



Report on a Public Hearing into the  
Proposal to alter the Categorisation of  
Railway Park from "Community – Park" to  
"Community – General Community Use".

Prepared for Byron Shire Council

**PLANNERS NORTH**, September 2018

## COMPLIANCE AND USAGE STATEMENT

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### Certificate

I certify that I have prepared the content of this report and it is true in all material particulars and does not, by its presentation or omission of information, materially mislead.

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## 1. INTRODUCTION

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Kate Singleton RPIA of PLANNERS NORTH was engaged by Byron Shire Council as an independent Chair for a Public Hearing into the proposal to alter the categorisation of Railway Park Byron Bay from "Community – Park" to "Community – General Community Use". The Public Hearing was held on Tuesday 21 August 2018 at the Byron Shire Council Chambers in Mullumbimby and commenced at 5.30pm.

Verbal submissions were made by seven (7) people. Written submissions received by Council prior to the Public Hearing have also been reviewed and are provided at **Appendix A**.

This report provides a summary of the submissions made to the Public Hearing, a response to the issues raised by the attendees and provides recommendations to Council.

### 1.1 THE PUBLIC HEARING PROCESS

Section 35 of the *Local Government Act 1993* requires community land to be used and managed in accordance with:

- 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; and
- the provisions of the Local Government Act.

Section 36(1) requires Councils to prepare a Draft Plan of Management for community land. A Plan of Management for community land must identify the category of the land in accordance with the provisions of Section 36(3)(a).

Section 36(4) requires land to be categorised as one or more of the following:

- a) a natural area;
- b) a sports ground;
- c) a park;
- d) an area of cultural significance; or
- e) general community use.

Section 40A of the Act provides as follows:

*"(1) The council must hold a public hearing in respect of a proposed plan of management (including a plan of management that amends another plan of management) if the proposed plan would have the effect of categorising, or altering the categorisation of, community land under section 36 (4)."*

Section 47G of the *Local Government Act 1993* requires the Public Hearing to be chaired by an independent person. The person presiding at the Public Hearing must not be a Councillor or employee of the council or a person who has been a Councillor or employee at anytime during the 5 years before the date of his or her appointment.

This section also requires council to make a copy of the report available for inspection by the public no later than 4 days after it has received the report from the person presiding at the Public Hearing.

This Public Hearing was chaired by Kate Singleton of PLANNERS NORTH.

## 2. BACKGROUND

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The Draft Plan of Management for Byron Bay Railway Park to alter the categorisation of the land from "Community – Park" to "Community – General Community" Use was publicly exhibited for a period of 28 days, ending on 31 August 2018.

Council's Plan of Management – Parks and Gardens adopted in June 1996 dealt with all Council parks in the Shire including Railway Park. In February 2005 Council adopted the Generic Plan of Management for Community Land Categorised as Park. Railway Park was not included in the revised Plan of Management. The intent of the draft Plan of Management is to ensure that the management and use of the park is undertaken in accordance with the requirements of the *Local Government Act 1993*.

### 2.1 THE LAND

Railway Park comprises Lot 2 DP 820749. The site is bounded by Jonson Street to the east and the rail corridor to the west. The park is presently zoned RE1 Public Recreation in accordance with the provisions of Byron Local Environmental Plan 2014. The objectives of the RE1 Public Recreation Zone are:

- 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; and
- To protect and enhance the natural environment for recreational purposes.

Land uses permitted with consent in the RE1 Public Recreation Zone include a range of recreational uses as well as commercial land uses.

### 2.2 THE PROPOSED CATEGORISATION OF RAILWAY PARK

Railway Park is presently classified as Community Land in accordance with the provisions of the *Local Government Act 1993*. The land is however not presently categorised under the Act. The proposed Plan of Management provides for the categorisation of the land as general community use. Section 361 of the *Local Government Act 1993* provides the following core objectives for land categorised as general community use.

***"361 Core objectives for management of community land categorised as general community use***

*The core objectives for management of community land categorised as general community use are to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:*

*(a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and*

*(b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities)."*

A Landscape Concept Plan has been prepared for the upgrade of Railway Park and was endorsed by Council on 14 December 2017. The vision of the concept is identified as providing for "essential public space in the town where the community can connect with each other and their town – a meeting place".

A licence agreement for the occupation of community land for artisan markets applies to the land. This agreement is between Byron Shire Council and Byron Bay Community Association Inc. and runs from 1 November 2016 to 31 October 2021. Present uses of Railway Park as identified in the draft Plan of Management include:

- Amenities building;
- Passive recreation including a children's playground;
- Cultural/ artistic space;

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- Rotunda used by Byron Environment Centre for community information, education and as a community access point for environmental programmes activities etc;
- General infrastructure; and
- Social/ economic space – market use.

## **3. PUBLIC HEARING**

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The Public Hearing was held on Tuesday 21 August 2018 in the Byron Shire Council Chambers. The Public Hearing commenced at 5.30pm.

### **3.1 ATTENDEES**

The following attendees were present at the Public Hearing:

- Helen Buckley,
- Luke Mooney,
- David Michie,
- Jenny Coman,
- John Lazarus,
- Kathryn McConnochie;
- Sharon Curry,
- Vos Janelle,
- Jo Faith,
- Jeff Bensley,
- Liz Levy.
- Councillor Simon Richardson,
- Councillor Jan Hackett,
- Councillor Cate Coorey,
- Councillor Alan Hunter, and
- Councillor Paul Spooner.

#### **Byron Shire Council Staff**

- Rob Van Iersel,
- Jamie Van Iersel,
- Claire McGarry, and
- Shannon Burt.

### **3.2 VERBAL SUBMISSIONS**

The following attendees made verbal submissions to the public hearing and the issues raised in their submissions are addressed as follows:

1. Liz Levy,
2. John Lazarus,
3. Jo Faith,
4. Paul Spooner,
5. Sharon Curry,

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6. Jeff Bensley, and

7. David Michie

## 1. Liz Levy

- Current classification should be retained.
- The uses identified in the documentation as examples of those which will be permitted by the revised categorisation have been selected to pacify “lefties” into submission e.g. protest rallies and markets.
- The recent history related to the precinct is cause for concern, for example the LEP for the activation of the railway corridor provides for stalls, pop ups and start ups, retail and office on a temporary basis for up to 52 days a year. This was opposed by businesses, the local community and the Master Plan Leadership Group.
- Elements of that revised Planning Proposal and reclassification of Railway Park may be another attempt at implementing the outcomes.
- No cost – benefit analysis.
- The area has existing economic activity.
- The existing railway building has been overlooked. The Station building should not be hacked off for commercial lease for a restaurant and should be maintained for community use.
- There is a current revenue base for the land – the markets.
- Concern regarding revenue objective – all the rail corridor is now identified for commercial use.
- The general community use will provide for opening the gates and commercial use will be proposed instead of park use.
- Rather than flexibility the community needs a green oasis, not commercial activity.
- What is the real agenda?
- The frequently asked question material issued by Council notes that the current category of park limits uses to passive uses, this should be maintained.

## 2. John Lazarus – Byron Environment Centre

- Opposed to the process.
- The reason Council provide for the change in category is that it can't fulfil existing uses under the current park classification, this is nonsense. The park classification can fulfil what Council alleges it can't licence and lease for.
- The information obtained from the General Manager indicates the current categorisation provides for all licence and leases presently occurring including artisan markets. Allows everything Council says it wouldn't.
- What is proposed allows for permanent commercial activity seven (7) days a week, thirty (30) year licences and leases, structures, three (3) storey, 12.5 metre buildings for community or commercial use or café.
- Existing use should remain.
- Council has pulled the wool over the community's eyes. Community will not know what can be done on the land until the classification is adopted. The classification determines what can happen in the Plan of Management. Why aren't people being told of the potential uses?
- No rezoning should proceed. The defacto zoning as a park should continue.



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- Currently two (2) parks in town, the beach front park which is windy and exposed and Railway Park which is the only place available and accessible where people can rest and relax.
- Rail corridor/ Master Plan visioning document may provide for pop up shops in what look like containers in Railway Park seven (7) days a week and twenty five (25) year leases.
- 100% supportive of categorisation as park and as an area of cultural significance,
- Arakwal support the retention of the memorial pole and note the significance.
- Council has failed.

### **3. Jo Faith**

- Were Arakwal people consulted? (Note: Council staff responded that meetings were held with representatives from Arakwal however no formal feedback received to date).
- Council need to move from rigid consultation process towards inclusive democracy.
- Inclusive democracies being usurped by selected democracy with certain people from certain interest groups engaged.
- Social engineering driven by corporate crony agenda. Read the book "A Game of Mates".
- The power structures creates the desired outcome for developers.
- The new definition of the park will open the park to development.
- Parks should be a place to go and experience peace, not somewhere for the free market to operate.
- Department of Planning is rezoning everything.
- Council should strongly reject cronyism and think about protection of the area for future generations.

### **4. Paul Spooner – General Manager of Byron Bay Community Association**

- The Byron Bay Community Association manages the Community Centre (located opposite Railway Park) and manages and operates the Artisan markets and Soul Street New Years Eve event).
- The Community Centre has been in the building opposite the park since the 1980's. There is a connection between the Community Centre and the park.
- School of Arts and Railway Park are both meeting places.
- The Community Centre has also operated the artisan markets since 2008 and also managed Soul Street New Year's Eve event over the past five (5) years. These events bring the community together and are family friendly. Railway Park is an intrinsic part of the Soul Street event.
- Location in relation to Community Centre has historical cultural significance for Byron. Railway Park and the Community Centre form a town square and discussions with the Byron Bay Master Planning Group reflect this.
- The Master Plan for Railway Park, is a key element of the Byron Bay Master Plan and accommodates the communities' wishes in terms of the provision of passive areas/ play spaces/ adults play opportunities (e.g. giant chess board). This provides for cross generation uses.
- Railway Park is a meeting place.
- In terms of the park versus general community use categorisation – not in favour of park. Local government Regulations Clause 104 identify use mainly for passive or active recreation, social, education and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others. Uses such as the artisan markets have potential to conflict with this categorisation as park. The artisan markets are successful local markets. They activate the park and are held one (1) night a week and on New Year's Eve.

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- A lot more happens at Railway Park than simply passive activities. General community use enables activities and continuation of current uses while providing for the future needs of the community to be met.
- The proposed categorisation provides for the needs of the community moving forward.
- It's not about commercial use of the park, this is a red herring. The cultural significance of the park is recognised and this classification enables that to continue into the future.
- The association is supportive of the proposal.

## 5. Sharon Curry – Byron Environmental Centre

- The rotunda is significant and the totem has indigenous meaning.
- The Plan of Management identifies preferred location for the rotunda adjacent to Commonwealth Bank where the old tree stump is.
- BEC rotunda is squashed between walls of bank and it is important area for the community and environment.
- The rotunda has a small footprint of two (2) metres diameter.
- Arwakwal lady funds for indigenous art and paintings.
- Maintenance of the structure is undertaken and the structure is provided for numerous community group to use.
- The flags re also significant.
- The current location is prominent and visible and provides for the BEC as gatekeeper of the park. BEC have prevented more trees from being destroyed.
- We understand it may need to be moved but the south east area is preferred.
- The Plan of Management recommends Community Groups should be invited to put in an expression of interest for the use of the rotunda. BEC has always made the building open for the use of all community groups at no charge.

## 6. Jeff Bensley

- Railway Park was filled when the Byron Bay swimming pool was constructed. There was 1.3m of fill and couldn't drain the park at that time.
- Totem should stay.
- Community activity is always needed to keep us fit for future and keep parks alive.
- Should be regulated with leases to pay for and maintain parks. 20 year leases are appropriate.
- Railway Park is not welcoming, the increase in commercial activity can encourage passive surveillance. For example, the coffee shop that used to opened up to the park was positive, now it is a glass wall and one person sleeps there.
- Support general community use, more people can enjoy the park.
- Don't see young people in the park.
- The swimming pool and restaurant Fish Heads adjacent to the main beach park is an example of a successful result where the restaurant assists in paying for the pool. Another example is the surf club where weddings and events support the operation of the club.

## 7. David Michie

- Member of the Byron Bay Master Plan Guidance Group which informs the upgrade of Railway Park.

- The upgrade will provide for connections across Byron Bay - between the proposed bus interchange, car parking, Railway Park and town centre. It will identify the area as a place of arrival.
- It will make the park open and welcoming and safe for visitors and locals.
- There was a consensus among the group that the park was underutilised.
- The markets are positive in terms of use by children and families.
- The Master Plan is not intended to concrete the park, it will provide for more trees and more green.
- There is no intent to commercialise the park.
- Current activities can continue.
- Categorisation will provide for best community use outcomes.

### 3.3 DISCUSSION AND RECOMMENDATION

It is evident from the submissions made to the Public Hearing that a key point of contention is the categorisation of the subject land as general community use rather than as park. Several of those who made submissions to the Public Hearing refer to the guidelines for categorisation of the land as a park and the guidelines for categorisation of land as general community use. The provisions of Clause 104 and 106 of the *Local Government (General Regulation 2005)* contain guidelines for the categorisation of community land and are provided as follows:

#### ***"104 Guidelines for categorisation of land as a park***

*Land should be categorised as a park under section 36 (4) of the Act if the land is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.*

#### ***106 Guidelines for categorisation of land as general community use***

*Land should be categorised as general community use under section 36 (4) of the Act if the land:*

*(a) may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public, and*

*(b) is not required to be categorised as a natural area under section 36A, 36B or 36C of the Act and does not satisfy the guidelines under clauses 102–105 for categorisation as a natural area, a sportsground, a park or an area of cultural significance."*

The issue raised in the submissions is whether the guidelines for categorisation of land as a park provide for the range of uses and activities identified by Council in the Draft Plan of Management, therefore rendering the re-categorisation as unnecessary. Related to this is the interpretation of the provisions of Clause 104, providing that pursuits undertaken on land categorised as a park *"...do not unduly intrude on the peaceful enjoyment of the land by others"*. The question is whether this provision will potentially result in restrictions on the nature of the uses permitted. It is Council's position that the categorisation of the land as general community use will provide greater flexibility in terms of the range of uses and the requirements of the legislation associated with leases and licences.

Another concern highlighted in the submissions objecting to the categorisation for general community use relates to the potential for increased intensification and commercialisation of Railway Park, including the erection of buildings and structures.

In considering these issues and the appropriate categorisation of the park, the adopted landscape concept plans for Railway Park and the Master Plan for the Byron Bay Town Centre in general should be taken into account.

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It is evident that the landscape concepts prepared for this precinct provide for greater pedestrian links from Jonson Street through Railway Park to Butler Street. This is likely to result in the function of the park changing to some extent. That is, it is likely that the Master Planning and improved pedestrian connectivity will result in the intensification of the use of the park as pedestrians who otherwise may not have utilised the park are more likely to do so, particularly having regard for the upgrades proposed.

In the context of the central location of the park and existing uses undertaken including New Years Eve activities, markets and the like, it follows that there will be a potential desire for other community and commercial activity to be undertaken in the future. It is considered that the provisions of Clause 104 provide some uncertainty in this regard. Potentially, any use other than the passive use of the park could be argued to unduly intrude on the peaceful enjoyment of the land by others.

It does not follow however, that the re-categorisation will result in three storey commercial buildings across the park. The Draft Plan of Management provides a framework for management of the use of the park and a framework for considering any future activities, licences, leases and development of the park. The statutory obligations of Council remain in terms of notifying the community of proposals, considering any applications in accordance with the legislative requirements and ensuring a transparent and open decision-making process.

On the balance of the merits of both sides of the case presented at the Public Hearing, it is considered that the categorisation of the land for general community use will provide a greater opportunity for flexibility in the use of Railway Park into the future and reduce ambiguity in terms of whether each particular activity is consistent with the categorisation of the land.

It is important to emphasise that the land remains classified as Community Land in accordance with *the Local Government Act 1993* and is subject to all associated legislative requirements in this regard. No reclassification of the land is proposed (whilst it is noted the proposed re-categorisation was often referred to as re-classification by those making submissions to the Public Hearing).

For the reasons outlined above it is recommended that: Council proceed with the re-categorisation of Railway Park from park to general community use.

On the basis of the above it is recommended:

1. That Council proceed with the re-categorisation of Railway Park from "Community – Park" to "Community – General Community Use".

## PLANNERS NORTH



**Kate Singleton RPIA**

PARTNERSHIP PRINCIPAL

APPENDICES

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**APPENDIX A**

Written Submissions provided to the Public Hearing

## Submission 1

**Subject:** HPE CM: Attention Jamie Van Iersel. Change of classification of RAILWAY PARK public hearing

Re-Change of classification of RAILWAY PARK , BYRON BAY

I object to the re classification of RAILWAY PARK to General Community Use as that would allow a higher intensity of permanent commercial use and the construction of buildings and more concrete.

RAILWAY PARK should be kept as a PARK, it is the only green space in the centre of town It has a splendid array of native Cottonwood Trees which provide much sort after shade. RAILWAY PARK provides a place to relax, to find shade, a place for children to play or just too while some time away.

TREES AND GRASS versus CONCRETE and BUILDINGS

TREES AND GRASS

TREES absorb carbon dioxide and potentially harmful gases such as sulphur dioxide and carbon monoxide from the air and release oxygen

1 large tree can supply a days supply of oxygen for 4 people.

GRASS also absorbs carbon dioxide at a smaller degree, it takes carbon (the burning of petrol, diesel and natural gas) from the atmosphere and converts it to more plant matter.

CONCRETE

The concrete industry is one of the two largest producers of carbon dioxide creating up to 5% of man-made emissions, 50% in the chemical process and 40% from burning fuel.

Place commercial activities, concrete and buildings which reflect heat, where concrete already exists at the new Mercato Shopping Centre, vacant shops, existing monthly/weekly markets.

The Art space could be located near the library, Butler St Reserve or the beach front where there are plenty of trees and grass and FREE OZONE.

Give the community and tourists a place they need A PARK providing oxygen- fresh air and an ambience in the centre of town, where most tourists first arrive. Byron Bay should reflect these qualities instead of a clone town boring Gold Coast concrete style development.

KEEP RAILWAY PARK GREEN.

I implore Green councillors and independents to look after our green environment, have a VISSION, be the forerunners with something different, a greener future, away from commerce and concrete as so many towns are. Away from the present day clone mentality.

RAILWAY PARK can be replenished with trees and grass, B.S. COUNCIL Open Spaces have the resources, native trees, plants, grass and good workers in the gardens department, thus providing more employment locally and a beautiful RAILWAY PARK.

Come on guys and gals strut your stuff !!

CREATE A DIFFERENCE FOR ALL THE TWO MILION+ VISITORS TO  
EXPERIENCE.

Yours sincerely

## Submission 2

Hello,

As a once long-time Byron resident who has been closely involved in much of the early activism to preserve and contain Byron's urban precinct and maintained strong social connections, I feel the right of input on this burning issue.

When I finally left Byron in 1999 for career reasons, the place was already on the edge of being loved to death and many of my local friends had already headed for the Hills. But like them I've maintained a strong connection with the Byron township, and Railway Park has an Historic role in that sense of community.

Byron is currently facing that vexed question of whether to allow commercial pressures to overwhelm any sense of community and local traditions, or fight to keep the town's heritage ambience, of which a grassed and heavily treed Railway Park, together with its quirky Byron Environment Centre is an essential component, or sink beneath a sea of monocultural tourism.

Please do not destroy the very things that make Byron unique.



### **Submission 3**

Dear Jamie, I have been following the Masterplay concept for a few years with the intention of establishing chess in our Byron Parks, preferable in Apex Park. I have been assured by all and sundry that this would be taken seriously but alas with all the changes that have taken at Apex and Railway Parks there is still no permanent chess board built. I have mentioned at some stages that I can arrange funding for such.

## **Submission 4**

*Dear Jamie*

*Please accept this Byron Environment Centre Submission to the Public Hearing on the Classification of Railway Park.*

*In an effort to limit the time of speaking I will only speak on a few points*

*Yours*

*John Lazarus*

*Per the BEC*

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### **Submission in Objection to the Classification of Railway Park Byron Bay as "General Community Use"**

John Lazarus

Convenor Byron Environment Centre Inc

The Byron Environment Centre (BEC) has maintained a weekly presence in Railway park for the last 16 years, through volunteers staffing the local Arakwal artist painted Aboriginal Muraled Rotunda, which we maintain as an information kiosk, and as a community accessible asset for any community park activities

The BEC notes that the Byron Shire Councils major claim for adoption of a "General Community Use" Classification, is that the "Park" Classification would prevent Council from authorising the existing uses of a weekly market (presently held one day a week), fundraising stalls and political rallies. Councils claim is incorrect and the "Park" Classification would allow such activities to continue.

Council has also claimed that the process is to retain the park as a dominantly passive recreation space. The Classification of "Park" is demonstrably a superior mechanism to retain that value.

1) The Byron Environment Centre (BEC) opposes Classifying the park as "General Community Use"

Because:

a) The land satisfies the **Local Government Act** and the **Local Government (General) Regulation 2005 Guidelines** for both Categorisation as "Park", and for Part Categorisation as an "Area of cultural significance" (under section 36 (4) of the L.G. Act.). And

b) "General Community Use" would give capacity of issuing 30 year leases and licences for seven day a week activities, which would interfere with the current and preferred dominant uses of passive and active recreation, social, educational and cultural pursuits, and impact on the peaceful recreational enjoyment of the land. And

c) "General Community Use" would allow capacity for construction of buildings, with built construction reducing the recreational area of the park. and

d) Construction of buildings would allow permanent commercial activity to restrict the capacity to continue the current park uses of holding occasional cultural events, rallies, and political protests, due to the capacity of these event to adversely clash and impact on permanent leased commercial activities.

### **Local Government (General) Regulation 2005**

Guidelines for categorisation of land as general community use

#### **Land should be categorised as general community use under section 36(4) of the Act if the land:**

(a) may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public, and

(b) is not required to be categorised as a natural area under section 36A, 36B or 36C of the Act and **does not satisfy the guidelines under clauses 102–105 for categorisation as a natural area, a sportsground, a park or an area of cultural significance.**

And

e) The proposed "General Community Use" Classification does not categorise the area of Aboriginal Memorial totem pole of a local Arakwal Bundgalung man, situated in the south west corner of the park, as an "Area of cultural significance" (under section 36 (4) of the L.G. Act.), with classification appropriate due to this area being significant to the local Arakwal Aboriginal people. Senior Arakwal spokesperson Delta Kay requested that I also add that the park has always been significant to Arakwal and is further more so, due to the memorial pole.

Local Government (General) Regulation 2005

Clause 105

Guidelines for categorisation of land as an area of cultural significance

#### **Land should be categorised as an area of cultural significance under section 36 (4) of the Act if the land is:**

**(a) an area of Aboriginal significance, because the land:**

**(ii) whether or not in an undisturbed state, is significant to Aboriginal people in terms of their traditional or contemporary cultures, or**

**(iii) is of significance or interest because of Aboriginal associations,**

**(f) an area of social significance, because of the area's association with Aboriginal life after 1788**

**or the area's association with a contemporary community for social, spiritual or other reasons.**

2) The BEC supports Classifying the park as "Park"

a) To allow the park to be improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for the dominant use of passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.

b) To allow issuing of casual licences for events of no more than 3 consecutive days, and for multiple events for a maximum period of one year, to facilitate the issuing of casual licences for the existing uses of events and weekly market (subject to the Plan of Management), while maintaining the dominant use of passive recreation

#### Local Government (General) Regulation 2005

##### Clause 104

##### Guidelines for categorisation of land as a park

Land should be categorised as a park under section 36 (4) of the Act if the land is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.

3) BSC has failed to publicly exhibit the legal status of the Artisan market licence

The parks (Generic) Plan of Management does not include a licence for a market. All licences and leases must first be identified in a Plan of Management before they can be issued. The BSC has unlawfully issued a 5 year licence for weekly markets on the land, and recently Adopted to expand the area used for this invalid market licence. As such the public can have no confidence that the proposed Classification of "General Community Use" will not evolve into a further dominant commercial and built environment use of the park. And BSC's failure to exhibit the unlawful status of this market has fettered the public's capacity on both Submissions on the Categorisation, and on the Plan of Management. As such the existing de facto Classification status of "Park" should not be changed

4) Comments on Council's Press Releases and Councils Web Statements in their Frequently Asked Questions :

a) "Categorisation as a Park limits the uses and types of facilities in the space to those of a passive nature or pastime types that do not unduly intrude on the peaceful enjoyment of the land by others."

BEC Comment: The BEC wants the Categorisation as "Park" to limit the uses and types of facilities in the space to those of a dominant passive nature or pastime types that do not unduly intrude on the peaceful enjoyment of the land by others.

b) Council : "The central location of the land and the wider community's need for community space in the Byron CBD indicates that broader uses of the land are required."

BEC Comment: As the only centrally located green space park in the CBD it should be reserved for passive recreation and occasional casual events.

In the locality there is kilometers of beach front Reserve, 10 minutes walk away on the same road. The beachfront Reserve has a number of different areas that have been, and can be, used for "broader uses".

The Main Beach Reserve has been used for major Rallies ( recently aprox 800 people at a West Byron development Rally), major Events (New Years Eve stages and stalls, the Council sponsored Australia Day Survival event held there annually for the last 14 years). And has a Surf Life Saving building with attached commercial event space, which is used for weddings, conferences, concerts, art exhibitions, book sales etc.

There is also directly opposite the park the Byron Community Centre (recipient of \$500,000 of Council funding) that has commercially let shops and offices, a live music, live drama, and picture theatre, with a Bar, and event spaces. Council has completely failed to identify what "broader uses" it is contemplating allowing in the park

c) Council: "What are some examples of additional activities that could occur under this categorisation?"

Under the General Community Use categorisation, additional activities would be allowed under a short-term approval may be:

- A filming project,
- The provision of goods, services and facilities and the carrying out of activities, appropriate to the community needs, relating to public recreation or physical, cultural, social and intellectual welfare."

BEC Comment: Misrepresentation of the facts - "Park" Classification would allow short term approval for a filming project (a filming project also has separate and specific legislation that allows it to proceed even if it is not identified as an activity/licence in a Plan of Management).

"Park" Classification does allow the provision of services and the carrying out of activities appropriate to the community needs, providing these services and activities are over not more than three consecutive days, and only occur on multiple occasions for not more than a year (but licences or leases can be renewed annually).

The "Park" classification does prohibit construction of permanent facilities, and that prohibition is supported by the BEC

d) Council: "The draft Plan of Management provides that Council can consider a lease or licence for community or commercial purposes if it can be demonstrated to deliver enhanced social, environmental, economic & civic leadership outcomes."

BEC Comment: Council has not informed the public of the capacity of granting Plan of Management licences and leases under the categorisation of "Park". Council has failed to public exhibit the capacity of a "Park" Classification.

A Plan of Management for land Categorised as "Park" provides Council with the capacity to provide leases or licences for community or commercial purposes, but with restrictions of activities being held over a maximum of three days, and only occurring on multiple occasions for a maximum licence or lease period of one year.

The BEC supports these "Park" Classification restrictions, to maintain the park for dominant passive recreation and occasional community events.

e) Council: "The Local Government Act (47E) also stipulates clear guidelines that restrict the type and scale of development that a Council could approve on any piece of Community Land – regardless of its categorisation.

The draft Plan of Management highlights the importance of Railway Park as the heart of Byron Bay and promotes its use for passive recreation and a play area, while continuing to allow the use of the space for local gatherings, artisans markets and the installation of artwork."

BEC Comment: The "General Community Use" Classification allows multiple permanent commercial leases and licences for daily use, for up to 30 years. And the construction of buildings over the entire site, which would erode the use of the stated goal of retention of passive recreation. A "Park" Classification significantly protects the use for passive recreation.

f) Council: "Will this categorisation allow additional structures to be built in Railway Park? Part 6 of the draft Plan of Management outlines the development that is expressly authorised on Railway Park. Buildings or structures would only be allowed where they are consistent with the core objectives of the general community use categorisation and can demonstrate a social and/or community benefit."

BEC Comment: Capacity of construction of buildings in the park is not supported. There is sufficient community accessible buildings adjacent to the park (the Byron Community Centre: retail, office and event rental spaces), and in the vicinity of the park (Surf club: retail and event rental space), and in near vicinity of the park (Community Cabin: workshop and meeting rental space on the Byron Bay Recreation Ground, and Cavanbah Centre, Byron Bay: indoor/outdoor sports, and workshop, cultural events, and commercial rental spaces)

The categorisation of "General Community Use" would allow a future Plan of Management Amendment to allow the construction of a multi storey building entirely covering the site.

The "General Community Use" capacity of construction of buildings is in direct conflict with Councils Plan of Management statement "promotes its use for passive recreation and a play area, while continuing to allow the use of the space for local gatherings, artisans markets and the installation of artwork"

g) Council: Council is preparing a draft Plan of Management for Railway Park to guide the park's future as a focal point for Byron for locals and visitors of all ages. A public hearing will be held on Tuesday 21st of August at 5:30pm and all stakeholders are welcome to attend and participate"

BEC Comment: Council has muddled the Categorisation process and the Plan of Management process together.

The Categorisation will determine the general park use, while the Plan of Management will determine the allowable use under the Categorisation, yet both process are being advertised as one. Public Submission on the Plan of Management are being presented to Council before the Categorisation of the park is established.

The BEC states that the process of combining both is flawed, and that it disenfranchises the public in both decisions on the proposed Classification, and on Submissions on the Plan of Management. The BEC alleges that Council has failed to follow an appropriately

informed and accountable process, and as such the defacto status of "Park" should remain

h) Council: "Current activities in the park which have strong community support could not be authorised under categorisation of Park.

For example:

- fund raising activities by organisations such as Sea Shepherd; or
- artisan markets; or
- protest gatherings."

And

GM Byron Shire Council Mark Arnold: "The below clause from the Regulation is applicable – highlighted is the section indicating that Council could not authorise a number of existing activities.

#### **104 Guidelines for categorisation of land as a park**

Land should be categorised as a park under section 36 (4) of the Act if the land is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural ***pursuits that do not unduly intrude on the peaceful enjoyment of the land by others***"

BEC Comment: Council has misrepresented the facts to the public, as fund raising activities, artisan markets (presently held one day a week) and protest gatherings CAN all be authorised and held under the categorisation of "Park". The Local Government Act and associated legislation determines that the "Park" Classification can allow Council to authorise fundraising, the present weekly market (held one day a week) and political gatherings. While these events may be conditioned by Council in terms of extent of site usage, noise from a Public Address system etc, Council CAN authorise these activities and has misled the public on the alleged requirement for a "General Community Use " Classification, which was one of the most significant reasons BSC gave for a "General Community Use' Classification. As such the de facto existing Classification as "Park" should remain

The BEC has Emailed Council on the 9.8.2018, requesting clarification of this Council Press Release and Council web statement (and other Questions related to the proposed Plan Of Management).

The Email provided Council the appropriate excerpts of both the Local Government Act and the Local Government (General) Regulations 2005 Guidelines, both in regard to the capacity of the "Park" classification to allow fund raising activities, artisan markets and protest gatherings, and the legislation informing Councils capacity of issuing licences for the same, under the "Park" classification. Council has responded (the correspondence below).

As such the BEC alleges that Council has misrepresented the facts to the public on this Categorisation process. Has failed to make a case for "General Community Use " Classification.. And has failed to put a case for not Catagorising the park as "Park".



## ***Submission5***

Unfortunately our current council is seemingly blythely prepared to ignore both its own Cultural Policy and Plan AND future environmental issues in the inevitable time of Climate Change.

It seems oblivious in throwing caution to the wind in its insistence on pressing ahead with the folly of laying out concrete in Railway Park where there could be an expansion of GREEN space.

Puzzling. Lulled into some torpor by the assumption they have the moral high ground by adopting a (faux) Zero Emissions Byron which is perplexingly, stonily silent on the issue of adding to our carbon footprint by more concrete in our cbd.

It is sad that a community that has long been renowned for its Green values is apparently being led by the nose down the lacklustre and boring concrete path to the oblivion met by every other over developed backwards coastal town.

A great shame and a wasted opportunity to lead and shine

. It seems they prefer a 'designer' town to the actual CULTURE which exists and failed to talk to either users of the park or stakeholders...just a self nominating select group.

Please note the below links on the importance of GREEN SPACE and turn back from squandering our kids future environment on this concrete laden folly.

Please give us a Park to meet relax in and enjoy in the heart of our cbd NOT a town Square.

Note the following links.

I was present at the community consultations to write a cultural policy for Byron Shire . I note the original definition remains

[https://www.byron.nsw.gov.au/files/assets/public/hptrim/corporate-management-policies-current/policy-cultural-res-08-39120408-no-submissions-received-after-advertising-current\\_policies.pdf](https://www.byron.nsw.gov.au/files/assets/public/hptrim/corporate-management-policies-current/policy-cultural-res-08-39120408-no-submissions-received-after-advertising-current_policies.pdf)

<http://www.abc.net.au/radionational/programs/lifematters/whatever-the-weather:-battling-urban-heat/10119482>

[https://www.globalcitizen.org/en/content/new-zealand-wants-to-plant-1-billion-trees/?utm\\_source=facebook&utm\\_medium=social&utm\\_content=au&utm\\_campaign=general-content&linkId=55603198](https://www.globalcitizen.org/en/content/new-zealand-wants-to-plant-1-billion-trees/?utm_source=facebook&utm_medium=social&utm_content=au&utm_campaign=general-content&linkId=55603198)

Sincerely  
Rosie Lee