitted by Reflections Holiday Parks, Council staff to satisfy due diligence, had an independent planning consultant review the approval pathway proposed by Reflections Holiday Parks for the works / activities proposed to support the short term and camping site use proposed in the Southern Area Precinct. Attachment 10.

10 A phone conference was held on 28 August 2018 between Council staff and the Reflections Holiday Parks project team to discuss the issues raised in the independent planning consultant's review about the Coastal Management State Environmental Planning Policy (SEPP) mapping; and the reliance on the 2014 Plan of Management and use of the Infrastructure SEPP to exempt works from a development application that are needed to support the short term and camping sites use proposed in the Southern Area Precinct.

15 Council staff are of the opinion that further confirmation of the pathway selected by Reflections Holidays Parks i.e. Part 5 is necessary in this regard.

20 The Reflections Holiday Parks project team, acknowledged this concern, but maintain that the issues raised by Council staff can be addressed by conditions on the ATO as they are matters independent of the ATO assessment under the Act and Regulations.

Staff subsequently acquiesced and drafted conditions to address the relevant **Resolutions** in place being: **17- 418, 17- 523, 18-325** and the statutory requirements under the Act and Regulations for the operation of a caravan park and camping ground.

5 As this application is made as a Crown application, Reflections Holiday Parks need to agree to the conditions on the ATO; as such preliminary draft conditions were referred to them on 31 August 2018 for comment.

10 In response, the Reflections Holidays Parks project team (in support of Special Condition Option A below) provided an update and correction of the Holiday Park community map and concept plan site numbers and site uses; requested 60 days to finalise a BCA compliance report for the Park sites; and provided updated documents for the ATO on same.

15 This confirmed that it is proposed to have a total number of 30 sites (18 powered short term and 12 camping unpowered sites) in the Southern Area Precinct. This results in an overall reduction of sites in the area to greater than 8 sites.

20 With regard to the Northern Area Precinct of the Park, Reflections Holiday Parks has also provided the following update on their progress towards the works associated with the agreed concept plan from **Resolution 17-418**.

The Total expenditure to date related to moving the permanent residents off the foreshore has been approx. \$417,000.

25 Movements since late 2016

Relocated permanent dwellings and associated structures

- o Relocated from site 113 – site 87
- o Relocated From site 112 – site 86

30

Cabins converted to permanent residence

- o Cabin 101 (up near the back exit gate) relocated to site 81. The home owners from site 110 moved into the cabin and we removed the dwelling and associated structure on site 110.
- o Cabin 11 (ex permanent residence on the waterfront, purchased by the Trust approx. 5 years ago and left unoccupied) relocated to site 75 and renovated. The home owners from site 138 moved into the refurbished cabin on site 75 and we removed their dwelling and associated structures on site 138.
- o Cabin 73 (ex permanent residence near the front exit gate and within the permanents precinct, purchased by the Trust approx. 6 years ago, refurbished and rented out as a short term tourist site) is now home to the permanents from site 107. We are currently removing the dwelling and associated structures located on site 107 – on completion this will be a short term tourist site.

35

40

45 **Permanent dwelling purchased by the Trust**

- o Permanent dwelling located on site 92 was purchased by the Trust in 2017 and refurbished. The home owners located on waterfront site 138 moved into the permanent dwelling on site 92 in June 2018. Waterfront site 138 will be removed next week. On completion we will level and turf the site in preparation for the season.

50

Permanent dwelling purchased by the Trust and removed.

- o Permanent dwelling located on site 132 was purchased by the Trust in 2016. The dwelling was removed and changed to a waterfront powered site.
- o Permanent dwelling located on site 120 was purchased by the Trust in 2016. The dwelling was removed and changed to a powered tourist site.

55

- o Permanent dwelling located on site 74 was purchased by the Trust approx. 5 years ago. The dwelling remained vacant and was removed in 2017 and changed to a powered tourist site.

5 Proposed Stage 2 works – moving back the waterfront permanent residents.

- o Move back permanent resident 122 6 metres back from the waterfront
- o Turn permanent resident 119 around to face the waterfront and line up next to site 122
- o Turn permanent resident 118 around to face the waterfront and line up next to site 124 (powered tourist site 123 will be decommissioned – this site is rarely occupied as it sits between 2 permanent residents)
- o Move permanent resident 124 back from the waterfront and line up next to site 118.
- o Move permanent residents 125, 126 and 127 back and line up next to site 124.
- o Move permanent resident 111 to site 128 and line up next to site 127.
- o Move permanent residents 129 and 130 back from the waterfront and line up next to site 128.

Reflections Holiday Parks have formally rejected the option – no use / activity in the Southern Area Precinct (Option B below).

Should Council resolve to adopt the rejected option (Option B below), the ATO will be submitted to the Minister for Local Government for determination as per the Act.

Report

The ATO application lodged on 6 November 2017 (Attachment 1) for The Terrace Holiday Park, Brunswick Heads has been the subject of further resolutions of Council including **Resolutions 17-523 and 18-325**, subsequent amendments to address these resolutions, and a statutory assessment under the Act and Regulations as discussed in the report. Attachments 12 & 13)

Reflections Holiday Parks has requested that Council make a determination of the ATO application submitted with regard to the most recent reports submitted to address the abovementioned resolutions of Council and the statutory considerations under the Act and Regulations. Attachments 2 - 9.

Attachment 11 is the staff compliance assessment report for The Terrace Reserve Holiday Park. This report takes into consideration the amendments and clarifications provided by Reflections Holiday Parks for the ATO.

The ATO application for The Terrace Reserve Holiday Park is recommended for approval subject to conditions. The conditions proposed are twofold: standard regulatory conditions and special conditions.

With regard to the special conditions - Council is presented with the choice of two options (A or B) below for a special condition to be imposed on the use of the Southern Area Precinct where the Coastal Cypress Pine community is located and where short term and camping site use is proposed in the ATO application.

OPTION A

3. The total number of short term powered and camp sites unpowered permitted in the Southern Area Precinct – Coastal Cypress Pines Community is restricted to a maximum of 30 (18 short term powered and 12 camp sites unpowered) at any time.

4. To address any potential biodiversity impacts on the Coastal Cypress Pine Community a known endangered ecological community: no new works or activities are to occur in the Southern Area Precinct of The Terrace Reserve Holiday Park without the appropriate planning consent / approvals in place. The various pathways for this to be determined are provided in the note below:

Note: Subject to legislative change.

Part 4 EP&A Act

III. *The applicant must clearly demonstrate whether or not the proposal requires development consent under Part 4 of the EP&A Act. This includes considering the land uses that require such consent in the RE1 zone under the Byron LEP.*

IV. *If development consent is required, then the Byron Shire Council expects a development application to be lodged and to be determined to satisfy 2 above.*

Part 5 EP&A Act

III. *If development consent is not required, then the applicant must clearly demonstrate that it has ministerial authority in writing to act as a public authority.*

IV. *If this can be established, then the council expects an assessment of the activity under Part 5 of the EP&A Act to be undertaken (usually via a Review of Environmental Factors), a determination made, and then any subsequent approvals obtained, such as an approval from the council under its DCP for the vegetation clearing, to satisfy 2 above.*

Vegetation SEPP

III. *If development consent or an activity determination is not required for the proposal, then the Vegetation SEPP may apply.*

IV. *If the applicant establishes that the proposal triggers the biodiversity offset scheme thresholds, then under the Vegetation SEPP approval for the clearing will need to be obtained from the Native Vegetation Panel to satisfy 2 above.*

OPTION B

1. No further use of or activity within the Southern Area Precinct - Coastal Cypress Pines Community is to occur from the date of the Approval to Operate and all existing infrastructure (except the existing amenities facility) is to be removed.

Financial Implications

N/A

Statutory and Policy Compliance Implications

The operation of caravan parks and camping grounds require Approval to Operate (ATO) under Section 68 (Part F2) of the Local Government Act 1993. Applications are lodged by the land owner to continue the operation of caravan park and camping ground activities and application fees are paid in accordance with Councils' adopted fees and charges.

The process of assessing and determining ATO applications is regulated under Chapter 7 Part 1 of the Local Government Act 1993. Part of the consideration of such applications involves the

auditing of compliance with the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 (“the Regulation”).

5 Once it had been determined that the application represented the actual site activities, and satisfies the requirements of the Regulation, then an ATO approval is granted. Once an approval has been issued council may determine to extend or renew an approval (but without changing the terms of the approval) if satisfied there is good cause for doing so.

The relevant sections of the Local Government Act have been reproduced below:

10

LOCAL GOVERNMENT ACT 1993

72 Determination of applications by the Crown

- 15 (1) A council, in respect of an application for approval made by the Crown or a person prescribed by the regulations, must not:
- (a) refuse to grant approval, except with the written consent of the Minister, or
 - (b) impose a condition of an approval, except with the written consent of the Minister **or the applicant.**
- 20 (2) If the council proposes to refuse to grant approval or to impose a condition of approval, it must immediately notify the applicant.
- (3) After the applicant is so notified, the council must submit to the Minister:
- (a) a copy of the application for approval, and
 - 25 (b) details of its proposed determination of the application, and
 - (c) the reasons for the proposed determination, and
 - (d) any relevant reports of another public authority.
- (4) The applicant may refer the application to the Minister whether or not the council complies with subsection (3).
- 30 (5) After receiving the application from the council or the applicant, the Minister must notify the council and the applicant of:
- (a) the Minister’s consent to the refusal of approval, or
 - 35 (b) the Minister’s consent to the imposition of the council’s proposed conditions, or
 - (c) the Minister’s intention not to agree with the council’s proposed refusal and the period within which the council may submit any conditions it wishes to impose as conditions of approval, or
 - 40 (d) the Minister’s refusal to agree with the council’s proposed conditions and any conditions to which the Minister’s consent may be assumed.
- (6) At the end of the period specified in subsection (5) (c), the Minister must notify the council and the applicant:
- (a) whether the Minister consents to the imposition of any of the conditions submitted by
 - 45 the council during that period and, if so, which conditions, or
 - (b) of the conditions to which the Minister’s consent may be assumed.
- (7) The Minister must notify the council and the applicant of the reasons for a decision under subsection (5) or (6).
- 50 (8) If the council does not determine the application within the period notified by the Minister for the purpose, the council is taken, on the expiration of that period, to have determined the application in accordance with the Minister’s consent.

73 Effect of council's failure to determine Crown application

- 5 (1) If the council does not determine an application to which section 72 applies within the relevant period specified in section 105, the council is taken, on the expiration of that period, to have refused the application.
- (2) If the application is taken to have been refused, the applicant may refer the application to the Minister for determination.
- 10 (3) The Minister may determine an application so referred to the Minister.
- (4) The Minister's determination has effect as if it were a determination of the council.

74 Prohibition on appeals concerning Crown applications

- 15 No review or appeal lies against a determination that the council is taken to have made under section 72 (8) or a decision or determination of the Minister under section 72 or 73.

105 Circumstances in which approval is taken to have been refused

- 20 (1) If the council has not determined an application:
- (a) within the period of 40 days after the application is lodged with it, except as provided by paragraph (b), or
- 25 (b) within the period of 80 days after the application is lodged with it in the case of an application for which the concurrence of a person or authority is required by or under this Act, the council is, for the purposes only of section 176, taken to have determined the application by refusing approval on the date on which that period expires.
- (2) Nothing in subsection (1) prevents the council from determining an application after the expiration of the 40-day or 80-day period, whether on a review under section 100 or otherwise.
- 30 (3) A determination under subsection (2) does not prejudice or affect the continuance or determination of an appeal made under section 176 in respect of a determination that is taken under subsection (1) to have been made, subject to subsection (4).
- 35 (4) Where a determination under subsection (2) is made by granting approval, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 176 in respect of a determination that is taken by subsection (1) to have been made, withdrawn at any time before the appeal is determined.
- 40

Report No. 13.17 **Update - Byron Housing Roundtable and Residential Strategy**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
File No: I2018/1691
5 **Theme:** Sustainable Environment and Economy
 Planning Policy and Natural Environment

Summary:

10 The purpose of this report is to provide Council with an update on the progress made towards the agreed next steps the result of the Byron Housing Roundtable held by Council on 5 July 2018; and the outcomes of the Strategic Planning Workshop, 6 September – Update on Residential Strategy.

RECOMMENDATION:

1. That Council note the update provided by staff on the progress made towards the agreed next steps the result of the Byron Housing Roundtable held 5 July 2018.
2. That Council note that a draft Residential Strategy will be presented to Council by the end of the year inclusive of a Charrette being held in November.
3. That Council allocate an additional \$1,500 to the Residential Strategy Budget to create a total budget of \$20,000 to fund the estimated cost of the Charrette with funding sourced from the Land and Natural Environment Reserve.

Report

5 A Byron Housing Roundtable was convened by the Director of Sustainable Environment and Economy on 5 July 2018 as a follow up to the successful Byron Housing Summit held February 2017:

<https://www.byron.nsw.gov.au/Community/Supporting-communities/Housing-Affordability-Initiatives#section-5>

10 The purpose of the Roundtable was to meet with select stakeholders to discuss: where Byron Shire is now 18 months on from the Summit; and where does it need to be, to further support and deliver affordable housing outcomes for its community.

15 As can be seen from the link below a number of key projects and initiatives have been progressed since the Summit <https://www.byron.nsw.gov.au/Community/Supporting-communities/Housing-Affordability-Initiatives>

The Roundtable was arranged around themes to look at the following areas:

- 20
- Housing types and models
 - Tenure types and security
 - Planning enablers and barriers
 - Finance and investment models

25 The roundtable was well attended by councillors, staff and a range of industry stakeholders. Participation was through short presentations, active conversations with an outcomes focus to the day.

30 Since the Roundtable staff have progressed work on the 4 keys actions agreed to on the day to address housing need in the Shire:

1. Legal / governance structures

35 Staff are soon to convene a working group (from attendees / councillors) to explore and progress options for legal and governance matters as they pertain to landownership / tenure models. In the meantime staff will continue to contribute to discussions on the Byron Community Land Trust as they occur with that working group.

2. Development opportunities

40 Staff continue to look at options for pilot site opportunities to explore and deliver on innovative housing models. Discussions with senior staff at the Department of Planning have also commenced in this regard.

3. Planning/policy reforms

45 Council staff have commenced a review of the existing planning controls in an effort to identify some quick win opportunities from policy review to enable the above opportunities to occur if currently impeded by the LEP / DCP.

50 A tiny houses fact sheet has also been uploaded to the fact sheet page on the Council web page: [file://fapmho2/users\\$/sburt/Downloads/MASTER-Tiny-houses-Fact-Sheet-August-2018.pdf](file://fapmho2/users$/sburt/Downloads/MASTER-Tiny-houses-Fact-Sheet-August-2018.pdf)

4. Communication/education

55 Staff have progressed updates to the webpage with the available information and presentations shared at the Roundtable. Relevant information to housing policy will also be uploaded as links from time to time.

Further (in consultation with David Brown) staff have prepared a brief for a consultant to undertake work on a series of “pen portraits” of individuals and families in need, and the housing product / location / price point trade-offs they would be prepared to make to stay in the Shire. For example, close to friends, support networks, workplaces and other family members. These “pen portraits” would assist in communicating with the community about the housing affordability issue, who is affected and the sort of housing they seek. This qualitative work would supplement quantitative work already completed or in train for the Residential Strategy. Updates to Council on the above work will be provided as part of the Residential Strategy. Funding for the Pen Portraits however is needed and the project is currently being scoped by staff but at this time should be accommodated within the existing budget.

Strategic Planning Workshop, 6 September – Update on Residential Strategy

Council received an update on the draft Residential Strategy in light of recent Council and State policy positions. Options to prepare the Strategy were discussed in accordance with this and the following Council resolutions:

Resolution 17-044 (relevant part only)

3. That a report be included outlining the possible role, cost and an implementation plan for the establishment of a citizen jury to enhance the engagement outcomes within the revised project plan being prepared to present to Council that responds to engagement concerns raised in the submission (Within Table 3: Key matters relating to ‘Strategy Process’.)

Resolution 18-410 (relevant part only)

2. Endorse, subject to budget allocation in the 2018/19 Budget, the allocation of \$50,000 to fund a 6 month planning position to prioritise the finalisation of the residential strategy by end of year.

There was general agreement reached by Councillors that a draft Residential Strategy would be presented to Council by the end of the year and that a Charrette be held in November to inform the recommendations to be made.

The Charrette proposed given the tight time frame, will seek to bring together Councillors, Council staff and experts over an intensive 1-2 day block to deliberate on and provide a policy position for Council on land supply, location and housing type consistent with the State Government’s North Coast Regional Plan and other Policy and Code initiatives. This policy position can then be tested with the wider community during the formal exhibition period of the Residential Strategy early 2019.

If Council prefer to have community representatives participate in the Charrette then options that could be accommodated within the tight time frames are: seeking interest from members of the Community Solutions Panel; or Councillors nominating community representatives, with 5 community representatives invited to participate in the Charrette.

Financial Implications

Council currently has a budget of \$18,500 available for the residential strategy for the 2018/2019 financial year. A cost estimate for the Charrette is estimated at \$20,000. This leaves a budget shortfall of \$1,500 which can be funded from the Land and Natural Environment Reserve should Council proceed.

Statutory and Policy Compliance Implications

N/A

Report No. 13.18 PLANNING - DA2017.516.1 - Subdivison to Create 4 Lots,8 Coomburra Cr, Ocean Shores

Directorate: Sustainable Environment and Economy
Report Author: Greg Smith, Team Leader Planning Services
 Chris Larkin, Manager Sustainable Development
File No: I2018/1697
Theme: Sustainable Environment and Economy
 Development and Certification

Proposal:

DA No: 10.2017.516.1
Proposal description: Subdivision to create four (4) Lots
Property description: LOT: 1577 DP: 243995
 8 Coomburra Crescent OCEAN SHORES
Parcel No/s: 14500
Applicant: Ardill Payne & Partners
Owner: Mr A L Mangleson
Zoning: R2 Low Density Residential
Date received: 19 September 2017
Integrated Development: No
Public notification or exhibition:

- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period 1: 28/09/17 to 11/10/17
- Submissions received: Ten (10)
- Exhibition period 2: 28/09/17 to 11/10/17 (Geotechnical report)
- Submissions received: Five (5)

Delegation to determination: Meeting of Council
Issues:

- Width of driveway
- Stormwater management
- Geotechnical issues

Summary:

The application seeks development consent for the subdivision of a large existing residential lot into four (4) new lots. Access to proposed Lots 1, 2, 3 and 4, is via a 6.0m wide access handle from Coomburra Crescent. The proposal is considered to satisfy the provisions of Byron LEP 2014 and other relevant Environmental Planning Instruments, and is satisfactory form of infill development ranging in size from 800m² to 1675m² in area.

Council considered a report (copy attached) recommending approval of the DA, subject to conditions, at it's meeting on 2 August 2018. Council resolved to defer the DA in order to investigate possibilities of narrowing the driveway, ensure Council's stormwater infrastructure can adequately receive stormwater generated by this subdivision, ensure that the community has a longer period to consider the geotechnical aspects and implications of the development application and, when reported back to Council a more expansive report from staff on this aspect be presented.

The Geotechnical Stability Assessment submitted in support of the DA was publicly exhibited from 10 to 30 August 2018. A total of five (5) submissions (copy attached) have been received. The

matters raised relate to driveway, storm water, amenity, vegetation removal and geotechnical impacts and adequacy of information submitted. These issues are discussed in the body of the report.

5 In summary it is considered the proposed four lot subdivision is not an overdevelopment of the site with the large sized lots as proposed. It is also noted consent could have been sought for a much more intense development on this property such as multi dwelling housing, however the four lots as proposed has had regards to the constraints affecting it such as slope, drainage and access, and is consistent with the low density residential character of Ocean Shores.

10 The application is considered to have sufficient merit to warrant approval subject to conditions.

15 NOTE TO COUNCILLORS:

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

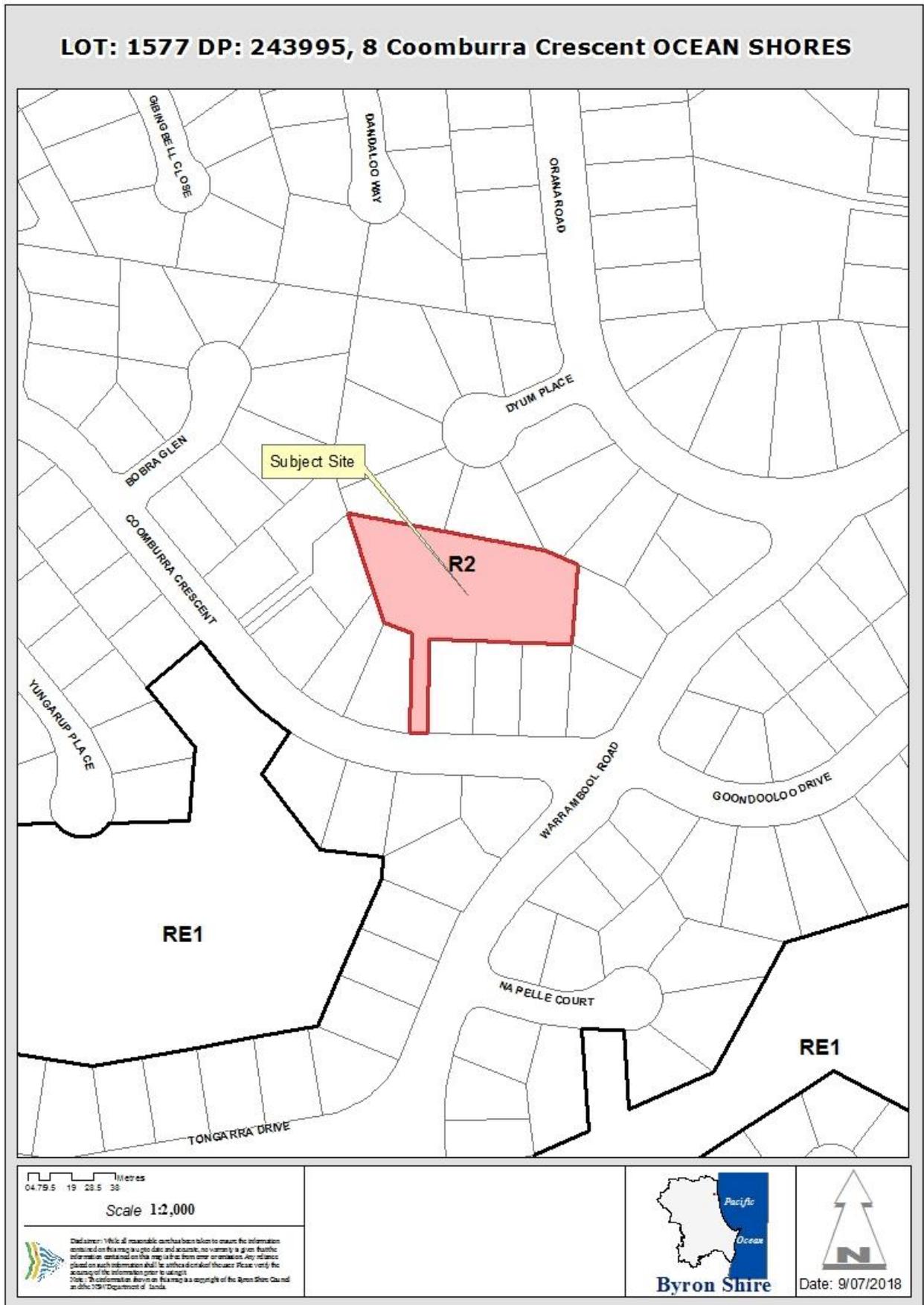
RECOMMENDATION:

That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2017.516.1 for subdivision to create four (4) lots, be granted consent subject to conditions detailed in Attachment 2 #E2018/73142.

Attachments:

- 25
- 1 Attachment 1 - Ordinary 18 October 2018 - Proposed Plans by Ardill Payne, E2018/72998 
 - 2 Attachment 2 - Ordinary 18 October 2018 - Report to Council on Development Application No. 10.2017.516.1, E2018/73142 
 - 3 Attachment 3 - Ordinary 18 October 2018 - Geotechnical Stability Assessment by Shaw Urquhart Pty Ltd dated 17/5/2018, E2018/73148 
 - 30 Attachment 4 - Ordinary 18 October 2018 - Submissions received in relation to public exhibition of Geotechnical Stability Assessment, E2018/73003 
 - 5 Attachment 5 - Ordinary 18 October 2018 - Recommended conditions of consent, E2018/73146 

35



Report

1. HISTORY / BACKGROUND

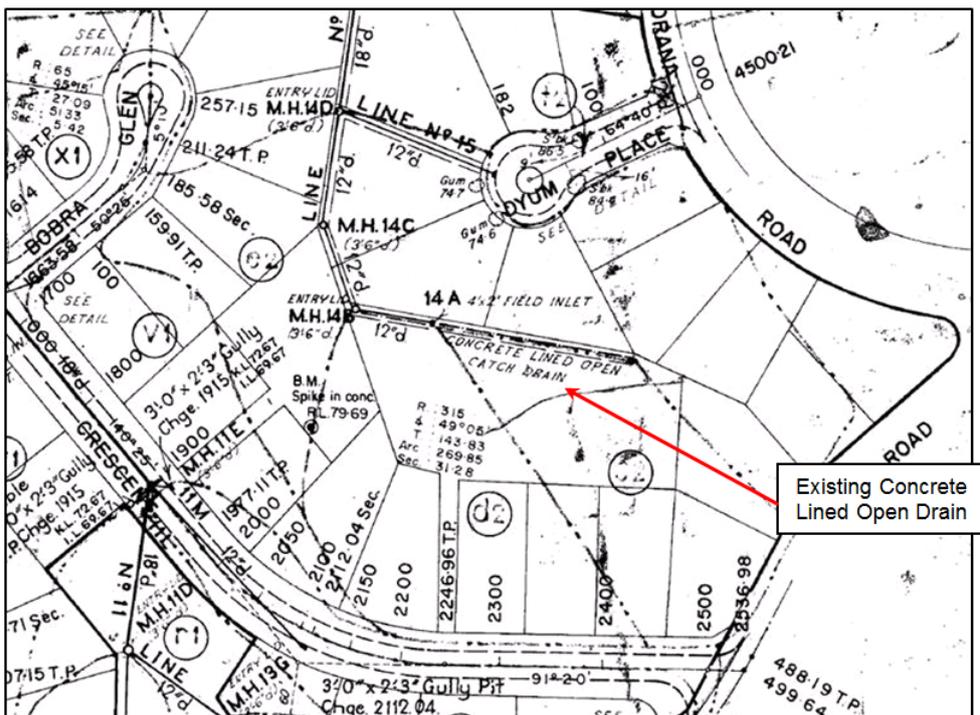
5 At it's meeting on 2 August 2018, Council resolved in relation to DA 10.2017.516.1 as follows:

Resolved that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2017.516.1 for subdivision to create four (4) lots, be deferred in order to:

- 10 1. Investigate possibilities of narrowing the driveway to allow for increased vegetation along the driveway.
- 15 2. Ensuring Councils stormwater infrastructure is of a size and management regime to adequately receive stormwater generated by this subdivision.
- 3. Ensure that the community have a longer period in which to consider the geotechnical aspects and implications within the development application, and that when reported back to Council a more expansive report from staff on this aspect be presented.

20 In relation to item 1 of the resolution, condition 6(a) has been recommended to reduce the width of the driveway to 5m wide for the first 6m into the property to allow 2 cars to pass at the site entry to act as a passing bay and then narrowed to 3.5m wide for approximately 40m leaving approximately 1.3m each side of the driveway for appropriate landscaping. A condition is recommended requiring the application for a construction certificate to include plans and specifications that indicate the landscaping of areas either side of the driveway surface within the battleaxe handle to the site. In terms of fencing along the length of the access handle, this is no longer a conditioned requirement as it will result in removal of existing garden vegetation currently growing along those boundaries.

30 In relation to item 2 of the resolution, the site drains to, and is part of, the catchment that the existing Council stormwater infrastructure system was designed for as shown in the extract of the engineering plans below.



The existing Council infrastructure is not identified by Council's systems as failing, however it is noted that a concrete lined catch drain was constructed on the northern boundary of the site and it is clear that the drain is overgrown with vegetation and has little maintenance over the years. The development of this property will ensure that this drain is upgraded with the construction of the inter-allotment drainage system.

Conditions 6(d) and 27(c) are also recommended for the provision of on-site stormwater detention so that the peak flow from the proposed development does not exceed the existing peak flow from the site in accordance with section B3.2.3 of Development Control Plan 20104, Chapter B3 – Services.

It is also noted that inter-allotment drainage is required under conditions 6(c) and 27(a) for the subject lots and the upstream properties at 2 to 10 Coomburra Crescent to provide lawful points of discharge for existing and future dwellings.

In relation to item 3 of the resolution, a letter was sent to the same people who were publicly notified of the development application essentially:

1. Advising of the Council resolution;
2. Advising that the Geotechnical report submitted in support of the DA was on public exhibition and accessible for consideration on Council's website; and
3. Inviting written responses from members of the public to the geotechnical aspects and implications within the development application by 30 August 2018.

The public submissions received in response to are considered below.

2. Submissions made in accordance with this Act or the regulations

In accordance with item 3 of the Council resolution, the Geotechnical Stability Assessment by Shaw Urquhart Pty Ltd dated 17/5/2018 was publicly exhibited from 10 to 30 August 2018. 5 public submissions have been received, and the issues raised are summarised and commented on as follows:

- *Impact of a dual carriageway driveway with no vegetation or barriers of any kind, plus 2.5m high boundary fence each side of access handle.*

Comment: The condition for the 2.5m high fence has been deleted and the driveway narrowed for landscaping to be provided for improved amenity and as requested by neighbours.

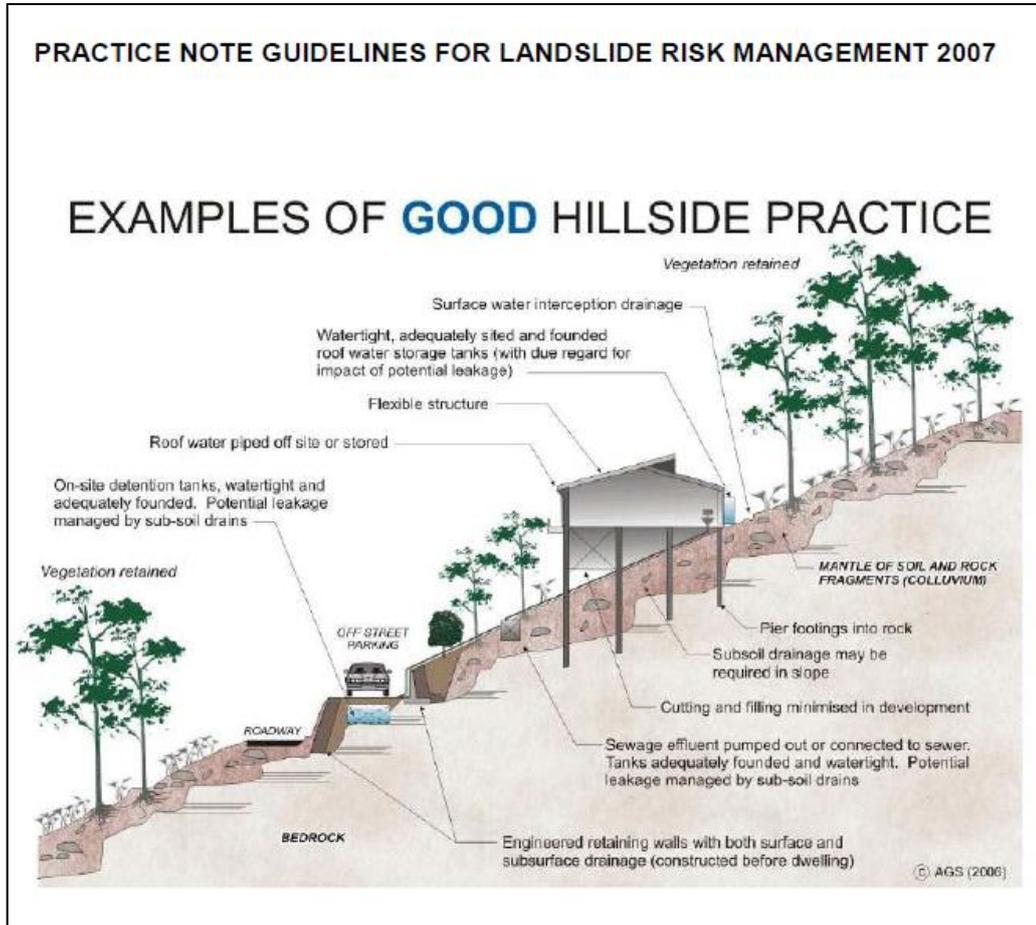
- *Insufficient infrastructure to cater for the stormwater runoff from proposal.*

Comment: As discussed above, conditions have been recommended to include stormwater infrastructure, including provision of inter-allotment drainage to direct stormwater to the existing Council infrastructure.

- *A full geotechnical assessment should be undertaken before development consent is issued having regard to the slope of the land and in particular lot 3.*

Comment: Further Geotech is required to inform the design and construction of civil works as part of the subdivision. Conditions of consent also require further geotechnical assessment and certification before issue of subdivision certificate and restrictions on title to ensure further geotechnical assessment inform the design and construction of future dwellings having regard to the geotechnical constraints. The Shaw:Urquhart report indicates that the type of building is likely to be restricted to light weight slope-sensitive structures to limit surcharge loadings on the slopes in

accordance with good hillside construction practice as recommended by the Australian Geomechanics Society "Practice Note Guidelines for Landslide Risk Management", March 2007.



5

In essence this will mean that dwellings will be of pole home or pier construction and not the typical slab on ground construction. Restrictions on title have been recommended for this type of construction. It is not normal practice to require detailed geotechnical report without detailed plans of the future dwellings. In this instance the application is for subdivision only not the construction of the dwellings upon them Notwithstanding, it is considered that the site is suitable to accommodate future dwellings.

10

Conflict between tree removal plan and Geotech report

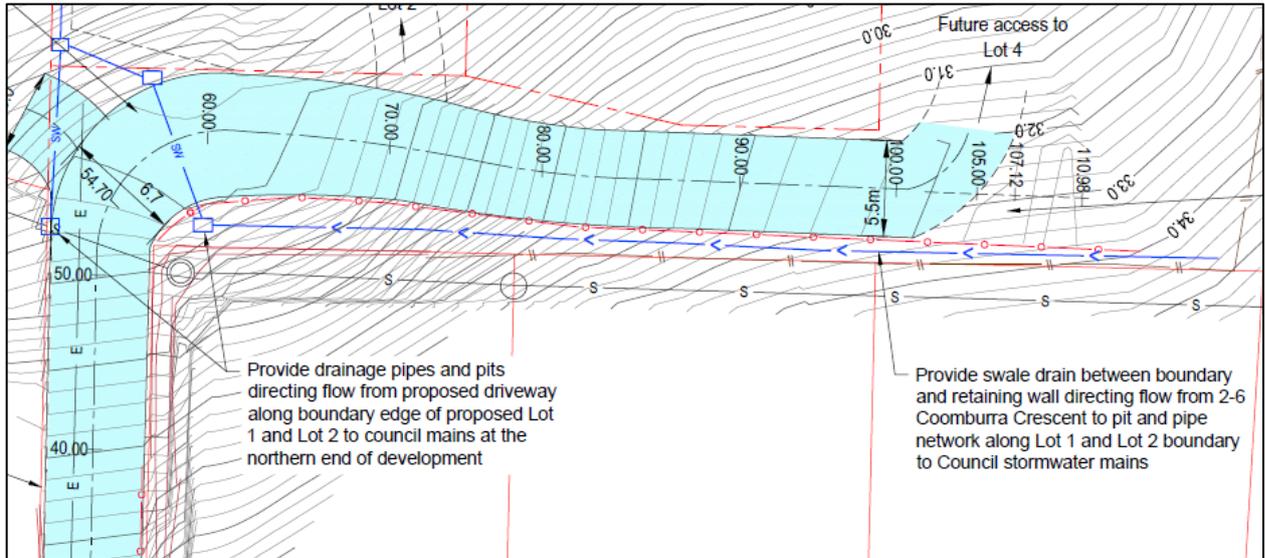
15 Comment: Tree removal is proposed for Lot 3 which is consistent with the geotech report

There will be a gap between the lower boundary of properties on 2, 4 and 6 Coomburra Crescent and the retaining wall of the proposed driveway. The plans are unclear whether the drain is on the surface? Consent Conditions must be defined for the maintenance of this gap.

20

Comment: A proposed catch drain is shown on the engineering plans (see below) which is located on the applicants land between the retaining wall and the boundaries of 2, 4 & 6 Coomburra Crescent. Adequate width is available for maintenance purposes.

25



5 *If the groundwater water is prevented from flowing under Lot 3 by non-porous retaining walls then the water will pool somewhere else ie: possibly further up the slope causing instability issues to existing neighbours' properties on 2, 4 and 6 Coomburra Crescent. Ground water management techniques need to be clearly defined that do not transfer risk to our properties.*

10 Comment: Drainage will be constructed behind the proposed retaining walls and its is normal for such walls to be backfilled with gravel with ag pipe to collect and direct seepage to the inter-allotment drainage system in accordance with engineering practice. Conditions of consent also recommended requiring the engineering plans for the Construction Certificate for the civil works to be considered in conjunction with a Geotechnical Assessment.

- 15 • *Disruption during construction to neighbourhood amenity from tradesmen's vehicles and the like.*

20 Comment: Noted, this is anticipated but will be short lived during the construction phase of future dwellings. Notwithstanding the driveway will be constructed for the full length of the access handle and will provide a platform for parking of construction vehicles.

- *Should only be a 3 lot subdivision with Lot 3 unsuitable.*

25 Comment: It is considered that the site can accommodate 4 lots as proposed.

- *Inherent conflict of interest in having the developer fund the geotech report.*

30 Comment: It is standard procedure for an Applicant to pay for and supply plans and reports in support of a development application. Those preparing and providing the reports should be satisfied that they are acting with integrity and have appropriate qualifications and experience. Council's Development Engineer has in this instance, considered the DA and raised no objection to the geotechnical assessment subject to conditions.

- 35 • *Landscaping plan required to reduce the impact of noise, light and visual impacts*

Comment: A condition was previously recommended that, prior to issue of a Construction Certificate amended plans are to be submitted which include a 2.5 metre high solid fence either side of the vehicle access handle. The condition is no longer recommended due to the narrowing of the driveway and provision of landscaping either side of the vehicle access handle. Such a fence

would also impact on existing vegetation that is raised as a concern as indicated below. Should future fencing be desired by land owners this will be a matter for negotiation between the property owners.

- 5 A landscape plan is now required prior to the issue of a construction certificate, and a new condition is recommended accordingly, given the reduction in the width of the driveway.

The golden cane palms lining the driveway are on number 6 Coomburra Crescent and I have not been asked for consent for their removal. It is illegal to remove vegetation on another's property without approval from the owner to do so.

10

Comment: Approval is not given for the removal of any vegetation beyond the boundaries of the subject site, given that the DA only relates to 8 Coomburra Crescent. The golden cane palms are likely to form up part of the landscaping either side of the vehicle access handle if retained.

15

3. CONCLUSION

20

It is considered the proposed four lot subdivision is not an overdevelopment of the site with the large sized lots as proposed. It is also noted consent could have been sought for a much more intense development on this property such as multi dwelling housing, however the four lots as proposed has had regards to the constraints affecting it such as slope, drainage and access. The application is recommended for approval subject to conditions of consent.

25

4. 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

5. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

30

The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.

The proposed development is considered suitable for the proposed site and represents a viable use of urban land for low density residential purposes.

How community views were addressed

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.19 Suffolk Beachfront Holiday Park Dog Friendly Report

Directorate: Infrastructure Services

5 **Report Author:** Pattie Ruck, Open Space Facilities Coordinator

File No: I2018/1269

Theme: Infrastructure Services
Suffolk Park Holiday Park

10

Summary:

To provide a report on Dog Friendly Trial Results at Suffolk Beachfront Holiday Park and recommend Dog Friendly Status based on these results.

15

RECOMMENDATION:

That Council adopt Suffolk Beachfront Holiday Park as a Dog Friendly Park in accordance with the dog friendly site map, during off peak times.

Attachments:

20

1 Dog Friendly Park Rules, E2018/57756 

2 Feedback on Dog Friendly Trial at Suffolk Beachfront Holiday Park, E2018/59006 

25

Report

Dog Friendly Trial

5 The initial trial period commenced in late 2016 and was extended until the finalisation of this report.

10 Consultation prior, during, and post trial period has been undertaken with the Park Managers, permanent residents, and short term guests. Written feedback was received from Park Mangers, residents, and short term guests throughout the dog friendly period. The trial period excluded peak periods and busy times.

Dog Friendly Park Rules and Associated Procedures

15 During the trial the Park Managers implemented strict dog friendly park rules, as attached (E2018/57756). Upon guest check-in these rules were signed and understood by dog friendly guests and the below map provided.

Map depicting access point to Off Lead Companion Area from Suffolk Beachfront Holiday Park



Appropriate signage placed throughout the park and beach access points.

Beach access points within the park

Signs inside the BBQ Area



5

Dogs NOT PERMITTED signs near camp kitchen and laundry.



10

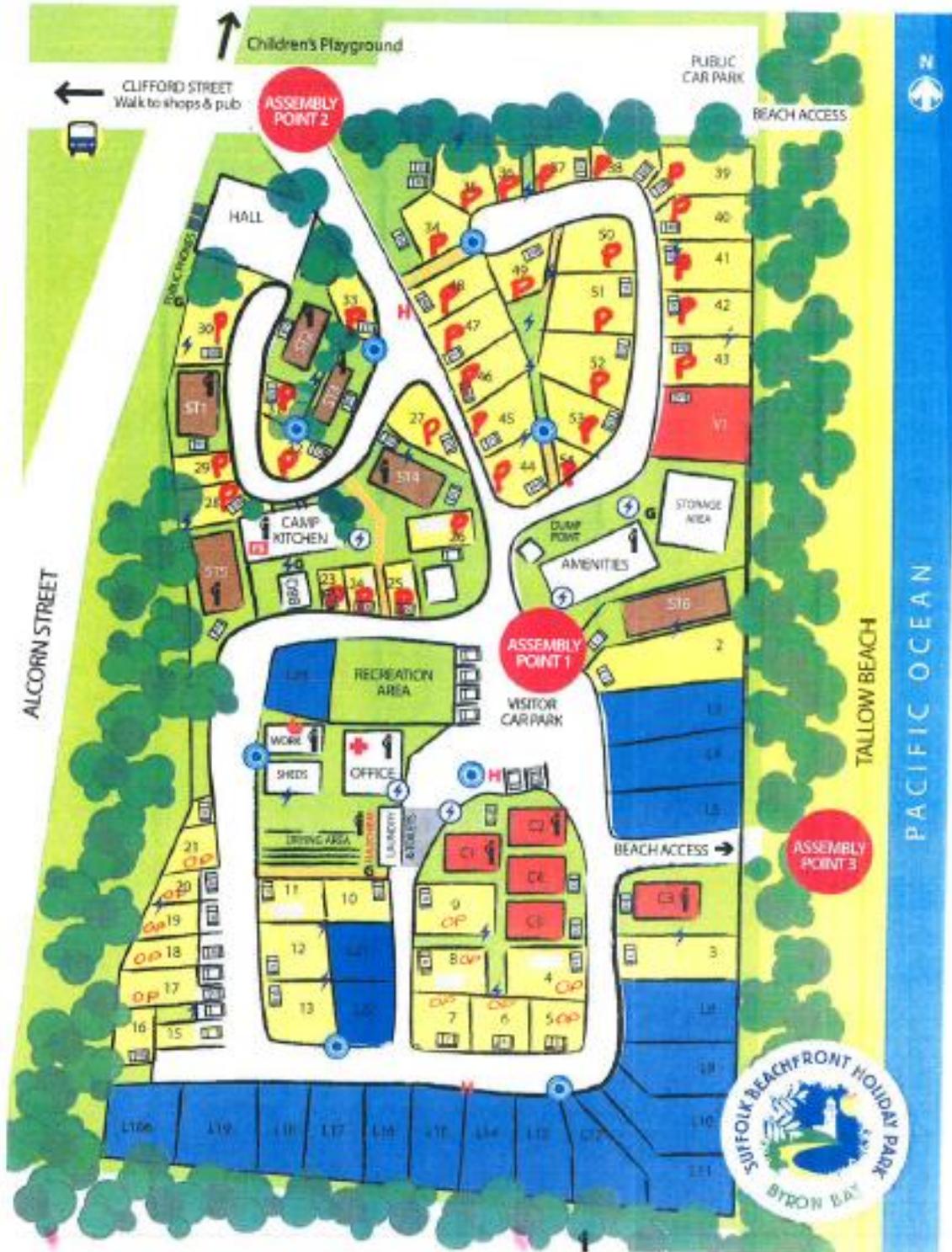
Dog Friendly Sites Available Map

P = Dog friendly sites – Sites 23 to 50 = 32 Sites

OP = Overflow Dog friendly sites – used as overflow only when P sites are full – Sites 4 to 9 & 17 to 21 = 11 Sites

5

Dog friendly site locations selected considering proximity separation from permanent residents.



LEGEND

- | | | | | | |
|-------------|--------------|-------------------|---------------------|-------------------------|----------|
| Cabins/Van | Safari Tents | Powered Site | Permanent Residents | Concrete Slabs | Walkways |
| First Aid | Fire Blanket | Gas Bottles | Fire Extinguisher | Fire Hose Reel | Hydrant |
| Power Heads | Car Parking | Flammable Liquids | Secondary Sites | Electrical Switch boxes | |

Dog Friendly Feedback

Feedback and Mitigation measures implemented on feedback items

The table below displays a summary of feedback items received. Summary of the details of where the feedback was from, how many submissions were received, and documentation reference details are attached.

Unsupportive Submissions - One submission signed by eight of the permanent residents. Two negative submissions received individually from two permanent residents who also signed the group submission. One negative submission received from a regular short term guest.

Supportive Submissions - Two positive submissions received from permanent residents. Council has received positive feedback from written letters, facebook comments, and wikiCamp reviews. One positive feedback received in writing from a short term guest, six positive comments on Facebook and nine positive comments on wikiCamps.

Feedback Item	Mitigation Measure
Dogs off leads	<ul style="list-style-type: none"> • Dog friendly park rules explained to guests upon check in and signed by guests to acknowledge requirements of the park. • Managers communicate with offending guests ASAP and ensure compliance. If non-compliance is ongoing the guests will be required to leave. • Occasionally dogs from outside of the park wonder through. There has been occasions throughout the trial this has occurred and after enquiring with guests, these particular dogs were not from guests staying at the park and did not match the description of their types of dogs. This issue is ongoing and hard to mitigate with or without a pet friendly status. Possible fencing could be looked at in the future if this issue is heightened and cost/benefit is feasible.
Complaints from other guests/residents regarding barking and roaming dogs.	<ul style="list-style-type: none"> • Managers act upon the requests ASAP and ensure compliance where applicable. • Complaints are looked into ASAP by the managers and mitigation measure actioned.
Dog droppings	<ul style="list-style-type: none"> • Guests are briefed and required to sign on dog friendly park rules. • Managers inspect the sites daily to ensure sites and surrounds are free from droppings. There were two occasions this occurred during the trial. • Bag dispensers provided if problem persists.
Dogs taken onto the beach through non dog friendly access points	<ul style="list-style-type: none"> • Signs indicate where Dogs are NOT PERMITTED are in place at access points. • Upon check in guests are verbally told and provided a map detailing access points.
Effect on wildlife	<ul style="list-style-type: none"> • Park rules ensure dogs are tied up, therefore unable to chase after wildlife. If wildlife was to approach the dog this is unable to be mitigated.
Complaints from permanent residents	<ul style="list-style-type: none"> • Dog Friendly Sites are separated from the permanent residents and the overflow sites are separated by a minimum road width. Throughout the trial there were issue when the managers allowed pets throughout the whole park. However, this was resolved and the managers are to ensure there is always separation from the residents as per the map displayed above.

Dog Friendly Seasonal Dates

Seasonal dates throughout Suffolk Park for 18/19 was adopted by Council on 28 June 2018 along with the fees and charges. These seasonal dates will continue to be included in the annual fees and charges process.

Peak times will be *excluded* from dog friendly status. The adopted peak seasonal dates for Suffolk Beachfront Holiday Park run from 22 December 2018 to 14 January 2019 (Christmas holidays) and 17 April 2019 to 27 April 2019 (Easter, ANZAC, NSW and QLD School holidays). Major festivals fall under this peak category and these festival dates change annual. Seasonal dates outside of the adopted peak dates will be available to guests as dog friendly. As *peak times* are *excluded* as dog friendly periods within the park, permanent residents will not be able to have a pet friendly status. This procedure mitigates any risk of ongoing permanent dog related issues. Short term guests are required to leave if their dog is a nuisance.

10 **Financial Implications**

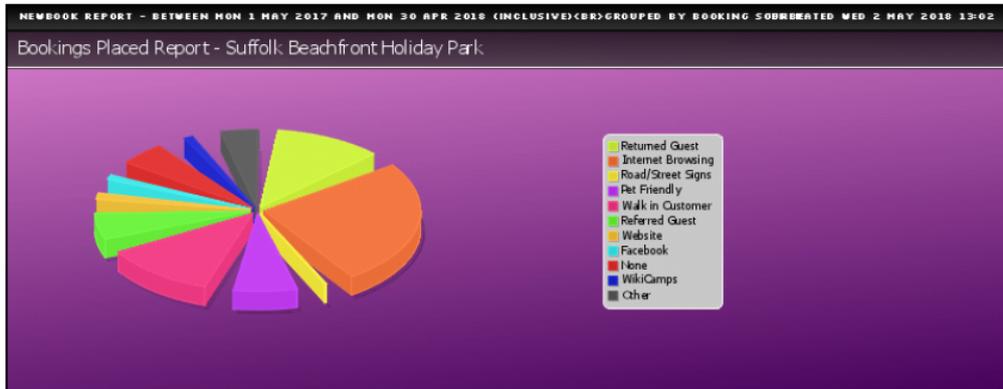
The minimum financial increase from dog friendly bookings from 1 May 2017 to 30 April 2018 was \$64,940.78. The Park Managers have indicated this figure does not include website or internet browsing bookings that are dog friendly bookings. 9.13% of overall bookings are related to pet friendly bookings. There was no decline noted in regular bookings that were not dog friendly guests. Additional infrastructure is not required by Council. If Suffolk Park is not to continue as a Dog Friendly Holiday Park Council acknowledges the potential for declined income and recognises a need to honour pet friendly bookings already taken until 2 October 2018.

20

Bookings Placed Report

Suffolk Beachfront Holiday Park

Between Mon 1 May 2017 and Mon 30 Apr 2018 (Inclusive)
Grouped By Booking Source



Booking Source	Total Bookings	Active Bookings	Cancelled Bookings	Projected Revenue	Average Revenue (per Booking)	Average Length	Booking Source Percentage
Internet Browsing	1944	1742	202	\$327,469.73 CR	\$168.45 CR	3 Nights	35.66%
Walk in Customer	874	852	22	\$71,138.43 CR	\$81.39 CR	2 Nights	16.03%
Returned Guest	827	716	111	\$162,976.70 CR	\$197.07 CR	6 Nights	15.17%
Pet Friendly	498	459	39	\$64,940.78 CR	\$130.40 CR	4 Nights	9.13%
Referred Guest	404	347	57	\$87,655.00 CR	\$216.97 CR	4 Nights	7.41%
None	360	286	74	\$44,051.00 CR	\$122.36 CR	3 Nights	6.60%
NewBook Online	189	159	30	\$33,542.00 CR	\$177.47 CR	3 Nights	3.46%
Website	97	83	14	\$18,177.55 CR	\$187.40 CR	3 Nights	1.77%
Facebook	71	60	11	\$11,335.00 CR	\$159.65 CR	7 Nights	1.30%
WikiCamps	70	70	0	\$8,212.05 CR	\$117.32 CR	3 Nights	1.28%
Booking.com	34	20	14	\$9,040.50 CR	\$265.90 CR	3 Nights	0.62%
First Sun	18	18	0	\$1,404.00 CR	\$78.00 CR	7 Nights	0.33%
NSW CARAVAN & CAMPING DIRECTORY	15	14	1	\$1,228.00 CR	\$81.87 CR	3 Nights	0.27%
Trip Advisor	15	14	1	\$2,704.00 CR	\$180.27 CR	3 Nights	0.27%
Beyond Byron	14	14	0	\$2,493.00 CR	\$178.07 CR	3 Nights	0.25%
Road/Street Signs	11	10	1	\$2,555.85 CR	\$232.35 CR	6 Nights	0.20%
AAA TOURISM	6	3	3	\$481.71 CR	\$80.29 CR	6 Nights	0.11%
Tourist Information Office (Byron)	3	3	0	\$215.00 CR	\$71.67 CR	2 Nights	0.05%
NRMA EXPERIENCE NSW	1	1	0	\$176.00 CR	\$176.00 CR	2 Nights	0.01%
Total	5451 Bookings	4871 Bookings	580 Bookings	\$849,796.30 CR	\$155.90 CR	3 Nights	100.00%

Statutory and Policy Compliance Implications

Current zoning of land – LEP 2014 – Zone RE 1 – Public Recreation

Suffolk Beachfront Holiday Park is currently located on DP 1023737 Lot 100. Zone RE 1 – Public Recreation.

Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Child care centres; Community facilities; Emergency services facilities; Entertainment facilities; Environmental facilities; Flood mitigation works; Function centres; Horticulture; Information and education facilities; Jetties; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Roads; Signage

4 Prohibited

Any development not specified in item 2 or 3

5

Permanent Sites at the park have been reclassified as Operational Land recently. These sites are separate from the dog friendly sites.

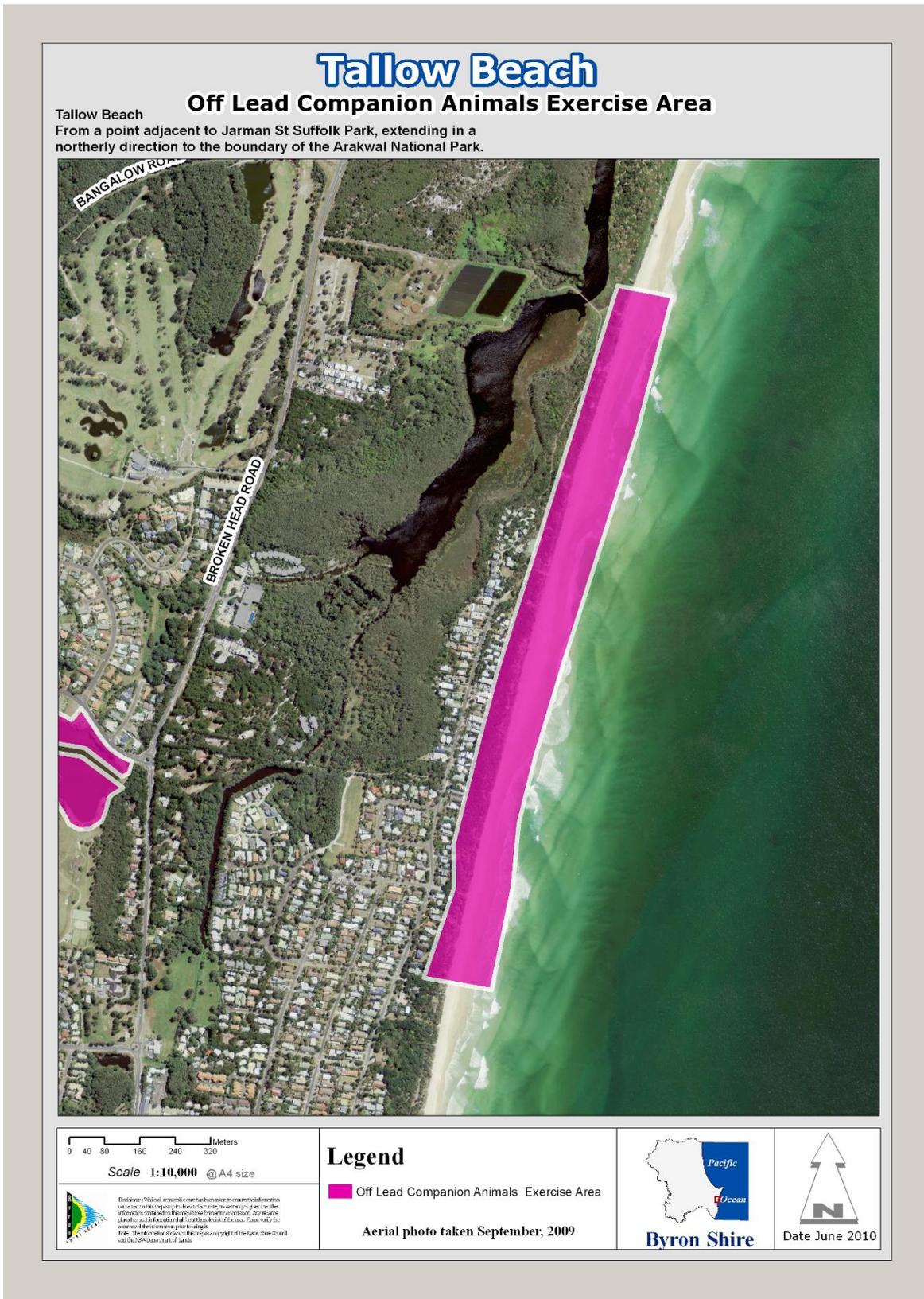
10 Byron Shire Council Companion Animal Exercise Areas – Policy 5.31

Policy 5.31 adopted by Council in March 1994 and reviewed in October 2011 outlined off-lead exercise areas within Byron Shire. Tallow Beach shown in MAP 1 is the closest to Suffolk Beachfront Holiday Park. Tallow Beach off-lead exercise area is approximately 485 m from Suffolk Beachfront Holiday Park. This distance requires a short walk from Suffolk Beachfront Holiday Park.

15

20

MAP 1



Benefits of Dog Friendly Suffolk Beachfront Holiday Park

- 5 • Allows Council's holiday park to remain competitive and in line with other holiday parks in and surrounding Suffolk Park area. Ferry Reserve at Brunswick Heads, Byron Holiday Park at Suffolk, North Coast Holiday Parks including Shaw's Bay in Ballina and Silver Sands at Evans Head have all converted to dog friendly periods and have reported an increase during off peak periods of approximately 60 to 70 %.
- Dog friendly availability offers extra service options for guests.
- Increases Council's revenue stream for this asset as shown below.
- 10 • Park Managers are able to manage this dog friendly status with no additional resources required from Council.
- Park location and relaxed nature support the dynamics of a dog friendly acceptance.

Non-benefits of Dog Friendly Suffolk Beachfront Holiday Park

- 15 • Continued and/or escalated negative feedback from park users and/or permanent residents and subsequent increased mitigation measures required by Park Managers in consultation with Council. Possible increase in costs associated with mitigation measures relevant to feedback.
- Forecasted revenue not as predicted.

Conclusion

- 20 Overall the dog friendly trial period was well received by both permanent residents and short term guests. There were instances where residents were unhappy with the effects of the dog friendly trial. Once mitigation measures outlined were strictly enforced many of these complaints were able to be minimised.
- 25 The separation of the dog friendly sites from the permanent resident sites proved to be a major factor in minimising this negative effect on permanent residents. Unfortunately, the managers of the park allowed dog friendly sites close to the residents for an interim period throughout the trial. This created permanent residents to become unsupportive of the dog friendly status and subsequently submitted unsupportive feedback.
- 30 Since then, Council has consulted with the park managers to promptly action the site separation preferences as discussed in the original trial. The mitigation measures outlined have had a positive impact on feedback received.
- 35 It is anticipated that there will never be 100% support of a Dog Friendly Park, however based on the feedback received and the success and failure points within the trial it can be concluded that there is general support from customers for the Park to become Dog Friendly.

Report No. 13.20 **Parking Time Changes in Mullumbimby, Bangalow and Brunswick Heads - Status Report**

Directorate: Infrastructure Services

Report Author: Evan Elford, Team Leader Infrastructure Planning

5 **File No:** I2018/1437

Theme: Infrastructure Services

Local Roads and Drainage

10 **Summary:**

To update Council on the implementation and monitoring of the time limit changes to parking in Mullumbimby, Bangalow and Brunswick Heads parking schemes.

15 The report details the relevant issues relating to the implementation of the schemes, the methodology of data collection and analysis, provides commentary on the schemes and outlines the future actions for continued monitoring and reporting to Council.

RECOMMENDATION:

1. **That Council note the status and proposed actions relating to the parking schemes in Mullumbimby, Bangalow and Brunswick Heads**
2. **That Council receive a further report detailing the performance review of the parking schemes at Mullumbimby, Bangalow and Brunswick Heads at the April 2019 Council meeting.**

20

Report - Mullumbimby

Resolutions:

5 Mullumbimby parking time changes were resolved by Council on 23 November 2017 as follows:

17-572 Resolved:

- 10 1. That Council endorse the implementation of the changes to parking time limits in the Mullumbimby town centre, in line with Figure 1 in this report, being 1P throughout Burringbar Street and the addition of 4P zones at the ends of Stuart and Dalley Streets, with 2P remaining in place for the remainder of Stuart and Dalley Streets.
- 15 2. That the time limit changes be reported to the Local Traffic Committee (LTC).
3. That Council approve a budget of \$15,000 to implement the revised parking time limits, from the Infrastructure Renewal Reserve.
- 15 4. That Council receive a report after twelve (12) months, to review:-
- 20 a) The effectiveness of the time limit changes in managing parking turnover;
- b) Infringement levels throughout the town centre; and
- 20 c) Based on the outcomes of a) and b) above, the introduction a pay parking scheme to manage parking turnover and effectiveness in accordance with the recommendations of the Traffic and Parking Systems Group (TPS) report titled "Mullumbimby Town Centre Parking Management Strategy" (#E2016/80919).

25 The proposed time limit changes were reported to Local Traffic Committee (LTC) and the minutes reported to Council on 14 December 2017 where Council resolved as follows:-

17-710 Resolved:

Committee Recommendation 6.1.1

- 30 1. That the Local Traffic Committee endorse the changes to the parking time limits in the Mullumbimby Town Centre, as depicted in the proposed parking times in Figure 1, being:
- a) 1P throughout Burringbar Street and the addition of 4P zones at the ends of Stuart and Dalley Streets and
- b) 2P remaining in place for the remainder of Stuart and Dalley Streets.
- 35 2. That the Local Traffic Committee recommend that the proposed 4hr parking limits be reviewed during the 12 month period on a needs basis.

Implementation:

40 Infrastructure Services installed new signs and modified existing parking zone time limits to implement the scheme which became enforceable on the 15 March 2018.

45 Approximately 80 new signs were required with the implementation being of medium complexity due to the requirements to extend current time zones and the fact that parking durations were not uniform with that of Byron Bay thereby limiting the option for utilising existing signage from existing stores.

Parking time zone changes appear to have been accepted by the community with limited feedback or minimal issues being raised with Infrastructure Services.

50 Data Collection:

Monitoring and Licence Plate Recognition (LPR) data collection of the scheme has been carried out on the following dates:

27 April 28 April 9 May 11 May 12 May 6 June

On those dates, 2 Enforcement Officers carried out LPR data collection functions in the 3 villages on a rotation basis as follows:

- 5 1. Complete LPR scan of Mullumbimby then Brunswick Heads followed by Bangalow and repeat this process 3x per day.
2. The team was also tasked with processing LPR based infringements only for overstay in these locations as per standard enforcement protocols on the basis that all other non-LPR compliance would be reviewed outside these dates.
- 10 3. The team operated from 9:00 am to 4pm with a half hour lunch break from 12:30 to 1pm – This represents 6.5 hours data capture per assigned day.

15 The next series of data collection was scheduled for the first week of August with dates beyond that subject to consideration of staffing levels, rosters and staff annual leave interactions by Sustainable Environment & Economy staff.

Future Actions and Reporting:

Moving forward the identified actions are:-

- 20 1. Continue LPR scanning and infringement actions undertaken to date generally on a monthly basis.
2. Commence critical analysis of collected data to review the scheme's performance
3. Undertake additional vacancy survey to supplement current data collection and to inform the review and reporting process.
- 25 4. Identify areas for improvement and any changes or modifications considered worthy of implementation to improve the parking turnover and effectiveness of the scheme.
5. Prepare a performance review report noting that a report is due after 12 months in accordance with resolution 17-572. It is considered appropriate to report all 3 schemes simultaneously and accordingly Infrastructure Services propose to report to the April 2019
- 30 Council meeting.

Report - Bangalow

Resolutions:

35 Bangalow parking time changes were resolved to be implemented by Council on 14 December 2017 as follows:

17-660 Resolved:

- 40 1. That the petition regarding no paid parking in Bangalow be noted.
2. That Council now resolve on the local traffic committee advice regarding paid parking in bangalow as follows:
- 45 a) In relation to Local Traffic Committee (LTC) recommendation 6.4 of 31 October 2017 and comments received from Members at the LTC of 13 December 2017 Council endorse the implementation of the changes to the parking time limits in the Bangalow town centre, as depicted in the proposed parking times in Figure 1, being 1P throughout Byron Street and part of Station Street, with 2P in the remainder of Station Street for a trial period of twelve months and that parking time limits be reviewed on a needs basis during the trial.
- 50 b) Closely monitor parking demands, durations and infringements in the Bangalow Town Centre area with the objective to quantify the appropriateness of time limit duration and track trends in the level of infringement, and
- c) Assess compliance with the revised time limits and associated infringements in the management of parking turnover in conjunction with any future consideration by Council of the implementation of a pay parking scheme in bangalow.

- d) *This resolution rescinds and replaces Res 17-356*
e) *That any advice forwarded to RMS and NSW Police in accordance with the appeal procedures in the Delegation as a result of this resolution include a notification that the NSW Police Member was not present at the LTC meeting of 31 October 2017 and consequently raised objection to the proposal as did the local MP member of the committee at the LTC meeting of 13 December 2017.*

Implementation:

- 10 Infrastructure Services installed new signs and modified existing parking zone time limits to implement the scheme which became enforceable on the 14 March 2018.

Additional line marking to reinforce parking management signage was completed on 1 May 2017.

- 15 Approximately 50 new signs were required with the implementation being relatively straight forward due to the requirements to introduce only 2 time zones and the fact that parking durations were uniform with that of Byron Bay thereby maximising the option for utilising existing signage from existing stores.
- 20 Parking time zone changes appear to have been accepted by the community with limited feedback or minimal issues being raised with Infrastructure Services.

Data Collection:

- 25 Monitoring and Licence Plate Recognition (LPR) data collection of the scheme has been carried out in conjunction with the collection of data for Mullumbimby and Brunswick Heads as noted earlier in the report.

Future Actions and Reporting:

- 30 Moving forward the identified actions are:
1. Continue LPR scanning and infringement actions undertaken to date generally on a monthly basis.
 2. Commence critical analysis of collected data to review the scheme's performance
 - 35 3. Undertake additional vacancy survey to supplement current data collection and to inform the review and reporting process.
 4. Identify areas for improvement and any changes or modifications considered worthy of implementation to improve the parking turnover and effectiveness of the scheme.
 - 40 5. Prepare a performance review report noting that the scheme is for a trial period of twelve months and that parking time limits be reviewed on a needs basis during the trial in accordance with resolution 17-660. It is considered appropriate to report all 3 schemes simultaneously and accordingly Infrastructure Services propose to report to the April 2019 Council meeting.

45 **Report - Brunswick Heads**

Resolutions:

- 50 Brunswick Heads parking time changes were resolved to be implemented by Council Res 17-587 on 23 November 2017 and Council Res 17-636 at the extraordinary meeting on 28 November 2017 as follows:

17-587 Resolved:

1. That Council endorse the implementation steps recommended in the Brunswick Heads Parking Management Strategy as modified to:
 - a) Implement revised time limits in the town centre immediately (as per point 2 below);
 - 5 b) Closely monitor parking demands, durations and infringements in the Town Centre Area in particular with the objective to continuously quantify the appropriateness of duration limits and to 'track' trends in the level of infringement; and
 - c) Assess the compliance with the revised time limits and associated infringements in the management of parking turnover, following the implementation of the revised time limits, in conjunction with any future consideration by Council of the implementation of a pay parking scheme in Brunswick Heads.
2. That Council endorse the implementation of the changes to the parking time limits in Brunswick Heads, using the layout provided by the Brunswick Heads Chamber of Commerce shown at Figure 2, incorporating the amendments identified in Table 2.
- 15 3. That Council seek Local Traffic Committee (LTC) endorsement of the parking time limit changes.
4. That Council negotiate any necessary agreement with Crown Lands to implement parking schemes.
5. That prior to the consideration of any Pay Parking Scheme for Brunswick Heads, staff undertake further investigations and consultation and report to Council in mid 2018 on revised parking arrangements and the cost of infrastructure upgrade requirements in the following areas;
 - a) Booyun Street, east of Park Street, in order to implement a Kiss and Ride School drop off zone in this area;
 - 25 b) Park Street, between Fingal Street and Slessor Lane, to formalise parking whilst maintaining the existing bus zone;
 - c) Parking arrangements on South Beach Road, including dedicated parking for up to four (4) Horse floats at the end of South Beach Road; and
 - d) Parking arrangements in South Beach Lane
- 30 6. That Council approve:
 - a) an allocation of \$115,000 to be funded from Section 94 Car Parking Brunswick Heads to undertake the investigation works in items 5a) to 5d), inclusive; and
 - b) the allocation of \$25,000 for the implementation or revised time limits (including line marking) be funded from the existing signage program.

17-636 Resolved:

- That in relation to the implementation of the Brunswick Heads Parking Management Strategy that Council endorse the following time limits subject to Local Traffic Committee approval:
- 40 1. General time limits to apply Mon to Sun 9.00am - 5.00pm
 2. Time Limits at South Beach Road and South Beach Lane be retained as all-day parking.

The proposed time limit changes were reported to LTC and the minutes reported to Council on 14 December 2017 where Council resolved as follows:

17-711 Resolved

Committee Recommendation 6.2.1

1. That the Local Traffic Committee endorse Council Resolutions 17-587 and 17-636, providing concurrence for:
 - 50 a) Item 2, which is to implement the changes to the parking time limits in the Brunswick Heads Town Centre, as depicted in the proposed parking times in Figure 1 of this report, with the minor amendments identified in Table 1.

2. *That the Local Traffic committee recommend the proposed parking limits be reviewed on a needs basis.*
3. *That the review period be extended from 6 months to 12 months.*

5 Implementation:

Infrastructure Services installed signs and modified existing parking zone time limits to implement the scheme which became enforceable on the 21 March 2018. Time changes were implemented by placing temporary stickers over existing signs and old signs from the depot store whilst a new sign range was being designed and procured.

Approximately 150 new signs were required with the implementation being of high complexity due to the requirements to extend current time zones, change existing time zones and introduce new time zones in locations that were not time restricted previously. The fact that parking durations were not uniform with that of Byron Bay limited the option for utilising existing signage from existing stores and introduced additional signage procurement issues as this scheme was also inconsistent with those being simultaneously implemented in Mullumbimby and Bangalow.

Over the course of time a number of signs had stickers removed which limited enforcement operations to the point where a second round of sticker placement was undertaken and completed on 4 May 2018.

Procurement of new signs from manufacturers has proved to be difficult with the filling of orders delayed to late July 2018 due to manufacturer rescheduling works between it's Melbourne and Brisbane plants.

Prior to installing the new signs, a detailed review of signage was carried out on site which identified that some of the matters that had been included on the plan prepared by the Chamber of Commerce/Progress Association (Chamber Plan) had not been fully implemented.

Whilst the vast majority of the scheme had been implemented on 23 March using old existing signs in accordance with the Chambers plans as amended by resolutions, a number of issues were identified as not being implemented which have subsequently been rectified with the installation of the new signs including:-

- Utilising existing posts and signs to adjust zones by placing stickers over incorrect information – essentially due to supply issues for new signs, which were essentially custom signs from those normally installed across the shire and the urgency of the implementation program. This has also created inconsistency in signage throughout the scheme.
- Missed – 3 dedicated motorcycle spaces adjacent to but outside existing line marked parking areas.
- Missed – Change 1 single parking bay to a loading zone at the east end of Fingal St
- Missed – 1 loading zone in current no standing zone in driveway of bakery. – note- all other loading zones were implemented.
- Missed – 3 single 15 min parking bays– 1 at Laundry and 1 at the bank in Fingal St and 1 at Bakery in Park St – note all other 15min parking zones were implemented.
- Anomaly – Western end of Fingal St 1P and 2P swapped to opposite sides of the St from that shown on Chamber Plan. No real explanation other than the current arrangement accords more with the concept of increasing parking time limits as you move away from the business core however we will change to accord with Chamber Plan if required.
- Incorrect extend of 2P parking in western end of Fingal St –as a consequence of a misinterpretation of the adjustments made under the resolution that was construed as 2P for Fingal St when only the Chamber proposed 3P was all that was required to change. This area will be returned to “open”.

As noted above, the misses have now been rectified including the provision of motorcycle parking pavement markings. The scheme, complete with replacement new signage was completed 27 July 2018.

5 Council's Consultants, TPS Traffic Consultants, have been contacted and asked to comment on the criticality of the misses in respect to the review of parking availability and number plate data collections as it relates to preparation and review reporting of the scheme. The consultant has been provided with "staging" plans which will identify any missed or signage errors applicable for each data collection period.

10
15
15 TPS advise *"it can confidently be said that the matters listed have had no identifiable effect on parking supply, availability or durations. We can confidently state that none of the things you have listed would be cause to question the validity of the past or initial data collection processes or results. The best that can be said of the things you have listed is that they are 'normal' fine tuning which is inevitable (and desirable) in implementing any change in parking management strategy."*

20 Operators of the Laundry and other local business owners spoken to when undertaking the recent inspection work advised that the adjusted loading zone changes and additional 1/4P parking spaces were welcomed and provided opportunities for locals to access services where only short access times were required at all times.

25 Once again, parking time zone changes appear to have been accepted by the community with limited feedback or minimal issues being raised with Infrastructure Services.

Data Collection:

30 Monitoring and Licence Plate Recognition (LPR) data collection of the scheme has been carried out in conjunction with the collection of data for Mullumbimby and Bangalow as noted earlier in the report.

Future Actions and Reporting:

Moving forward the identified actions are:

- 35
1. Continue LPR scanning and infringement actions undertaken to date generally on a monthly basis.
 2. Commence critical analysis of collected data to review the scheme's performance
 3. Undertake additional vacancy survey to supplement current data collection and to inform the review and reporting process.
 - 40 4. Identify areas for improvement and any changes or modifications considered worthy of implementation to improve the parking turnover and effectiveness of the scheme.
 5. Complete current investigation, design works and reporting to Council for the various areas outlined in item 5 and 6 of resolution 17-587.
 - 45 6. Investigate foreshore parking arrangements east of Simpsons Creek (Torakina, South Beach Road, South Beach Lane area)
 7. Based on a review period of 12 months as required by resolution 17-711 and an initial implementation date of 23 March 2018, prepare a performance review report for the April 2019 Council meeting.

50 **Financial Implications**

There are no financial implications at this time.

Statutory and Policy Compliance Implications

There are no statutory or policy compliance implications at this time.

Report No. 13.21 **Bayshore Drive Roundabout - Project Update**
Directorate: Infrastructure Services
Report Author: Joshua Winter, Civil Engineer
File No: I2018/1087
5 **Theme:** Community Infrastructure
 Local Roads and Drainage

Summary:

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The Bayshore Drive roundabout project comprises the following major components:

- 1. Project governance
- 2. Grant management
- 15 3. Contract management
- 4. Communications
- 5. Public Art

20 This report provides an update on all these components.

There are no financial or statutory and policy compliance implications for this report.

RECOMMENDATION:

That the status report on the five components of the Bayshore Drive roundabout project be noted.

25

Attachments:

- 1 Confidential - Bayshore Dr Roundabout - Extensions of Time Register, E2018/66098
- 2 Confidential - Bayshore RAB Variation Register, E2018/66765

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Report

The Bayshore Drive roundabout project comprises the following major components:

- 5
1. Project governance
 2. Grant management
 3. Contract management
 4. Communications
 5. Public Art

10

1. Project Governance

The governance team includes representatives from the following areas of Council:-

15

- Executive Team
- Finance
- Grants
- Business Analysis
- Communications
- Section 94
- Managerial
- Engineering
- Contract Management

20

25

Meetings of the governance team are held every two (2) weeks and minutes and a status report with project metrics is produced as part of each meeting.

The minutes and status reports are provided to the Executive Team meetings.

30

2. Grant Management

This project is funded in part by a \$2.64M Australian Government Building Better Regions Fund (BBRF) grant, which is a 50% contribution grant for the construction of this project.

35

Council has committed to contribute the remaining 50% as well as an 'in-kind' contribution of \$422,000, meaning Council's total contribution to the project will be \$3.06M.

The 'in-kind' contribution will consist of the land acquisition and staff time involved in the management of the project.

40

The funding details for the project are detailed in the Financial Implications Section of this report.

The requirements of the grant are a number of milestones at the following stages of actual construction works:

45

1. 20% completion
2. 50% completion
3. 100% completion
4. Final report

50

The requirement of achieving the milestone is a report to be provided to the Australian Government within 1 calendar month of the achievement of the milestone.

Currently, milestone 1 has been achieved and a report submitted by the due date, however, there has been no feedback from the Australian Government. It is noted that milestone 1 for 20% completion is a non-financial milestone and does not involve any payments by the Australian Government to Council.

5 Achievement of milestone 2 (50% completion), including the submission on time of the milestone report, will result in 50% payment of the grant to Council whilst milestone 3 will be 100% payment of the grant.

10 The Contractor is providing the required information in the correct format, which forms part of the data in the report from Council to the Australian Government.

Also required as part of the grant are:-

- an official opening
- 15 • Benefits Report which is submitted five years after the final report.

3. Contract Management

20 The contract for the works includes the Request for Tender, General and Special Conditions of Contract and all associated documentation, including the design plans and technical specifications.

Management of the works for the construction of the roundabout is occurring in accordance with all requirements of the contract, including:

- 25 1. Project duration and end date
- 2. Contract value
- 3. Traffic control
- 4. Community communication
- 5. Contract administration
- 30 6. Requirements of the environmental, safety and quality management plans
- 7. Construction matters
- 8. Design matters

35 Meetings are held weekly between Council contract management staff and the contractors staff to facilitate the proper management of the contract works and ensure all mandatory contract requirements are satisfied.

40 The contractor has made a lot of progress since the light rain stopped and the wet site conditions dried in mid July.

Approved Contract Variations and Extensions of Time

45 The project is governed by a formal Australian Standard AS4000 Contract with the Contractor and this AS contract clearly defines what different variations and extensions of time may be considered by the Principal (Council). This details that the Contractor is entitled to claim a variation to the Contract under a number of circumstances. This may include Contract drawing omissions, additional work ordered by the Principal (Council), Latent or unknown conditions or variations to the site conditions.

50 This AS contract clearly defines what a 'Qualifying Cause of Delay' is. Wet weather and latent conditions (unknown site conditions) are both classed as a 'Qualifying Cause of Delay'. When these situations occur during the contract, the Contractor is entitled to claim an 'Extension of Time', which extends the Date of Practical Completion (DoPC the date the contractor must complete the works). An extension is only approved if the work cannot be concurrently completed with the
55 original Contract work, therefore delaying the completion of the Contract.

Any requests by Council for additional works also will result in extra costs and may result in an extension of time, e.g., any infrastructure for the provisions of public art in the centre of the roundabout.

5 Confidential attachments are included with the report of the Variations Register and Extensions of Time Register.

Contract duration and end date

10 Under the contract the original date for completion of the works was 8 November 2018, however, with the extensions of time claimed and approved, the revised date is currently 15 December 2018.

15 Contract management staff are working closely with the contractor to ensure all mandatory requirements are met and to minimise the time on site and to finish the contract works by the end of the calendar year, especially those impacting the trafficable area of Ewingsdale Road

4. Communications

20 Councillors are updated via a fortnightly E-newsletter and there is also a community subscriber E-newsletter which is also sent out fortnightly, on the alternative week to the Council newsletter.

25 Two community information sessions were held at The Cavanbah centre in May and June 2018 with notifications on the electronic project board's, on social media, our website and the like but unfortunately there were no attendees.

Drafts of all publicity, announcements and media releases relating to the Australian Government must be provided for approval with at least 10 business days notice prior to their release.

30 Other media releases not mentioning or related to the Australian Government do not need such approval.

The project team are updating weekly the 3 traffic message boards and 2 project information boards to inform passing motorists of the current work activities.

35 Project staff are working in conjunction with Councils Communications staff to manage any enquiries through our social media / website platforms and the other conventional forms of communication, such as emails, letters and face-to-face. Letters have also been hand-delivered to the joining residents and property owners along Bayshore Drive and in the Sunrise/Arts and Industrial Estate and residential area.

45 The Communications Panel have been sent the Communications Plan for Stage Two of the project. This will involve further information sessions, letters, media releases, website updates, Facebook posts, radio and newspaper ads and notifications to key stakeholders.

Public Art

50 The Bayshore Drive Roundabout Public Art Project (PAP) is a key deliverable in the newly adopted Public Art Strategy.

A brief was developed with input from the PAP members and a PAP sub-committee was selected to work with staff to progress the commissioning of a public artwork

The Bayshore Drive roundabout is at a major intersection of Ewingsdale Rd and Bayshore Drive, with Bayshore Drive being the main entrance to the Byron Arts and Industrial Estate, and access to Sunrise Beach residential area.

5 It is Council's preference that the public art project is completed and installed prior to any official opening or launch of the new roundabout.

10 Expressions of Interest were called via advertising from 14 June 2018, with submissions closing 13 July 2018. An onsite information session was held on Tuesday 26 June 2018 with two artists attending.

15 The sub-committee of the Panel has met to undertake the first round of shortlisting. The shortlisted artists were requested to provide further information about their concept designs as per the requirements in the brief for Stage 2, copied below.

The final design proposal is to include:

- *A written statement of concept philosophy and description of concept proposal*
- *Drawings, sketches, elevations and/or a model to convey the concept and scale of the proposed design*
- 20 • *Site plan showing proposed location of work(s)*
- *Final project budget indicating design development and installation costs*
- *Preferred materials and fabrication methods*
- *Indicative detail of footings and fixings to footings*
- 25 • *Outline of public safety, risk management and maintenance considerations for the life of the project – provide a risk assessment*
- *Fabrication and installation timeline.*

The Public Art Panel met on 3 August 2018 to review the shortlisted artists' stage 2 information.

30 This public art project is being funded from Section 94 developer contributions. The total available budget is \$60,000, however, \$5,000 has been set aside to pay for concept design development and as a small contingency. The total available amount for artists to deliver the project is \$55,000.

35 Council resolved to select the lighthouse silhouette art piece by Corey Thomas, constructed using thousands of stainless steel birds.

Financial Implications

40 The information in italics is from the report to the Council meeting on 22 March 2018, when the tender was awarded.

Tender Award Council report

45 *The lump sum price of the recommended tenderer is \$3,958,203.56 excluding GST. This price is not the total cost of the project as it does not include the land acquisition, contract management, Telstra relocations, Council management or any allowance for project risk and unknown site conditions. The total cost of the project is \$5,720,949 which is detailed below and is the amount that the Building Better Regions Fund (BBRF) grant agreement is based on. The grant agreement can be broken down into the following three categories:-*

50

<i>Australian Government Contribution</i>	<i>\$2,640,254</i>	<i>50% Construction</i>
<i>Byron Shire Council Co-Contribution</i>	<i>\$2,640,254</i>	<i>50% Construction</i>
<i>Byron Shire Council 'In-Kind' Contribution</i>	<i>\$ 422,441</i>	<i>100% Staff Time / Acq</i>

BYRON SHIRE COUNCIL

Total Project **\$5,702,949**

This cost is made up of the following components:

Project Item	Cost (ex. GST)
<i>Construction (Tender 2017-0014) to SEE Civil Pty Ltd</i>	\$ 3,958,203
Forecasted Costs to Complete	
<i>i. Contract Management & Design Clarifications (Consultant)</i>	\$ 387,000
<i>ii. Telstra Relocations (Fee Advised by Telstra)</i>	\$ 310,000
<i>iii. Land Acquisition (In-Kind Contribution)</i>	\$ 175,000
<i>iv. Council Management (In-Kind Contribution)</i>	\$ 247,441
<i>v. Allowance for Project Risk & Unknown Site Conditions (11%)</i>	\$ 625,305
Total Project Cost	\$ 5,702,949

5

Council's contribution to the project is \$3,062,695 (items ii to vi inclusive in the below table).

The total cost of the project is \$5,702,949. The funding for the project is as follows:-

<i>i. Australian Government Grant</i>	\$2,640,254
<i>ii. Section 94 Contributions</i>	\$2,515,254
<i>iii. Water Reserve</i>	\$125,000
Construction (Sub Total)	\$5,280,508
<i>iv. Section 94 Contributions</i>	\$125,000
<i>v. Salaried Staff</i>	\$120,000
<i>vi. Infrastructure Renewal Reserve Project Budget</i>	\$177,441
'In-Kind' Contribution (Sub Total)	\$422,441
Total Budget Allocation	\$5,702,949

10

Each contract variation has been detailed in the confidential attachment, however, has been related to:-

- 1. dewatering for telecommunication works
- 2. amended signage
- 5 3. additional vegetation management
- 4. water main realignment
- 5. foundation treatment road embankments
- 6. relocation of existing open drain to a better location
- 7. electrical conduits to the centre island of the roundabout for public art purposes
- 10 8. additional CCTV of existing drainage pipes
- 9. replacement of damaged existing drainage pipes
- 10. design revisions.

15 As at the end of August 2018:-

Original contract value	\$3,958,203.56
Provisional items not used	\$59,698.01
Value of variations approved	\$266,180.95
Balance of project risk allowance not used.	\$375,035.14
Projected contract value	\$4,164,686.50

The current financial status of the overall project is within the total budget allocation.

20 **Statutory and Policy Compliance Implications**

There are no statutory or policy compliance implications.

Report No. 13.22 **Suffolk Beachfront Holiday Park - Re-classification Planning for Permanent Residents**

Directorate: Infrastructure Services
Report Author: Pattie Ruck, Open Space Facilities Coordinator
File No: I2018/1393
Theme: Infrastructure Services
Suffolk Park Holiday Park

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10 **Summary:**

Council has recently received formal approval for the re-classification of the long-term resident sites at Suffolk Beachfront Holiday Park from Community Land to Operational Land classification. Now this re-classification has been approved, resolution **07-364** no longer applies enabling Council to enter into new site agreements. A project plan and communication strategy for current permanent residents for transition to new site agreements and regulation compliance has been developed (Refer Attachments 1 and 2).

20

RECOMMENDATION:

That Council:

- 1. Endorse the Project Plan (E2018/61386) and Communication Strategy (E2018/61762) for the current owners to transition to new site agreements and Regulation Compliance Program.**
- 2. Endorse that any new home owners enter a new agreement that will set site fees at “fair market value” as outlined in section 109 of Act and use the “Non-fixed Method” for future site fee increases and specify a term of agreement for no longer than 5 years.**
- 3. Transfers \$20,000 from the Holiday Park Reserve to fund the implementation of the actions within the project plan and communication strategy.**

Attachments:

- 1 Project Plan - Suffolk Beachfront Holiday Park - Permanent Residents, E2018/61386 
- 25 2 Communication Strategy - Suffolk Beachfront Holiday Park, E2018/61762 [↔](#)

Report**Information/Background:**

- 5 There is a long history regarding the status of the land occupied by the Suffolk Park Holiday Park and the permissibility of the activities that are undertaken on this land. However, the focus of this report is on the relevant resolutions pertaining to the Permanent Residents at Suffolk Beachfront Holiday Park.
- 10 Council at its Ordinary Meeting held on 28 June 2007 considered a report on review and management at Suffolk Beachfront Holiday Park.

Council resolved as follows in part (Resolution 07-364):

- 15 1. *That, pending reclassification of Lot 100 in DP 1023737 and/or adoption of a Plan of Management, Council not issue any leases for occupation of any 'permanent' sites on any part of the land.*

20 Since this Council resolution new or existing residents at the holiday park have been unable to enter into a new site agreement. This means any new residents have registered a Deed of Assignment if a member has passed away and there has been a transfer of the estate or a Deed of Consent and Assignment where a new resident has purchased the relocatable home.

25 Council at its Ordinary Meeting held 27 February 2014 considered a report on reclassification of Community land at Suffolk Beachfront Holiday Park. (Resolution **14-51**)

30 Council has recently received news of the DoPE's approval for the re-classification. Now this re-classification has been approved, resolution 07-364 no longer applies enabling Council to enter into new site agreements.

A project plan and communication strategy for current permanent residents for transition to new site agreements and regulation compliance has been developed (Refer attached).

Consultation:

35 Council Legal Advice and the Caravan and Camping Industry Association (CCIA) Advice has been obtained regarding the elements outlined in the Project Plan and Communication Strategy.

40 Suffolk Beachfront Holiday Park Caravan and Camping Ground Approval granted by the Council of Byron Shire on 9 July 2018 stipulate special conditions relating to compliance of long term sites within timeframes. These conditions are taken into consideration within the project plan and compliance program.

Consultation Conclusions Regarding Residential Site Agreements

- 45
- The new site agreement will offer security to the permanent residents and will not stipulate a "Term of Agreement", therefore will offer ongoing security to the residents and terminations could only be in accordance with the Act.
 - The Notice (non-fixed) method would be stipulated as the future site fee increase method.
 - 50 • The new site agreement offered would be in line with the Residential (Land Lease) Communities Regulation 2015 and use the Standard Residential Site Agreement Form.

55 Previous Council communications with the residents have suggested the current owners were concerned about their future tenancy security. The new site agreement would offer this security to the current home owners.

Consultation Conclusions Regarding Compliance of homes from a habitable, safety, structural stability, fire separation, health, amenity and infringement viewpoint

- 5
- Current caravan and camping ground approval requires a compliance audit of long term sites.
 - CCIA and Council legal services have both outlined clauses within the current Acts and Regulations that Council could rely on to action a Compliance Program.
- 10
- Sections within the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 and Residential (Land Lease) Communities Act 2013 provide clauses for Council to rely on when requesting compliance issues.

Statutory and Policy Compliance Implications

- 15
- Suffolk Beachfront Holiday Park is governed by the Residential (Land Lease) Communities Act 2013, Local Government (General) Regulation 2005 and Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

- 20
- The Caravan Park and Camping Ground Approval relies on special condition completion regarding compliance to the above Acts and Regulations within a 3 and 5 year timeframe.

Financial Implications

- 25
- Suffolk Beachfront Holiday Park is a self financing business activity. There is no funding contribution from the General Fund to the Holiday Parks and as such all costs are to be funded from the Holiday Park Reserves.

There is currently funding available in the Holiday Park Reserve budget and can fund resources/expertise to address/resolve the issues identified above.

Report No. 13.23 **Targa Restaurant Footpath Dining Application, 11 Marvell Street, Byron Bay**

Directorate: Infrastructure Services
5 **Report Author:** Andrew Pearce , Development Engineer
File No: I2018/1435
Theme: Infrastructure Services
 Local Roads and Drainage

10 **Summary:**

15 This report relates to a request for landowners consent from Council for footpath dining for the Targa Restaurant, located at the corner of Marvell Street and Middleton Street, Byron Bay.

The report details opportunities the development has to meet several strategies presented within the Byron Bay Master Plan as well as outlining a number of concerns associated with the request.

20 It is recommended that these concerns need to be addressed prior to granting consent or any approval for the Footpath Dining Application.

RECOMMENDATION:

That Council not grant landowners consent for Footpath Dining, until the following has occurred:

- a) **Consultation with Byron Bay Masterplan Guidance Group and modified decking design in accordance with guidance group recommendations.**
- b) **The applicant has submitted plans and documentation detailing how they will comply with and manage Council’s Policy 4.20 - Building Over Pipelines and Other Underground Structures.**
- c) **The applicant has submitted plans and documentation in relation to relocation of traffic and parking signage in conflict with the deck including details of the final signage locations and Council has indicated it is in agreement with the proposed relocations.**
- d) **The applicant to agree in writing to make payment to Council for the cost of Council to relocate traffic and parking signage and any other associated works prior to any other work being carried out on site by the applicant.**

25 **Attachments:**

- 1 Targa Deck Expansion proposal BMGG - Council Report 20 September 2018, E2018/74746 

Report

5 The application submitted to Council states the purpose of the application is to “Apply for the use of Council land to develop a removable deck over footpath and some garden area to use of under utilised area in the sun.”

It is considered the applicant would be able to construct the decking as an exempt development once Roads Act approval is granted to use the footway for dining purposes.

10 Byron Bay Masterplan

Due to time constraints consultation with Byron Bay Masterplan Guidance Group has not been undertaken. However, discussions with Council’s Place Manager and Major Works Planner identified potential opportunities for the application to address and meet some strategies outlined within the Byron Bay Town Centre Masterplan, such as:

- 15
1. Allowing space for street café seating / wider footpaths
 2. Minimising building bulk focus on the front of properties by encouraging dual aspect built form that fronts onto lanes / side streets
 3. Aiming to achieve diversity in commercial floor space size and encourage / support local businesses
 - 20 4. Establishing regular pilot activation trials on the town centre streets, laneways and carparks
 5. Enabling local businesses and activation experts to identify opportunities to revitalise under-utilised building edges and spaces

25 Potential Design Conflicts

Adequate clearance has been proposed between the dining area and the existing building.

30 The proposed deck will require the removal of a portion of garden vegetation and relocation of one sign post and associated traffic and parking signage. In addition, the decking is proposed over Council stormwater pipes and manhole. This is not considered a significant concern as:

- i) A manhole is proposed within the decking to allow access to the stormwater manhole, and
- ii) The deck is able to be deconstructed, as required, to provide access to the pipeline if future maintenance is required.
- 35 iii) Footing’s must be located and constructed in accordance with Council Policy 4.20 - Building over Pipelines and Other Underground Structures.

Financial Implications

40 The applicant is required to enter into a lease agreement with Council and pay for Council to relocate traffic and parking signage. Payment for sign relocations, based on a quotation to be provided by Council, to be made prior to any other works commencing on site. Any loss of revenue from modifications to Council’s pay parking scheme to be factored into calculations for lease payment amounts.

45

Statutory and Policy Compliance Implications

The following statutory and policies documents are considered applicable:

- 50
- Council Policy 4.20: Building over Pipelines and Other Underground Structures.
 - Roads Act 1993, Part 9, Division 1 – Footway Restaurants.
 - State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Subdivision 20A Footpaths – outdoor dining

Report No. 13.24 **Spelling Error of Historical Significance "Hollingsworth" Lane should be "Hollingworth" Lane Mullumbimby**

Directorate: Infrastructure Services
Report Author: Deanna Savage, Roads and Property Officer
File No: I2018/1526
Theme: Infrastructure Services
Local Roads and Drainage

5

10 **Summary:**

As per Res **18-034** – *Attachment 1 (12018/61)* (“Hollingsworth” Lane to be changed to “Hollingworth” Lane with 3 street signs requiring replacement.

15

RECOMMENDATION:

1. **That Council endorse the name change of “Hollingsworth” Lane to “Hollingworth” Lane Mullumbimby and send in the appropriate name change application “Erratum” to NSW Gazette to be published.**
2. **That Council have the 3 already erected street signs changed with the new spelling “Hollingworth” Lane with costs to come out of the General Fund for Sign Maintenance.**

Attachments:

- 1 Report 01/02/2018 Council Spelling correction for Denning, I2018/40 
- 20 2 Hollingworth Family Mullumbimby Historical Information to accompany report to Council for misspelling of Street Signs Mullumbimby, E2018/67648 
- 3 Letter to Historical Societies regarding Council Res 18-034 seeking applications to change spelling errors of historical significance., E2018/16903 
- 25 4 Email from Brunswick Valley Historical Society - Advising of The Misspelling of Hollingworth Lane Mullumbimby Signage (CRM 3312), E2018/67720 

Report

A report went to Council meeting 1 February 2018 *Attachment 1 (I2018/40)* requesting the correct spelling for Dening which was misspelt as “Denning”, all signage, maps and notices to be changed.
5 The resolution passed after this report went to Council extended this particular issue of spelling mistakes across the Shire and opened it up for Historical Societies to lodge applications to change these spelling errors of historical significance, *attachment 3 (E2017/16903)*

Resolution 18-034

- 10
1. *That Council ensure the correct spelling of Dening in all signage, maps and notices within the Byron Shire. Eg Dening Park is currently misspelt as Denning Park.*
 - 15 2. *That historical societies across the Shire be invited to lodge any applications to change spelling errors of historical significance.*

Susan Tsicalas, Treasurer/ Correspondence Secretary, of the Brunswick Valley Historical Society sent an email *Attachment 4 (E2018/67720)* to Council requesting the correction of Hollingsworth Lane Mullumbimby to its correct spelling “Hollingworth” Lane. *Attachment 2 (E2018/67648)* gives
20 an insight into the Hollingworth Family and contributions to Mullumbimby.

Financial Implications

25 Currently there are 3 signs with the misspelling that will need replacing. The cost of replacement will come out of General Fund for Sign Maintenance.

Statutory and Policy Compliance Implications

Not Applicable.

Report No. 13.25 Naming of 2 Unnamed Roads - Tims Lane in Broken Head and Blackwell Alley in Bangalow

Directorate: Infrastructure Services
Report Author: Deanna Savage, Roads and Property Officer
File No: I2018/1579
Theme: Infrastructure Services
Local Roads and Drainage

5

10 **Summary:**

To inform Council of the Gazettal of 2 unnamed roads in the Shire, Tims Lane in Broken Head and Blackwell Alley in Bangalow.

15

RECOMMENDATION:

That Council accept into the Byron Shire Street Name Register Tims Lane, Broken Head and Blackwell Alley, Bangalow as official Gazetted names.

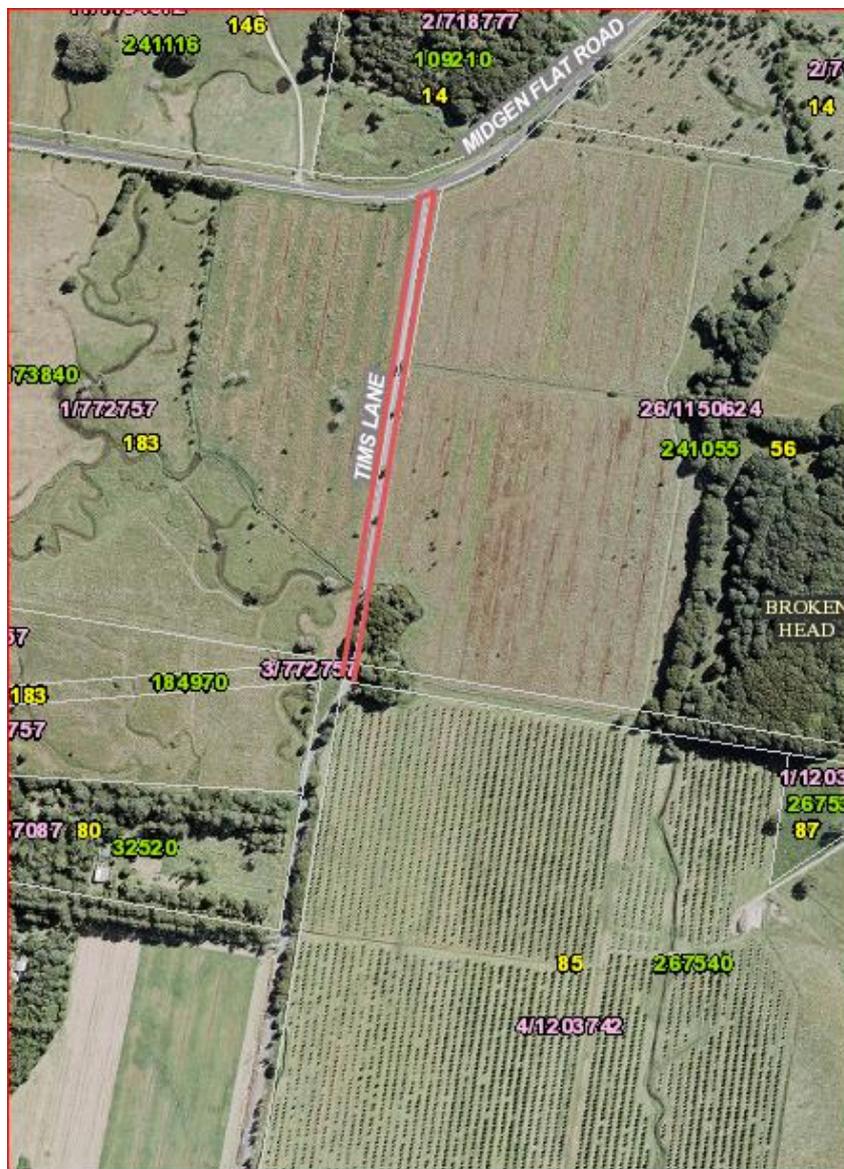
Attachments:

- 20 1 Letter from Adrian Zakaras (CivilTech Consulting Engineers) on behalf of T W Dorey & Sons - Naming of Unnamed Road off Midgen Flat Road as Dedicated by T W Dorey & Sons- request for DOREY Lane, E2016/78067 
- 2 Tims Lane in Broken Head and Blackwell Alley in Bangalow road naming Page 3958 NSW Government Gazette No 63 of 22 June 2018, E2018/71283 
- 25 3 Attachment to EMail Col Draper 19 June 2015 Proposal to Name BLACKWELL ALLEY unnamed lane off Station Street Bangalow, E2018/71346 

Report

Tims Lane

- 5 Council was approached by CivilTech Consulting Engineers Town Planner Adrian Zakaras on behalf of the Dorey family requesting the naming of unnamed road off Midgen Flat Road in August 2016. The request was for the road to be named either Dorey Lane or Tim's Lane (*Attachment 1 E2016/78067*).
- 10 The land on which the road is located was dedicated to Byron Shire Council by T.W Dorey and Sons who purchased the land in 1990 to service their large agricultural land holdings located on the Newrybar Valley. T.W Dorey and Sons have been farming land in the locality since the early 1970's and have a strong local presence. Historically, roads in the area have been named after local land owners i.e. Armstrong Lane and Phillips Road. T.W Dorey maintained and upgraded the
- 15 road before dedication to Byron Shire Council.



Tims Lane was officially Gazetted on the 22 June 2018 (*Attachment 2 E2018/71283*)

Blackwell Alley

A local resident Mr Col Draper, approached Council in 2015 requesting the naming of unnamed road off Station Street in Bangalow (*Attachment 3 E2018/71346*).

5 Blackwell is a historical name and Pioneer of Bangalow. Charles E Blackwell and family came from Balmain, buying McLelland’s General store business Bangalow in mid 1909. The fire of August 1911 destroyed five businesses including Charles E Blackwell and Son, however the store was quickly rebuilt and today it is Wax Jambu and Elder’s Real Estate. Charles died in 1944, aged 10 97, and is buried in Bangalow next to his wife. Blackwell was chosen to recognize the position of the store at the head of the Alley, the name on the stone at the Masonic Temple, and the high regard for Blackwell and Robinson families.



15 Blackwell Alley was officially Gazetted on the 22 June 2018 (*Attachment 2 E2018/71283*).

The naming of both Tims Lane and Blackwell Alley followed Road Naming Procedures set out by the Geographical Names Board and Roads Regulation 2008.

20 Initial submissions were received for the naming of both Tims Lane and Blackwell Alley.

Before moving forward the names were checked through the Geographical Names Board and passed by the LPI notifying Authorities.

25 Local residents affected directly by the new names were informed and both were advertised in the local Byron Shire News under Byron Shire Council Notices with a 28 day submission period. Neither names received any submissions of objection. Blackwell Alley received a submission of support for the name.

Authorities were notified accordingly and no submissions of objection were received.

The Geographical Names Board was then notified in both cases and they moved forward with the official Gazettal.

- 5 Council is currently organising the instillation of the road signs to conform with the official names.

Financial Implications

- 10 The installation of the signs is being undertaken next month and the expenses are to come out of the General Fund for Sign Maintenance.

Statutory and Policy Compliance Implications

- 15 *Roads Regulation 2008* – Division 2 Naming of roads
Roads Act 1993 – Sect 162 Naming of public roads
New South Wales Address policy – March 2015
New South Wales Addressing User manual – September 2016
New South Wales Online Road Naming System – Geographical Names Board of New South
20 Wales – June 2015

Report No. 13.26 **Renaming Northern Part of Granuaille Crescent on Bangalow Cemetery side of the Pacific Highway**

Directorate: Infrastructure Services
Report Author: Deanna Savage, Roads and Property Officer
File No: I2018/1580
Theme: Infrastructure Services
 Local Roads and Drainage

5

10 **Summary:**

That Council endorse the renaming of the Northern Part of Granuaille Crescent (Image 1) and submit the chosen name to the NSW Geographical Names Board for concurrence and Gazettal.

15

RECOMMENDATION:

1. **That Council endorse the renaming of the Northern part of Granuaille Crescent on the Bangalow Cemetery side of the pacific highway to “Pioneers Crescent”.**
2. **That the endorsed name be submitted to the NSW Geographical Names Board for concurrence, advertising and Gazettal in accordance with regulation requirements.**
3. **That new street name signs be erected and funded from the General Fund for Sign Maintenance.**

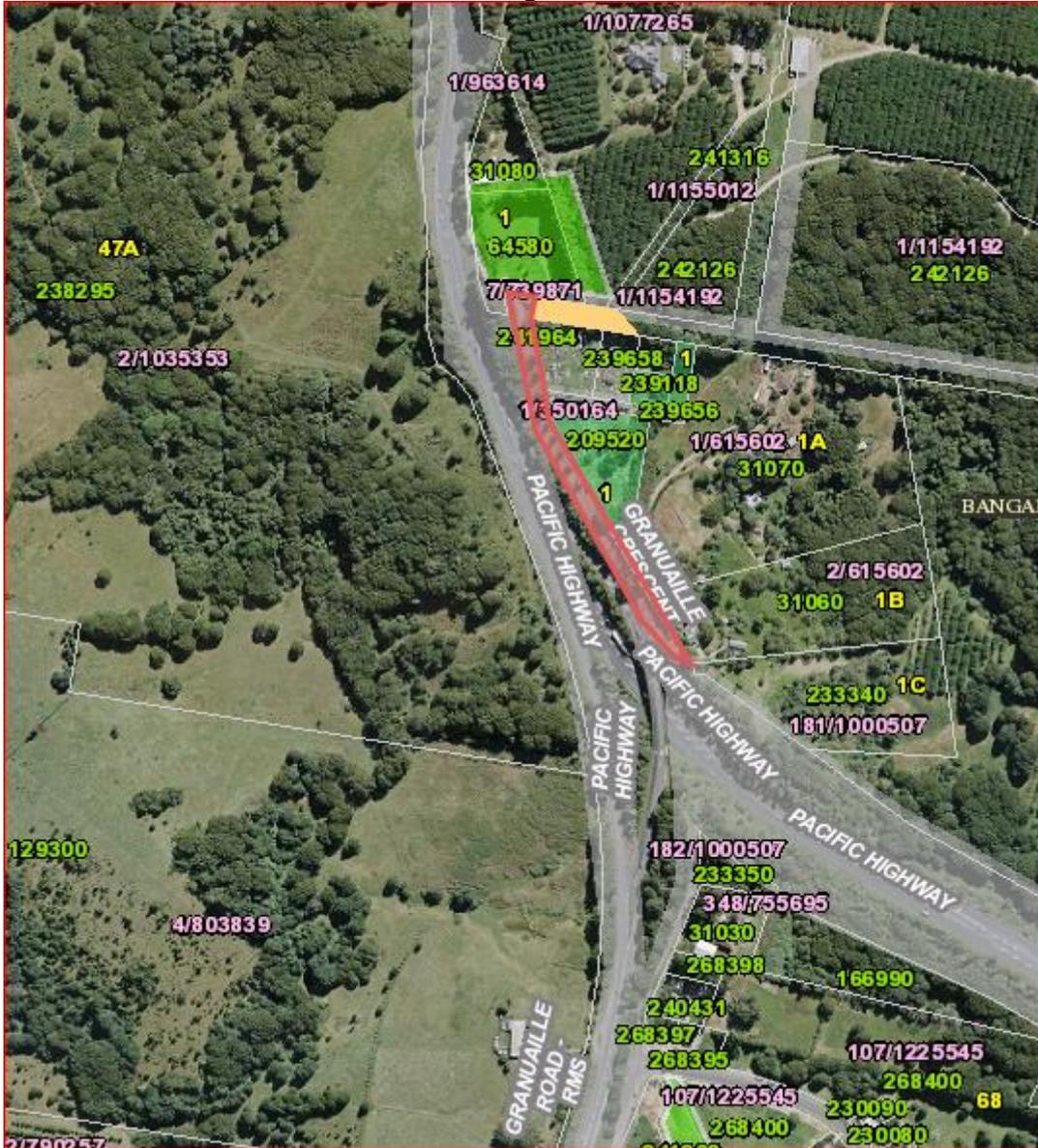
Attachments:

- 20 1 PDF version of E2016/71862 Email from Heidi Sawyer & Paul Croxson Requesting what their address is Lot 1 Pacific Highway Bangalow NSW or DP 1_1155012, E2018/71862 
- 2 Letter to residents re renaming of Part of Granuaille Crescent to allow for numbering of Properties without a number, E2018/34900 
- 3 PDF Version of E2018/62430 Email from Instant Steel regarding submission for name change - Part of Granuaille Crescent Bangalow, E2018/71824 
- 25 4 PDF Version of E2018_62429 _ Email from Mitch Carter regarding Submission for Name Change Part of Granuaille Crescent BANGALOW, E2018/71827 
- 5 PDF Version of E2018_68142 Email from Nadine Hood regarding name change part of Granuaille Crescent, E2018/71833 
- 30 6 Advertising 26 July 2018 Byron Shire News, E2018/43828 

Report

5 A submission was put to Council by a local resident requesting a number allocation to their newly purchased property at Lot 1 DP 1155012 accessed through Bangalow Cemetery, the Northern part of Granuaille Crescent. *Attachment 1 (E2018/71862)* Image 1 below

Image 1



10 The whole of Granuaille Crescent was tagged as a road naming and numbering issue in 2016 and residents have written into Council requesting the issue of naming and numbering of properties on both the Southern and Northern sides of Granuaille Crescent be further investigated. Staff in consultation with Land Information Officers considered this as a means to rectifying the numbering issues.

15 Letters were sent out to residents *Attachment 2 (E2018/34900)* informing them of a potential name change and offering some suggestions of names and requesting submissions or suggestions for the road names. The proposal was advertised in the Byron Shire News 26 July 2018 *Attachment 6 (E2018/43828)*.

20

Suggestions received were Bangalow Heights Road or Pioneers Crescent (submission in favour of Pioneers Crescent *Attachment 3 E2018/62430*) with other submissions suggesting Settlers Crescent *Attachment 5 (E2018/71833)*, Noble Lane/Crescent and Jelbon Lane/Crescent *Attachment 4 (E2018/71827)*.

5 There was one submission of objection for both Bangalow Heights Road and Pioneers Crescent *Attachment 5 (E2018/71833)* stating:-

10 Bangalow Heights Road "So unoriginal. Boring"
Pioneers Crescent "That sounds like a Soviet children's camp".

Name suggestions and submissions included the following:

- Bangalow Heights Road
- Pioneers Crescent
- 15 • Settlers Crescent
- Noble Lane/Crescent
- Jelbon Lane/Crescent

20 None are currently used in the Shire and all adhere to Geographical Names Board Standards.

Council Cemetery staff and staff in Infrastructure Services support Pioneers Crescent as a fitting name as it reflects the pioneering families and history attaching to those buried at the cemetery without favour to one pioneering family over another.

25 **Financial Implications**

Once the street name has been determined the funds for the erection of the signs to come out of the General Fund for Sign Maintenance.

30 **Statutory and Policy Compliance Implications**

Byron Shire Council Street Name Register.

35 Council is able to name roads in accordance with the authority provided in Part 10, Division 4, Section 162 of the *Roads Act 1993*.

The procedure of naming roads, is dictated by Sections 7 to 10 within Part 2, Division 7 of the *Roads Regulation 2008*, which is available in detail at:

40 <https://www.legislation.nsw.gov.au/#/view/subordleg/2008/156>

Report No. 13.27 **Mullumbimby Rugby League Club S64 Contributions**
Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2018/1703
5 **Theme:** Infrastructure Services
 Sewerage Services

Summary:

10 Council has advised that s64 contributions are due to be paid by the Mullumbimby Rugby League Football Club Limited (MRLFC) for charges levied under the *Water Management Act 2000* applicable as a condition of consent for the subject development application 10.2016.125.1.

15 At the ordinary meeting on 24 May 2018, Council deferred its decision on the matter pending a review of opportunities regarding use of recycled water on the site. It is possible to supply sufficient recycled water to the site that would potentially boost activity and increase amenity on the site.

20

RECOMMENDATION:

1. **That Council levy s64 contributions due to be paid by the Mullumbimby Rugby League Club for DA 10.2016.125.1, but at the 2004 rate to be paid over a 10 year period.**
2. **That Council enter into negotiations with the Mullumbimby Rugby League Club to supply recycled water to the site to a dual reticulation standard as a part of the Main Arm Recycled Water Scheme.**
3. **That the he cost of supplying the recycled water to the site to be borne by Council (Water and Sewer s64 Funds)**

Attachments:

- 25 1 Report 24/05/2018 Council Mullumbimby Leagues Club Amenities Facility Section 64 Contribution, I2018/802 
- 2 Council Report - Waiving of s64 Charges - Mullumbimby Rugby Leagues Club, E2014/70916 
- 3 Supporting Documents from Barry Stenner re Exemption Development Contribution for Mullumbimby Leagues Club received on 8 May 2018 (attachment to Council Report I2018/802), E2018/38624 

30

Report

At the Council meeting 24 May 2018, Council resolved:

5 **Resolution 18-315**

1. *That Council defer consideration of applying or waiving s64 contributions due to be paid by the Mullumbimby Rugby Leagues Club for Development Application 10.2016.125.1.*
- 10 2. *That prior to final consideration a report be brought to Council outlining opportunities to utilise Council's re-use water system and a report that considers the wider opportunities for supporting not-for-profit groups and their contribution requirements. (Richardson/Coorey)*

15 The Mullumbimby Rugby League Club utilises both bore water and rainwater tanks on its site in an efficient manner such that its use of town water is minimal. There are however, constraints on the quantity of these water sources available that makes it difficult for the club to expand its playing fields. The bore water is also high in iron that presents quality issues.

20 The extension of the Main Arm Recycled Water Scheme to the site would be consistent with the recently adopted Recycled Water Strategy 2017-27 and would allow the club to consider expansion of their playing fields which would be beneficial to both the club and the community.

25 To provide recycled water to the quality required for a dual reticulation systems fit for playing field irrigation and toilet use would require the addition of a sand filter and chlorine dosing system to the spur line that would feed the sporting fields. The total cost of this work including the pipeline to the sporting fields would be approximately \$350,000.

30 The increased capacity provided by the recycled water line would allow the club to expand its playing field activities. This increased activity would support the club in its s64 contribution requirements.

Financial Implications

35 Should the Mullumbimby Rugby League Club want to access Council's recycled water scheme, the funds to extend the scheme would be sourced from the Water and Sewer s64 funds.

Statutory and Policy Compliance Implications

40 The application of s64 contributions upon DA10.2016.125.1 has been consistent the Water Management Act 2000, Water Management (General) Regulation 2011, Council's Water Supply and Sewerage Developer Servicing Plan's and also the Equivalent Tenement Policy.

45 The recommendation does constitute financial assistance as it is applying fees at a reduced rate and therefore will require 28 days public notice.

Report No. 13.28 **Mullumbimby Skate Park**
Directorate: Infrastructure Services
Report Author: Michael Matthews, Manager Open Space and Resource Recovery
File No: I2018/1714
5 **Theme:** Infrastructure Services
 Open Space and Recreation

Summary:

10 The installation of skate park lighting at the Mullumbimby Skate Park as per Res **17-347**, has been designed and re-costed identifying a shortfall of funds to a value of \$20,000 over the approved budget of \$30,000.

15 Additional budget is required in order for the project to achieve the required lux levels across the skate park surface, lighting access control as advised by NSW Police in response to recommendations provided from a *Crime Prevention through Environmental Design (CPTED)* assessment and necessary upgrades of existing electrical infrastructure connections.

20 In addition to the additional funding required for lighting, it has been identified through engagement with users of the facility, that surface renewal is necessary to improve its safe use.

25 A budget for such renewal work has been identified as \$70,000. As a budget to fund this renewal work has not been identified at this point in time, funding sort for this work will be subject to a future report.

RECOMMENDATION:

That Council allocate an additional \$20,000 from developer contributions (s94) in the Mullumbimby Open Space account to fund the current funding shortfall for the lighting project upgrade at the Mullumbimby Skate Park.

30 **Attachments:**

1 Letter from NSW Police Crime Prevention Officer - Site Crime Risk Assessment of the Mullumbimby Skate Park and Recreation Grounds, S2018/5675 

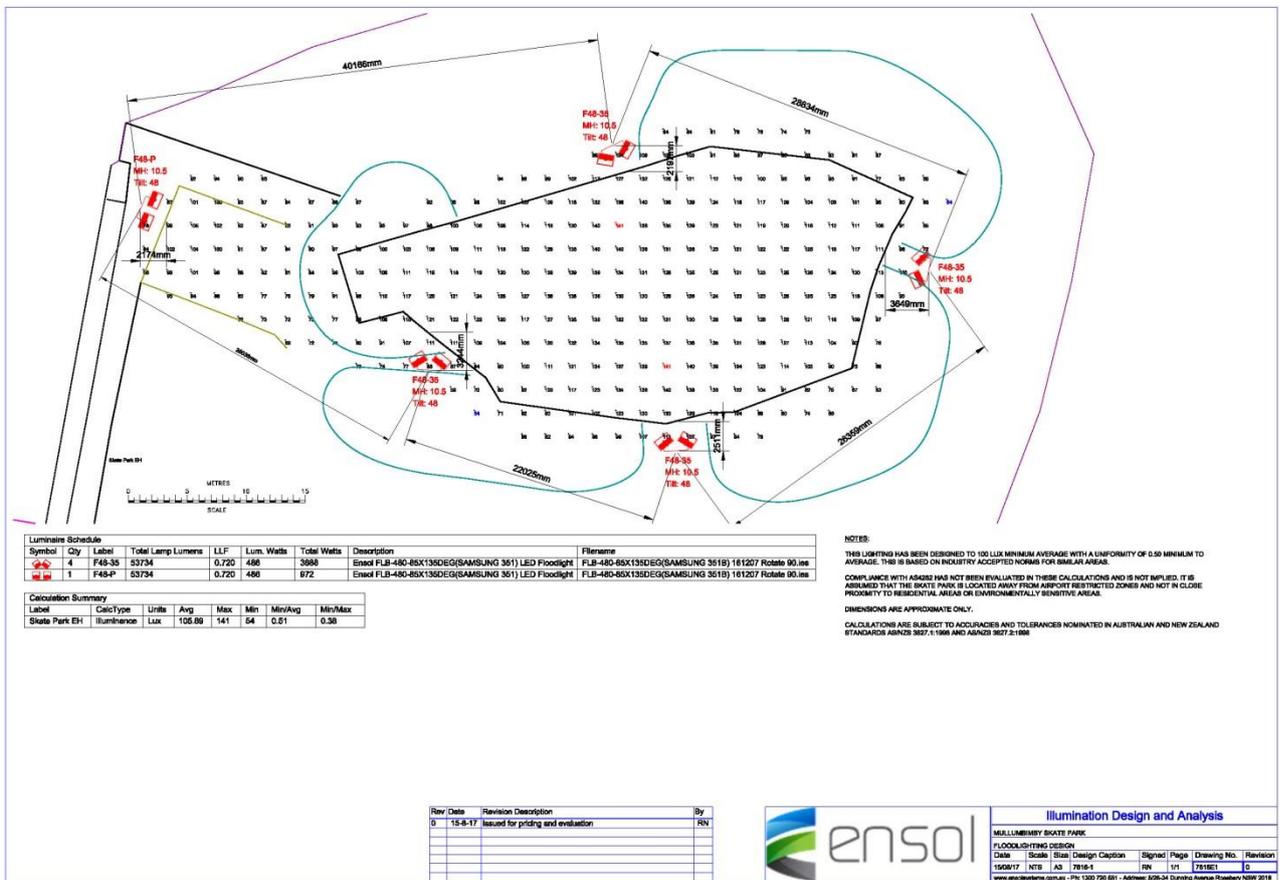
35

Report

At Council's ordinary meeting on 24 August 2017 Council resolved (Res 17-347) that:

- 5 Council approve the installation of skate park lighting and upgrade of existing lighting and that:
- a) Additional consultation be undertaken with local residents and the skating community
 - b) \$30,000 is allocated from s94 funds for the project
 - c) a review be provided after 12 months
 - d) the fade facility to be extended to two minutes
 - 10 e) the lighting is turned off at 9.00pm

The project brief was outsourced to project manage the design, supply and installation of flood lighting for the skate park.



15 During the process of evaluation and consultation the NSW police, the Tweed Byron crime prevention officer became involved due to public concerns raised in relation to Crime Prevention through Environmental Design (CPTED) considerations for the project.

20 Manager Open Space and Resource Recovery worked with the NSW Police to address perceived concerns with the project.

25 A CPTED assessment was completed (attached) with NSW Police with the following recommendations as advice in order to reduce the risk of offences and anti-social behavior occurring at the location:

- *The first issue of installing lighting at the skate park would need to be closely monitored on a trial basis, to ensure there is no increase of criminal activity at the location because of lighting.*
- 5 • *It would not be recommended to light the area on a permanent basis every night. It's suggested that the lighting system be installed with restricted access to those who register with council to have access to the lighting for legitimate purposes only. Also have a timer placed on the lighting for 30 to 60-minute intervals.*
- 10 • *If council's desire is to increase community activity in the area, police would recommend that the current parking area be improved to reduce the risk of trips and falls because of the uneven surface. Lighting of the parking area would also be beneficial to provide better security at night if the areas activities area increased.*
- 15 • *To assist with the increased usage of the location improved access to and from the skate park is required. Currently access is limited to walking across playing fields and grassed areas. In wet weather or immediately after rain, the access to the skate park would be greatly improved if there were concrete foot paths leading to the desired areas from the car park.*
- 20 • *Surveillance of the skate park is almost non-existent due to the distance from Jubilee Avenue, being surrounded on two sides by open paddocks with very little to no access and because of the over grown and inappropriately placed garden beds that prevent the clear view of the Skate Park. There is very little council can do regarding passive surveillance of the location, as there is no residential housing or community access overlooking the location and the distance from the only passing street being Jubilee Ave. By removing or significantly reducing the current garden beds would assist in the surveillance of the area.*
- 25 • *If the council desires to increase community usage of the location the general up keep of the structures currently at the skate park would need to be repaired and improved. The addition of well-appointed and maintained facilities near the skate park such as family friendly facilities for the general community for example BBQ's, seating, shaded areas, toilets and even playgrounds would make the space more attractive to the general community. By increasing the communities use of the space on a more frequent basis, the community would provide a form of self management of appropriate behavior at and near the skate park.*
- 30 • *Police would suggest that the entire sporting fields and surrounding area is in need of significant upgrading to ensure the community feels safe and wants to attend the location. By limiting the upgrades to just lighting the skate park, this will only attract people to the area at night which would greatly increase the potential risk and liability of the council due to the increased patronage and potential for incidents at the location due to their poor state of repair of the run down facilities.*
- 35 • *Police would suggest that the entire sporting fields and surrounding area is in need of significant upgrading to ensure the community feels safe and wants to attend the location. By limiting the upgrades to just lighting the skate park, this will only attract people to the area at night which would greatly increase the potential risk and liability of the council due to the increased patronage and potential for incidents at the location due to their poor state of repair of the run down facilities.*
- 40 • *Police would suggest that the entire sporting fields and surrounding area is in need of significant upgrading to ensure the community feels safe and wants to attend the location. By limiting the upgrades to just lighting the skate park, this will only attract people to the area at night which would greatly increase the potential risk and liability of the council due to the increased patronage and potential for incidents at the location due to their poor state of repair of the run down facilities.*

45 After several discussions between Project Manager (consultant), Council staff and NSW Police it was decided that at a minimum access control to lighting was required to alleviate any concerns the police and community had voiced.

The design was modified to include an illuminator control within the lighting circuit to enable minimum access control.

50 Revised costing for the lighting installation is \$50,000 which is 40% over adopted budget of \$30,000. This additional costs is attributed to the current state of electrical infrastructure required to be connected into, illuminator inclusion, materials and labour.

55 During consultation with users of the facility, a request was made for consideration of renewal of the skate park surface for reasons of its safe use.

Staff has investigated the cost of such renewal works with specialist skate park renewal and repair providers with a budget of \$70,000 being required. This budget has not been identified at this point in time.

- 5 It should be noted that the replacement of this facility has been estimated at \$600,000.

Financial Implications

- 10 To proceed with the lighting project, a further \$20,000 is required from the Mullumbimby Open Space s94 account.

Statutory and Policy Compliance Implications

- 15 Byron Shire Section 94 Plan
Crime Prevention through Environmental Design (CPTED)

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Audit, Risk and Improvement Committee Meeting held on 16 August 2018

5 **Directorate:** Corporate and Community Services
Report Author: David Royston-Jennings, Strategic Risk and Improvement Coordinator
File No: I2018/1588
Theme: Corporate Management
Corporate Services

10

Summary:

This report provides the minutes and recommendations of the Audit, Risk and Improvement Committee Meeting held on 16 August 2018 for determination by Council.

15

RECOMMENDATION:

1. That Council note the minutes of the Audit, Risk and Improvement Committee Meeting held on 16 August 2018.
2. That Council adopt the following Committee Recommendation(s):

Report No. 4.1 Internal Activity & Progress Report - July 2018
File No: I2018/1270

Committee Recommendation 4.1.1

1. That the Audit, Risk and Improvement Advisory Committee note the Internal Audit Activity Report – July 2018 (#E2018/67716).
 2. That the Audit, Risk and Improvement Advisory Committee note the updated Internal Audit Plan (#E2018/64849).
3. That Council adopt the following Committee Recommendation(s):

Report No. 4.2 EPA Licence Audit Review
File No: I2018/1311

Committee Recommendation 4.2.1

1. That the Audit, Risk and Improvement Committee note the Environmental Protection Authority (EPA) 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 Confidential Attachment 1 (#E2018/64759).
3. That the report and Confidential Attachment 1 of the closed part of the meeting remain confidential.

20

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

Report No. 4.3 Business Continuity Management Strategy

File No: I2018/1310

Committee Recommendation 4.3.1

That the Audit, Risk and Improvement Advisory Committee:

- 1. Note the presentation on the draft Business Continuity Management Strategy.**
- 2. Note the draft Business Continuity Management Strategy.**

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

Report No. 4.4 2018 Interim Audit Management Letter

File No: I2018/1358

Committee Recommendation 4.4.1

That the comments provided by Management in response to matters raised in the 2018 Interim Audit Management Letter be noted by Council.

5 Attachments:

- 1 Audit, Risk and Improvement Committee Minutes 16 August 2018 PDF, E2018/69986 

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Report

The Audit, Risk and Improvement Committee Meeting of 16 August 2018 considered the following items and their minutes are presented for determination by Council:

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Report 4.1 - Internal Activity & Progress Report - July 2018

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The Committee received a status report provided by Council's internal auditors OCM, which included status of planned audit reviews in the adopted internal audit plan, an overview of completed audits in the 2017/18 financial year, and updates on tasks associated with completed audits (i.e. risk management and fraud and corruption controls).

15

The Committee discussed the progress made against audit recommendations since the last meeting, noting that 22 recommendations had been completed. Council's internal auditor OCM provided an overview of the new format in which the information was presented. The Committee were informed that Council would be working in close partnership with OCM to report regularly to the Executive Team on progress against audit recommendations.

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Report 4.2 - EPA Licence Audit Review

Council's Internal Auditors conducted an internal audit review of Environmental Protection Authority (EPA) Licence Controls during June 2018. The Committee received a report on the findings made by OCM and agreed recommendations with Council's management.

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Report 4.3 - Business Continuity Management Strategy

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The Committee received a presentation from the Strategic Risk and Improvement Coordinator on Council's progress towards the implementation of a business continuity management strategy, noting that business impact analyses were underway with management throughout the organisation, the results of which will inform business continuity plans.

35

The Committee discussed the importance of having recovery plans in place for the community and requested an update on work being done in this space. Councillors will receive an update on the Local Recovery Plan at the October Strategic Planning Workshop.

40

Report 4.4 - 2018 Interim Audit Management Letter

Council received an Interim Audit Management Letter from the External Auditor, the Audit Office of NSW, relating to the 2018 Audit. The letter details three items for management to consider and provided recommendations to improve internal controls and systems. The three findings are as follows:

45

- Accounts payable Masterfile maintenance
- Payroll Masterfile maintenance
- Personal data handling framework

50

The Committee discussed the recommendations and requested regular updates of Council's performance and progress against recommendations received from Council's external auditor.

The minutes from this meeting are available on Council's website at the following link:

https://byron.infocouncil.biz/Open/2018/08/ARIC_16082018_MIN_794.PDF

Financial Implications

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 16 August 2018.

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Statutory and Policy Compliance Implications

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 16 August 2018.

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Report No. 14.2 **Report of the Finance Advisory Committee Meeting held on 16 August 2018**

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2018/1690

Theme: Corporate Management

Financial Services

10 **Summary:**

This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 16 August 2018 for determination by Council.

RECOMMENDATION:

15 1. **That Council note the minutes of the Finance Advisory Committee Meeting held on 16 August 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 30 June 2018

File No: I2018/942

Committee Recommendation 4.1.1

1. **That the update report to 30 June 2018 on the 2017/2018 Financial Sustainability Plan Action Implementation Plan (E2018/43656) be received and noted.**

2. **That a separate Financial Sustainability Plan no longer be developed from the 2018/2019 financial year onwards as it will be incorporated into Council's Long Term Financial Plan.**

3. **That Council adopt the following Committee Recommendation:**

Report No. 4.2 Quarterly Update - Implementation of Special Rate Variation

File No: I2018/1442

Committee Recommendation 4.2.1

That the Finance Advisory Committee note the quarterly update on the Special Rate Variation Implementation as at 30 June 2018.

4. **That Council adopt the following Committee Recommendation:**

Report No. 4.3 Carryovers for inclusion in the 2018/19 Budget

File No: I2018/1522

Committee Recommendation 4.3.1

That the Finance Advisory Committee recommend to Council to note:

That the works and services, and the respective funding shown in Attachment 1 (#E2018/66991) be carried over from the 2017/2018 financial year and that the carryover budget allocations be adopted as budget allocation revotes for inclusion in the 2018/2019 Budget Estimates.

5. That Council adopt the following Committee Recommendation:

Report No. 4.4 Budget Review 1 April 2018 to 30 June 2018
File No: I2018/1524

Committee Recommendation 4.4.1

That the Finance Advisory Committee recommend to Council to note:

- 1. That Council authorises the itemised budget variations as shown in Attachment 2 (#E2018/67079) which includes the following results in the 30 June 2018 Quarterly Review of the 2017/2018 Budget:**

- General Fund - \$0 change in Unrestricted Cash Result**
- a) General Fund - \$9,795,300 increase in reserves**
 - b) Water Fund - \$1,899,300 increase in reserves.**
 - c) Sewerage Fund - \$3,461,600 increase in reserves**

6. That Council adopt the following Committee Recommendation:

Report No. 4.5 2018/19 Annual Procurement Plan
File No: I2018/1533

Committee Recommendation 4.5.1

That the Finance Advisory Committee note the procurement savings achieved in 2017/18 and the proposed program for 2018/19 as per Attachment 1 (E2018/63063)

7. That Council adopt the following Committee Recommendation:

Report No. 4.6 Long Term Financial Plan 2018-2028
File No: I2018/1540

Committee Recommendation 4.6.1

That the Finance Advisory Committee note:

- 1. the Working Draft of the 2018-2028 Long Term Financial Plan as provided at Attachment 1 (#E2018/66626).**
- 2. that further work on the Draft 2018-2028 Long Term Financial Plan be undertaken with a further revision to be provided to the Finance Advisory Committee for consideration at its 15 November 2018 Meeting.**

Attachments:

- 1 Minutes of the Finance Advisory Committee held 16 August 2018, I2018/1692 

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Report

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 16 August 2018 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2018/08/FAC_16082018_AGN_790.PDF

The Committee considered the following items.

Report 4.1 – 2017/18 Financial Sustainability Plan – Update on the Action Implementation Plan as at 30 June 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. The Committee also considered that the principles contained in the 207/2018 Financial Sustainability Plan and previous version of the Financial Sustainability Plan have now been incorporated into Council's Integrated Planning documents and will form part of guiding policy for the Long Term Financial Plan going forward. This will mean that there will not be any future Financial Sustainability Plans produced beyond the 2017-2018 Financial Sustainability Plan and that there will be no further quarterly reporting to the Finance Advisory Committee.

Report 4.2 – 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 June 2018, Council had expended 86.23% of the overall program and of the five capital works projects in the program, three are completed.

Report 4.3 – Carryovers for inclusion in the 2018/19 Budget

The Committee was presented with the schedule of budget carryovers from the 2017/2018 financial year to be carried forward to 2018/2019. Total carryovers were \$12,357,500 up from \$11,924,000 from 2017/2018.

The report also provided details of eleven projects with a value greater than \$150,000 still in progress. Major projects include the five bridges project and the Bayshore Drive/Ewingsdale Road Roundabout.

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 23 August 2018.

Report 4.4 – Budget Review 1 April 2018 to 30 June 2018

The Committee discussed the 30 June 2018 Quarter Budget Review noting the proposed amendments to the 2017-2018 Budget and recommended their adoption to Council that occurred at the 23 August 2018 Ordinary Meeting. Of note in the report were the following major items:

1. Retention of a balanced projected budget result as at 30 June 2018.
2. Maintenance of the unrestricted cash balance of \$1,145,200 being greater than Council's \$1,000,000 benchmark.

The 30 June 2018 Quarter Budget Review Report is closely related to Report 4.3 concerning Carryovers for inclusion in the 2018/19 Budget. The 30 June 2018 Quarter Budget Review takes into consideration the carryover amounts by reducing the 2017-2018 Budget Estimates accordingly.

5 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 23 August 2018.

10 Report 4.5 – 2018/19 Annual Procurement Plan

This report provided the Finance Advisory Committee with the proposed procurement plan for the 2018-2019 financial year along with an outline of procurement achievements from the 2017-2018 financial year.

15 Key procurement achievements from 2017-2018 include:

- \$1.2M saved (over 3% of materials and contracts budget);
- Implementation of Tenders Online providing, for the first time, a single place where all of Council's goods/works/services contracts information can be found;
- Introduction of purchasing cards, reducing the administrative burden of low value purchases;
- Improved social and sustainability outcomes from procurement activities.

25 Focus areas for 2018-2019 include:

- Staff training
- Procurement of suppliers under LGP contract
- Contract management framework
- Stores operation
- Tenders for 15 expiring contracts, plus others for identified compliance or savings.

Report 4.6 – Long Term Financial Plan 2018-2028

35 This report provided the Committee with the first version of the 2018-2028 Long Term Financial Plan. The Plan incorporates forward projections for ten years utilising the 2018-2019 adopted original budget estimates as the base year. One additional scenario was also included which was the base case plus the remediation of the Mullumbimby Hospital site.

40 In addition the Plan now incorporates the principles from the Financial Sustainability Plan and also a policy position on rules for budget development.

A further revision of the 2018-2028 Long Term Financial Plan will be provided to the 15 November 2018 Finance Advisory Committee Meeting.

45 The Committee Recommendations are supported by management and are provided in the attachment to this report.

Financial Implications

50 As per the Reports listed within the Finance Advisory Committee Meeting of 16 August 2018.

Statutory and Policy Compliance Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 16 August 2018.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.3 Report of the Transport and Infrastructure Advisory Committee Meeting held on 16 August 2018

5 **Directorate:** Infrastructure Services
Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services
File No: I2018/1675
Theme: Infrastructure Services
10 Roads and Maritime Services

Summary:

15 The attachment to this report provides the minutes Transport and Infrastructure Advisory Committee Meeting held on 16 August 2018 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Transport and Infrastructure Advisory Committee Meeting held on 16 August 2018.**

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

Report No. 4.1 Transport Asset Management Plan - Customer Levels of Service Survey

File No: I2018/1315

Committee Recommendation 4.1.1

That:

1. The Transport Customer Levels of Service Report is noted.
2. Council pursues other mediums such as short videos/messages to continue to educate and engage with the community about customer levels of service, asset condition and challenges associated with the transport network as detailed in the draft Transport Asset Management Plan (TAMP).
3. The Levels of Service detailed in the Transport Asset Management Plan (Section 4) are adopted in accordance with the requirements of the 2018/19 adopted Operations Plan, Action 1.1 (b).
4. That the Transport and Infrastructure Advisory Committee continue to consider the Levels of Service issues such as: driver behaviour, lower speed limits, non-car owning road users, bus users, development of the Bike Strategy and Action Plan (Bike Plan) and Pedestrian Access and Mobility Plan (PAMP).

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

Report No. 4.2 Flight Neighbourly Procedure Tyagarah

File No: I2018/1334

Committee Recommendation 4.2.1

That Council note the Fly Neighbourly Procedure for Tyagarah Airfield.

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

Report No. 4.3 Status Update - Bike Plan and PAMP

File No: I2018/1520

Committee Recommendation 4.3.1

That Council note the status update on the development of the Bike Strategy and Action Plan (Bike Plan) and Pedestrian Access and Mobility Plan (PAMP).

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

**Report No. 4.4 2018/19 Local Roads Capital Works Program and 2019/20 to 2028/29
ten (10) year Capital Works Program - All Assets**

File No: I2018/1523

Committee Recommendation 4.4.1

That Council note the actions taken in delivering the 2018/19 Local Roads Capital Works Program.

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Attachments:

- 1 Minutes 16/08/2018 Transport and Infrastructure Advisory Committee, I2018/1545 

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Report

The attachment to this report provides the minutes of the Transport and Infrastructure Advisory Committee Meeting (TIAC) of 16 August 2018 for determination by Council.

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The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2018/08/TIAC_16082018_AGN_799_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 Transport and Infrastructure Advisory Committee Meeting of 16 August 2018.

20 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Transport and Infrastructure Advisory Committee Meeting of 16 August 2018.

CONFIDENTIAL REPORTS - GENERAL MANAGER

Report No. 16.1 **CONFIDENTIAL - Grant of lease to Preferred Tenderer for the operation and management of the Byron tennis courts**

5 **Directorate:** General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2018/1539
10 **Theme:** Corporate Management
 Corporate Services

Summary:

15 Council issued a Tender (2018-0004) for a five (5) year lease with a five (5) year option to renew for the operation and management of the Byron tennis courts in folio 444/28/75827, located at the corner of Tennyson and Carlyle Street Byron Bay.

Tender 2018-004 was publically advertised on 12 June 2018 and closed on 2pm on 16 July 2018.

20 Tender submissions were assessed by an independent Evaluation Panel between 23 July and 20 August 2018 in accordance with the Tender Evaluation Plan. This report recommends that the Evaluation Panel's preferred tendered response is granted a five (5) year lease with a five (5) year option to renew for the operation and management of the Byron tennis courts located at the corner of Tennyson and Carlyle Street Byron Bay.

25 The report also recommends notification of the proposed lease. This is required by section 47 LGA.

30 **RECOMMENDATION:**

- 35 1. **That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Grant of lease to Preferred Tenderer for the operation and management of the Byron tennis courts.**
- 40 2. **That the reasons for closing the meeting to the public to consider this item be that the report contains:**
 - 45 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:**

the report contains confidential commercial information.

Attachments:

- 50 1 Tender 2018-0004 Signed Evaluation Report., E2018/71216
- 2 Tender 2018-0004 Probity Report for lease of Byron Tennis Facility 30 Aug 2018, E2018/72269

BYRON SHIRE COUNCIL

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender 2018-0018 - Multi Use Byron Shire Rail Corridor are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d)i of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 1 Confidential - CONFIDENTIAL 24.2017.33.1 - 2018-0018 Multi Use Rail Corridor Tender Evaluation Report - Council Meeting September 2018, E2018/74785

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.3 **CONFIDENTIAL - Reuse Irrigation**
Directorate: Infrastructure Services
5 **Report Author:** Malcolm Robertson, Team Leader Open Space
File No: I2018/1577
Theme: Infrastructure Services
 Open Space and Recreation

10 **Summary:**

On 19 February 2018 the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2018-0025 Supply and Install In-ground Irrigation.

The Request for Tender was advertised from 26 June to 27 July. Tenders were received from the following organisations:-

- Fernie Holdings Pty Ltd (Thinkwater Northern Rivers)
- Turf Irrigation Services
- WNL3 Family trust as trustee for Waterworx Australia Pty Ltd

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 2018-0025.

30 **RECOMMENDATION:**

1. That pursuant to Section 10A(2)(d)iii of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Reuse Irrigation.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
35 a) information that would, if disclosed, reveal a trade secret
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:
40
Contains information that is commercial in confidence relating to a competitive tender process.

45 **OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:**

RECOMMENDATION:

- 50 1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Reuse Irrigation are to be treated as confidential as they relate to matters specified in s10A(2)(d)iii of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 1 Confidential - 2018-0025 - Supply and Install In-ground Irrigation Request for Tender - Evaluation Report, E2018/72547

5