



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 22 November 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

ORDINARY MEETING

BUSINESS OF ORDINARY MEETING

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2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (S450A LOCAL GOVERNMENT ACT 1993)
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Infrastructure Services

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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.

NOTICES OF MOTION

Notice of Motion No. 9.1 Councillor Privacy and Safety
File No: I2018/1990

5

I move:

- 1. That Councillors' phone numbers not be published on the Council web page.**
- 2. That calls to Councillors are to be made to Council offices and messages conveyed to Councillors.**

10

Signed: Cr Cate Coorey

Councillor's supporting information:

15 No member of parliament at state or federal level has a personal mobile phone published; indeed some have no phone number at all, only an email form.

Councillors have been the recipients of offensive, lewd and threatening calls and texts. There is no need for them to have their direct contact details available to everyone.

20

Email is an immediate enough medium for the public to contact Councillors.

Staff comments by Anna Vinfield, Manager Corporate Services

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

25

Councillors are the representatives of the community and it is important that the community is able to contact and meet with Councillors to discuss and contribute their views and ideas. The Office of Local Government's [Councillor Handbook](#) discusses these matters and the *Local Government Act 1993* recognises that appropriate lobbying of councillors is a normal part of the democratic system and that councillors have a representative role in considering the views of their constituents and communicating with them.

30

Councillors may select how they wish to be contacted by members of the community. There is no evidence to suggest there is a requirement for Councillors to provide a phone contact method and therefore a Councillor, if they chose to do so, could provide alternative methods of communication on Council's web page.

35

Officers reviewed other local government's webpages as to whether Councillors' phone numbers were published. While there were some, the vast majority publish Councillors' numbers – including Ballina, Lismore, Kyogle, Richmond Valley and Tweed.

40

Councillors had previously nominated a public telephone number to provide to the community and these preferred telephone numbers have been listed on Council's website accordingly.

45

Should Councillors not wish to have their phone number made publically available, the telephone allowance provided in the *Councillor Expenses and Facilities 2018* Policy would not apply. In accordance with the Policy Councillors are each allocated \$200/month for telephone (fixed line/mobile) expenses, with clause 6.43.1c) stating that *"the mobile and landline number is to be made available to the public"*.

The *Councillor Expenses and Facilities 2018* Policy also outlines the administrative support that will be provided to Council. Should officers be required to provide additional level of administrative support (take and convey messages), this would need to be reviewed.

5 Financial/Resource/Legal Implications:

Local Government Act 1993

232 *The role of a councillor*

- 10 (1) *The role of a councillor is as follows:*
- (a) *to be an active and contributing member of the governing body,*
 - (b) *to make considered and well informed decisions as a member of the governing body,*
 - (c) *to participate in the development of the integrated planning and reporting framework,*
 - (d) *to represent the collective interests of residents, ratepayers and the local community,*
 - (e) *to facilitate communication between the local community and the governing body,*
 - 15 (f) *to uphold and represent accurately the policies and decisions of the governing body,*
 - (g) *to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.*
- (2) *A councillor is accountable to the local community for the performance of the council.*

20 Is the proposal consistent with any Delivery Program tasks?

No.

Notice of Rescission Motion No. 9.2

Tyagarah Clothes Optional Declaration - Results of the enhanced stakeholder safety initiatives of Res 17-499 and Res 17-715

File No:

I2018/1992

5

We move that Council rescind Resolution No. 18-698 from its Ordinary meeting held on 18 October 2018 which reads as follows:

1. *Acknowledge the improvement in beach safety at Tyagarah and thank the Safe Beaches Committee, NSW Police and stakeholders.*
2. *Confirm the current status and area for the clothes optional beach at Tyagarah with 6 monthly reporting to Council on progress.*
3. *Council establish a Safe Byron Beaches Committee meeting quarterly to cover all beaches and adjacent environs in Byron Shire.*
4. *The Safe Byron Beaches Committee be established with a constitution and paramount objective to identify and promote cooperative actions to ensure a safe environment for all beach users in Byron Shire.*
5. *The Safe Byron Beaches Committee membership include representatives from Council, NPWS, Police, naturists and residents and be chaired by a councillor nominated by Council.*
6. *The nominated Chairperson of the Safe Byron Beaches Committee with the support of Council, consult with stakeholder groups to draft a constitution for endorsement at the November meeting of Council that includes the following key actions*
 - *Liaise with NSW Police and other agencies*
 - *Develop rapid response and reporting protocols*
 - *Implement strategies to support beach user groups and individuals*
 - *Focus resources on identified problem locations (eg Grays Lane)*
 - *Consider how digital technologies (eg cameras) can be deployed*
 - *Draft a positive statement of community values*
 - *Provide advice to Council*
 - *Other measures that achieve the paramount objective*
7. *That Council allocate a budget of \$10,000, subject to confirmation of funding being available as part of the 30 September 2018 Quarter Budget Review to be submitted to Council at the 22 November 2018 Ordinary Meeting for the installation of up to 20 battery operated cameras recording vehicle registration and personal behaviour in the reserve.*

If successful we intend to move:

- 10 1. **That Council revoke its 'Clothes Optional Declaration' within the Tyagarah Reserve.**
2. **That Council establish a 12 month trial 'Clothes Optional Declaration' for the stretch of beach from 'The Wreck' north to the walking track south of Beaumonts Beach House.**

15

**Signed: Cr Paul Spooner
Cr Jan Hackett**

20

Cr Simon Richardson

Comments from Director Infrastructure Services:

- 5 To enable the establishment of a new Clothes Optional designated area, Council should consider an allocated budget of \$10,000 for the installation and establishment of appropriate signage either through the September quarterly budget review process or via resolution from this Rescission Motion. An appropriate source of funding could be allocated from the Crown Reserve for R82000.
- 10 Resolution **18-698** has not been enacted save that, in respect of 18-698/7, a letter has been forwarded to National Parks and Wildlife Service enquiring as to whether NP&WS would give consent to the placement of optical surveillance devices (overt fixed cameras) in the Grays Lane carpark together with the placement of signage applicable thereto.
- 15 It was felt prudent to forward this letter so that Councillors, and therefore the debate, can be fully informed when the rescission motion is before Council.

Statutory and Policy Implications

20 **Clothes optional bathing under the *Local Government Act 1993***

The starting point is section 633 of the Act.

- 25 Section 633(1) makes it an offence for a person in (without limitation): a public bathing place; a river or tidal water; the sea adjacent to a local government area; or a public place adjacent to those areas; to fail to comply with a notice erected by Council.

Section 633(2) is directly relevant to "clothes optional bathing":

- 30 *633(2) A person who is in public view in the nude in any place (other than a designated beach) referred to in subsection (1) is guilty of an offence unless a notice erected by the council at the place allows the use of the place (or part of the place) for the purposes of nude bathing.*

Maximum penalty: 10 penalty units.

Other sub-sections of section 633 are relevant:

- 35
- Council may erect a notice on any land under the control of Council - or on any other land with the consent of the person who owns or controls the land.
 - The terms of any notice under section 633 may relate to the conduct and costume of the bathers - and the use of a place for the purposes of nude bathing.
- 40

It is important to recognise the scope of Council's power under section 633. Council does not actually have a specific power to declare a beach as a "nude beach". What Council does have is a power to otherwise excuse what would be an offence ("nudity") under s.633(2). The excuse arises as a result of a notice which is erected by the Council.

45

To state it clearly: any person who is in the nude on a beach in New South Wales commits an offence *unless* the beach is a designated beach (Lady Bay (Lady Jane) Beach, Cobblers Beach, Obelisk Beach, Werrong Beach and Samurai Beach), or there is a notice erected by Council which allows the place to be used for the purposes of nude bathing.

50

That is the extent of Council's power under this section.

The power granted under section 633 allows Council to determine where nude bathing can be permitted in the Shire. Simply put, if Council does not erect a notice, then nude bathing is impermissible.

5 Of course, once Council erects a notice pursuant to s.633(2), then nude bathing is permissible: the person no longer commits an offence by virtue of the sign erected by Council.

10 To make the point again: the Act does not contain, in terms, a power for Council to declare a beach a "nude beach". The Act contains a power for a Council to erect a sign which provides a defence to the offence of public nudity.

s.633 is a power to erect a sign on land

15 Once the power under s.633 is understood in this way, then issues associated with who actually owns or controls the public bathing area can be properly understood.

- If Council owns the land on which the notice is to be erected, then Council can proceed to a erect the notice and, declare the area to be a "clothes optional" beach.
- However if the Council does not own the land on which the notice is to be erected, the consent of the landowner is required before the sign can be erected and the area is declared a "clothes optional" beach.

The power to erect the sign is not a power to regulate all behaviour at the place

25 By erecting signage permitting nude bathing, Council does not become the "police" for all behaviour at a "nude beach". The extent of Council's powers are set out in s.633. Other regulatory authorities, including the NSW Police Force, are not precluded or prevented from taking enforcement action simply because Council has erected a sign pursuant to s.633.

Land ownership in the area proposed should Resolution 18-698 be rescinded

30 As previously advised, in order for Council to erect a notice it must be on land vested in or under the control of Council or on other land with the consent of the person who owns or controls the land.

35 The area defined as the beach access track north of the Beaumonts Beach House to the shipwreck is shown below.



40

Crown Land Manager:

5 Land from Kendall Street south is Crown Land managed by Council as the Crown Land Manager for R82000 for the purpose of public recreation. Being the Crown Land Manager for this land, Council must manage this land as community land, must have a plan of management for the land and may resolve that part of R82000 is designated for nude bathing if permitted by the plan of management.

10 Prior to adopting that plan of management, s44 LGA provides that the nature and use of the land must not be changed.

Use of community land prior to adoption of a Plan of Management ('PoM') is set out in s44 LGA.

15 s44 LGA is found in Div 2 of Part 2 Public Land, Div 2 is titled Use and Management of community land and provides

Pending the adoption of a plan of management for community land, the nature and use of the land must not be changed.

20 The OLG Practice Note Public Land Management revised May 2000 provides:

Until a plan of management for community land is adopted the nature and use of the land must not be changed (s.44). This means that council cannot carry out new development on the land. It also means that council cannot grant a lease, licence or other estate over the land until a plan of management is in place.

25 The relocation of the clothes optional beach onto part of Reserve R82000 will not impact on:

- 30 i. the current use of the land because the land will remain open for public recreation unchanged, and
- ii. the current nature of the land will not change because the use does not require the granting of development consent or a lease or licence.

Signage may be erected on the land by Council in accordance with the LGA.

Licensee of Crown Land:

35 North from Kendall Street to the beach access point past Beaumonts Beach House is Crown Land held by Council under a s34A licence for Business Purposes. Nude bathing would not be included under the s34A licence unless undertaken for commercial purposes.

40 The erecting of signage may not be permitted by the licence under:

- 45 • cl 21(b) that states the licence holder will not use the Premises or allow them to be used for any purpose other than the purpose specified in Column 2 of Item 4 in Schedule 1 being the purpose for which premises must be used is Business Purposes (Low Impact Commercial Recreational Activities). Signage permitting nude bathing is not a business purpose.

The alternate date and time of the meeting is at the discretion of the Chair and availability of the Panel members. Their availability is being sought for an early February meeting.

5 A quorum for a determination meeting of a planning panel is a majority of its members, including the chair, i.e. a total of three members. The determination meeting is to be deferred if a quorum is not present. Where conflicts of interest are known before the meeting, alternate members will be used to ensure there is a quorum.

10 At the time of writing this response, a meeting date and time had not been formally confirmed by the JRPP secretariat.

Separate advice will be provided to councillors if this changes before 22 November 2018.

15 Financial/Resource/Legal Implications:

Not relevant.

Is the proposal consistent with any Delivery Program tasks?

20 Not relevant.

Notice of Motion No. 9.4 **Community Resilience and Recovery during Natural Disasters**
File No: I2018/2134

I move:

That Council facilitate a meeting between the SES and residents groups in Mullumbimby to provide an update on the Community Action Team (CAT) initiative and consider future actions.

5

Signed: Cr Basil Cameron

Councillor's supporting information:

10 Council has previously resolved on supporting the Community Team Action initiative of the SES.

The CAT initiative aims to provide logistical and material support to communities isolated during times of natural disasters such as floods so that the response and recovery are able to be coordinated even though disaster relief agencies are unable to reach such communities.

15

Following Cyclone Debbie Council received a high demand for assistance, but was unable to respond due to access, power and other issues. The CATs build resilience in local communities to provide their own immediate response.

20 Much has been done to build organisational resilience within Council to be better able to operate during natural disasters, however the community building has lagged behind.

A number of meetings were held in Billinudgel, Mullumbimby and Ocean Shores. These meetings were well attended and many residents expressed interest in being part of the CAT initiative. While it is understood that planning may be underway for Billinudgel, residents in Mullumbimby have not had any follow up.

25

This motion supports informing residents and giving them the opportunity to consider future actions.

30

Staff comments by Tony Nash, Manager Works, Infrastructure Services:

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

A strategic planning workshop was held on 8 November 2018 with Councillors and the SES. As part of the presentation SES provided an update on 'volunteering reimagined' including the CATs program.

35

Council staff will work with the SES to organise a meeting for Mullumbimby.

40 Recommended priority relative to other Delivery Plan tasks:

Operational

Definition of the project/task:

45

Facilitate meeting between SES, Council and resident groups to discuss the CAT initiative.

Source of Funds (if applicable):

50 Operational

Notice of Motion No. 9.5 Cycle Racks for Mullumbimby
File No: I2018/2135

I move:

I move that Council allocate \$15,000 from S94 funds to manufacture and install cycle racks at various locations in Mullumbimby.

Signed: Cr Basil Cameron

Councillor's supporting information:

Mullumbimby Chamber of Commerce has undertaken a project to identify a design for cycle racks that reflects Mullumbimby.

The Chamber have recommended a design that references Mount Chincogan and Tincogan.

Two quotes have been obtained for the fabrication of four units. The preferred median would be stainless steel for its longer life and better wear.

Locations have yet to be identified and reference to the ongoing work of the Mullumbimby Masterplan Group is advised in choosing locations.

The provisional budget (subject to further advice) is \$15,000 as follows.

Design	\$ 500.00
Fabrication	\$5,417.28
Installation	\$9,082.72

- Attachments: Technical Drawings
 Quote Stainless
 Quote Steel
 Design Invoice

Staff comments by Christopher Soulsby Developer Contributions Officer Infrastructure Services:

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

The project would be consistent with the Civic and Urban Improvements works program from the 2005 Contributions Plan. Council still holds funds from this old plan and it would be appropriate to expend these funds on this purpose.

The budget is adequate to do the initial scope, design and site selection. Additional funds may be required to fabricate and install. If this is the case then the project budget can be adjusted at the quarterly review.

Financial/Resource/Legal Implications:

5 These works can be funded from the Section 7.11 (cf Section 94) Mullumbimby Civic and Urban Improvements account. There are adequate funds in this account to undertake the works. This will not adversely impact on Council's finances.

Is the proposal consistent with any Delivery Program tasks?

10 Item 1.3 of the Delivery Program is to Support, through partnership, a network of integrated sustainable transport options has an action to update the Update Bike Plan and Pedestrian and Access Mobility Plan (PAMP) and Plan and deliver prioritised Pedestrian and Access Mobility Plan (PAMP) facilities . Consultation on the new Bike Plan and PAMP is underway. Additional bike racks in the Mullumbimby town centre are consistent with the public feedback undertaken to date. The delivery of these bike racks is consistent with the delivery program.

Notice of Rescission Motion No. 9.6

Suffolk Beachfront Holiday Park Dog Friendly Report

File No:

I2018/2149

5

We move that Council rescind Resolution No. 18-625 from its Ordinary meeting held on September 2018 which reads as follows:

1. *That Council adopt Suffolk Beachfront Holiday Park as a Dog Friendly Park in accordance with the dog friendly site map, during off peak times*
2. *Request that the Biodiversity Advisory Committee provide an assessment on potential impacts of the change in status of the Suffolk Beachfront Holiday Park to a Dog Friendly Park on the surrounding environment*
3. *That Council increase ranger patrols in this area, as per availability, to ascertain any increased non-compliance*

If successful we intend to move that Council:

1. Send the staff report in 13.19 to the Biodiversity Advisory Committee for assessment on potential impacts of the change in status of the Suffolk Beachfront Holiday Park to a Dog Friendly Park on the surrounding environment
2. Consult with local residents about the proposal
2. Receive a report on the amount of known compliance issues with guests and residents during the trial including but not limited to their method of access to the beach.

**Signed: Cr Cate Coorey
Cr Michael Lyon
Cr Simon Richardson**

Comments from Director Infrastructure Services:

Resolution **18-625** adopts Suffolk Beachfront Holiday Park as a Dog Friendly Park during off peak times only. This excludes owners from bringing their pets to the Holiday Park from 22 December to 14 January and 17 April to 27 April 2019. To ascertain whether the Dog Friendly status results in increased non-compliance, a targeted compliance program should cover both peak and off peak periods for the park and adjacent areas. Known compliance data to date can be collated; however its value in informing the level of compliance / non-compliance is possibly limited.

As a pet friendly destinations are popular with those that choose to bring their pet companion with them on holidays and bookings are often booked well in advance. Any change to a Pet friendly status will require consideration of any existing bookings.

A report was tabled at the Biodiversity Advisory Committee on 15 October 2018.

SUBMISSIONS AND GRANTS

Report No. 11.1 **Byron Shire Council Submissions and Grants as at 31 October 2018**

Directorate: Corporate and Community Services

5 **Report Author:** Anna Vinfield, Manager Corporate Services

File No: I2018/2156

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 (#E2018/89928) for the Byron Shire Council Submissions and Grants as at 31 October 2018.

Attachments:

20

- 1 BSC Grants Register at 31 October for 22 November 2018 meeting, E2018/89928 
- 2 Confidential - SCCF recipients, E2018/89947

25

Report

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

5 Successful Applications

- Upgrade of Jonson St protection works - pre-construction investigation works, Office of Environment & Heritage
- 10 • Refurbishment of CWA Hall, Brunswick Heads, Stronger Country Communities Fund, Department of Premier and Cabinet
- The Mullumbimby Gateway – Repair & Renew, Stronger Country Communities Fund, Department of Premier and Cabinet
- 15 • Refurbishment of The Mullumbimby War Widow’s Cottage Bathroom, Laundry and Training Room for Youth Activities, Stronger Country Communities Fund, Department of Premier and Cabinet

Additional information on the grant submissions is provided in Attachment 1 – Submissions and Grants report as at 31 October 2018.

20 Attachment 2 provides an embargoed list of successful applications yet to be announced.

Financial Implications

25 If Council is successful in obtaining the identified grants more than \$13 million would be achieved which would provide significant funding for Council projects. Some of the grants require a contribution from Council (either cash or in-kind) and others do not. Council’s contribution is funded. The potential funding and allocation is noted below:

Requested funds from funding bodies	13,869,743
Council cash contribution	4,814,356
Council in-kind Contribution	121,857
Other contributions	8,730,545
Funding applications submitted and awaiting notification (total project value)	27,536,501

30 **Statutory and Policy Compliance Implications**

35 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.

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 Lease for Signage on Ewingsdale Road to Ganra Pty Ltd**Directorate:** General Manager5 **Report Author:** Paula Telford, Leasing and Licensing Coordinator**File No:** I2018/1717**Theme:** Corporate Management

Corporate Services

10

Summary:


15 Ganra Pty Ltd is seeking a long-term lease over part of Lot 104 DP 1119488 located at the corner of Ewingsdale Road and Bayshore Drive Byron Bay for the purpose of a free standing advertising billboard. The land is Council owned land and classified as operational land.

20 Ganra Pty Ltd has development consent 92/205 for the advertising billboard and sees the longer-term tenure for the advertising billboard as being an important element in its overall advertising strategy for Elements of Byron Bay and associated services.

RECOMMENDATION:

1. That Council authorise the General Manager to enter into new five (5) year lease with three five (5) year options to renew with Ganra Pty Ltd over Part of Lot 104 DP 1119488 located on the corner of Ewingsdale Road and Bayshore Drive, Byron Bay for the purpose of an advertising billboard.
2. That the Lease contains the following terms:
 - a) the initial lease rent to be set at \$5,000 excluding GST, and increased by Consumer Price Index – Australia “All Groups” compounding annually thereafter for the balance of the term;
 - b) a full market rent valuation to be undertaken before the commencement of each option to renew for the purpose of setting rent on commencement of each option and thereafter increased annually by Consumer Price Index – Australia “All Groups” compounding for the term of each option;
 - c) all lease preparation and registration costs to be met by the Lessee;
 - d) all maintenance to be carried out by the Lessee at the Lessee’s cost; and
 - e) the Lessee to provide public liability insurance to the minimum value of twenty million dollars.
3. That Council, authorise the Mayor and the General Manager to affix the Council Seal to the lease documents in accordance with clause 400 of the *Local Government (General) Regulation 2005 (NSW)*.

Attachments:

- 25 1 Independent rent valuation report (Tayor Byrne) for lease to Ganra over folio 104/1119488 advertising billboard., E2018/80049 [↗](#) 

30

Report

Land information:

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Title information: Lot 104 DP 1119488
Owner: Byron Shire Council
Classification: Operational Land
LEP Zone: RU2 Rural Landscape

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15

This report has been prepared to enable Council to consider the offer of a twenty (20) year lease (structured by a (5) year lease with three additional five (5) year options to renew) to Ganra Pty Ltd for a free standing advertising billboard located on Lot 104 DP 1119488 being the corner of Ewingsdale Rd and Bayshore Drive Byron Bay ('the Land'). The advertising billboard is erected in accordance with development approval 92/205 held by Ganra Pty Ltd.

Background:

20

In January 2010 Council undertook a boundary adjustment of Lot 101 DP 808566 and created Lot 104 DP 1119488.

25

Development approval 92/205 was originally granted to Byron Bay Beach Resort Pty Ltd owned by Holiday Villages (Byron Bay) Pty Ltd for the construction of an advertising billboard on Lot 101 DP 808566. As a condition of the approval Council entered into a ten year lease with an option of ten years with Holiday Villages (Byron Bay) Pty Ltd for the advertising sign.

30

In 2001 Byron Bay Beach Resort Pty Ltd was purchased by Taylorise Pty Ltd. Council resolved (Resolution **01-1360**) to allow the transfer of the lease for the advertising billboard to Taylorise Pty Ltd. That lease terminated on 30 June 2011 when Byron Bay Beach Resort Pty Ltd was again sold to Ganra Pty Ltd. Council resolved (Resolution **11-759**) to enter into a five year lease with Ganra Pty Ltd for the advertising billboard to commence 1 July 2011 at market rent. Ganra Pty Ltd currently holds that lease as a monthly tenant under holding over provisions.

35

Proposed new lease:

40

Ganra Pty Ltd approached Council seeking a new twenty (20) year lease, to secure the long-term tenure for its free standing advertising billboard on Lot 104 DP 1119488. Council had previously granted Ganra Pty Ltd a short-term five (5) year lease. Ganra Pty Ltd has disclosed that the advertising sign is important element in its overall advertising strategy for Elements of Byron Bay and associated services.

45

Staff propose that Council enter into a (5) year lease with three additional five (5) year options to renew with Ganra Pty Ltd for the purpose of an advertising billboard. The proposed lease is structured in this way to allow for a market rent review to be obtained before the commencement of each option, thereby ensuring that Council receives a competitive rental return from the leased land.

50

Council must register the lease with the New South Wales Land Registry Services ('LRS') in accordance with s53(1) of the *Real Property Act 1900* (NSW). Advice from the LRS is that ss23F, 23G of the *Conveyancing Act 1919* and s6.2 of the *Environmental Planning & Assessment Act 2017* (NSW) do not apply to a lease for a signage because a lease for signage is construed as a lease of a premise that requires a compiled plan to be annexed to the lease

55

The initial rent during the first year of the lease is set by an independent market valuation being \$5,000 excluding GST and thereafter increased annually by Consumer Price Index – Australia "All

Groups” compounding for the term. A full market rent valuation must be undertaken before the commencement of each option to renew for the purpose of setting rent on commencement of each option and thereafter increased annually by Consumer Price Index – Australia “All Groups” compounding for the term of each option.

5 The Lessee will be wholly responsible, at its own cost, for all maintenance of the leased area and public liability insurance for a minimum value of \$20 million. The Lessee must cover all lease preparation and registration costs.

10 **Financial Implications**

15 The Lessee provided an independent market rent valuation that recommended lease rent of \$5,000 per annum excluding GST. This report recommends that the initial rent for the term of the lease be set at \$5,000 per annum (excluding GST), and thereafter increased CPI Australia “All Groups” compounding.

20 A full market rent valuation must be undertaken before the commencement of each option to renew for the purpose of setting rent on commencement of each option and thereafter increased annually by Consumer Price Index – Australia “All Groups” compounding for the term of each option.

20 **Statutory and Policy Compliance Implications**

25 A lease for a term exceeding three years must be registered in order to pass the estate to the Lessee s53(1) of the *Real Property Act 1900* (NSW).

25 ***Real Property Act 1900 (NSW)***

25 **53 Land under the provisions of this Act—how leased**

- 30 (1) *When any land under the provisions of this Act is intended to be leased or demised for a life or lives or for any term of years exceeding three years, the proprietor shall execute a lease in the approved form.*
- (2) *(Repealed)*
- 35 (3) *A right for or covenant by the lessee to purchase the land therein described may be stipulated in such instrument, and in case the lessee shall pay the purchase money stipulated and otherwise observe the lessee’s covenants expressed and implied in such instrument, the lessor shall be bound to execute a transfer of the said land to such lessee.*
- (4) *A lease of land which is subject to a mortgage, charge or covenant charge is not valid or binding on the mortgagee, chargee or covenant chargee unless the mortgagee, chargee or covenant chargee has consented to the lease before it is registered.*
- 40 (5) *Subsection (1) does not apply in relation to land the subject of a social housing tenancy agreement within the meaning of the Residential Tenancies Act 2010.*

45 To overcome constraints requiring a registered plan of subdivision for a lease over part of an exiting lot for a term of more than five years in accordance with 23G *Conveyancing Act 1919* and s6.2 of the *Environmental Planning & Assessment Act 2017*, the New South Wales Land Registry Services Register General’s Guidelines provide that a lease for a sign is construed as being a lease of a premise. A lease over a premises merely requires a compiled plan of the leased site to be annexed to the lease

Report No. 13.2 **Lilly Pilly Community Pre-School Inc - Lease**
Directorate: General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2018/1949
5 **Theme:** Corporate Management
 Corporate Services

Summary:

10 Council resolved (**18-640**) to authorise the General Manager to negotiate with the Lilly Pilly Community Pre-School, ('the Pre-School') a new lease with following terms and conditions:

- 15 a) *an initial term of five (5) years with three additional options of five (5) years to renew;*
 b) *the lessor provide subsidised rent to the value of \$40,190 (Calculated on the basis of 6% of the lands Unimproved Capital Value \$40,680 less \$490 being the value of minimum Crown rent) and adjusted each year;*
 c) *the lessee pay annual rent of \$490 (excluding GST) being minimum Crown rent, adjusted for each year of the lease;*
20 d) *the lessor provide full (100%) subsidies general land rates value for each year of the lease;*
 e) *the Lessee pay all other outgoings;*
 f) *the Lessee repair or replace all non-structural defects identified in a building audit obtained prior to commencement of the lease, and subsequent obtained prior to commencement of each additional option of the lease.*

25 Negotiations with the Pre-School have completed and a resolution from Council is now required to authorise the granting of the proposed lease.

RECOMMENDATION:

1. **That Council delegate to the General Manager, the authority to authorise the holding-over by the Lilly Pilly Community Pre-School Inc under the existing lease terms to permit occupation of Lot 70 DP 851902 after 30 November 2018 and until a new lease is executed.**

2. **That Council grant a five (5) year lease with three five (5) year options to renew, for the purpose of early childhood education and care to the Lilly Pilly Community Pre-School Inc over the whole of Lot 70 DP 851902, 96 Kingsford Drive Brunswick Heads NSW 2483.**

3. **That Council authorise the publication of the proposed grant of a five (5) year lease with three five (5) year options to renew for the purpose of early childhood education and care to the Lilly Pilly Community Pre-School Inc for a period of 28 days seeking public comment.**

4. **That in the event of no comments objecting to the grant of the lease are received, that Council delegate to the General Manager the authority to consider all submissions to enter into the lease referred to in 2 above with the following minimum conditions:**
 - a) **term of five (5) years with three five (5) year options to renew;**
 - b) **annual lease rent to commence at \$490 (inclusive of GST);**
 - c) **annual rent to be increased to annual the value of minimum Crown rent for the same year;**
 - d) **all lease preparation and registration costs to be met by the Lessee;**

- e) all maintenance to be carried out by the Lessee at the Lessee's cost;
 - f) Council subsidise annual rent to value of \$40,190 being the difference between the market rent \$40,680 and the subsidised rent of \$490 payable by the Lessee on commencement of the lease by a section 356 of the LGA donation of Council;
 - g) Council subsidise annual general land rates payable on the unimproved capital value of the land being \$678,000 in the 2018-2019 financial year.
5. That in the event that objecting comments are received then Council make an application for the consent from the NSW Minister for Local Government for the lease, referred to in 2 above, to be granted.

Report

Council resolved (**18-640**) to authorise the General Manager to negotiate with the Lilly Pilly Community Pre-School, (Pre-School) a new lease with following terms and conditions:

- 5
- a) *an initial term of five (5) years with three additional options of five (5) years to renew;*
 - b) *the lessor provide subsidised rent to the value of \$40,190 (Calculated on the basis of 6% of the lands Unimproved Capital Value \$40,680 less \$490 being the value of minimum Crown rent) and adjusted each year;*
 - 10 c) *the lessee pay annual rent of \$490 (excluding GST) being minimum Crown rent, adjusted for each year of the lease;*
 - d) *the lessor provide full (100%) subsidies general land rates value for each year of the lease;*
 - e) *the Lessee pay all other outgoings;*
 - 15 f) *the Lessee repair or replace all non-structural defects identified in a building audits obtained prior to commencement of the lease, and subsequent obtained prior to commencement of each additional option of the lease.*

Negotiations with the Pre-School have completed and a resolution from Council is now required to authorise the granting of the proposed lease.

20

Background:

The Pre-School holds a current five (5) year lease with Council that terminates on 30 November 2018. The Pre-School request a new twenty year lease.

25

The proposed new lease is over the whole of Lot 70 DP 851902, 96 Kingsford Drive Brunswick Heads being Council owned land and classified as community land for general community use.

30 The adopted Generic Plan of Management (the Plan) over the land, permits Council to lease the land for a term not greater than 21 years for purposes consistent with the core objectives of the Plan. The proposed grant of a five (5) year lease with three options of five (5) years to renew, for the purpose of early childhood education and care, is consistent the Plan and its core objectives.

Direct negotiation:

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In accordance with s46A(3) of the *Local Government Act 1993* (NSW), Council is exempted from running a tender process to let a proposed lease for greater than five years to the Pre-School because the Pre-school is a registered charity (93 549 848 039) and approved children's care provider (PR-00005056). A long-term lease will provide the Pre-School with the security to apply for applicable grant funding.

40

Terms of proposed Lease:

45 The proposed lease will be for a term of five (5) years commencing 1 December 2018 to 30 November 2023. The lease will provide the option of three additional five (5) year options to renew.

A regime of scheduled building audits throughout the term of the lease will ensure ongoing maintenance to the Council asset. Terms of the Lease will place an obligation on the Lessee to repair or replace all non-structural building defects identified in each building audit report.

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Public notification of proposed Lease:

55 *LGA* section 47 (set out below) provides that if a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must give

public notice of the proposal (including on the council's website), and exhibit notice of the proposal on the land to which the proposal relates.

5 Before granting the lease, licence or other estate, the council must consider all submissions duly made to it. The council must not grant the lease, licence or other estate except with the Minister's consent, if a person makes a submission by way of objection to the proposal.

10 As a result of the public notice, this report seeks Council authority to authorise the Pre-School to remain in occupation of the premises after 30 November 2018 under holding-over provisions, (clause 29 of the current lease) until the new proposed lease is completed.

Subsidies:

15 Council's Policy 3.44 Children's Services Policy provides that Council will provide community land at nominal cost to the organisations including the Pre-School as a result Council will need to:

- subsidise \$40,190 being the difference between the market rent calculated at 6% of the lands Unimproved Capital Value (UCV) being \$40,680 and the rent payable by the Pre-School of \$490 (exclusive of GST) being the value of minimum Crown Rent on commencement of the lease; and
- subsidise the annual value of general land rates in accordance with Council's Policy 12/008 Section 356 Donations for not for profit organisations. The Pre-School to pay all other outgoings except for general rates charges.

25

Subsidy will be by way of a section 356 of the LGA, donation of Council.

Financial Implications

30 This report recommends that Council subsidise by way of a section 356 of the LGA donation:

- annual rent to the value of \$40,190 being the difference between the market rent \$40,680 and the rent \$490 payable by the Pre-School; and
- annual general land rates for each year of the lease. The annual general rent for the 2018-19 financial year based on a UCV of \$678,000.

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40 That the Pre-School pay the lease preparation costs of \$517 as set by Council's 2018-19 Fees and Charges and the full cost of registering the lease with the NSW Land Registry Services as well as all maintenance to be carried out by the Pre-School at its cost.

Statutory and Policy Compliance Implications

Local Government Act

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s46A Means of granting leases, licences and other estates

- (1) A plan of management is to specify, in relation to the community land to which it applies, any purposes for which a lease, licence or other estate may be granted only by tender in accordance with Division 1 of Part 3.
- (2) Nothing in this section precludes a council from applying a tender process in respect of the grant of any particular lease, licence or estate.
- (3) A lease or licence for a term exceeding 5 years may be granted only by tender in accordance with Division 1 of Part 3, unless it is granted to a non-profit organisation.

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55 **47 Leases, licences and other estates in respect of community land—terms greater than 5 years**

- 5 (1) *If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:*
- (a) *give public notice of the proposal (including on the council's website), and*
 - (b) *exhibit notice of the proposal on the land to which the proposal relates, and*
 - (c) *give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and*
 - (d) *give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.*
- 10 (2) *A notice of the proposal must include:*
- *information sufficient to identify the community land concerned*
 - *the purpose for which the land will be used under the proposed lease, licence or other estate*
 - *the term of the proposed lease, licence or other estate (including particulars of any options for renewal)*
 - *the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)*
 - *a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.*
- 15 (3) *Any person may make a submission in writing to the council during the period specified for the purpose in the notice.*
- 20 (4) *Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.*
- 25 (5) *The council must not grant the lease, licence or other estate except with the Minister's consent, if:*
- (a) *a person makes a submission by way of objection to the proposal, or*
 - (b) *in the case of a lease or licence, the period (including any period for which the lease or licence could be renewed by the exercise of an option) of the lease or licence exceeds 21 years.*
- 30 (6) *If the council applies for the Minister's consent, it must forward with its application:*
- *a copy of the plan of management for the land*
 - *details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision*
 - *a statement setting out all the facts concerning the proposal to grant the lease, licence or other estate*
 - *a copy of the public notice of the proposal*
 - *a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate*
 - *if the application relates to a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years, a statement outlining the special circumstances that justify the period of the lease or licence exceeding 21 years*
 - *a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate.*
- 35 (7) *On receipt of the application, the Minister must request the Director of Planning to furnish a report concerning the application within such period as the Minister specifies.*
- 40 (8) *After considering the application and any report of the Director of Planning, the Minister, if satisfied that:*
- (a) *subsections (1), (2) and (6) have been complied with, and*
 - (b) *such consent would not contravene section 46, and*
 - (c) *in all the circumstances, it is desirable to grant consent,*
- 45 *may consent to the granting of a lease, licence or other estate in respect of the whole or part of the land to which the application relates, subject to such terms and conditions as the Minister specifies.*
- 50 (8AA) *The Minister may consent to a lease or licence referred to in subsection (5) (b) only if the Minister is satisfied that there are special circumstances that justify the period of the lease or licence exceeding 21 years.*
- 55
- 60

- 5
- 10
- (8A) *On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to consent to, the granting of a lease, licence or other estate in accordance with subsection (8).*
 - (9) *The Minister's consent is conclusive evidence that the council has complied with subsections (1), (2) and (6).*
 - (10) *For the purposes of this section, any provision made by a lease or licence, or by an instrument granting any other estate, in respect of community land, according to which the council:
 - (a) *would suffer a disadvantage or penalty if the same or a similar lease, licence or estate were not to be granted, for a further term, after the expiry of the current lease, licence or other estate, or*
 - (b) *would enjoy an advantage or benefit if the same or a similar lease, licence or estate were to be so granted, is taken to confer an option for renewal for a term equal to the further term.**

Report No. 13.3 **Crown Lands Transition**
Directorate: General Manager
Report Author: Shannon McKelvey, Executive Officer
 Claire McGarry, Place Manager - Byron Bay
5 **File No:** I2018/2123
Theme: General Manager
 Organisation Development

10 **Summary:**

15 The Crown Lands Management Act commenced from 1 July 2018 and changes the way that some crown reserves will be managed in future. All crown reserves will stay public land, with some managed under the Crown Lands Management Act and others managed under the Local Government Act.

20 There will be no practical impacts for the reserves that will continue to be managed by Council under the Crown Lands Management Act. For reserves managed by Council as ‘community land’ under the Local Government Act, there will now need to be Plans of Management in place to guide their future use and management. Council needs to notify the Minister and work with the Department to determine the initial classification and categorisation for reserves that will be managed under the Local Government Act.

25 There is a transition period of 3 years for councils to put Plans of Management in place for these reserves. The Crown Lands transition project is being coordinated from the General Manager’s Office and will involve staff and resources from many service areas of Council, for example open spaces, works, utilities, community services, legal services, place planning and media and communications.

30 While the Act commenced in July this year, the supporting guidelines, training and reserve-specific information have been being progressively rolled out by Department of Industry Crown Land (DOI-CL) and Office of Local Government. Council now has sufficient information to get parts of the transition underway.

35 This report relates to some reserves which Council is involved in managing. As the transition progresses over the next 3 years, there will be further reports on other reserves. For now, Council has to start the transition process and the recommendations in this report cover as many reserves as possible at this time.





40

RECOMMENDATION:

That Council resolve to apply to the Minister administering the Crown Lands Management Act for:

- a) **Initial classifications and categorisations set out in Attachments 1 & 2 (E2018/90298 and E2018/90299).**
- b) **A one-off vesting application for the Sandhills Estate (part reserve number 755695/part Lot 457 in DP 1087879).**

Attachments:

- 45 1 Crown Land Manager Reserves, E2018/90298  
- 2 Devolved Reserves, E2018/90299  

Report

5 The Crown Lands Management Act commenced on 1 July 2018. According to the Department of Industry - Crown Lands (DOI-CL) it will reduce red tape and duplication, recognise and support Aboriginal involvement in the management of Crown Land and support greater community involvement in local decisions made about Crown Land.

10 This report does not relate to crown reserves where Council has no current role in management. Also it relates only to those reserves in the Shire that DOI-CL have identified so far as being devolved to Council. There are many other crown reserves in the Shire that DOI-CL are yet to make a decision on and they will be the subject of future consideration. No timeframe has been provided by DOI-CL for when that future consideration will occur as part of what they are calling their 'land negotiation program'.

15 At this stage, staff have identified only one reserve where the delay in that future consideration will negatively impact current projects and that is the Sandhills Reserve – see more information below.

20 DOI-CL have created a new public and searchable on-line Portal to provide information on some crown reserves <https://www.industry.nsw.gov.au/lands/reserves/portal> . It is created from a live database which means that the published information is updated regularly.

25 DOI-CL advise they plan to develop and improve the Portal and eventually have it cover all reserves but for now the Portal only shows the reserves that have been devolved to Council or which Council is the Crown Land Manager (formerly Reserve Trust Manager) for.

There are now 2 types of crown land that will managed by Council:

- 30 1. Reserves that have been 'devolved' to Council – These are reserves that will continue to be overseen by Crown Lands under Crown Lands Management Act but operationally they are to be managed by Council. There will be no requirements for a Plan of Management for these reserves. In practice, nothing much will change with these reserves, however, the process has identified reserves which were not previously known to Council as this is the first time they have been shown by DOI-CL in their mapping.
- 35 2. Reserves where Council is now Crown Lands Manager – These are the reserves Council has been Reserve Trust Manager of. These reserves will now be overseen and operationally managed by Council under the Local Government Act. For reserves that are classified as 'Community Land' under the Local Government Act, a Plan of Management will now be need to be in place by 31/7/2021.

40 There will continue to be some significant differences between Council-owned land and Crown reserves managed under the Local Government Act public land management system including that:

- 45 1. Native Title responsibilities will continue with crown reserves;
2. Additional statutory requirements will apply to crown reserves under the Crown Lands Management Act;
- 50 3. The Minister has additional powers in relation to crown reserves, for example Minister can make classifications subject to conditions and Department has an approval role for plans of management.
- 55 4. The Minister retains control over crown reserves, including the power to dispose of a reserve or change the status of reserves or of management of reserves.

5 Council is now required to notify and apply to the Minister for initial classification and categorisation of reserves under the Local Government Act. A Council resolution is required to make the application to the Minister (as it is a non-delegable function under s377(1)(s) of the Local Government Act).

The Department have issued guidelines for the classification and categorisation of reserves – see <https://www.olg.nsw.gov.au/content/council-crown-land-managers-resources>.

10 The Guidelines point out that some reserves will be manifestly inconsistent with a community land classification including reserves that:

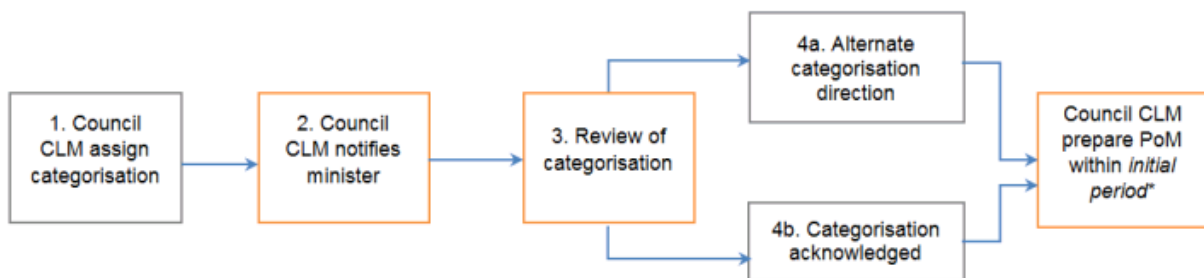
- may not need to be made available to the public for use for any purpose for which community land may be used, either by general public or specific sections of the public;
- 15 • do not satisfy the guidelines under the Local Government (General) Regulations;
- cemeteries
- emergency services sites
- reserves needed for infrastructure eg quarries, sewerage works, coastal infrastructure, sanitary purposes, reservoirs and water infrastructure.

20 The guidelines confirm that where a council recommends an operational classification, the onus is on them to identify and satisfy the Minister that certain land does not fall within any of the categories for community land under the Local Government Act or could not continue to be used and dealt with as it currently is if it were classified as community land.

25 For reserves classified as community land, they require categorisation as per the Local Government Act and Regulations. Appendix B to the Guideline – Initial categorisation of Crown Land managed by council Crown land managers, provides a comprehensive list of the ‘guidance category’ for each of the purposes reserves may have been dedicated for. If the guidance category is inconsistent with the existing use of a reserve the onus will be on Council to provide evidence of the inconsistency.

30 The process for categorising each reserve classified as Community Land set out in the Guideline is:

35



40 During this transition the initial decisions on classification and categorisation are ultimately matters for the Minister. After that, the usual processes set out in the Local Government Act can be followed if community wish to change the classification/categorisation, however, Crown Lands approval will still be required in many instances.

45 Once community land has been categorised, there will be different processes for preparation of Plans of Management depending on the categorisation. It is not possible to start to plan the process for preparing all the necessary Plans of Management until the Minister’s decisions on categorisation are known. This is because some categorisations will trigger the need for site-specific Plans of Management but some reserves with the same categorisations may be able to

have generic Plans of Management. Once the Minister's categorisation decisions are known, a further workshops with Councillors on resourcing preparation of the Plans of Management will be possible.

5 There is a large body of work to get the notifications/applications and supporting information prepared. This will have to be resourced from within existing staff resources. Also, DOI-CL will be processing notifications/applications from each council which will be a significant workload for them. This means that it is most likely that it will take quite some time before Council receives the final initial classifications and categorisations.

10

In relation to Sandhills (as shown below), it is part of Reserve 755695.



15

Reserve 755695 includes more than 50 different parcels of land across the Shire used for varied purposes so the whole reserve had been deferred for future consideration. [NB the Byron Youth Activity Centre (Byron YAC) has its own reserve, Reserve Number 1026908 and the recommendation regarding Sandhills does not refer to the Byron YAC reserve.]

20

Consistent with Res 18-542 Council requested urgent consideration of the vesting of this land in Council. Council has received confirmation from The Honourable Paul Toole MP, Minister for Lands and Forestry, via The Honourable Ben Franklin, Parliamentary Secretary for Renewable Energy and Northern NSW, that:

25

- The process can be by way a one-off vesting application for Sandhills Estate or, if that is unsuccessful, by way of Compulsory Acquisition which would involve Council paying compensation (which would be beyond Council's capacity).

30

- The Department is interested in working with Council to ensure that the ongoing future use of the site brings optimal public benefit.

35

A cross-directorate team from the General Manager's office, Open Spaces, Community Services and Utilities has commenced work on the application in accordance with Res 18-542 and are working with DOI-CL staff. The application has to be supported by a formal resolution authorising its making (as this is a non-delegable function).

Vesting would result in ownership of the crown land transferring to Council for no money. However it is important to note that vesting:

- 5 • Can be conditional, ie covenants, spatial limits and restrictions can be imposed on the vesting notice. For example, the Byron Library site was vested in Council some years ago and it was conditional upon a restriction being placed on the title to the land requiring use a library for a designated period.
- 10 • Does not displace dedications and reservations or Native Title unless/until the land becomes “excluded land” and then only if the vesting notice is unconditional. Council will need to engage with and involve the Arkawal / Byron Bay Bundjalung and Tweed Byron Area Land Council consistent with the Indigenous Land Use Agreement that includes reference to Sandhills Estate and the NSW Aboriginal Land Council as claimants under the Aboriginal Land Rights Act 1983 (NSW). Some preliminary discussions have been held but will need to continue throughout the process.
- 15 • Will result in the land being community land unless the vesting notice expressly states it is vested as operational land.
- 20 To be eligible for vesting, the land must:
 - a. meet one or more of the ‘Local Land Criteria’:
 - 25 - provides public good predominantly for residents in the shire or in adjacent shires
 - consistency of use with LEP/planning provisions
 - consistency of use with functions of a council under LG Act
 - consistency of management of the land as a community asset by Council.
 - b. be “suitable for local use” for example the application could be supported by proof of:
 - 30 - assets/infrastructure on the site supporting that local use
 - investment by Council into the site for that local use
 - consistency of use with current zoning
 - timeframes for achieving local use
 - 35 - Council funding details;
 - that the future use will be actually activated and brought to completion after vesting.
 - c. not be ‘state significant’.
- 40 To make a one-off vesting application Council must also demonstrate that there is an ‘*exceptional local need*’ which is a matter that DOI-CL have absolute discretion to determine. The examples provided by DOI-CL of where exceptional local need *may* be found include:
 - 45 • That ownership would provide Council with significantly increased ability to manage the land to realise greater community benefit for public recreation and multi-use than currently exists.
 - Council intends/needs to make a significant financial investment and where security of ownership would justify the investment.
 - 50 • Council has already made significant investment infrastructure to allow for public good and are seeking ownership of land for continued management to provide security for future investments and community benefit.
 - 55 • Timing is critical and it is not possible to delay the vesting, as delay would result in continued loss of community benefit and reputational risk to Council or State Government/

- The public interest/good can be demonstrated to “far outweigh” any potential loss of state revenue by vesting high-value Crown land and assets in Council.

5 Preparation of the application is being resourced from within existing resources. The application will need to be comprehensive as there will only be one opportunity to make it and it needs to be supported with engagement information, so it will take some time to prepare.

10 **Financial Implications**

15 DOI-CL will provide the base amount of \$30,000 to Council to assist with preparation of Plans of Management. This amount is insufficient to cover the costs of Plans let alone the costs of the preparatory work in notifying/applying to the Minister for classifications and categorisations, the vesting application or the future work that will arise once the program for discussing the balance of the reserves starts.

20 The work involved in the transition will have to be resourced from within existing staff resources which means that other projects, like reviewing plans of management for some Council-owned land may need to be delayed.

Statutory and Policy Compliance Implications

25 The Crown Lands Management Act imposes statutory non-discretionary obligations on Council in relation to the management and governance of certain Crown Lands. The recommendation and progressing this project are consistent with those obligations.

Report No. 13.4 **PLANNING - Railway Park Draft Plan of Management - Adoption**
Directorate: General Manager
Report Author: Ralph James, Legal Counsel
File No: I2018/2151
5 Theme: General Manager
 General Manager

10 **Summary:**

Council's Legal Services team have considered Council's 18 October 2018 Resolution (**18-647**) against a background of clause 114 of the *Local Government (General) Regulation 2005*.

15 For the elimination of legal doubt as to Council's resolution it should be recast in the terms recommended.

20 There is no need to rescind Council's existing resolution. Councils are able to change their decisions by way of a later decision. The courts have held that it is not always essential that a Council expressly alter or rescind a resolution prior to passing a later resolution which is inconsistent with the earlier resolution. In other words, alteration can be implied.

RECOMMENDATION:

That Council replace Resolution 18-647 with the following:

1. **Note the minor amendments of the Plan following public engagement dealing with acknowledging the heritage value of the land and the adjoining railway corridor and the retention of the memorial pole.**
2. **Adopt the Plan of Management for Railway Park, contained at Attachment 2 (#E2018/78998) to report PLANNING - Railway Park Draft Plan of Management - Submissions Report to Council's Ordinary Meeting on 18 October 2018, categorising the site as General Community Use and not, as was the subject of a public objection, as a Park , because a General Community Use categorisation will:**
 - i) **provide a greater opportunity for flexibility in the use of Railway Park into the future; and**
 - ii) **reduce ambiguity in terms of whether existing and potential future activities are consistent with the categorisation of the land, noting that the guidelines within the Local Government (General) Regulation 2005 relating to the categorisation of *park* suggest that 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.**

25

Report

At its Ordinary Meeting on 18 October 2018 Council received report 'PLANNING - Railway Park Draft Plan of Management - Submissions Report.'

5

Council resolved (**18-647**) as follows:

10

that Council adopt the Plan of Management for Railway Park, contained at Attachment 2 (#E2018/78998), categorising the site as General Community Use, noting the amendments to the Plan following public engagement associated with acknowledging the heritage value of the land and the adjoining railway corridor and the retention of the memorial pole.

Public objection was raised as to the categorisation of General Community Use.

15

That objection was addressed in detail in the body of what was a public report.

There can be no doubt that Council, in resolving as it did, considered the report including that part which dealt with the objection to General Community Use.

20

That Council considered the objections is evidenced by the fact that the resolution reflects the inclusion of matters which were raised in objecting submissions.

Council's Legal Services team have considered the resolution against a background of clause 114 of the *Local Government (General) Regulation 2005*.

25

114 Adoption of draft plan of management in relation to which certain submissions have been made

(1) This clause applies if:

30

(a) a council prepares a draft plan of management, and

(b) the council receives any submission, made in accordance with the Act, concerning that draft plan that makes any objection to a categorisation of land under the draft plan, and

(c) the council adopts the plan of management without amending the categorisation that gave rise to the objection.

35

(2) If this clause applies, the resolution by which the council adopts the plan of management must state the council's reasons for categorising the relevant land in the manner that gave rise to the objection.

For the elimination of legal doubt as to Council's resolution it should be recast in the terms recommended.

40 **Financial Implications**

Nil.

45

Statutory and Policy Compliance Implications

There is no need to rescind Council's existing resolution.

50

Councils are able to change their decisions by way of a later decision. The courts have held that it is not always essential that a Council expressly alter or rescind a resolution prior to passing a later resolution which is inconsistent with the earlier resolution. In other words, alteration can be implied. See *Everall V Ku-ring- gai Municipal Council* (1991).

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.5 Annual Report 2017/18

5 **Directorate:** Corporate and Community Services
Report Author: Heather Sills, Corporate Governance Officer
File No: I2018/1860
10 **Theme:** Corporate Management
 Governance Services

Summary:

15 Each NSW Local Government Authority is required under S428 of the *Local Government Act 1993* to prepare and submit to the Minister of Local Government an Annual Report.

20 The preparation of an Annual Report is an opportunity for Council to provide feedback back to the community on how the Council has implemented its operational plan and delivered outcomes for the community.

25 This report seeks for Council to note the Annual Report 2017/18 and the submission of the Annual Report to the Minister for Local Government.

30 A separate report on the 2017/18 Financial Statements has been prepared and will be considered at this meeting of Council.

RECOMMENDATION:

That Council note the Annual Report 2017/2018 (#E2018/80058), included as Attachment 1 to this report, and its submission to the Minister for Local Government.

Attachments:

30 1 Annual Report 2017/18, E2018/80058 

Report

Each Council in NSW has an obligation to prepare and submit an Annual Report. It is an opportunity to celebrate Council's achievements and report back to the community on these.

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

10 In addition to the prescribed information, this Annual Report is one of the key points of accountability between Council and our community. The Annual Report contains some of our achievements in implementing the Delivery Program over the last year and the effectiveness of each of the activities in achieving the overarching objectives in the Community Strategic Plan (2017-2027) objectives:

- 15 • Corporate management
- Economy
- Society and culture
- Environment
- 20 • Community infrastructure

During 2017-18 Council made significant progress towards its operational plan – 52% of actions were complete, 41% substantially completed and 8% not achieved.

25 Highlights for the year include:

- \$878k invested to reseal 16km of roads and \$2.4M to reconstruct 1.3km of roads
- \$1.6M to fill potholes
- 79% completed of \$16.1M capital works program including
 - 30 ○ Commence the bridges program in the Nashua – Booyong area
 - South Golden Beach Playground
 - Capping the dipsite at Bangalow Parklands
 - Stage one of Railway Park, Byron Bay
 - Causeways at Durrumbul and Fowlers Lane
 - Upgrade of fire mains across the Shire
- 35 • Commenced Railway Park and Rail Corridor catalyst site projects
- \$11.6M of grants awarded to Council
- \$1.2M saved as a result of improved procurement activities
- Awarded Customer Service National Team Leader of the Year
- Community Solutions Panel delivered recommendations on infrastructure spending
- 40 • New Byron Shire Council website launched
- Easy to Do Business program launched in partnership with ServiceNSW
- \$168k donated to community groups
- 710 development applications processed with a construction value of \$196.7M
- Launch of Byron region food booklet and Byron Unfolded trail map
- 45 • Creation of more than \$2.6M worth of conferencing and event bookings from March 2017 to February 2019 through Byron Business Events Bureau
- Reopened Byron Visitors' Centre after renovations including a Council enquiries
- 291 fixed premises and 230 temporary food shop inspections
- Reduced chemical use with steam weeder
- 50 • E-zone review for land of important environmental value
- Flying fox management plan
- Pest management program
- Launch of butt-free Byron Shire

- Beach scraping to improve New Brighton sand dunes
- Installation of more fast charge points through the Northern Rivers Electric Vehicle Strategy
- 49 court matters settled

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

Financial Implications

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

Statutory and Policy Compliance Implications

15 Section 428 requires Council to prepare an annual report within 5 months after the end of each year and detail its achievements in implementing its delivery program and the effectiveness of the principal activities undertaken in achieving the objectives at which those principal activities are directed.

20 *The Local Government (General) Regulation*

The report must include a copy of the council's audited financial reports prepared in accordance with the *Local Government Code of Accounting Practice and Financial Reporting* published by the Department, as in force from time to time, and such other information or material as the regulations or the guidelines under section 406 may require. A copy of the council's annual report must be posted on the council's website and provided to the Minister.

25

Report No. 13.6 Report of the Public Art Panel Meeting 11 October**Directorate:** Corporate and Community Services**Report Author:** Joanne McMurtry, Community Project Officer

Dominic Cavanough , Contract Engineer

5 **File No:** I2018/1985**Theme:** Society and Culture

Community Development

10 **Summary:**

15 A Public Art Panel meeting was held on 11 October 2018 and this report provides the Panel recommendations to Council. The meeting considered the selection of an artist for the Railway Park Public Art Project; submissions for the Bus Shelters Public Art Project; provided feedback to Mercato and planners about planned public art in the development and considered an update on the Creative Mullumbimby MOU, including a new permanent sculpture for the Mullumbimby Sculpture Walk.

20 The outcome the review of the Public Art Chapter of the Development Control Plan will be reported to the December ordinary meeting of Council.

RECOMMENDATION:**That with respect to the Public Art Panel meeting held on 11 October 2018, Council:**

1. **Grant the preferred artist, as per attachment 1, the commission for the Railway Square Public Art Project.**
2. **Not accept any of the artist submissions for the commission for the Bus Shelters Public Art Project and note that the Public Art Panel's sub-committee on this project has worked with staff to provide the options in this report incorporating public art.**
3. **That Council:**
 - a) **Council select the two shortlisted bus shelter designs from attachment 2: XXXX and XXXX that will:**
 - i) **Standardise the replacement of over forty bus shelters throughout the Byron Shire as funding becomes available.**
 - ii) **Allow flexibility for Council officers to choose the best bus shelter to suit the location and dimensions of each bus stop.**
 - b) **Council select a colour pattern to be used in the two shortlisted bus shelter designs.**
 - c) **Council request quotes from each of the three shortlisted artists that responded to the Bus Shelter Public Art Project Expression of Interest to provide a design for artwork that can be stencilled into a durable material for incorporation into the Bus Shelters.**
4. **That Council note that the Public Art Panel provided feedback and comments to the planner and representatives of the Mercato development about the proposed public artwork and that endorsement was provided for the concepts presented of the 'feather' seat in the public domain and the second piece of canopy art at the side of**

the building.

- 5. Provide in-principle support for a new sculpture for Mullumbimby Sculpture Walk – ‘Elevate’ by Ellen Ferrier, however before recommending approval for the sculpture, that engineering and structural designs be provided with the height risks resolved and that these be provided to the next available Public Art Panel meeting.**

Attachments:

- 1 Confidential - Railway Park Byron Bay - Design Phase Submission A-Gio Veronesi, E2018/85602
- 5 2 24.2018.57.1 - Bus Shelter Designs – Alternative Options attachment to 22 November 2018 Council meetings, E2018/85425  

Report

A Public Art Panel meeting was held on 11 October 2018 to consider:

- 5 1. the selection of an artist for the Railway Park Public Art Project;
2. submissions for the Bus Shelters Public Art Project;
3. feedback to Mercato and planners about planned public art in the development and
4. an update on the Creative Mullumbimby MOU, including a new permanent sculpture for the Mullumbimby Sculpture Walk.

10 A copy of the Agenda for the Public Art Panel meeting of 11 October 2018 can be found at https://byron.infocouncil.biz/Open/2018/10/PAP_11102018_AGN_923_AT_WEB.htm. The Panel made recommendations to Council as described in the recommendations of this report. The recommendations are supported by management.

15 Attachment 1 provides the recommended artist submission (confidentially) for the Railway Park Public Art Project.

20 Further information is supplied about the Panel recommendation for the Bus Shelters project below.

The outcome the review of the Public Art Chapter of the Development Control Plan will be reported to the December ordinary meeting of Council.

25 Bus Shelters Public Art Project

Regarding the commission for the Bus Shelters Public Art Project, the Public Art Panel recommend to Council:

- 30 1. *that none of the artist submissions is accepted and that Council write to the artists to thank them.*
2. *that the Panel's sub-committee on this project, work with staff to provide some examples to Council similar to those presented to the Panel meeting with suggestions to modify panels to incorporate artwork.*

35 Subsequent to the Panel meeting, the sub-committee considered alternate options for bus shelter designs where public art could be incorporated.

40 Council are requested to, note:

- The Public Art Panel noted that bus shelters are probably industrially designed to function based on Australian Standards and other legislation and are difficult to convert to a public art piece within the limited budget for this project.
- 45 • The budget for this initial project (first 11 bus shelters) will not allow every bus shelter to have public art incorporated
- The priority for installing a public art treatment (budget permitting) on the highest used bus shelters is as follows:
 - 50 1. 15 Tweed Street, Brunswick Heads
 2. 9 Broken Head Road, Suffolk Park
 3. 5 Clifford Street, Suffolk Park
 4. 172 Lighthouse Road, Byron Bay
- If the glass provided in any bus shelter design is vandalised, the maintenance of the shelter could include replacement of the glass with the public art treatment in the future.

- Procurement of the design for the public art treatment on this project will allow all future bus shelters to be replaced using the same public art treatment.

5 The following recommendation is made to Council based on the sub-committee's work and budget considerations. Attachment 2 provides the suggested design/s as recommended by the Public Art Panel sub-committee for Council's consideration.

RECOMMENDATION:

- 10 1. Council select the two shortlisted bus shelter designs XXXX and XXXX that will:
- 15 a. Standardise the replacement of over forty bus shelters throughout the Byron Shire as funding becomes available.
 - 15 b. Allow flexibility for Council officers to choose the best bus shelter to suit the location and dimensions of each bus stop.
2. Council select a colour pattern to be used the two shortlisted bus shelter designs.
- 20 3. Council request quotes from each of the three shortlisted artists that responded to the Bus Shelter Public Art Project Expression of Interest to provide a design for artwork that can be stencilled into a durable material for incorporation into the Bus Shelters.

Financial Implications

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

Statutory and Policy Compliance Implications

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

Report No. 13.7 **Budget Review 1 July 2018 to 30 September 2018**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2018/1995
5 **Theme:** Corporate Management
 Financial Services

Summary:




- 10 This report is prepared to comply with Regulation 203 of the *Local Government (General) Regulation 2005* and to inform Council and the Community of Council's estimated financial position for the 2017/2018 financial year, reviewed as at 30 September 2018.
- 15 This report contains an overview of the proposed budget variations for the General Fund, Water Fund and Sewerage Fund. The specific details of these proposed variations are included in Attachment 1 and 2 for Council's consideration and authorisation.
- 20 Attachment 3 contains the Integrated Planning and Reporting Framework (IP&R) Quarterly Budget Review Statement (QBRS) as outlined by the Office of Local Government in circular 10-32.

RECOMMENDATION:

1. **That Council authorise the itemised budget variations as shown in Attachment 2 (#E2018/89897) which includes the following results in the 30 September 2018 Quarterly Review of the 2018/2019 Budget:**
 - a) **General Fund – \$37,200 increase to the Estimated Unrestricted Cash Result**
 - b) **General Fund - \$952,700 increase in reserves**
 - c) **Water Fund - \$163,900 increase in reserves**
 - d) **Sewerage Fund - \$208,200 increase in reserves**

2. **That Council adopt the revised General Fund Estimated Unrestricted Cash Result of \$1,145,200 for the 2018/2019 financial year as at 30 September 2018.**

25 **Attachments:**

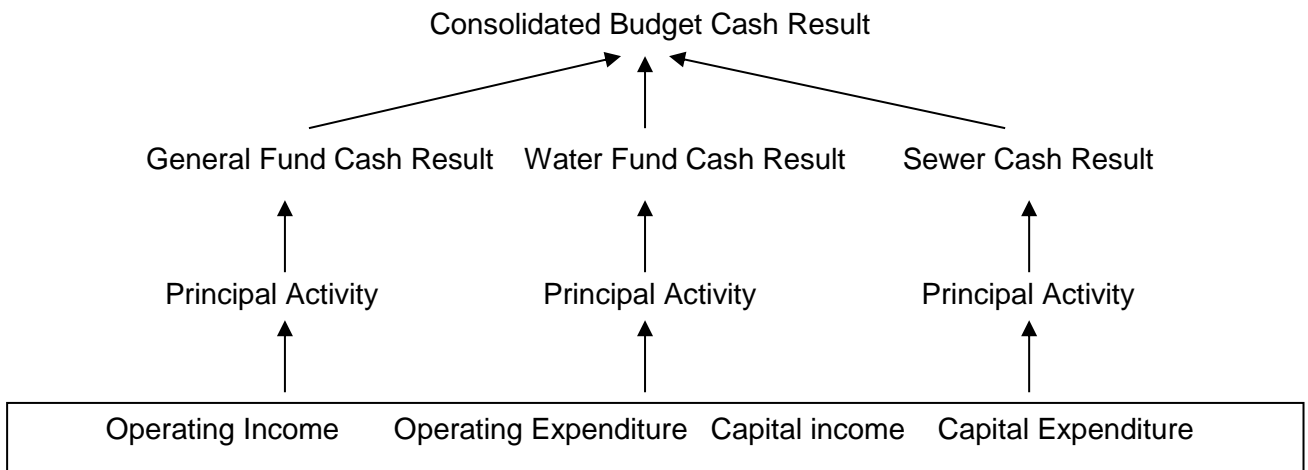
- 1 Budget Variations for General, Water and Sewerage Funds, E2018/89888 
 - 2 Itemised Listing of Budget Variations for General, Water and Sewerage Funds, E2018/89897 
 - 3 Integrated Planning and Reporting Framework (IP&R) required Quarterly Review Statement, E2018/89903 
- 30

Report

Council adopted the 2018/2019 budget on 28 June 2018 via Resolution **18-429**. It also considered and adopted the budget carryovers from the 2017/2018 financial year, to be incorporated into the 2018/2019 budget at its Ordinary Meeting held on 23 August 2018 via Resolution **18-522**. Since that date, Council has reviewed the budget taking into consideration the 2017/2018 Financial Statement results and progress through the first quarter of the 2018/2019 financial year. This report considers the September 2018 Quarter Budget Review.

The details of the budget review for the Consolidated, General, Water and Sewer Funds are included in Attachment 1, with an itemised listing in Attachment 2. This aims to show the consolidated budget position of Council, as well as a breakdown by Fund and Principal Activity. The document in Attachment 1 is also effectively a publication outlining a review of the budget and is intended to provide Councillors with more detailed information to assist with decision making regarding Council's finances.

Contained in the document at Attachment 1 is the following reporting hierarchy:



The pages within Attachment 1 are presented (from left to right) by showing the original budget as adopted by Council on 28 June 2018 plus the adopted carryover budgets from 2017/2018 followed by the resolutions between July and September and the revote (or adjustment for this review) and then the revised position projected for 30 June 2019 as at 30 September 2018.

On the far right of the Principal Activity, there is a column titled "Note". If this is populated by a number, it means that there has been an adjustment in the quarterly review. This number then corresponds to the notes at the end of the Attachment 1 which provides an explanation of the variation.

There is also information detailing restricted assets (reserves) to show Council estimated balances as at 30 June 2019 for all Council's reserves.

A summary of Capital Works is also included by Fund and Principal Activity.

Office of Local Government Budget Review Guidelines:-

The Office of Local Government on 10 December 2010 issued the new Quarterly Budget Review Guidelines via Circular 10-32, with the reporting requirements to apply from 1 July 2011. This report includes a Quarterly Budget Review Statement (refer Attachment 3) prepared by Council in accordance with the guidelines.

The Quarterly Budget Review Guidelines set a minimum standard of disclosure, with these standards being included in the Local Government Code of Accounting Practice and Financial Reporting as mandatory requirements for Council's to address.

- 5 Since the introduction of the new planning and reporting framework for NSW Local Government, it is now a requirement for Councils to provide the following components when submitting a Quarterly Budget Review Statement (QBRs):-
- 10 • A signed statement by the Responsible Accounting Officer on Councils financial position at the end of the year based on the information in the QBRs
 - Budget review income and expenses statement in one of the following formats:
 - 15 ○ Consolidated
 - By fund (e.g General, Water, Sewer)
 - By function, activity, program etc to align with the management plan/operational plan
 - Budget Review Capital Budget
 - Budget Review Cash and Investments Position
 - 20 • Budget Review Key performance indicators
 - Budget Review Contracts and Other Expenses
- 25 The above components are included in Attachment 3:-

30 **Income and Expenditure Budget Review Statement by Type** – This shows Councils income and Expenditure by type. This has been split by Fund. Adjustments are shown, looking from left to right. These adjustments are commented on through the last 11 pages of Attachment 1.

35 **Capital Budget Review Statement** – This statement identifies in summary Council's capital works program on a consolidated basis and then split by Fund. It also identifies how the capital works program is funded. As this is the first quarterly review for the reporting period, the Statement may not necessarily indicate the total progress achieved on the delivery of the capital works program.

40 **Cash and Investments Budget Review Statement** – This statement reconciles Council's restricted funds (reserves) against available cash and investments. Council has attempted to indicate an actual position as at 30 September 2019 of each reserve to show a total cash position of reserves with any difference between that position and total cash and investments held as available cash and investments. It should be recognised that the figure is at a point in time and may vary greatly in future quarterly reviews pending on cash flow movements.

Key Performance Indicators (KPI's) – At this stage, the KPI's within this report are:-

- 45 ○ **Debt Service Ratio** - This assesses the impact of loan principal and interest repayments on the discretionary revenue of Council.
- **Rates and Annual Charges Outstanding Ratio** – This assesses the impact of uncollected rates and annual charges on Councils liquidity and the adequacy of recovery efforts
- 50 ○ **Asset Renewals Ratio** – This assesses the rate at which assets are being renewed relative to the rate at which they are depreciating.

55 These may be expanded in future to accommodate any additional KPIs that Council may adopt to use in the Long Term Financial Plan (LTFP.)

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Contracts and Other Expenses - This report highlights any contracts Council entered into during the July to September quarter that are greater than \$50,000.

5 CONSOLIDATED RESULT

The following table provides a summary of the overall Council budget on a consolidated basis inclusive of all Funds budget movements for the 2018/2019 financial year projected to 30 June 2019 but revised as at 30 September 2018.

10

2018/2019 Budget Review Statement as at 30 September 2018	Original Estimate (Including Carryovers) 1/7/2018	Adjustments to 30 Sept 2018 including Resolutions*	Proposed 30 Sept 2018 Review Revotes	Revised Estimate 30/6/2019 at 30/9/2018
Operating Revenue	81,580,000	0	142,700	81,722,700
Operating Expenditure	86,541,800	264,500	1,009,500	87,815,800
Operating Result – Surplus/Deficit	(4,961,800)	(264,500)	(866,800)	(6,093,100)
Add: Capital Revenue	25,396,200	0	(117,600)	(25,278,600)
Change in Net Assets	20,434,400	(264,500)	(984,400)	19,185,500
Add: Non Cash Expenses	13,678,900	0	925,700	14,604,600
Add: Non-Operating Funds Employed	3,899,000	0	1,300,000	5,199,000
Subtract: Funds Deployed for Non-Operating Purposes	(63,028,000)	(3,007,700)	120,700	(65,915,000)
Cash Surplus/(Deficit)	(25,015,700)	(3,272,200)	1,362,000	(26,925,900)
Restricted Funds – Increase / (Decrease)	(25,031,500)	(3,219,200)	1,324,800	(26,925,900)
Forecast Result for the Year – Surplus/(Deficit) – Unrestricted Cash Result	15,800	(53,000)	37,200	0

GENERAL FUND

In terms of the General Fund projected Unrestricted Cash Result the following table provides a reconciliation of the estimated position as at 30 September 2018:

15

Opening Balance – 1 July 2018	\$1,145,200
Plus original budget movement and carryovers	15,800
Council Resolutions July – September Quarter	(53,000)
Recommendations within this Review – increase/(decrease)	37,200
Forecast Unrestricted Cash Result – Surplus/(Deficit) – 30 June 2019	0
Estimated Unrestricted Cash Result Closing Balance – 30 June 2019	\$1,145,200

The General Fund financial position overall has increased by \$37,200 as a result of this budget review, bringing the forecast cash result for the year back to a balanced result. The proposed budget changes are detailed in Attachment 1 and summarised further in this report below.

5

Council Resolutions

Council has passed the following resolutions within the Budget Review that required funding and have been included::

10

- Resolution **18-628 part 3** for the Multi Use Byron Shire Rail Corridor:

“That Council increase the project budget for the Multi Use of the Byron Rail Corridor by an additional \$50,000 funded from the unrestricted cash balance”.

15

- Resolution **18-630 part 2** for the Support for Drought Relief:

“That Council allocate a budget of \$3,000 in the 2018/19 financial year funded from the current 2018/19 budget surplus of \$15,800”.

20

Budget Adjustments

The budget adjustments identified in Attachments 1 and 2 for the General Fund have been summarised by Budget Directorate in the following table:

25

	Revenue Increase/ (Decrease) \$	Expenditure Increase/ (Decrease) \$	Accumulated Surplus (Working Funds) Increase/ (Decrease) \$
Budget Directorate			
General Manager	125,000	125,000	0
Corporate & Community Services	145,900	117,400	28,500
Infrastructure Services	1,387,600	1,367,900	19,700
Sustainable Environment & Economy	(62,200)	(51,200)	(11,000)
Total Budget Movements	1,596,300	1,559,100	37,200

Budget Adjustment Comments

Within each of the Budget Directorates of the General Fund, are a series of budget adjustments identified in detail at Attachment 1 and 2. More detailed notes on these are provided in Attachment 1 but in summary the major additional items included are summarised below by Directorate and are included in the overall budget adjustments table above:

30

General Manager

35

- In the General Manager’s program the budget Legal Services costs have been moved from the Corporate Services program as per Council’s organisation structure. This will have an impact on the way support service costs are distributed across all budget programs. In addition, income and expenditure budgets are provided for the implementation of the new Crown Lands Act 2016 (\$30,000).

40

- In the People & Culture program, it is proposed to increase income and expenditure by \$47,000 for the annual WHS incentive payment and restrict the funds in a new reserve.

Corporate and Community Services

- 5 • In the General Purpose Revenues Program an additional \$104,900 in revenue has been recognised as the allocation for Council's 2018/2019 Financial Assistance Grant is more than originally budgeted.
- In the Information Service program it is proposed to increase income and expenditure by \$20,000 to evaluate a new WHS risk management/safety management system.
- 10 • In the Governance Services Program the Legal Services budgets have been moved to the General Manager's program.
- In the Sandhills program, it is proposed to increase the budget by \$44,000 for the upgrade of the centre. This has no net effect on the budget result as all movements are taken up through the Children's Service reserve.
- 15 • In the Public Libraries program, it is proposed to increase the budget for the Brunswick Heads Library Upgrade by \$85,000, funded from developer contributions to enable Council to apply for a grant to complete the project.
- 20

Infrastructure Services

- 25 • In the Projects & Commercial Development program, it is proposed to increase capital income due to the sale of land at Station Street Mullumbimby for \$1,300,000. This can be transferred to the Property Development reserve (\$1,102,100) and the property Reserve (\$197,900).
- In the Local Roads and Drainage program, there are a number of adjustments outlined under Note 16 in the Budget Variations explanations section of Attachment 1. Further disclosure is included in the third page of Attachment 2 under the budget program heading Local Roads and Drainage.
- 30 • In the Roads and Maritime Services program (RMS) it is proposed to increase the budget by \$176,200 for Broken Head Road to reflect the revised cost of the project.
- 35 • In the Open Space and Recreation program, there are a number of adjustments outlined under Note 18 in the Budget Variations explanations section of Attachment 1. Further disclosure is included in the fourth page of Attachment 2 under the budget program heading Open Space & Recreation.
- 40 • In the Waste & Recycling program it is proposed to purchase a loader for the Waste & Recycling Centre (\$130,000) and to continue with the Waste Management Strategy (\$100,000). These are funded through the Domestic Waste Management and Waste Management reserves.
- 45 • In the Cavanbah Centre program, it is proposed to increase expenditure by \$21,000 for additional marketing and \$10,000 for DA Activation.
- In the Facilities Management program it is proposed to increase the budget for the Suffolk Park Hall upgrade by \$51,900.

50 Sustainable Environment and Economy

- In the Development and Certification program, it is proposed to decrease income by \$80,000 due to a decline in income received for DA Fees (\$40,000) and Construction Certificates (\$40,000). This is largely due to a decrease in the number of Development Applications

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received and the market share for Construction Certificates dropping with additional companies offering this service.

WATER FUND

5 After completion of the 2017/2018 Financial Statements the Water Fund as at 30 June 2018 has a capital works reserve of \$6,923,500 and held \$3,857,800 in section 64 developer contributions.

10 The estimated Water Fund reserve balances as at 30 June 2019, and forecast in this Quarter Budget Review, are derived as follows:

Capital Works Reserve

Opening Reserve Balance at 1 July 2018	\$6,923,500
Plus original budget reserve movement	(2,627,400)
Less reserve funded carryovers from 2017/2018	(375,700)
Resolutions July - September Quarter – increase / (decrease)	0
September Quarterly Review Adjustments – increase / (decrease)	89,900
Forecast Reserve Movement for 2018/2019 – Increase / (Decrease)	(2,913,200)
Estimated Reserve Balance at 30 June 2019	\$4,010,300

15 Section 64 Developer Contributions

Opening Reserve Balance at 1 July 2018	\$3,857,800
Plus original budget reserve movement	(746,400)
Less reserve funded carryovers from 2017/2018	(503,800)
Resolutions July - September Quarter – increase / (decrease)	(430,000)
September Quarterly Review Adjustments – increase / (decrease)	74,000
Forecast Reserve Movement for 2018/2019 – Increase / (Decrease)	(1,606,200)
Estimated Reserve Balance at 30 June 2019	\$2,251,600

20 Movements for Water Fund can be seen in Attachment 1 with a proposed estimated increase to reserves (including S64 Contributions) overall of \$163,900 from the 30 September 2018 Quarter Budget Review.

SEWERAGE FUND

25 After completion of the 2017/2018 Financial Statements the Sewer Fund as at 30 June 2018 has a capital works reserve of \$8,706,800 and plant reserve of \$704,400. It also held \$9,051,600 in section 64 developer contributions.

Capital Works Reserve

Opening Reserve Balance at 1 July 2018	\$8,706,800
Plus original budget reserve movement	(3,480,800)
Less reserve funded carryovers from 2017/2018	(1,454,800)
Resolutions July - September Quarter – increase / (decrease)	(1,330,000)
September Quarterly Review Adjustments – increase / (decrease)	258,600
Forecast Reserve Movement for 2018/2019 – Increase / (Decrease)	(6,007,000)
Estimated Reserve Balance at 30 June 2019	\$2,699,800

30 Plant Reserve

Opening Reserve Balance at 1 July 2018	\$704,400
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Plus original budget reserve movement	0
Less reserve funded carryovers from 2017/2018	0
Resolutions July - September Quarter – increase / (decrease)	0
September Quarterly Review Adjustments – increase / (decrease)	0
Forecast Reserve Movement for 2018/2019 – Increase / (Decrease)	0
Estimated Reserve Balance at 30 June 2019	\$704,400

Section 64 Developer Contributions

Opening Reserve Balance at 1 July 2018	\$9,051,600
Plus original budget reserve movement	(27,900)
Less reserve funded carryovers from 2017/2018	(1,018,700)
Resolutions July - September Quarter – increase / (decrease)	(1,020,000)
September Quarterly Review Adjustments – increase / (decrease)	(50,400)
Forecast Reserve Movement for 2018/2019 – Increase / (Decrease)	(2,117,000)
Estimated Reserve Balance at 30 June 2019	\$6,934,600

- 5 Movements for the Sewerage Fund can be seen in Attachment 1 with a proposed estimated overall increase to reserves (including S64 Contributions) of \$208,200 from the 30 September 2018 Quarter Budget Review.

Legal Expenses

- 10 One of the major financial concerns for Council over previous years has been legal expenses. Not only does this item represent a large expenditure item funded by general revenue, but can also be susceptible to large fluctuations.
- 15 The table that follows indicates the allocated budget and actual legal expenditure within Council on a fund basis as at 30 September 2018.

Total Legal Income & Expenditure as at 30 September 2018

Program	2018/2019 Budget (\$)	Actual (\$)	Percentage To Revised Budget
Income			
Legal Expenses Recovered	0	4,000	0%
Total Income	0	4,000	0%
Expenditure			
General Legal Expenses	202,600	53,724	26.52%
Total Expenditure General Fund	202,600	53,724	26.52%

- 20 Note: The above table does not include costs incurred by Council in proceedings after 30 September 2018 or billed after this date. At the time of writing this report, Council has incurred an additional \$66,391 of expenditure in October 2018 with a further commitment of \$8,193.

Financial Implications

- 30 The 30 September 2018 Quarter Budget Review of the 2018/2019 Budget has improved the overall budget result by \$37,200. This brings the movement against the unrestricted cash balance attributable to the General Fund back to a balanced result for the year, leaving the estimated unrestricted cash balance attributable to the General Fund at an estimated \$1,145,200 at 30 June 2019. This is a good result for the first quarter, but going forward Council must be conscious of

decisions that may affect the unrestricted cash balance when considering matters with financial implications especially where funding sources are not identified.

Statutory and Policy Compliance Implications

5

In accordance with Regulation 203 of the Local Government (General) Regulation 2005 the Responsible Accounting Officer of a Council must:-

10 (1) *Not later than 2 months after the end of each quarter (except the June quarter), the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the statement of the council's revenue policy included in the operational plan for the relevant year, a revised estimate of the income and expenditure for that year.*

15 (2) *A budget review statement must include or be accompanied by:*

(a) *a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and*

20 (b) *if that position is unsatisfactory, recommendations for remedial action.*

(3) *A budget review statement must also include any information required by the Code to be included in such a statement.*

25

Statement by Responsible Accounting Officer

30 This report indicates that the short term financial position of the Council is still satisfactory for the 2018/2019 financial year, having consideration of the original estimate of income and expenditure at the 30 September 2018 Quarter Budget Review.

This opinion is based on the estimated General Fund Unrestricted Cash Result position and that the current indicative budget position for 2018/2019 outlined in this Budget Review remains for the remainder of the 2018/2019 financial year.

35

Report No. 13.8 **Investments October 2018**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2018/2007
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 October 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 October 2018 be noted.**

Report

5 In relation to the investment portfolio for the month of October 2018, Council has continued to maintain a diversified portfolio of investments. At 31 October 2018, the average 90 day bank bill rate (BBSW) for the month of October was 1.93%. Council's performance to 31 October 2018 is 2.73% 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 October 2018:

Schedule of Investments held as at 31 October 2018

Purch Date	Principal (\$)	Description	C P*	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	N	FRN	3.20%	500,000.00
23/05/18	1,000,000	The Capricornian Credit Union	Y	NR	23/11/18	U	TD	2.85%	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	AMP Bank	Y	A	25/02/19	N	TD	2.80%	1,000,000.00
08/06/18	2,000,000	ME Bank	Y	BBB	07/12/18	Y	TD	2.84%	2,000,000.00
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
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 Bank	N	A	21/01/19	N	TD	2.80%	1,000,000.00
01/08/18	1,000,000	Defence Bank	Y	BBB	30/01/19	U	TD	2.75%	1,000,000.00
03/08/18	2,000,000	AMP Bank	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
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	Y	TD	2.80%	1,000,000.00
08/08/18	1,000,000	AMP Bank	N	A	08/02/19	N	TD	2.80%	1,000,000.00
13/08/18	1,000,000	B & E Ltd (Bank of Us)	N	NR	12/11/18	Y	TD	2.75%	1,000,000.00
15/08/18	1,000,000	Police Credit Union Limited (SA)	Y	NR	15/11/18	Y	TD	2.70%	1,000,000.00
20/08/18	1,000,000	Maitland Mutual Building Society	Y	NR	19/11/18	Y	TD	2.70%	1,000,000.00

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Purch Date	Principal (\$)	Description	C P*	Rating	Maturity Date	No Fossil Fuel ADI	Type	Interest Rate Per Annum	Current Value
22/08/18	1,000,000	Suncorp	Y	A+	22/11/18	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+	29/11/18	Y	TD	2.65%	2,000,000.00
03/09/18	1,000,000	Bank Vic	Y	NR	07/01/19	Y	TD	2.76%	1,000,000.00
04/09/18	1,000,000	Suncorp	N	A+	01/03/19	Y	TD	2.70%	1,000,000.00
06/09/18	1,000,000	Bananacoast Credit Union	Y	NR	06/03/19	Y	TD	2.70%	1,000,000.00
06/09/18	1,000,000	Suncorp	N	A+	05/03/19	Y	TD	2.70%	1,000,000.00
11/09/18	1,000,000	Bank Vic	N	NR	10/12/18	Y	TD	2.78%	1,000,000.00
12/09/18	1,000,000	Bankwest	Y	AA-	10/01/19	N	TD	2.65%	1,000,000.00
12/09/18	2,000,000	Suncorp	N	A	08/02/19	Y	TD	2.70%	2,000,000.00
17/09/18	1,000,000	The Capricornian Credit Union	N	NR	17/01/19	Y	TD	2.80%	1,000,000.00
17/09/18	1,000,000	The Capricornian Credit Union	N	NR	17/12/18	Y	TD	2.80%	1,000,000.00
17/09/18	1,000,000	Hunter United Employees Credit Union	Y	NR	17/12/18	Y	TD	2.80%	1,000,000.00
19/09/18	1,000,000	Maitland Mutual Building Society	N	NR	17/01/19	Y	TD	2.80%	1,000,000.00
21/09/18	1,000,000	ME Bank	N	BBB	05/02/19	Y	TD	2.67%	1,000,000.00
21/09/18	1,000,000	Police Credit Union Limited (SA)	N	NR	21/01/19	Y	TD	2.80%	1,000,000.00
24/09/18	1,000,000	Bankwest	N	AA-	22/01/19	N	TD	2.65%	1,000,000.00
27/09/18	1,000,000	Suncorp	N	A	25/01/19	Y	TD	2.65%	1,000,000.00
28/09/18	1,000,000	Police Credit Union Limited (SA)	N	NR	02/01/19	Y	TD	2.85%	1,000,000.00
02/10/18	1,000,000	Police Credit Union Limited (SA)	N	NR	03/01/19	Y	TD	2.80%	1,000,000.00
03/10/18	2,000,000	Police Credit Union Limited (SA)	N	NR	04/01/19	Y	TD	2.80%	2,000,000.00
03/10/18	1,000,000	NAB	N	AA-	31/01/19	N	TD	2.66%	1,000,000.00
03/10/18	1,000,000	Hunter United Employees Credit Union	N	NR	01/04/19	Y	TD	2.80%	1,000,000.00
03/10/18	1,000,000	NAB	N	AA-	31/01/19	N	TD	2.66%	1,000,000.00
04/10/18	1,000,000	NAB	N	AA-	04/04/19	N	TD	2.70%	1,000,000.00
04/10/18	1,000,000	Australian Military Bank	Y	NR	03/04/19	Y	TD	2.80%	1,000,000.00
10/10/18	1,000,000	NAB	N	AA-	07/02/19	N	TD	2.66%	1,000,000.00

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Purch Date	Principal (\$)	Description	C P*	Rating	Maturity Date	No Fossil Fuel ADI	Type	Interest Rate Per Annum	Current Value
15/10/18	1,000,000	Suncorp	N	A	15/04/19	Y	TD	2.65%	1,000,000.00
15/10/18	1,000,000	Australian Military Bank	N	NR	15/02/19	Y	YD	2.77%	1,000,000.00
17/10/18	1,000,000	Police Credit Union Limited (SA)	N	NR	14/02/19	Y	TD	2.85%	1,000,000.00
25/10/18	1,000,000	NAB	N	AA-	22/02/19	N	TD	2.67%	1,000,000.00
29/10/18	1,000,000	Maitland Mutual Building Society	N	NR	14/02/19	Y	TD	2.80%	1,000,000.00
29/10/18	2,000,000	NAB	N	AA-	29/03/19	N	TD	2.69%	2,000,000.00
30/10/18	1,000,000	Australian Military Bank	N	NR	30/04/19	Y	TD	2.90%	1,000,000.00
30/10/18	2,000,000	Australian Military Bank	N	NR	28/02/19	Y	TD	2.87%	2,000,000.00
31/10/18	1,000,000	B & E Ltd (Bank of Us)	N	NR	29/04/19	Y	TD	2.90%	1,000,000.00
31/10/18	2,000,000	NAB	N	AA-	29/03/19	N	TD	2.70%	2,000,000.00
N/A	1,486,024	CBA Business Online Saver	N	A	N/A	N	CALL	1.40%	1,486,024.30
12/01/18	1,016,709	NSW Treasury Corp	N	AAA	N/A	Y	CALL	2.40%	1,016,709.47
Total	75,402,733						AVG	2.73%	75,425,265.50

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

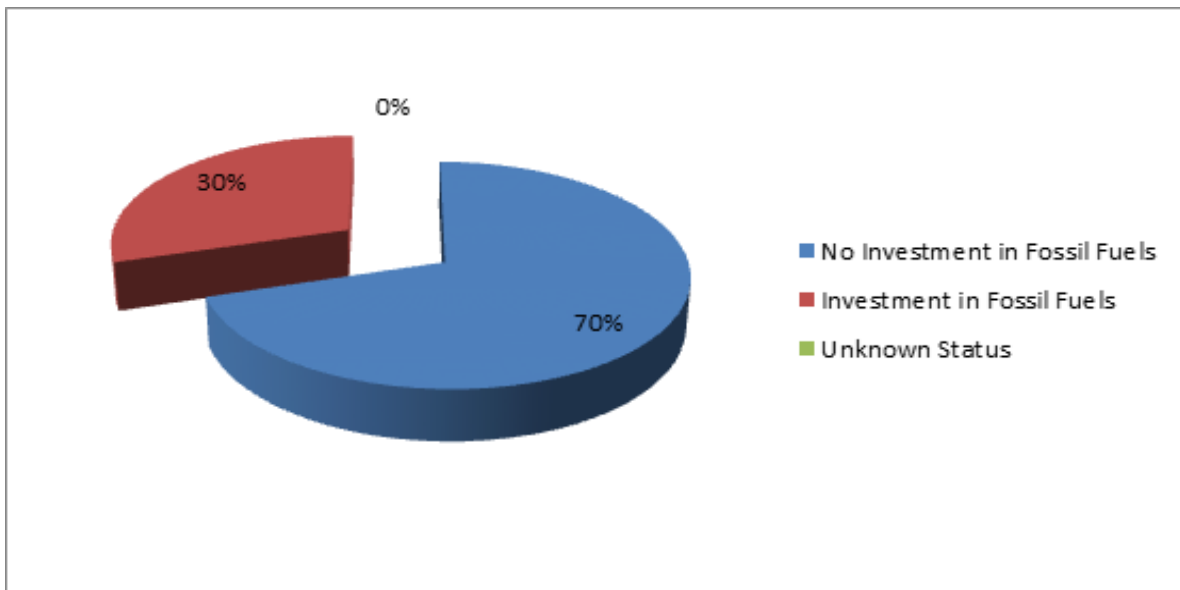
5

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:

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

25 **Investment Policy Compliance**

Investment policy compliance			ACTUAL	Variance
% per institution should not exceed the following				
Long Term	Short Term			
AAA to AA	A1+	100%	39%	Meets policy
A+ to A-	A1	60%	7%	Meets policy
BBB to NR	A2,NR	40%	54%	Does not meet policy

30 The above table identifies compliance with Council’s Investment Policy in terms of the proportion of the investment portfolio actually invested with financial institutions and their associated credit ratings compared to parameters established in the Investment Policy. The intent of the parameters is a tool to manage credit risk and to ensure diversification of the investment portfolio. Currently

financial institutions mainly offering investments in the 'ethical' area are those with lower credit ratings being either BBB or not rated at all ie credit unions.

5 Council needs to be aware that progressively moving more of the investment portfolio into the 'ethical' space will lower the credit quality of the investment portfolio overall and increase the credit risk (ie exposure to potential default). This is due to financial institutions with higher credit quality (ratings) are yet to provide more investment opportunities in the 'ethical' area or reduce their investment exposure to 'fossil fuels'. To measure this issue the table above with the heading 'Investment Policy Compliance' will now also be produced for each Investment Report presented to
 10 Council monthly. Currently Council is exceeding the benchmark for the proportion of the investment portfolio invested in financial institutions with low credit ratings or no credit rating with 54% of the portfolio invested in this area compared to a tolerance of 40% so there is a view more of the investment policy has a higher level of exposure to credit risk than Council has determined via policy. To redress this imbalance, Council would need to invest more of the portfolio with
 15 institutions with higher credit ratings but this will reduce the percentage of the investment portfolio invested ethically.

20 For the month of October 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 October 2018

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
69,000,000.00	Term Deposits	69,000,000.00	0.00
2,900,000.00	Floating Rate Note	2,905,144.56	5,144.56
1,486,024.30	Business On-Line Saver (At Call)	1,486,024.30	0.00
1,016,709.47	NSW Treasury Corp (T Corp)	1,016,709.47	0.00
1,000,000.00	Bonds	1,017,387.17	17,387.17
75,402,733.77		75,425,265.50	22,531.73

25 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.

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

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Movement in Investment Portfolio – 31 October 2018

Item	Current Market Value (at end of month) \$
Opening Balance at 1 October 2018	78,021,198.11
Add: New Investments Purchased	22,000,000.00
Add: Call Account Additions	3,000,000.00
Add: Interest from Call Account	1,841.46
Less: Investments Matured	25,000,000.00
Add: T Corp Additions	0.00
Add: Interest from T Corp	2,225.93
Less: Call Account Redemption	2,600,000.00
Add: Fair Value Movement for period	0.00
Closing Balance at 31 October 2018	75,425,265.50

Investments Maturities and Returns – October 2018

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
1,000,000	AMP	TD	02/10/18	180	2.60%	12,821.92
1,000,000	Police Credit Union	TD	02/10/18	93	2.80%	14,054.79
2,000,000	Police Credit Union	TD	03/10/18	182	2.86%	28,521.64
1,000,000	NAB	TD	03/10/18	120	2.70%	8,876.71
1,000,000	Hunter United Employees Credit Union	TD	03/10/18	90	2.90%	7,150.68
1,000,000	NAB	TD	03/10/18	90	2.76%	6,805.48
1,000,000	NAB	TD	04/10/18	183	2.60%	13,035.62
1,000,000	NAB	TD	08/10/18	96	2.77%	7,285.48
1,000,000	Suncorp	TD	09/10/18	123	2.82%	9,435.62
1,000,000	Maitland Mutual Building Society	TD	15/10/18	153	2.85%	11,946.58
1,000,000	Suncorp	TD	15/10/18	122	2.80%	9,358.90
1,000,000	Police Credit Union	TD	17/10/18	183	2.94%	14,740.27
1,000,000	ME Bank	TD	22/10/18	90	2.73%	6,731.51
1,000,000	Bankwest	TD	22/10/18	91	2.65%	6,606.85
1,000,000	NAB	TD	22/10/18	91	2.68	6,681.64
2,000,000	ME Bank	TD	29/10/18	91	2.73%	13,612.60
1,000,000	Maitland Mutual Building Society	TD	29/10/18	180	2.83%	13,956.16
2,000,000	Bankwest	TD	30/10/18	90	2.65%	13,068.49
1,000,000	Bank of Vic	TD	30/10/18	90	2.82%	6,953.42
2,000,000	Police Credit Union	TD	30/10/18	181	2.83%	28,067.40
1,000,000	Bank of Us	TD	31/10/18	120	3.00%	9,863.01
25,000,000.00						249,574.77

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

Dissection of Council Cash Position as at 31 October 2018

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	69,000,000.00	69,000,000.00	0.00
Floating Rate Note	2,900,000.00	2,905,144.56	5,144.56
Business On-Line Saver (At Call)	1,486,024.30	1,486,024.30	0.00
NSW Treasury Corp (T Corp)	1,016,709.47	1,016,709.47	0.00
Bonds	1,000,000.00	1,017,387.17	17,387.17
Total Investment Portfolio	75,402,733.77	75,425,265.50	22,531.73
Cash at Bank			
Consolidated Fund	3,174,943.84	3,174,943.84	0.00
Total Cash at Bank	3,174,943.84	3,174,943.84	0.00
Total Cash Position	78,577,677.61	78,600,209.34	22,531.73

10 **Financial Implications**

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

Statutory and Policy Compliance Implications

15

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

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

25

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.

30

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

Report No. 13.9 **Mullumbimby Hospital Site Project Reference Group**
Recommendations: future use of the site

Directorate: Corporate and Community Services

Report Author: Deborah Stafford, Community Projects Officer (Generalist)

5 **File No:** I2018/2012

Theme: Corporate Management
Community Development

10 **Summary:**

15 The Mullumbimby Hospital Site Project Reference Group (PRG) has completed a 12 month, best practice participatory planning process and prepared recommendations to Council on the best future use of the Mullumbimby Hospital Site. This report seeks Council endorsement of the PRG's recommendations and acknowledges that the PRG has achieved its objectives and can be dissolved.

RECOMMENDATION:

1. **That the Mullumbimby Hospital Site Project Reference Group (PRG) recommendations on the best future use of the site are endorsed.**
2. **That the Mullumbimby Hospital Site Project Reference Group (PRG) is dissolved and the members thanked for their contribution.**

20

ReportBackground

5 The Mullumbimby Hospital Site Project Reference Group (PRG) was established by Council resolution (17-269) to provide recommendations to Council on the best use of the Hospital Hill site.

The PRG's Constitution states that principles underpinning the PRG are based on *The Community Charter – Planning for the people – a community charter for good planning in NSW* and include:

- 10
- the wellbeing of the whole community, the environment and future generations is considered
 - effective and genuine public participation is fundamental
 - open, inclusive, transparent and accountable processes are undertaken
 - objective and evidence-based advice is utilised

15 The Constitution states that the PRG objectives are to:

1. propose and consider potential uses for the former Mullumbimby Hospital site
2. utilise a best practice participatory planning process for the future use of the Hospital Hill site that gives the community and all stakeholders a genuine and meaningful voice
3. work with Council staff to develop an inclusive community engagement strategy for
20 implementation by Council
4. consider potential constraints arising from the site contamination and the various options for remediating/ removing that contamination
5. develop a set of clear criteria for assessment of recommendations and options to Council
6. provide advice and recommendations to Council on the best outcome for the Hospital Hill site
25 taking into consideration community and stakeholder input, data and zoning and regulatory requirements.

The objectives of the group have been met and the 12 month term completed on 31 October 2018, therefore the PRG members can be thanked and the committee dissolved.

30

PRG Process

In keeping with Council's direction in engaging the community in decision-making, the participatory process used to develop these recommendations for Council has been the subject of much interest
35 from staff across the organisation, other Councils and regional organisations.

To form the group, invitations were sent to over 40 local community groups and a public call for nominations from individuals was advertised. The final make-up of the PRG was 12 community organisational representatives, 5 individual community representatives and 4 councillors (21 in all).
40

It was acknowledged that the task was complex and would affect the community widely. It was also acknowledged that each group member had a real desire to see a positive outcome and offered unique experience, expertise and perspectives that would contribute to the collective "wisdom of the crowd".
45

A rigorous and systematic deliberative process, informed by the work of newDemocracy, was designed to provide a strong foundation from which the group's recommendations could be made.

The process consisted of 3 stages:

- 50 1. learning a great deal (collecting information and evidence, including wider community consultation and expert advice)
2. exploring common ground (discussion and dialogue investigating various issues and options from multiple viewpoints, thinking critically and deliberating)
3. deciding together (consensus seeking – building areas of informed agreement, moving
55 beyond individual positions towards a collective mind and the general will of the group).

Various aspects of best practice public participation methodologies, such as IAP2, deliberative democracy and Harwood, were referenced in the development of the process.

5 The process will be evaluated by PRG members at a December meeting and will inform Council's work in engaging community using the *Byron Model* of deliberative democracy.

PRG Recommendations

10 The recommendations from the Mullumbimby Hospital Site Project Reference Group (PRG) provide advice to Council on the best outcome for the Hospital Hill site, considering the wellbeing of the whole community, the environment and future generations.

1. Uses of the site

15 In broad terms, a mix of uses is proposed at a neighbourhood scale that does not compete with the town centre but creates synergy given the site's strategic location, its topography and its neighbours.

With that objective:

- 20 • The substantial proportion (60% or more) should be residential development.
- Within the residential development, an integrated mix of types and tenures provides, *and continues to provide, in perpetuity*:
 - 25 ○ housing that is affordable, accessible and appropriate for older people across a range of household income levels; and
 - housing that is affordable, accessible and appropriate for households with very low, low and moderate income in response to Brunswick Valley community needs.
- The housing is supported by and supports an innovative neighbourhood scale multipurpose facility that is designed to allow multiple uses, some of which are not yet known, for people of all ages and income levels.
- 30 • The multipurpose facility includes space(s) for consultation and may potentially include spaces for work, education, gathering, recreation, and a café, all intended to support residents and community, encourage social contact and develop with neighbours new relationships and opportunities.

35 2. Design

The development of the site should align with, and acknowledge, the interrelatedness of social and cultural, environmental, economic and civic guiding principles outlined by the local community.

40 Development should therefore:

- be of exemplary, high quality design, especially architectural, landscape and urban design
- achieve high levels of environmental sustainability, including:
 - 45 ○ preservation/enhancement of natural environment and local ecology (e.g. waterways, biodiversity, etc.)
 - striving towards zero emissions
 - strengthening community resilience and climate change precautions
 - establishing green space (gardens and shade throughout) for people to interact in/with
- articulate, respect and celebrate the indigenous and non-indigenous history of the site
- connect strongly with the natural landscape and land form
- 50 • ensure aesthetic values are consistent with the local area
- be staged in a way that is integrated at each phase to create a coherent sense of place and encourage pedestrian movement within and around the site
- be consistent with principles of Crime Prevention Through Environmental Design (CPTED)
- enhance the social vitality, social capital and community wellbeing, and, specifically:

- meet community responsibility to provide benefit to vulnerable people
- support healing and health
- support inclusion and participation from people of all ages
- incorporate purposeful creativity, art and culture
- 5 ○ provide education/training and pathways to volunteering/employment for local people
- support innovation and social enterprise
- support local business in line with local values
- prioritise ethical investment and procurement
- be mindful of the wide diversity of people and opinions in the Brunswick Valley community
- 10 ● be adaptable, where possible, to accommodate change that may not yet be anticipated or known
- be nested in the broader Mullumbimby Master Plan to contribute to an integrated approach to local development
- generate no or very limited current or future cost to local people and Council

15

3. Governance

To deliver and effectively manage ongoing outcomes on the site, development and governance mechanisms that allow Council and community to do this are needed.

20

Therefore:

- A range of best practice community-led governance mechanism needs to be reviewed, both for the project development stages and for the ongoing governance of the new site developments.
- 25 ● Appropriate community-led governance opportunities¹ continue to inform project stages until the long-term, ongoing community-led governance mechanism is fully operational.
- Those mechanisms need to engage with Arakwal Corporation and Tweed Byron Aboriginal Land Council to ensure that cultural heritage considerations and land matters are managed and integrated appropriately.
- 30 ● Should some of the chosen forms of development involve the sale of parts of the site and/or private-led marketplace activities, any profits achieved through sale or other activities should be reinvested back into achieving social and cultural, environmental or civic outcomes on the site.
- That the “horse paddock”² site be considered for development and sale.
- 35 ● Part of the site should be identified and made available to a community housing provider, or equivalent entity, for the provision of housing that is affordable, accessible and appropriate.
- Short term holiday letting and its impact should be considered in light of the best interests of the site residents and local community.
- Council, or another entity, should continue consulting with providers including local high schools, Mullumbimby District Neighbourhood Centre, TAFE, Byron Youth Service, Southern Cross University, The Buttery and other relevant stakeholders in relation to possible uses of the multi-purpose facility on the site and, therefore, possible involvement in development and management matters.
- 40 ● Council should identify any opportunities to facilitate partnerships and collaboration that contribute to achieving the best outcome for the site.
- 45 ● Council should seek to identify any relevant grant funding/philanthropic opportunities in relation to the development of the site.
- Catholic Health Care (CHC) continues their existing use of the site and a market-based purchase of the current land is appropriate. Should CHC seek to expand their facilities or

¹ Such as spokesperson representing PRG participating in potential tender process, etc.

² The horse paddock site refers to the area that extends along Reservoir Rd from the southern boundary of Coolamon Villa to the top of the hill, overlooking the hospital buildings. This area has extensive mountain and rural view to the coast.

establish further facilities elsewhere on the overall site, their proposals must be considered equally alongside other proposals for the site from other parties.

Next Steps

5 The PRG requested that a media release be prepared to communicate the recommendations to the community as well as members' networks and groups.

A consultant has been engaged to develop a Structure Plan for the site. The Structure Plan will include concept plan(s) and design principles (the PRG recommendations).

10

As stated in the PRG recommendations, further investigation of both operational delivery mechanisms and best practice community-led governance mechanisms is required.

15 A report will be brought to Council in February 2019 in relation to the Structure Plan and results of further investigation.

Financial Implications

20 None identified at this stage. Further consideration of financial implications will be addressed in the February 2019 report.

Legal Implications

25 The following advice has been provided by Council's Legal Services team.

Use of the site

The contract for the purchase of the site provides that:

30 5.1 The Purchaser will only use the property for any of the purposes in clause 5.1C ("Allowed Purpose").

5.1A In using the property for an Allowed Purpose, the Purchaser can:

- 35
- (a) earn income from the property to pay for the property's remediation;
 - (b) earn any other income from the property, provided this income is reinvested into the property; or
 - (c) sell or lease some or all of the property.

40 5.1B The Purchaser's right under clause 5.1A(c) is subject to the Purchaser contracting with a future purchaser or lessee that the property will only be used for an Allowed Purpose.

5.1C Under clause 5.1, the Allowed Purposes are:

- 45
- affordable housing
 - centre-based child care facilities
 - commercial premises
 - community facilities
 - early education and care facilities
 - educational establishments

50

 - environmental facilities
 - function centres
 - group homes
 - information and education facilities

55

 - markets
 - mixed use development

- public land
- recreation areas
- recreation facilities
- residential care facilities
- 5 • respite day care centres
- schools
- school-based child care
- seniors housing; and/or

10 any other use which, in the Purchaser's reasonable opinion, has similar characteristics to the above uses.

Each Allowed Purpose has the meaning given in the Byron Local Environmental Plan 2014, as amended from time to time.

15 Catholic Healthcare Limited

As to Catholic Healthcare Limited the contract provides:

- 20 4.4 The parties acknowledge and agree that:
- a) the Purchaser, Vendor and Catholic Healthcare Limited (being the lessee under the lease attached to this contract) executed a deed on or around the date of this contract ("the Deed").

25 The Deed provides that:

2. Recognition of CHL Leases

30 2.1 HAC and BSC acknowledge that CHL has possession of part of the Land as the tenant under the Leases being the part specified as the premises in the Leases (the "Premises").

35 2.2 BSC agrees that if it acquires the Land from HAC (or any other registered proprietor of the Land):

- (a) its acquisition will be subject to the Leases; and
- (b) its covenants with CHL from the date of acquisition to observe and be bound by the terms of the Leases as landlord including without limitation clauses I.K and I.P.1

40 3. CHL Covenant

45 3.1 CHL covenants with BSC, from the date BSC acquires the Land, to continue to observe and be bound by the terms of the Leases as tenant.

4. BSC Undertakings regarding Subdivision and Registration

50 4.1 BSC covenants with CHL that:

- (a) upon acquisition of the Land it will, at its cost promptly arrange for the Land to be subdivided to create a separate Lot for the part of the Land subject to the Leases ("Subdivision")
- (b) following the Subdivision it will promptly arrange for registration of the Leases.

55 4.2 BSC covenants with CHL that it will not transfer, mortgage, encumber or otherwise deal with the Land subject to the Leases until such time as the Leases have been registered.

5. Negotiations as to Future Arrangements

5.1 Without in any way limiting the obligations of BSC under clauses 2 and 4, the parties agree to continue to meet regularly to negotiate in good faith proposals to extend the term of the Leases or otherwise secure CHL's occupancy of the Premises and to increase the area being occupied by CHL.

5.2 This clause 5 does not impose any obligation on either party (other than to act in good faith) to agree to any matters raised in the negotiations required under clause 5.1.

The leases expire in November 2022.

Statutory and Policy Compliance Implications

This project sits within Council's Community Strategic Plan, Delivery Program and Operational Plan as indicated below:

CSP Objective 5: We have community led decision making which is open and inclusive	Delivery Program Action	Operational Plan Yr 2 Activity
5.1 Engage and involve community in decision making	Facilitate inclusive community consultation and stakeholder engagement to inform Council decision making	Develop a Byron Model for deliberative democracy
5.6 Manage Council's resources sustainably	Develop and implement organisational innovation and creativity	Identify evidence based opportunities to enable creativity and innovation in local government.

Report No. 13.10 **Community Initiatives Program (Section 356) - 2018/19 funding round applications**

Directorate: Corporate and Community Services

Report Author: Joanne McMurtry, Community Project Officer

5 **File No:** I2018/2015

Theme: Society and Culture

 Community Development

10 **Summary:**

15 This report provides the results of a call for applications for the 2018/19 financial year round of the Community Initiatives Program which was advertised during September/ October, with applications closing on 12 October 2018. The report describes the recommendation to fund seven projects.

RECOMMENDATION:

1. **That Council provide funds requested from the unallocated Section 356 budget to each of the projects which met the assessment criteria of the Community Initiatives Program 2018/19 funding round that are recommended for funding in Confidential Attachment 1 (#E2018/82824).**
2. **That Council advertise the Section 356 Donations proposed to be made in part 1 if approved by Council.**
3. **That Council note that unsuccessful applicants from this funding round will be provided detailed feedback and staff support to work on more complete applications that meet all criteria in future rounds.**
4. **That Council staff will continue to work with community groups to support them in submitting high quality applications to future rounds of the program.**

Attachments:

- 20 1 Confidential - Applications for Community Initiatives Program 2018-19 recommendations for funding, E2018/82824

Report

5 The new Community Initiatives Program (Section 356) was adopted by Council in March 2018. Applications have been called for both the 2017/18 and the 2018/19 financial years with three projects funded.

10 Unallocated funds for the 2018/19 financial year prompted an additional call for applications which closed on 12 October 2018. This report provides the results of the funding round with a recommendation to fund seven projects as described in attachment 1.

15 In order to facilitate high quality applications and develop grant writing capacity of community groups a workshop was held in September with approximately 20 community members attending. The workshop provided information to community members about the program guidelines and how to write successful grant applications. The quality of applications for this round was vastly superior to previous rounds. Staff will continue to support an improvement in grant writing skills and capacity building in this area.

20 Staff made themselves available to assist with understanding the guidelines for applications. Not all applicants attended the workshop or spoke to staff prior to submitting an application. As a result, some applications did not meet the criteria and/or did not clearly outline the benefits to the community or Council of the proposed projects. Council staff will continue to provide detailed feedback and work with applicants to submit a complete application in future rounds.

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

The assessment panel included:

- 30 • Community Projects Officer
- Resource Recovery and Projects Education Officer
- Events Liaison Officer
- Manager Social and Cultural Planning
- Manager Finance

35 Projects recommended for funding

40 Sixteen applications were received for the Community Initiatives Program 2018/19, most applying for \$5,000 which is the maximum amount available to any one applicant. An internal assessment panel reviewed the applications against the assessment criteria and recommends to Council to fund seven of the projects as outlined in the attachment.

Financial Implications

45 Council's budget allocation for Section 356 unallocated funds for 2018/19 is provided in the table below, which also shows the outcome if all seven projects are funded.

Donations to Community Organisations, Other Groups and Persons	\$36,200.00
Assistance for Festivals and Community Functions	\$7,000.00
Donations to Community Groups – Reimbursement of Council Application Fees	\$2,000.00
<i>Sub-Total</i>	<i>\$45,200.00</i>
Project 1	-\$5,000.00
Project 2	-\$4,520.00
Project 3	-\$5,000.00
Project 4	-\$5,000.00

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Project 5 (reimbursement of fees)	-\$2,001.37
Project 6 (reimbursement of fees)	-\$1,000.00
Project 7	-\$4,940.00
TOTAL remaining unallocated amount for 2018/19	\$17,738.63

Statutory and Policy Compliance Implications

- 5 Section 356 of the *Local Government Act 1993*

Report No. 13.11 **Section 355 Management Committees - resignations and appointments**

Directorate: Corporate and Community Services

Report Author: Joanne McMurtry, Community Project Officer

5 **File No:** I2018/2019

Theme: Society and Culture

 Community Development

10 **Summary:**

This report updates Council on recent resignations and proposed appointments to Section 355 committees. Recruitment for new committee nominations for several Section 355 Management Committees has been underway through print advertising and social media.

15

RECOMMENDATION:

1. **That the resignation of Adrienne Lester from the Bangalow A&I Hall Board of Management be accepted and a letter of thanks be provided.**
2. **That the nominee in Confidential Attachment 1 (#E2018/85809) be appointed to the Mullumbimby Civic Hall Board of Management.**
3. **That the nominees in Confidential Attachment 1 (#E2018/85809) be appointed to the Durrumbul Community Hall Management Committee.**
4. **That the nominee in Confidential Attachment 1 (#E2018/85809) be appointed to the Suffolk Park Community Management Hall Management Committee.**

Attachments:

- 20 1 Confidential - Confidential attachment to report to 22 November Council meeting - additional community members for Section 355 committees, E2018/85809

Report

Resignations and Committee appointments

5 This report details resignations and proposed new appointments for Section 355 committees where nominations have been received.

Several Section 355 Management Committees have requested more/new members, including:

- 10 • Brunswick Heads Memorial Hall
- Brunswick Valley Community Centre
- Durrumbul Hall
- Mullumbimby Civic Hall
- Ocean Shores Community Centre
- 15 • Suffolk Park Community Hall

Bangalow A&I Hall Board of Management

A resignation has also been received from Adrienne Lester.

20 Current members on this Board of Management are:

Councillors

- Cr Cate Coorey

25 *Community Representatives:*

- Tony Heeson (Chair)
- Peta Heeson (Treasurer)
- Roland Dickson (Vice Chair)
- Don Osborne (Secretary)
- 30 • Damon Lewis
- John Hudson
- Michael Dowd

Management Recommendation:

35 That the resignation from Adrienne Lester is accepted and a letter of thanks provided.

Mullumbimby Civic Hall Board of Management

40 Following a period of advertising for more committee members, a nomination has been received for the Mullumbimby Civic Hall Board of Management. Details of the nominee can be found in Confidential Attachment 1.

Current members on this Board of Management are:

45

Councillors

- Cr Basil Cameron
- Cr Jeannette Martin (alternate)

50 *Community Representatives:*

- Glenn Wright (Chair)
- Sam Fell (Secretary)
- Maureen Lightfoot (Treasurer)
- Judy MacDonald

- Jennifer Parenteau
- John Dorczak

Management Recommendation:

5 That the nominee in Confidential Attachment 1 be appointed to the Mullumbimby Civic Hall Board of Management.

Durrumbul Community Hall

10 Following a period of advertising for more committee members, nominations have been received for the Durrumbul Community Hall Management Committee. Details of nominees can be found in Confidential Attachment 1.

Current members on this Board of Management are:

15

Councillors

- Cr Jeannette Martin

Community Representatives:

20

- Jane Shand (Chair)
- Duncan Dey (Secretary)
- Wayne Smith (Treasurer)
- Rommel Albanese
- Robin Buckley

25

Management Recommendation:

That the three nominees in Confidential Attachment 1 be appointed to the Durrumbul Community Hall Management Committee.

30 Suffolk Park Community Halls

Following a period of advertising for more committee members, nominations have been received for the Suffolk Park Community Hall Management Committee. Details of nominees can be found in Confidential Attachment 1.

35

Current members on this Board of Management are:

Councillors

40

- Cr Cate Coorey
- Cr Simon Richardson (alternate)

Community Representatives:

45

- Margaret Wiles (Chair)
- Joy Taylor (Secretary and Bookings Officer)
- Colleen Barton (Treasurer)
- Margaret Beazley
- Sergio Scudery
- Linda Holland
- Annabelle Sinclair

50

Management Recommendation:

That the nominee in Confidential Attachment 1 be appointed to the Suffolk Park Community Hall Management Committee.

Financial Implications

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

Statutory and Policy Compliance Implications

10 Management Committees and Boards of Management operate under Guidelines which states:

3.2 Committee Membership

15 *Committee membership will number not less than four and not more than nine and each committee will state the actual number in their Terms of Reference unless otherwise decided by Council. The exception will be the Bangalow Parks (Showground) committee which numbers twelve. Council reserves the right to appoint up to two Councillors to each Committee. The total number of members includes office bearer committee members and Councillor members which are appointed by Council.*

20 *Whilst no particular qualifications are necessary (notwithstanding 3.1.a), a commitment to the activities of the Committee and a willingness to be actively involved in Committee issues is essential. Committees work best when the workload is shared amongst committee members and there is evident goodwill and cooperation amongst members.*

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

Report No. 13.12 **Election of Deputy Mayor 2018-2019**
Directorate: Corporate and Community Services
Report Author: Heather Sills, Corporate Governance Officer
File No: I2018/2039
5 **Theme:** Corporate Management
 Councillor Services

Summary:

10 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.

15 At the Ordinary Meeting of Council on 20 September 2018, Council resolved **(18-619)** *that Council extend the period of Deputy Mayor to the October 2018 meeting and defer the election of a new Deputy Mayor to the next meeting of Council.*

20 Further, at the Ordinary Meeting of Council on 18 October 2018, Council resolved **(18-695)** *that the election of a Deputy Mayor be postponed until November 2018 and extend the term of the incumbent Deputy Mayor until an election is held.*

RECOMMENDATION:

1. **That Council elect a Deputy Mayor for the period from 22 November 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.**

25 **Attachments:**

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

30

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.*
- (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.*

40

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

(4) *In this clause:*

“ballot” has its normal meaning of secret ballot;

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

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.

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.

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.

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.

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.

Financial Implications

On 21 June 2018, Council resolved **(18-420)** in part 3: *"That Council in accordance with its current practice not determine a fee payable to the Deputy Mayor."*

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.*

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.

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. 13.13 **Council Resolutions Quarterly Review - 1 April 2018 to 30 June 2018**
Directorate: Corporate and Community Services
Report Author: Heather Sills, Corporate Governance Officer
File No: I2018/2040
5 **Theme:** Corporate Management
 Governance Services

Summary:

10 This report provides an update on the status of Council resolutions.

Council should note that 169 resolutions were completed during the period 1 July to 30 September 2018. This is an increase of 90 resolutions compared with the same time period in 2017.



15 There were 72 active resolutions as at 30 June 2018. This is a decrease of 20 resolutions compared with the previous reporting period as at 30 June 2018, on which date there were 92 active resolutions.

20 Resolutions could be active or overdue as a result of budget constraints, staff resourcing, extended negotiations with stakeholders, or other reasons.

RECOMMENDATION:

1. **That Council note the information provided in this report on active Council Resolutions in Attachment 1 (#E2018/86729).**
2. **That Council note the completed Resolutions in Attachment 2 (#E2018/86730).**

Attachments:

- 1 Active Resolutions as at 30 September 2018, E2018/86729 
- 2 Completed Resolutions - 1 July to 30 September 2018, E2018/86730 

Report

This report provides a quarterly update on the status of Council Resolutions to 30 September 2018.

5 As at 30 September 2018:

- 169 resolutions were completed since 1 July 2018
- 72 resolutions remained active
- 65 of the active resolutions were overdue

10

The active Council resolutions per Council terms are provided below:

- 68 active Council Resolutions from current Council (2016-2020)
- 4 active Council Resolutions from previous Council (2012-2016)

15

Details of completed resolutions for the period are provided at Attachment 2 (E2018/86730).

Financial Implications

20 A number of resolutions note that resource constraints limit completion of action required.

Statutory and Policy Compliance Implications

- Council requires a quarterly report be prepared to allow it to consider the quarterly Operational Plan and Quarterly Budget reviews along with a review of Council Resolutions.
- Implementation of Council Resolutions in accordance with the *Local Government Act 1993*.
- This report has been prepared in accordance with Part 3c) of Resolution 14-417.

25

Report No. 13.14 Presentation of 2017/2018 Financial Statements

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

File No: I2018/2136

5 **Theme:** Corporate Management
Financial Services

Summary:

10 Council is required under Section 418 of the *Local Government Act 1993* to fix a meeting at which it presents the annual Audited Financial Statements and Auditor's Reports to the public. Council is required to do this no later than five weeks after the Auditor's Reports are received by Council.

15 The Financial Statements for the financial year ended 30 June 2018 were reported to the Ordinary Meeting held on 18 October 2018, where Council adopted the Audited 2017/2018 Financial Statements and Auditor's Reports through resolution **18-678**. This same resolution resolved to present the Audited 2017/2018 Financial Statements and Auditor's Reports to the public at this Ordinary Meeting of Council.

20 The presentation of the Financial Statements and Auditors Reports to the Public is required by Section 419(1) of the *Local Government Act 1993* and does not have any impact on the content of the Financial Statements.

25

RECOMMENDATION:

That the Audited Financial Statements and Auditors Reports for the 2017/2018 financial year be presented to the Public in accordance with Section 419(1) of the Local Government Act 1993.

30

Report

5 Council is required under Section 418 of the *Local Government Act 1993* to fix a meeting at which it presents the annual Audited Financial Statements and Auditor's Reports to the public. Council is required to do this no later than five weeks after the Auditor's Reports are received by Council.

At the Ordinary Meeting of Council on 18 October 2018, Council resolved:

18-678:

- 10
1. *That Council adopt the Draft 2017/2018 Financial Statements incorporating the General Purpose Financial Statements, Special Purpose Financial Statements and Special Schedules.*
 - 15 2. *That Council approve the signing of the "Statement by Councillors and Management" in accordance with Section 413(2)(c) of the Local Government Act 1993 and Regulation 215 of the Local Government (General) Regulation 2005 in relation to the 2017/2018 Draft Financial Statements.*
 - 20 3. *That Council exhibit the Financial Statements and Auditor's Report and call for public submissions on those documents with submissions closing on 30 November 2018 in accordance with Section 420 of the Local Government Act 1993.*
 - 25 4. *That the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 22 November 2018 in accordance with Section 418(1) of the Local Government Act 1993."*

In accordance with Council's resolution above, this report is provided to present the 2017/2018 Financial Statements and Auditor's Reports to the Public.

30 At the Ordinary Council Meeting held on 18 October 2018, Council received copies of the Financial Statements and Auditors Reports as outlined in Attachments 1 to 4 of Report 17.1 – Draft 2017/2018 Financial Statements to that Meeting.

35 Council's published 2017/2018 Financial Statements can be found at the following link:

<https://www.byron.nsw.gov.au/Council/Our-Byron-Our-Future/Our-progress/Financial-statements>

40 The presentation of the Financial Statements to the Public is a requirement by Section 419(1) of the *Local Government Act 1993* and does not have any impact on the content of the Financial Statements.

45 The Financial Statements and Auditors Reports have been placed on public exhibition and advertised in accordance with Section 418(1) of the *Local Government Act 1993* with a closing date for submissions of 30 November 2018. Should any submissions be received they are required to be forwarded to Council's Auditor and will be advised to Councillors via memo.

Presentation of the Financial Statements and Auditors Reports to the Public is the last step in the legislative requirements regarding the annual financial reporting.

50 Financial Implications

There are no financial or resource implications in presenting the Financial Reports to the public.

Statutory and Policy Compliance Implications

5 In accordance with Section 418(1) of the *Local Government Act 1993*, Council is required to fix a date for the meeting at which it proposes to present its Audited Financial Statements and Auditors Reports. It must also give public notice of the date fixed. Section 418(2) requires the date fixed for the meeting must be at least 7 days after the date on which the notice is given but not more than five weeks after the Auditors reports are given to the Council.

10 Section 419(1) of the *Local Government Act 1993* requires that Council must present its audited Financial Statements together with the Auditors reports, at a meeting of the Council held on the date fixed for the meeting. Council has advertised and previously resolved that this Ordinary Meeting is when the Financial Statements and Auditors Reports will be presented.

15 Section 420(1) of the *Local Government Act 1993* provides that any person may make submissions to Council with respect to the Council's audited Financial Statements or with respect to the Auditors Reports. Section 420(2) of the *Local Government Act 1993* requires a submission must be in writing and must be lodged with Council within 7 days after the date on which the Financial Statements and Auditors Reports are presented to the public. Any submissions received by Council must be referred to Council's Auditor in accordance with Section 420(3) of the *Local*
20 *Government Act 1993*.

Report No. 13.15 Operational Plan 2018/19 First Quarter Report - Q1 - 1 July to 30 September 2018

Directorate: Corporate and Community Services
Report Author: Heather Sills, Corporate Governance Officer
File No: I2018/2160
Theme: Corporate Management
Governance Services

5

10 **Summary:**

Council's Operational Plan outlines its projects and activities to achieve the commitments in its four-year Delivery Program.





15 This report summarises the Council's progress towards achieving the annual activities contained in the 2018-2019 Operational Plan. This report is the first quarterly progress report for the period 1 July to 30 September 2018.

20

RECOMMENDATION:

1. **That Council note the first quarter report on the 2017/18 Operational Plan for the period 1 July to 30 September 2018 (Attachment 1 #E2018/85563).**
2. **That Council adopt the proposed amendments to the Operational Plan 2018/19 outlined in Attachment 2 (#E2018/82686)**

Attachments:

- 25 1 Operational Plan Quarterly Report - Q1 - 1 July to 30 September 2018, E2018/85563  
- 2 Quarter 1 Report - Proposed Amendments to Operational Plan, E2018/82686  

Report

5 Every three months, Council will provide a status update on how it is progressing the activities in the Operational Plan and note any highlights or exceptions where actions may be delayed or reprioritised. For the first time Council is reporting on a quarterly basis under the Integrated Planning and Reporting Framework. Previously this was six monthly.

10 The report (Attachment 1 #E2018/85563) is structured by each of the 'Our Byron, Our Future' Community Strategic Plan (2018-2028) objectives:

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

20 Each section notes the progress against the activities including:

- Activity
- Responsible directorate
- Measure
- Timeframe
- Comments
- 25 • Status
 - On track – Indicates that an activity is currently on track, taking into account the timeframe, measures, and budget
 - Needs attention – Indicates that the scope of the activity may need to be reviewed in line with constraints such as timeframe / budget
 - 30 ○ Not commenced – The activity is not due to have commenced or has not yet commenced
 - Critical – The activity will not be delivered on time and / or on budget
 - Completed – The activity has been completed in accordance with the prescribed measures

35 As it is the first quarter (July – September) of the financial year, the majority of actions are on track. Some 'need attention' and will be monitored this quarter. A few actions have also been completed.

40 It should be noted that this report is at 30 September 2018 and therefore since collation of the report, actions may have progressed.

Each quarter, amendments required to be made to the original Operational Plan are to be endorsed and adopted by Council. These amendments are provided in detail in Attachment 2 (#E2018/82686). The proposed amendments include:

- 45 • new actions
- changes to proposed timeframes

Proposed new activities are a result of:

- 50 • revised priority
- new legislation
- conclusions of activity
- omission from original plan, or
- generated by resolutions of Council

Further administrative changes are also proposed, including introduction of a numbering system for ease of reference, splitting of actions and changes to responsibility

Financial Implications

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

Statutory and Policy Compliance Implications

10 The General Manager is required under Section 404 (5) of the *Local Government Act 1993* to provide regular progress reports as to the Council's progress with respect to the principal activities detailed in the Delivery Program/Operational Plan. Progress reports must be provided at least every six months.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.16 Coastal Management Conference and potential for Byron Shire Council to host

5 **Directorate:** Sustainable Environment and Economy
Report Author: Chloe Dowsett, Coastal and Biodiversity Coordinator
File No: I2018/609
Theme: Ecology
10 Planning Policy and Natural Environment

Summary:

15 At the Ordinary Meeting 3 August 2017, Council resolved as follows:

17-299 Resolved (relevant parts only):

- That Council submit a bid to host the 27th NSW Coastal Conference in 2018 and the next unallocated Australian Coastal Councils Conference.
- 20 • That if these submissions are unsuccessful, staff prepare a report on the implications of holding an event in Byron Shire, inviting key experts in coastal management.

25 Over the preceding 12 months staff have been liaising with the organisers of both coastal management events.

30 On 14 May 2018, staff were notified that Council's bid to host the Australian Coastal Councils (ACC) Conference was unsuccessful. Feedback received from the organiser outlined that Council's Expression of Interest was of an extremely high standard and it was a difficult decision based on the consideration of various other factors.

35 On 8 October 2018, staff were notified that Council's bid to host the NSW Coastal Conference 2019 was also unsuccessful. Feasibility of the proposed venue along with costs were the main factor.

40 This report provides an update on the outcome of Council's bid to host a coastal management event in Byron Bay. It also recommends that Council pursue the option of co-hosting the next available NSW Coastal Conference with a neighbouring coastal council.

RECOMMENDATION:

1. That Council note the unsuccessful outcome of the bid to host both the NSW Coastal Conference 2019 and the next unallocated Australian Coastal Councils Conference.
2. That Council pursue the option of co-hosting the next available NSW Coastal Conference with a neighbouring coastal Council in 2020.

Report

5 This report provides an update on the outcome of Council's bid to host a coastal management event in Byron Bay.

Background

10 Council resolved at the 3 August 2017 meeting to submit a bid to host the 27th NSW Coastal Conference in 2018 and the next unallocated Australian Coastal Councils Conference.

17-299 Resolved (relevant parts only):

- That Council submit a bid to host the 27th NSW Coastal Conference in 2018 and the next unallocated Australian Coastal Councils Conference.
- 15 • That if these submissions are unsuccessful, staff prepare a report on the implications of holding an event in Byron Shire, inviting key experts in coastal management.

20 Subsequent to this resolution, staff approached the organisers of both events and expressed Council's interest in hosting an event focussed on coastal management.

NSW Coastal Conference

25 The NSW Coastal Conference has grown to become one of the most successful coastal industry events held in Australia. The conference brings together 200 - 250 delegates from a diverse range of fields, including: all aspects of coastal, estuarine and marine management, science and research, and education, planning, policy and law; and includes representatives from government, the private sector and community groups and the interested public.

30 Past conferences have been held in Port Stephens (2017), Coffs Harbour (2016), Forster (2015), Shoalhaven (2014), Port Macquarie (2013), Kiama (2012), Tweed (2011), Batemans Bay (2010), Ballina (2009), Wollongong (2008), Yamba (2007), Coffs Harbour (2006) and Narooma (2005).

35 Traditionally at the end of each conference Councils bid for the rights to host the conference in their LGA the following year. The bid involves a description of the Council's ability to assist in the organisation of the event including venue, accommodation options, conference dinner and invitation of guest and key speakers, nomination of themes and calling for papers and session presenters, poster displays and arranging off-site field trips.

40 At the time of the resolution in August 2017 a host had already been confirmed for the 27th NSW Coastal Conference (2018) held in Merimbula, on the Sapphire Coast. However, staff were advised that Council could put in a submission to host the 2019 event.

45 The conference is a three-day event which comprises of plenary sessions, concurrent sessions, panel discussions, workshops, a trade area, field trips (addressing some of the local coastal, estuary and marine management issues), networking events and the Annual NSW Coastal Management Awards. Byron has not yet hosted a conference, however, it is noted that estimated numbers of attendees may be up to 300 delegates (higher than most years) due to the high-level of interest in Byron's coastline and attractive location for the event.

50 The host Council is required to provide the following:

- Form the Program Advisory Committee comprising a Councillor and relevant staff members and attend monthly teleconference meetings (or as required)
- Establish the theme for the event

- Complete the draft program outline for the event to enable the 'Call for Abstracts'.
- Provide off-site field trips to allow delegates to visit areas demonstrating key coastal management issues/solutions
- Underwriting of the conference to an agreed set amount (\$5,000 to \$15,000)

5

Staff and the conference organiser reviewed in detail the suitability of accommodation and venue options for the event. At first pass the Cavanbah Centre was the most feasible as other venues could not cater for the anticipated numbers or requested a number of accommodation packages which were over the allocated budget. A quote was sent to the organiser outlining the venue costs for the Cavanbah Centre and a site visit was undertaken at the end of September to view the venue in more detail. After the site inspection the organiser felt that the basketball court would not work as a main plenary room and was concerned about the acoustics in this space. A marquee would also be required in for the trade area and if it was to rain delegates would get wet from venue to trade area.

10

15

The quote hire of the Cavanbah Centre was also over the conference budget.

As such Council's bid to host the NSW Coastal Conference 2019 event was unsuccessful.

20 Australian Coastal Councils Conference

25

The Australian Coastal Council Conference is run by the Australian Coastal Councils Association Inc. The Association is a national body which represents the interests of coastal councils and their communities and was previously known as the National Sea Change Taskforce (for which Council was a member). The role of the Association is to advocate on behalf of coastal councils and commission research on behalf of councils in coastal areas in relation to a range of coastal issues.

Each year a conference is held around March, with the 2018 event held in Geelong, Victoria.

30

The host Council is required to support the event through various means such as:

- Providing the conference venue (either free of cost or at reduced cost)
- Financial sponsorship
- Providing assistance with local suppliers
- Arranging field tours
- Hosting a reception for delegates
- Providing input into the program

35

40

The conference is held at a national level in relation to coastal issues, hence unlike the NSW Coastal Conference it is not specific to NSW and applicable legislation and policies. The conference is also a 3 day event, with delegate numbers from 130 to 200. The conference is made up of plenary sessions, panel sessions, concurrent session, workshops and field trips.

Staff have been in contact with the organisers over the preceding months and have now received a response on the decision process. Council's bid to host the Australian Coastal Councils (ACC) Conference was unsuccessful as per the advice received on the 14 May 2018:

45

"This is to advise that at a Committee meeting of the Australian Coastal Councils Association Inc. held today, it was decided to accept the bid by Kiama Municipal Council in NSW to host the 2019 Australian Coastal Council.

50

I am writing on behalf of the Committee of Management to thank you and your colleagues at Byron Shire Council for the Expression of Interest to host the event. As noted during today's meeting it was an extremely difficult decision for the Committee and one that was made after extensive consideration of the various factors involved.

55

We would like to thank you for your input into the EOI process and for the extremely high standard of the submission received from your council”.

Recommendation

5

It is recommended that Council continue to pursue hosting an existing coastal management event, rather than pursue organising a new event. Reason being is that the most successful coastal industry event held in Australia is the NSW Coastal Conference with an event organiser coordinating all aspects of the conference at limited cost and resources to the host Council.

10

Should Council be interested in exploring the option of co-hosting the next available NSW Coastal Conference with a neighbouring coastal council (i.e. Ballina Shire Council or Tweed Shire Council), confirmation from the event organiser would be required along with a neighbouring council's agreement to co-host.

15

Financial Implications

Underwriting of the NSW Coastal Conference usually costs the host council up to \$15,000 however, should the conference be co-hosted these costs may decrease.

20

Statutory and Policy Compliance Implications

Nil.

Report No. 13.17 **PLANNING – 26.2018.2.1 - Planning Proposal for an amendment to Byron LEP 2014 and Byron LEP 1988 to permit Community Title subdivision and dwellings at Lot 1 DP 1031848, The Coast Road, Broken Head (The Linnaeus Estate)**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Steve Daniels, Project Officer - Planning Reforms
File No: I2018/1773
Theme: Sustainable Environment and Economy
10 Planning Policy and Natural Environment

Summary:

15 Council has received a planning proposal to amend Byron LEP 2014 and Byron LEP 1988. The planning proposal is to include Lot 1 DP 1031848 (The Linnaeus Estate, Broken Head) in Schedule 1 of BLEP 2014 and Schedule 8 of BLEP 1988 to permit the Community Title subdivision of the land to create 33 small lots, with the balance in a single community lot. The use of the small lots for dwellings is foreshadowed subject to future development consent. The planning proposal is consistent with the Byron Rural Land Use Strategy 2017 and the North Coast Regional Plan.

20 It is recommended that Council proceed with the planning proposal as submitted and forward it to the Department of Planning and Environment for a Gateway Determination.

RECOMMENDATION:

That Council:


1. **Request the NSW Department of Planning and Environment to issue a Gateway determination for the planning proposal, as included at Attachment 1 (E2018/87474) which proposes to include Lot 1 DP 1031848 (The Linnaeus Estate, Broken Head) in Schedule 1 of BLEP 2014 and Schedule 8 of BLEP 1988 to permit the Community Title subdivision of the land to create 33 small lots, with the balance in a single community lot.**


2. **Obtain any further studies from the applicant if required by the Gateway determination. Then undertake public exhibition of the planning proposal and government agency consultation based on the Gateway determination; and**

3. **Receive a further report post-exhibition about issues raised in public and/or government agency submissions received (if any).**

25

Attachments:

- 1 26.2018.2.1 Planning Proposal for Lot 1 DP 1031848, The Coast Road, Broken Head - Version 1 (Gateway), E2018/87474 

- 30 2 Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 

Report

Subject Land

5 The subject land is described as Lot 1 DP 1031848, The Coast Road, Broken Head (The Linnaeus Estate). It is an area of 111 hectares with a 1500 metre beach frontage and a 530 metres frontage to The Coast Road. It is located on the boundary with Ballina Shire immediately south of Broken Head. It has a series of approvals relating to its use as a private education facility. These approvals include 33 accommodation units of which 20 have been built.



10 **Subject site (in part) showing existing structures**

The Planning Proposal

The planning proposal (Attachment A) will permit:

- 15 ■ A subdivision using a neighbourhood community title scheme creating a total of 33 neighbourhood lots with a minimum size of 250m² each. Each lot can be privately owned. It will also include one lot comprising the residue of the land that will be in shared ownership.
- Each privately owned lot to contain only one dwelling.

The proponent has lodged the planning proposal because the amendment will permit the subdivision of the existing and approved accommodation units allowing clear title to each of them.

Community Title will replace the complex trust/lease/deed arrangement currently in place. Each accommodation unit can be used as a dwelling if the owners obtain Council consent.

Past Council Resolutions on this Planning Proposal

5 On 2 February 2015 Council considered a draft Planning Proposal for an amendment to the Byron LEP 2014 to rezone land and permit Community Title at Lot 1 DP 1031848, The Coast Road, Broken Head (The Linnaeus Estate). The planning proposal was unsolicited and submitted by the landowners. Council resolved as follows:

10 **15-029 Resolved:**

1. That Council decline to proceed with the attached planning proposal to amend Byron LEP 2014.
2. That Council investigate the suitability of the site for Community Title subdivision during preparation of the Byron Urban and Rural Housing Strategy.
3. That Council defer any new zonings on the site until after release of the final E zone review report.
4. That, at the next general update of Byron LEP 2014, Council agree to amend the SP1 zone on Lot 1 DP 1031848 to refer to a private education facility and amend Schedule 1 to define private education facility and specifically permit it as a use on the subject land.

In July 2018 the NSW Department of Planning and Environment agreed to the Byron Rural Land Use Strategy. This Strategy now includes the subject land.

25 New zones on the subject land are still being considered as part of the E zone review and this is subject to a separate planning proposal.

Council has amended the current SPI zone (as part of the LEP housekeeping amendments gazetted in 2017) to refer to “Mixed Use Development”. *Mixed use development* means a building or place comprising 2 or more different land uses. Additionally, the amendment identified the SP1 zoned land as “Area D” on the Additional Permitted Uses Map and is subject to clause ‘8’ in Schedule 1 of Byron LEP 2014. The additional permitted use is as follows:

35 **8 Use of certain land at Coast Road, Broken Head**

- (1) This clause applies to land at The Coast Road, Broken Head (known as the Linnaeus Estate) being part of Lot 1, DP 1031848, and identified as “Area D” on the [Additional Permitted Uses Map](#).
- (2) Development for the purposes of mixed use development that includes tourist or visitor accommodation is permitted with development consent.
- (3) Development consent may only be granted under this clause if the consent authority is satisfied that the proposed development:
 - (a) is ancillary to a lawful existing land use, and
 - (b) is for the purpose of providing education or training for professional and personal development through a variety of academic, cultural and vocational programs.

Key Issues

Byron Rural Land Use Strategy

50 Byron Rural Land Use Strategy 2017 has identified the subject land as a “priority site for future rural lifestyle living opportunities”. The subject land is identified for “Community Title conversion of approved accommodation units only (i.e. no additional dwelling yield)”. This strategy was endorsed by the NSW Department of Planning and Environment (DPE) in July 2018.

55 *North Coast Regional Plan*

As it is now in the Byron Rural Land Use Strategy 2017, it is consistent with the North Coast Regional Plan 2036 which states: “New rural residential housing will not be permitted in the coastal strip, unless the land is already zoned for this purpose, or is identified in a Department endorsed current or future local growth management strategy (or rural residential land release strategy).”

Amending Two LEPs

The subject land is currently zoned under both Byron LEP 1988 (BLEP88) and Byron LEP 2014 (BLEP14). It is a complex mix of land use zones. The approved 33 accommodation structures are located partly in the SP1 Mixed Use zone under BLEP 2014 and partly within the 5A Special Uses, 7D Scenic Escarpment, and 7F1 Coastal Lands zones under BLEP 1988. If only one of the LEPs is amended then only part of the site can be subdivided under community title. A development consent issued under one LEP cannot apply to land to which a different LEP applies. Preliminary contact with DPE officers indicated it would consider amending both BLEP 2014 and BLEP 1988 in these circumstances.

Coastal Erosion

Part of the subject land is affected by coastal erosion both in the immediate and long term (100 year projection). A map showing the projected erosion lines as mapped in Byron DCP 2010 Part J is included in the Planning Proposal. As many as 15 of the 33 approved accommodation structures may be affected by coastal processes over the long term. The structures are all approved and 20 have been built already. With the prospective subdivision and dwelling consent process Council has the ability to impose conditions requiring dwellings to be removed when the erosion threat is imminent. These conditions have been imposed on past approvals for accommodation on this site.

SEPP Coastal Management

The subject land is partly affected by coastal environment area, coastal use area, coastal wetlands and littoral rainforest mapping under SEPP (Coastal Management) 2018. The accuracy of this mapping is disputed by the landowner and Council staff agrees that not all of it is accurate, however this will need to be resolved as a separate process. The provisions of the SEPP will apply to the subject land as per the maps that prevail at the time a development application is being assessed. This is not a matter that should delay this planning proposal.

S. 9.1 Ministerial Directions (previously s. 117)

The planning proposal is justifiably inconsistent with certain Section 9.1 directions because it:

- has not yet been referred to RFS for bushfire consideration (Direction 4.4)
- introduces site specific provisions (Direction 6.3)
- enables increased development on land identified as being affected by current or future coastal hazard (Direction 2.2)
- restricts the potential development of resources on the site (Direction 1.3)

These justifiable inconsistencies are all discussed in more detail in the planning proposal.

Past DAs

Linnaeus Estate has two substantive approvals being DA 98/0146 which was issued by the Land and Environment Court in 1998 (and amended by consent orders in 2001, 2002, and 2004) and DA 10.2013.600.1.

DA 98/0146 issued in 1998 permitted a private education facility which included 30 buildings of which 24 were accommodation units (inclusive of 2 staff residences and disabled accommodation) with self-contained facilities for sleeping and cooking meals. No laundries were permitted in the accommodation units. There was also a camping ground and community buildings.

5 A subsequent amendment in 2001 increased accommodation unit floor areas from 110 sq metres to 123 sq metres (Type A units) and from 106 sq metres to 118 sq metres (Type B units). External decking was also added to accommodation units.

10 In 2002 an amendment was sought to the main communal building. This amendment expanded the approved disabled accommodation unit (attached to the communal building) from 1 unit to 4 detached units, bringing the total number of approved accommodation units to 27.

15 In 2003 two further modifications were lodged to increase daily sewage disposal from 6000 litres per day to 16,800 litres per day; increase maximum number of persons on site from 72 to 112; permit laundry facilities in the accommodation units; and provide additional areas for treated wastewater to be dispersed. These were agreed to by the Court in 2004.

20 DA 10.2013.600.1 was approved in 2014 by Council and permitted the reconfiguration of the private education accommodation by deletion of the camping sites and replacement with six additional accommodation units. The use of these buildings must cease if the erosion escarpment comes within 50 metres of the buildings the subject of this consent.

25 In total, 33 accommodation units (inclusive of 2 staff residences) are approved for the site and indicated on the proposed lot layout in Appendix 1 to the planning proposal (Attachment A).

Options to Move Forward

1. Proceed with the planning proposal and request DPE to proceed to issue a Gateway determination for the planning proposal as attached to this report
- 30 2. Don't proceed with the planning proposal and provide reasons to the applicant

Conclusion

35 Council has anticipated this planning proposal in response to the subject land being identified in the Byron Rural Land Use Strategy 2017. There is sufficient information to support the planning proposal as submitted and forward it to the Department of Planning and Environment for a Gateway Determination. This forms the basis of the report recommendation.

Financial Implications

40 If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as a landowner initiated planning proposal. Full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the planning proposal will not proceed.

45 If Council chooses not to proceed then the matter does not incur any additional costs.

Statutory and Policy Compliance Implications

The relevant policy considerations are addressed above and in the planning proposal attached to this report.

Report No. 13.18 **PLANNING - Development Application 10.2018.86.1 - Installation of a Telecommunications Facility with Ancillary Equipment at Lot 339 DP 755692 Old Pacific Highway Brunswick Heads**

Directorate: Sustainable Environment and Economy
Report Author: Greg Smith, Team Leader Planning Services
File No: I2018/1882
Theme: Sustainable Environment and Economy
 Development and Certification

Proposal:

Proposal description: Installation of 30m High Telecommunications Facility and Associated Ancillary Equipment

Property description: LOT: 339 DP: 755692
 Old Pacific Highway BRUNSWICK HEADS

Parcel No/s: 164530

Applicant: Aurecon

Owner: Brunswick Heads Bowling Club

Zoning: RE2 Private Recreation

Date received: 27 February 2018

Integrated Development: No

Delegation to determination: Council

Issues: • Further Consultation as per Council Resolution 18-441

Summary:

15 The DA proposes installation of a telecommunications facility and associated ancillary equipment. The location is part of the site of the Brunswick Heads Bowling Club. The DA was considered at the Council meeting on 2 August 2018. Council resolved to defer consideration of the DA to allow the Applicant to liaise with Brunswick Heads Progress Association, Brunswick Chamber of Commerce, Brunswick Heads Primary School P&C and other relevant local groups, to seek input and feedback on the proposed location and, if possible, to consider alternate sites. The results of the further consultation have been provided by the Applicant to Council and are outlined in this Report. The Applicant has also submitted amended plans, relocating the development to the east and slightly further away from the Old Pacific Highway frontage of the site.

25 The proposed development is generally consistent with the relevant environmental planning instruments and planning controls applicable to the site including the LEP and DCP provisions for this type of development, excluding the height provisions under Clause 4.3 of BLEP 2014. The telecommunications facility has a proposed maximum height of approximately 31.5m which exceeds the 9m maximum development standard.

30 The DA is supported by a written request for a variation pursuant to clause 4.6 of LEP 2014. It is considered that strict compliance with the development standard is not warranted in this instance. In particular a telecommunications facility would be ineffective at 9 metres in height. It is noted the telecommunications facility is located at the southern entrance to Brunswick Heads adjacent to the Bowls Club and next to an existing shed. The area is in part vegetated with a mixture of eucalypts and other coastal species helping to screen the telecommunications facility as it is approached from Brunswick Heads to the north and from the Pacific Highway to the south. Further landscaping is also recommended by way of a condition of consent to soften the visual impact of the telecommunications facility compound. The proposal is unlikely to have a significant impact on the visual amenity of the locality.






5 The proposal raises no significant environmental impacts which cannot be managed through reasonable and relevant conditions of approval, and the site is considered suitable for the development as discussed in this Report. In this regard numerous sites were considered in the Brunswick Heads area, including those mentioned in the previous Report to Council and further sites mentioned in this Report, with the Bowling Club site selected as the preferred property for the telecommunications facility.

10 The proposed telecommunications facility will provide improved mobile coverage for residents, businesses, tourists and other visitors to the area. The application is recommended for approval subject to conditions of consent.

RECOMMENDATION:

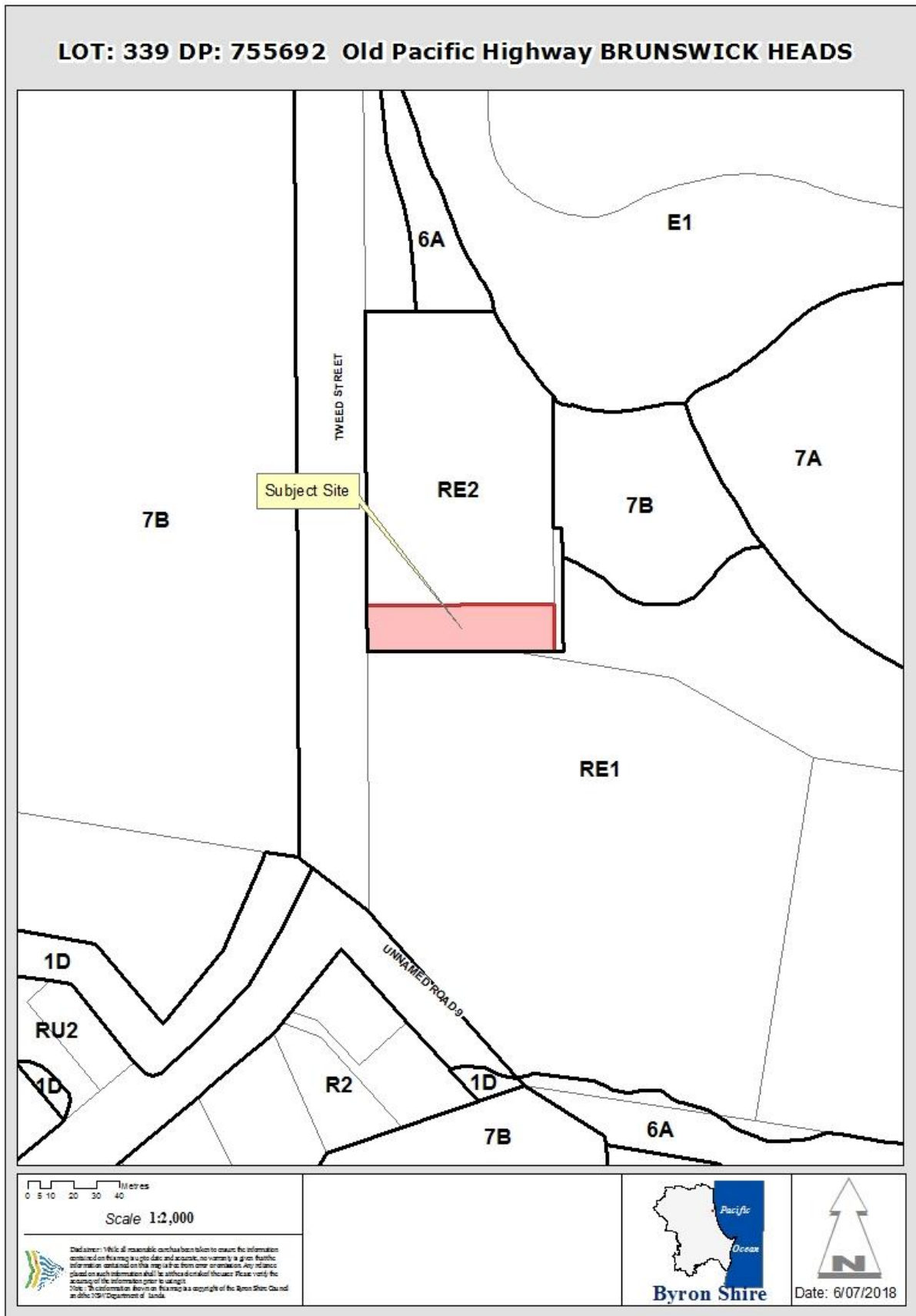
Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2018.86.1 for installation of 30m high telecommunications facility and associated ancillary equipment, be approved subject to conditions listed in Attachment 2 #E2018/83848.

Attachments:

- 15
- 1 Plans of proposed development, E2018/83840 
 - 2 Conditions of consent, E2018/83848 
 - 3 Previous Report to Council Meeting of 2 August 2018, E2018/79956 
 - 20 4 Email dated 3 September 2018 from Applicant regarding consultation with local groups, E2018/79958 
 - 5 Email dated 7 September 2018 from Applicant regarding consultation with local groups, E2018/79959 

25

Report



Assessment:

The following report needs to be read as an Addendum to Council Report 13.17 from the Ordinary Meeting of the 2 August 2018. (See Attachment 3)

1. HISTORY / BACKGROUND

Council considered a report at its meeting on 2 August 2018 recommending approval of the development application, and resolved as follows:

(Res 18-441)

1. *That Council defer this matter.*
2. *That the proponents liaise with Brunswick Heads Progress Association, Brunswick Chamber of Commerce, Brunswick Heads Primary School P&C and other relevant local groups, to seek input and feedback on the proposed location and, if possible, to consider alternate sites.*

2. CONSULTATION BY THE APPLICANT AS PER COUNCIL RESOLUTION

In response to the Council resolution, the Applicant provided a preliminary status update of stakeholder consultations by way of email dated 3/9/2018 (E2018/74912) as follows:

- Soccer Club – Emailed Ken on 13/8/2018 and sent follow up email on 20/8/2018. Yet to receive a response.
- AFL – Emailed President (Matt) on 14/8/2018 and again on 21/8/2018. Spoke with President on 27/8/2018 and provided full information pack on 29/8/2018. This is further discussed below.
- Brunswick Heads Primary School P&C – Left voicemail for President (Doug) on 14/8/2018, spoke with him later on 14/8/2018 and also sent full information pack. No response received.
- Cricket Club – Spoke with Robby (contact provided by Council) who is no longer involved with the Club but provided the Club's general address and the correct person. Email sent on 20/8/2018. No response received.
- Brunswick Area Responsible Canine Owners – Spoke with Maggie, who provided the Club's general address – email sent on 20/8/2018. No response received.
- Billygoats Rugby Club – Spoke with President Ben on 15/8/2018. He expressed concern about the facility being so close to where children play and EME. Applicant explained the need for facility and reasons as to why the site was chosen. The President requested further information about the proposal. Email sent with information on 17/8/2018. No response received.
- Brunswick Heads Sports Association – Left voicemail with Nick on 15/8/2018 and sent email on 20/8/2018. No response received.
- Progress Association – Ongoing communication, including a teleconference on 22/8/2018. The Progress Association has concerns about proximity to the oval and visual impact. Alternative options were discussed and reasons why they were unsuitable were explained. It was raised by Telstra that it would be possible to move the proposed lease area to the east, behind the existing Bowling Club shed – which would provide slightly more screening of the facility from the Highway. Revised photomontages and drawings were provided to the Progress Association for discussion at their next meeting. The Progress Association to provide an update (discussed below).
- Chamber of Commerce – Ongoing communication via email. Chamber raised the possibility of moving the facility to the east, which Telstra has investigated (as indicated). Revised montages and drawings were provided, yet to receive a response.

The Applicant provided a final update of the stakeholder consultation process by way of email dated 7/9/2018 (E2018/74906), as follows:

- 5 • Brunswick Heads Progress Association – Acknowledge finding a suitable location was difficult and agree moving the facility any further to the east will help reduce visual impact. Montages and drawings were revised and submitted (discussed below) to reflect the location change.
- 10 • Brunswick Heads Chamber of Commerce – Prefer a change in location, further to the east, to help reduce visual impact. Further correspondence was provided to the applicant following consideration of the amended plans dated 18th September 2018 whereby they advised that “the Executive are happy with the current plan”.
- 15 • The AFL Club – In opposition to the proposal with concerns around EME. Requested Telstra pay for lighting and upgrade of facilities at oval, as a way of alleviating perceived negative impact. The Applicant responded by way of email dated 6/9/2018 as follows:

20 *“In regards to EME, which I presume is the concern you raise, Telstra must adhere to the output standards that are set by the Australian Communications and Media Authority. All base stations in Australia are required to operate within this standard – which are deemed to be safe to all members of the community 24 hours a day/7 days a week.*

25 *We understand the Byron Shire Council area is a unique environment. There is also a need and demand for mobile communication in the area from residents, businesses and tourists. Telstra are responding to this demand and have endeavoured to find the most appropriate location for a facility in the Brunswick Heads area. As mentioned, it has taken many years of investigations.*

30 *Telstra has numerous telecommunications facilities located on sporting fields around Australia. This proposed facility however, would be wholly located on the Brunswick Heads Bowling Club lot and would not physically impede on the adjacent lot.*

35 *The owner of the sporting oval is Crown Land with Byron Shire Council as the Crown Land Manager and any upgrade works would obviously need to be requested/discussed with the owner of the land or Council, as the Crown Land Manager.*

40 *As a matter of probity Telstra are unable to pay for capital works on nearby properties, as a way of obtaining support or diminishing opposition to a new proposal. However, Telstra is sympathetic to your requirement to upgrade the amenities at the sporting ovals. If Council grant Telstra development consent for the proposed facility at the bowling club, it is likely the consent conditions will include a requirement for Telstra to pay Council a Section 7.12 contribution (previously known as s94A contributions). These Section 7.12 contributions enable local councils to levy monetary contributions for public amenities required as a consequence of development”.*

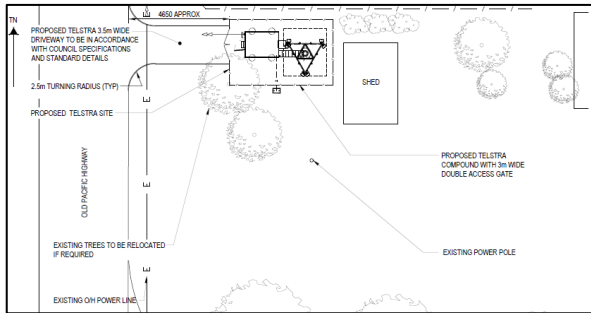
45

No further correspondence has been received.

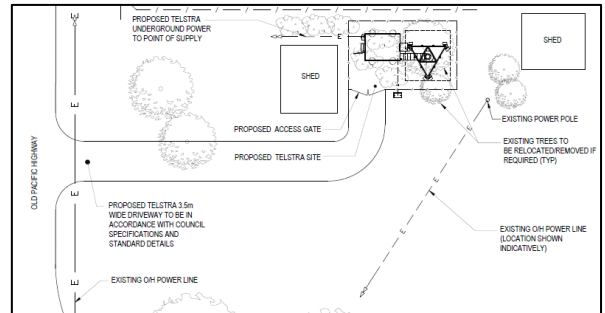
- 50 • Telstra and Aurecon have endeavoured to consult with all the persons/stakeholders Council noted.

55 The Applicant has submitted amended plans (Attachment 1 to this Report) in support of the DA. These include relocating the telecommunications facility an estimated 16m to the east of the original proposed location, from the western side of the small shed associated with the Bowling Club to eastern side of the shed. The proposed location is further away from the Old Pacific

Highway and better screened from view when approached from the south of the site due to an intervening tall tree.



Original proposed location



Modified proposed location



View north along Old Pacific Highway of original proposed location



View north along Old Pacific Highway of modified proposed location

- 5 The amended plans were referred to Essential Energy due to the proximity of the modified telecommunications facility location to a power pole and power lines and in accordance with clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Essential Energy has advised that it has no objection to the proposed telecommunication facility subject to conditions of consent.
- 10 The amended plans were also referred to Council’s Development Engineer who reviewed the plans and confirmed that the previously recommended engineering conditions remain unchanged.

In relation to other potential sites (including for example the nearby Brunswick Heads Sewage Treatment Plant), the Applicant advised as follows:

15

“Brunswick Heads Water Tanks - Lot 1 DP 584730

This location is unfortunately too far to the south west of the target coverage area (being the township of Brunswick Heads). Even a tall facility would not adequately provide increased capacity and coverage service into Brunswick Heads. The localities of Ocean Shores and Mullumbimby require their own dedicated telecommunications facility.

20

Brunswick Heads Sewerage Treatment Plant - Lot 1 DP 560486

An access agreement could not be obtained for this location. The driveway traverses Crown Land Lot 398 DP 724682 and there is an active Aboriginal Land Claim over the site, being the Tweed Byron Local Aboriginal Land Council lodged on the 28th October 2005. We were advised by Crown Land the claim is yet to be investigated and they are unable to provide a

25

5 *timeframe for when this investigation may occur. We were advised Crown Lands are not permitted to authorise owners consent for the creation of a legal burden over the land in the form of a lease, licence or easement while the claim remains unresolved. Additionally (as you mentioned) the location directly adjoins the Cape Byron Marine Park and I believe Council has redevelopment plans for the site.*

Behind Brunswick Heads Community Centre - Lot 436 DP 839424

10 *This location is too far to the east and a 360 degree coverage radius would not be achievable, thus making a facility in this location inefficient. The location is also close to residential properties and a telecommunications facility would likely impact on ocean and creek views.*

Behind Brunswick Heads Library - Lot 1 DP 105062

15 *A number of locations were identified in the centre of Brunswick Heads, similar to this location. However, from a planning perspective the proximity to residential properties and the impact to directly adjoining owners, was considered to be too great. A number of the central locations also did not offer adequate space for a facility.*

Behind the Brunswick Heads Memorial Hall - Lot 10 DP758171

20 *Similar to Candidate D, this location is in close proximity to residential properties and is heritage listed'.*

25 **3. CONCLUSION**

30 The proposed telecommunications facility and associated ancillary equipment will provide for improved access to mobile telecommunication for the residents and visitors of Brunswick Heads. It is considered the site is suitable and the proposal will not have an adverse impact on the built or natural environment of the locality. The DA is recommended for approval subject to conditions of consent.

Report No. 13.19 CZMP for the Eastern Precincts of the BBE - Request for Ministerial Certification Outcome**Directorate:** Sustainable Environment and Economy**Report Author:** Chloe Dowsett, Coastal and Biodiversity Coordinator5 **File No:** I2018/1973**Theme:** Sustainable Environment and Economy
Planning Policy and Natural Environment10 **Summary:**

15 Council has been at the forefront of adaptive planning which takes into consideration the risk of coastal hazards and unknown sea level rise, however with 10 years of making coastal plans, Council has been unable to achieve Ministerial certification of any Coastal Zone Management Plan (CZMP) under the former *Coastal Protection Act 1979* (CP Act) for any part of the coastline.

20 On 4 July 2018 the third consecutive CZMP (CZMP for the Eastern Precincts of the Byron Bay Embayment, 2018) was re-submitted to the Minister for the Environment (the Hon Gabrielle Upton) under section 55G of the *Coastal Protection Act 1979* (CP Act), for certification within the pending timeframes of the repeal of the CP Act, and commencement of the new coastal legislation.


25 Formal written advice from the Chief Executive of the Office of Environment and Heritage (OEH) received 16 October 2018 outlines that the CZMP (2018) was not referred to the Minister for certification due to legal uncertainty, and hence returned to Council advising Council to commence development of a Coastal Management Program for the whole Byron Bay Embayment.

30 This report provides a brief update of the making of CZMPs by Council over the preceding years and the outcome of the assessment process of the most recent CZMP for the Eastern Precincts of the Byron Bay Embayment re-submitted to the Minister on 4 July 2018.

RECOMMENDATION:

1. That Council request an urgent meeting the Minister for the Environment, the Hon Gabrielle Upton and the NSW State Premier, Gladys Berejiklian asking for the re-consideration of Ministerial certification of the Coastal Zone Management Plan of the Eastern Precincts of the Byron Bay Embayment (2018).
2. That Council seek formal written correspondence on the status of the Ministerial Direction issued on 12 October 2011 to submit a draft Coastal Zone Management Plan in accordance with the requirements under Part 4A of the Coastal Protection Act for the *coastline that is a beach between the southern extremity of the beach within Tyagarah Nature Reserve and Cape Byron, known as Belongil, Main Beach and Clarkes Beaches, Byron Bay.*
3. That Council note the current and future coastal projects being delivered by Council.

Attachments:

- 35 1 Letter from NSW Government Office of Environment & Heritage Director Anthony Lean to Mark Arnold GM - Coastal Zone Management Plan for the Eastern Precinct not recommended for certification, S2018/13222 [⇒](#) 

40

Background

5 The Byron Shire coastline has a long history of large coastal storms and coastal erosion, and has been identified through numerous studies as an area that is undergoing long-term coastal recession (landward movement of the shoreline).

10 Because of pressure from population growth, development and tourism, a concerted effort has been and continues to be required by Council to manage coastal hazards, maintain beach amenity, beach access, the natural environment, social and cultural values.

15 Council has been proactive in its strategy to manage coastal hazards through the application of planning and development controls on development in urban coastal hazard risk areas (Byron LEP 1988 and Part J, controls under Council's DCP, 2010). One of the guiding principles of the Byron LEP 1988 is the 'precautionary principle', namely that: "... actions will need to be taken to prevent damage even when it is not certain that damage will occur".

20 The approach was adopted in 1988 and provides for specified types of structures until such time as the erosion escarpment recedes to a defined distance to the development, after which time development consent ceases and the development (or relevant part of it) is to be relocated or removed.

25 Other management strategies have historically been implemented including the retention and implementation of coastal protection works at Main Beach (Jonson Street) and Wategos Beach, dune and public access and safety management.

Like many other coastal councils in NSW and Australia wide, managing the coastline is contentious and not without its challenges; legacy and historical issues add to the difficulty of the progress.

30 Council to date, has been at the forefront of adaptive planning which takes into consideration the risk of coastal hazards and unknown sea level rise, however with 10 years of making coastal plans, Council has been unable to achieve Ministerial certification of any Coastal Zone Management Plan (CZMP) under the former *Coastal Protection Act 1979* (CP Act) for any part of the coastline. Without a certified CZMP, an endorsed plan to guide the management of the coastline and
35 associated funding is restricted.

CZMP for the Byron Shire Coastline (2010)

40 On 1 September 2010 Council forwarded its draft CZMP for the Byron Shire Coastline (CZMP, 2010) to the Minister for Climate Change and the Environment (the former Hon Frank Sartor) for approval under Section 55G of the CP Act. Subsequent to the date of submission of the CZMP (2010) amendments to the CP Act came into effect, and the Act then provided for certification of the plan by the Minister under Section 55G of the CP Act.

45 On 22 February 2011 Council received a letter from the Minister which requested some information be provided, and which enclosed a Direction under section 55G(4)(b) of the CP Act for the draft CZMP (2010) to be amended in accordance with the requirements of the Direction.

50 Some of the changes requested represented a significant departure from the strategic planning framework that has underpinned coastline management in the Shire for over 20 years, and if undertaken would undermine the many years of planning investigation and consultation that had culminated in the draft CZMP (2010).

The changes were not supported and Council resolved to withdraw the CZMP (2010) on 14 April 2011. On 28 April 2011 Council wrote to the former Minister for the Environment (the Hon Robyn Parker) advising that Council no longer wished to proceed with the draft CZMP (2010).

5 In parallel with the submission of the draft CZMP (2010) Belongil Beach was designated one of 15 coastal erosion 'hotspots' in 11 council areas along the NSW coast. As a result of this 'hotspot' designation, and Council's request to withdraw the draft CZMP (2010) Council was given a Direction on 12 October 2011 by the Minister to submit a draft CZMP in accordance with the requirements under Part 4A of the CP Act for the *coastline that is a beach between the southern*
 10 *extremity of the beach within Tyagarah Nature Reserve and Cape Byron, known as Belongil, Main Beach and Clarkes Beaches, Byron Bay.* This area was named the 'Byron Bay Embayment'.

CZMP for the Byron Bay Embayment (2016)

15 From the date of the Ministerial Direction issued in 2011, Council commenced preparation of a draft CZMP for the Byron Bay Embayment (CZMP BBE 2016) which was submitted to the former Minister for Planning, the Hon Rob Stokes MP for certification under the CP Act on 30 June 2016.

20 On 28 August 2017 Council received a response from the Minister for Environment (the Hon Gabrielle Upton MP) along with comments and advice from the NSW Coastal Panel which acknowledged the complexity and range of issues associated with preparing a plan for this part of the coast. The main detail of the advice includes:

- 25 • The CZMP BBE (2016) did not meet the requirements for certification under the Act. Key elements of the plan dealing with hazard management along Belongil Spit did not meet the requirements for certification.
- 30 • The majority of the plan (with the exception of the Belongil Spit Precinct) met relevant requirements of a CZMP BBE (2016) subject to further consideration of funding and community consultation. In particular, Masterplanning for the Jonson Street area (Town Centre) was considered a high priority for implementation.
- 35 • The plan proposes actions or activities to be carried out by public authorities, or on land managed by a public authority without the agreement of those authorities.

As such, the Minister returned the plan and invited Council to re-submit a CZMP BBE (2016) for certification which excluded the Belongil Spit in the hope that a CZMP for this area could be certified within six months of repeal of the CP Act, and commencement of the new coastal legislation, the *Coastal Management Act 2016* (CM Act). The CM Act commenced on 3 April 2018, and the newly formed needed to be certified by 3 October 2018.

45 Further advice from the Minister's office received on 27 October 2017 clarified the Minister's invitation to re-submit a plan excluding the Belongil Spit and urged Council to be working on a Coastal Management Program (CMP) for the Belongil Beach precinct under the new coastal legislation. Or as an alternative, Council may wish to address the entire Byron Bay Embayment in a single new CMP under the new legislation.

CZMP for the Eastern Precincts of the Byron Bay Embayment (2018)

50 At the 26 October 2017 meeting, Council resolved (**Res 17-521**) to develop a newly formed CZMP for Cape Byron to Main Beach only (excluding the Belongil Spit) for re-submission and Ministerial certification within the pending timeframes of the repeal of the CP Act.

55 The area was named the 'Eastern Precincts of the Byron Bay Embayment' and includes the beaches of Wategos/Little Wategos, The Pass, Clarkes Beach and Main Beach.

Council's decision was based on the following:

- 5 • The considerable amount of work and resources that had been spent on the preceding CZMP BBE (2016);
- The Ministers advice which outlined the majority of the plan (with the exception of the Belongil Spit precinct) meeting relevant requirements for certification under the CP Act; and
- 10 • The commitment of Council to progress the upgrade/modification of the Jonson Street coastal protection works to protect the Town Centre and improve public safety and amenity.

15 A plan to address the Western Precincts of the BBE encompassing precincts of Cavvanbah, Belongil Beach and North Beach was anticipated to be developed under the CM Act as a Coastal Management Program (CMP).

20 Council staff worked in close consultation with representatives of the Office of the Environment and Heritage (OEH) for 8 months to develop the CZMP (2018) that conform to the assessment and designated certification criteria of the CP Act. Pursuant to section 55C(2)(b) of the Act, Council gained written correspondence from all public authorities indicating their agreement to the plan.

25 A considerable amount of time was spent developing the plan in accordance with the Minister's advice and invitation received, by both Council and OEH staff. On 4 July 2018 the plan was re-submitted to the Minister under section 55G of the CP Act, along with public agency agreement on the 1 August 2018.

30 The CZMP has a long history and Council under the advice of the Minister's office made a concerted effort to re-submit the plan within the pending timeframes for approval. During the CZMP assessment period, Council sought the urgent action of the Minister to progress the CZMP through the Ministerial certification process along with advice on the suitability of the CZMP for certification.

35 The Minister was notified that the CZMP is a very important plan for the management of this part of the coast within Byron Shire, NSW and without certification Council will not be able to progress with the upgrade/modification of the coastal protection works at Jonson Street.

40 Following a lengthy deliberation of the CZMP (2018) by OEH, formal written advice from the Chief Executive, Anthony Lean was received 16 October 2018 (Attachment 1), as a follow up to a phone discussion with the General Manager on the 12 October 2018. Formal advice received (Attachment 1) outlined that:

- The decision to separate the previous CZMP BBE (2016) into two locations and develop a newly formed plan excluding the Belongil Spit has not satisfied key stakeholders within the local community - most notably the landholders of properties at Belongil Beach;
- 45 • There is considerable legal uncertainty as to whether the CZMP (2018) as re-submitted to the Minister is able to be considered and certified under the terms of the transitional provisions of the CP Act.

50 As such OEH did not consider it appropriate to recommend to the Minister that she certify the CZMP (2018), and instead returned it to Council advising Council to commence development of a CMP for the whole Byron Bay Embayment.

A meeting was held with OEH staff and Council on 25 October 2018 to discuss the implications of non-certification of the plan. As discussed at the meeting, the rationale for OEH not recommending

to the Minister that she certify the plan is primarily due to the risk of legal proceedings that may stall progress of the actions in the CZMP (2018) and tie up staff and resources.

5 OEH are committed to assisting Council in developing CMPs for the Byron coastline and will prioritise resources to achieve this.

10 Notwithstanding the above, the response from OEH and non-certification of the CZMP (2018) should be explored further as there are major implications to Council and considerable time and resources were spent on developing the plan based on the previous advice received by the Minister. The response from OEH is conflicting with the Minister's original invitation to re-submit a plan excluding the Belongil Spit and subsequent advice clarifying this avenue for certification of the plan. As such, it is recommended that a meeting is requested with the Minister and the Premier for re-consideration of certification of the plan.

15 **Ministerial Direction issued in 2011**

20 At the time of developing the newly formed CZMP (2018), Council was aware that until such time that a plan/s encompassing the entire spatial extent of the Byron Bay Embayment (*between the southern extremity of the beach within Tyagarah Nature Reserve and Cape Byron*) is certified by the Minister, the Ministerial direction issued to Council in 2011 still stands. Council has been recently informed that the Ministerial Direction is no longer valid, however it is recommended that Council seek formal correspondence in writing on this matter.

25 **Upgrade/modification of the Jonson Street Protection Works (JSPW)**

30 The coastal protection works at Main Beach (JSPW) are degraded and not to contemporary engineering standards with Council committed to the re-design and modification of this structure. Previous advice of the NSW Coastal Panel considered Master Planning of the Jonson Street area (town centre of Byron Bay) a high priority for implementation. As such, the upgrade/modification of the JSPW is at the forefront of the CZMP (2018).

35 Council is committed to progressing this project and submitted a funding application to the Coastal and Estuary Grants Program on 4 July 2018 to commence the design and planning phase. Council has allocated 50% of the project costs in this year's budget.

The funding application for \$150,000 has been approved by OEH with a total project estimate of \$300,000. The first component of the project will commence prior to December 2018.

40 **CMP Stage One Scoping Study for the Byron Shire Coastline**

Council has recently secured 50% funding from the Coastal and Estuary Grants Program (OEH) to embark on the new coastal management process in accordance with the new CM Act. The funding will go towards the first stage of this process, being a Scoping Study for the Byron Shire Coastline.

45 The Scoping Study is the first step in 5 stages of planning to develop a CMP under the new CM Act. The Scoping Study will consider coastal hazards and the open coast between Cape Byron and the northern extent of the Shire boundary, primarily focussing on Belongil and New Brighton Beach where property and infrastructure are at risk. A consultant has been engaged with the project expected to be delivered by April 2019.

50

Financial Implications

Council has allocated 50% of the project costs for the JSPW upgrade in this year's budget (\$150,000).

Council has allocated \$35,000 in this year's budget to undertake Stage One of the CMP process (Scoping Study) for the Byron Shire Coastline.

Statutory and Policy Compliance Implications

- 5 Coastal Management Program to be developed in accordance with the *Coastal Management Act 2016* and associated NSW Coastal Manual.

Report

Development Application 10.2014.753.1 for a Community Events Facility at Tanner Lane Tyagarah was approved by Council on 25 February 2016.

5

As part of the development consent, condition 57 requires the establishment of a Regulatory Working Group.

Condition 57 – Regulatory Working Group

10 The owners of the land to establish a regulatory working group (RWG) to oversee the environmental performance of events. The RWG must:

- 15 (a) *comprise at least one (1) representative of the proponent, Office of Environment and Heritage, Roads and Maritime Service, NSW Police Force, State Emergency Services, Rural Fire Service and Council, where these parties agree to be part of the RWG, or as otherwise agreed to by Council;*
- 20 (b) ***comprise at least two (2) representatives of the local community nominated by the Council. Community representatives are appointed on a rotational basis with a representative not exceeding four (4) years;***
- (c) *be chaired by a chairperson, whose appointment has been approved by Council;*
- (d) *meet at least once prior to the first large, first medium and first small event to review the proposed management in relation to:*
- 25 *i. illegal camping;*
- ii. litter;*
- iii. provision of security services;*
- iv. noise;*
- v. event traffic and car parking;*
- vi. complaint mechanisms;*
- vii. koala management*
- viii. flooding;*
- 30 *ix. bushfires;*
- x. evacuation procedures; and*
- xi. any other issues raised by government agencies or Council.*
- (e) *meet 6 monthly to review the proponent's performance with respect to environmental management and community relations for events held during a reporting period and where appropriate, make recommendations to the Council on measures or strategies to improve performance for future events;*
- 35 (f) *undertake periodic inspections of the site;*
- (g) *review community concerns or complaints with respect to environmental management and community relations.*
- 40 (h) *the landowner must, at its own expense:*
- i. provide the RWG with regular information on the environmental performance and management of events;*
- ii. provide meeting facilities for the RWG (if necessary);*
- iii. arrange site inspections for the RWG (if necessary);*
- 45 *iv. take minutes of the RWG meetings;*
- v. make these minutes publicly available;*

vi. respond to any advice or recommendations the RWG may have in relation to the environmental management or community relations;

vii. provide a copy of the minutes to each RWG meeting to members.

5 Expressions of Interest were invited between 20 September and 15 October 2019. Two nominations were received. These are provided as confidential attachment 2 due to the personal information contained within each.

10 Council is required in accordance with part b) of Consent Condition, C2 Regulatory Working Group – constitution and role, to nominate two community representatives for appointment to the RWG.

15 Both nominations have previous experience working within the community and it is recommended that they both be accepted by council as community representative on the to be formed Regulatory Working Group.

Financial Implications

No financial implications to Council.

20 **Statutory and Policy Compliance Implications**

It is a condition of development consent to form this Regulatory Working Group to oversee the environmental performance of events.

Report No. 13.21 **Update on the release of the Short Term Rental Accommodation Planning Framework by the Department of Planning and Environment**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
5 **File No:** I2018/1993
Theme: Sustainable Environment and Economy
 Planning Policy and Natural Environment

10 **Summary:**

The Department of Planning and Environment (DPE) is currently calling for feedback on proposed changes to planning rules as part of its framework to provide for short term rental accommodation in NSW.

15 The exhibition formally closed on 16 November 2018. An extension to this date has been granted to Council to provide the opportunity to attend a meeting with the DPE at Tweed Heads on 13 November 2018 about the planning rules and a report to Council to be considered at this meeting on same.

20 A summary of what is proposed in the planning rules follows.

RECOMMENDATION:

That Council:

1. **Note the update on the release of the short term rental accommodation planning framework by the Department of Planning and Environment provided in the report.**
2. **Write (again) to the Minister for Planning to seek an urgent meeting to request a deferral of Byron Shire from the new state-wide planning rules (pause to implementation). This pause is necessary to enable a full consideration of the current impact of, and that of the proposed planning rule changes to legitimise short term rental accommodation on Byron Shire in terms of environmental, social and economic impacts.**
3. **Concurrent with 2 above, write to the Department of Planning and Environment to advise that Council has significant concerns in relation to the planning rules as exhibited including:**
 - i) **the burden to be placed on council to enforce the planning rules;**
 - ii) **the lack of a coherent registration system including fees for short term rental accommodation to resource council with the enforcement role of short term rental accommodation;**
 - iii) **the absence of a Code of Conduct to inform the planning rules;**
 - iv) **the ambiguity in the planning rules due to the definition of 'short term rental accommodation' and exempt and complying criteria applicable to same;**
 - v) **the known impact of short term rental accommodation on local neighbourhoods, community, and other tourist accommodation and failure to address this;**
 - vi) **the known impact on housing availability and affordability and failure to address this;**
 - vii) **the number of days policy position which conflicts with other State Government policy initiatives to address housing affordability, local character and place planning and needs review.**

4. Concurrent with 2 and 3 above, make a formal submission to Department of Planning and Environment to the planning rules as exhibited to include the following as a local exception to the planning rules for Byron Shire through either a state wide planning policy schedule or Byron local environmental plan amendment:

- i) a reduction in the number of days that short term rental accommodation is permissible from 365 days to 90 days (not 180 days);**
- ii) require the owner or manager of a property used for short term rental accommodation to register on a Byron Shire Council Short Term Rental Accommodation Register;**
- iii) require the ‘dwelling’ used for short term rental accommodation to be the principle place of residence of the owner;**
- iv) exclude short term rental accommodation from (to be nominated) areas in the Byron Shire that are needed for permanent residential and key worker accommodation.**

5

Background:

Current Government framework on short-term rental accommodation

On 5 June 2018, the Minister for Planning and the Minister for Better Regulation and Innovation announced a whole-of-government framework for short term rental accommodation (STRA) in New South Wales.

The framework enables STRA to occur through:

- A state-wide planning framework (see below).
- Changes to strata legislation (to allow strata owners corporations (by a 75% majority vote) to make a by law that prohibits the use of lots for STRA where the lot is not the principle place of residence of the owner or tenant. The by law cannot prohibit STRA if the lot is the principle place of residence for the owner or tenant).
- A mandatory Code of Conduct (the Code will apply to anyone involved in providing or using short-term rental accommodation including hosts, guests, online booking platforms, and letting agents. The Department of Finance, Services and Innovation is developing the Code).

The Government Policy is not yet in effect. The NSW Parliament passed the Fair Trading Amendment (Short Term Rental Accommodation) Bill 2018 on 14 August 2018. The new framework is expected to start in 2019.

Proposed amendments to planning rules – exhibited by DPE

The proposed amendments to planning rules will amend the Standard Instrument Order and State Environmental Planning Policy Exempt and Complying Development Code to:

- Introduce a single definition for STRA;
- Introduce exempt and complying development pathways that enable STRA as:
 - [Exempt development](#) for up to 365 days per year, when the host is present.
 - [Exempt development](#), when not on bushfire prone land and when the host is not present, for:

- No more than 180 days per year in Greater Sydney
 - Up to 365 days per year outside of Greater Sydney. Councils outside Greater Sydney will be able to decrease the 365 day threshold to no lower than 180 days per year.
- 5 ○ [Complying development](#), when on bushfire prone land under BAL29 rating and the host is not present for:
 - No more than 180 days per year in Greater Sydney
 - Up to 365 days per year outside of Greater Sydney. Councils outside Greater Sydney will be able to decrease the 365 day threshold to no lower than 180 days per year; and
- 10 • Introduce minimum fire safety and evacuation requirements for premises used for STRA.

Once made, the planning rules will become the state-wide planning framework for STRA and will apply to all councils.

15 Current Council position:

Council at its ordinary meeting 2 August 2018, resolved below on a report that provided an update on ‘short term holiday let’ enforcement action and State Government position on ‘short term holiday letting’ as per the Options Paper the DPE exhibited in July 2018:

18-439 Resolved:

- 20 1. *That Council writes to all Members of the Legislative Council within the next 7 days to convey the following:*
 - i. That the Fair Trading Amendment (Short Term Rental Accommodation) Bill lacks detail and is unworkable for Byron Council;*
 - 25 *ii. That Council seeks an amendment to the Fair Trading Amendment (Short Term Rental Accommodation) Bill allowing councils flexibility to develop their own STRA strategy;*
 - iii. That the Bill has serious negative implications to small business owners of registered and licensed holiday accommodation, and*
 - 30 *iv. That Council expresses concern that the Code of Conduct Advisory Committee was convened without the invitation of concerned community groups and that consists of a majority of representatives from the holiday letting industry;*
 - v. That Council continue to consider to prosecute for development without consent.*
 - vi. That to avoid grossly unfair and onerous cost shifting on to local governments, Byron Shire Council requests that local councils be able to both manage the licensing and monitoring of STHL dwellings in order for revenue raised in licensing to be used to pay for monitoring compliance.*
 - 35
- 2. *That Council advise the community of the above steps.*

Since this resolution, submissions have been made on behalf of Council to the relevant Ministers and Premier about the impact of ‘short term holiday letting’ (now known as STRA) on the Byron Shire community.

To inform these submissions a number of key statistics and facts that highlight the impacts of STRA on the Byron community comparative to other local government areas were included. (Source: The University of Sydney and Urban Housing Lab research on behalf of the Australian Coastal Councils Association).

- 5 • Byron Shire has 17.6% of its total housing stock listed as online holiday let. This compares to a national rate of 0.2% and a Greater Sydney metro rate of 1.7%.
- 'Airbnb' beds account for more than 4 times the number of traditional tourist accommodation beds. This demonstrates the existence of a different legislative playing field for short term holiday let v traditional tourism operators.
- 10 • Online listings of whole homes amount to the equivalent of nearly half the rental housing stock in Byron. This equates to around 50 listings for each permanent rental available.
- The return on investment from short term holiday let is anything up to 170% of existing permanent rental properties. This has resulted in homes being solely purchased for holiday let in Byron Shire.
- 15 • The increase in holiday let activity has tightened the local housing market where renters are unable to find permanent accommodation and or are subject to short term leases and seasonable displacements.

In addition to the above, the impact of STRA on long term residents and businesses is becoming more apparent. Media and other reports received by Council on this are becoming more frequent.

- 20 • Loss of a sense and presence of 'community' in local neighbourhoods where the prevalence of STRA has seen long term local residents sell and move away.
- Financial pressures on local motels, hotels, caravan parks and other registered forms of tourist and visitor accommodation unable to compete in the market place with the online platforms and STRA which is not subject to the same approval and compliance regimes.

25 <https://www.abc.net.au/news/2017-06-18/airbnb-in-australia-the-sharing-economy-has-a-dark-side/8624122>

<https://www.abc.net.au/news/2018-08-19/beechnorth-tourism-accommodation-airbnb-battle/10134260>

To date, only standard responses have been received from both Ministers, neither agreeing to a meeting with Council to discuss first hand the Byron Shire community concerns.

30 The DPE is now calling for feedback on its proposed planning rules to provide for STRA in NSW.

The stated intention of the planning rules includes but is not limited to the following:

1. Provide clarity on the permissibility of STRA
2. Enable STRA to occur in appropriate locations
- 35 3. Strike a balance between availability of properties for long term and short term rental market in metropolitan areas
4. Enable councils in regional areas to respond to local needs

For Byron Shire, a clear disconnect exists between the above intended outcomes for STRA and what that translates to for our community, particularly points 2, 3 and 4.

Further, and in support of the above statement, the proposed planning rules fail to reflect any of the suggested inclusions by Council to mollify or retard the current known deleterious social and economic impacts on the community resulting from the unabated growth in STRA in Byron Shire in recent years.

5 The changes / inclusions suggested to the DPE and relevant Ministers proposed by Council for the planning framework were threefold:

1. Limit the use to less than 90 days in a calendar year. (As noted above 180 days is the current minimum for a regional council and only if approved by the DPE).

10 Formal tourist accommodation operators in Byron Shire run to about 56% occupancy or 205 days in Byron Shire according to the ABS survey. So this means even limiting STRAs to 180 days in Byron Shire would be unlikely to prevent conversion to a holiday home.

2. Require the owner or manager of a property used for short term rental accommodation to register on a Council Short Term Rental Accommodation Register.

Byron Shire has over **2,900 STRA** properties and growing.

15 Note: that the latest figures, September 2018, for Byron Shire from Murray Cox of Inside Airbnb show an increase in on line listings from 2,700 to 2,912 since end 2017 of which around 75% are whole homes/apartments. Tweed is the next closest council in the northern rivers with 1,091 listings.

A Council register would allow:

- 20
- identification of properties being used as STRA;
 - real time data to be collected on the growth and supply of this market; this data could then be used to monitor and evaluate the costs and benefits over time;
 - provide an additional revenue source for councils to fund the enforcement of the yet to be determined code of conduct.

25 As it stands, without a revenue source Council is unlikely to be able to 'police' the number of 'holiday lets' to protect long term residents' amenity and lifestyle from the impacts of the STRA 'phenomena'.

The policy announced by Government on 5 June 2018 does not include a registration system.

30 Alongside the state-wide planning framework, the policy includes only changes to strata legislation and a mandatory Code of Conduct. The Code of Conduct will include a complaints system for neighbours and penalties for breaches; as well as a 'two strikes and you are out' policy. Hosts or guests who seriously breach the code twice within two years will be banned for five years and listed on an exclusion register. These elements of the policy are being progressed by the Department of Finance, Services and Innovation, and are therefore not enacted through the proposed amendments to the planning system.

35

Unanswered questions about the Code remain:

- 40
- what opportunity will councils have to provide input to the Code?
 - will the Code go through a public consultation process?
 - how will the Code and the planning regulations interface?
 - whether evidence/proof will be necessary to demonstrate of a breach of a Code?
 - how will 'independent adjudicators' be determined for Code matters and under what criteria?
 - what commitment is there for sufficient funds/resourcing to enforce the Code, and clear delineation of responsibilities between FT, councils & industry platforms?

3. Require the dwelling used for short term rental accommodation to be the principle place of residence of the owner.

This creates a level playing field for a 'bed and breakfast establishment' which is ordinarily associated with a 'residential' use of a property. It is consistent with the approach taken for strata bodies under the recent amendments, which banned short-term holiday rentals of investor-owned apartments.

Further, this may serve to diminish the interest in the purchase of homes solely for holiday let in Byron Shire, which is on the increase and impacting the operations of all other tourist and visitor accommodation operators. It is also impacting the availability and affordability of residential accommodation for permanent residents and key workers.

Council instead has been advised by the DPE that once the state-wide planning rules are implemented that a 12 month review of their impacts could occur. Council's preference is the ability to monitor and report on its proposed local provisions after the same 12 month period. From Council's past experience it is extremely difficult if not improbable to roll back planning controls once implemented by the State Government.

Current research

There are a plethora of recent reports and research papers on the impact of Airbnb, online holiday let platforms and other 'technology disruptors' as they are known on the housing market. All raise pertinent considerations for local and state government when considering STRA. Examples below:

<https://coastalcouncils.org.au/2018/09/24/planning-controls-not-keeping-pace-with-online-holiday-rentals/>

https://www.ahuri.edu.au/_data/assets/pdf_file/0027/28674/PES-305-Technological-disruptions-in-private-housing-markets-the-case-of-airbnb.pdf

Further, Southern Cross University is currently undertaking specific research to profile the nature of Airbnb in the Byron Shire. The project also aims to describe, critically analyse and explore the community perspectives regarding their perceived positive or negative impacts of Airbnb within the Byron Shire as a basis to investigate specific and locally appropriate solutions. This research will be useful to council once completed. Link below:

Airbnb impacts: Giving a voice to Byron Shire residents

Airbnb raises polarised opinions within the Byron Shire. Do you have a story to tell about dealing with Airbnb in Byron Shire? You may be an Airbnb host or you may be the neighbour of an Airbnb short-term holiday let. You may be a retailer capitalising on new customers in the Shire as they holiday with Airbnb. You may be a renter having been evicted from a long-term rental property in peak season to allow the property to let through Airbnb.

Researchers from Southern Cross University are keen to hear your story and want to give Byron Shire residents a voice when it comes to the future of short-term holiday letting (STHL) in the area.

A survey released on October 26, would allow residents to contribute their views on possible options for STHL in the Shire. The survey will also capture participating Byron Shire residents' perceptions on positive and negative impacts of Airbnb within the Byron Shire.

The University survey results will be presented to the Council before it makes its formal submission to the NSW Government at the beginning of December. The research findings will be also shared with the Byron Shire community.

The survey will approximately take 10-20 minutes to complete and survey responses are anonymous.

5 **Link to the survey:** <https://bit.ly/2RnPbHf>

For more information about the research also see SCU Media release:

10 <https://www.scu.edu.au/engage/news/latest-news/2018/airbnb-impact-giving-a-voice-to-residents-of-one-of-australias-top-tourist-destinations.php>

Implications for Byron Shire

15 The DPE has made it clear that feedback is welcome on the planning framework; **but** that state wide permissibility of STRA and numbers of days in which it can take place have been endorsed by Government. These are non-negotiable. There in lies the first problem it would seem that the number of days is a fait accompli.

20 Regional councils however have been invited to provide an expression of interest to the DPE within 8 weeks of the exhibition occurring to seek the ability to reduce the number of days for STRA from 365 days to 180 days.

If a council LEP does not amend the day threshold, then per annum state wide policy will apply by default.

25 Point 3 of the recommendation proposes a submission to the DPE with a 90 day limit instead.

A review of the other key changes proposed in the planning framework reveals many other problems:

Planning framework proposal	Staff comment
<p>New definition: Short term rental accommodation in the Standard Instrument Oder Dictionary.</p> <p><i>STRA “the commercial use of an existing dwelling, either wholly or partially, for the purposes of short term accommodation, but does not include tourist and visitor accommodation”</i></p> <p>This definition is intended to enable use of a dwelling for STRA as a part of its residential use where:</p> <ul style="list-style-type: none"> • The dwelling is permissible with consent in the zone • No physical alterations or additions would be made to accommodate the STRA use • The dwelling has a current development consent or existing use rights for its use as a dwelling 	<p>By these amendments STRA will be permissible anywhere in the Byron Shire that a legal dwelling is permitted, rather than through specified zones. This translates to:</p> <ul style="list-style-type: none"> • Rural and residential zones via the definition of dwelling, rural workers dwelling, temporary workers dwelling • Commercial zones via shop top housing • Industrial zones via a caretakers dwelling • ‘Moveable dwelling’ such as tents, tee pees, caravans etc. that constitute a dwelling if used as a separate domicile in most zones <p>The potential impact of this on housing availability and affordability in Byron Shire has not been able to be qualified as yet but will be substantial.</p> <p>It is unclear and unstated what the relationship between this definition and other existing ‘tourist and visitor accommodation’ definitions are e.g. whether serviced apartments are a form of STRA or not? It will become an interpretation issue.</p>

	<p>Further, the use of the words ‘commercial use’ in the definition of STRA contradicts the land use objectives and intent of the residential zones which do not ordinarily permit commercial development.</p> <p>Also a commercial use of a building has different BCA classification to that of a residential building. A change in building classification requires a development application. This is not addressed in the controls.</p> <p>Impact on Council: Onus will be on Council to interpret, record and manage compliance with these restrictions.</p>
<p>STRA is intended to be permissible in secondary dwellings. However, STRA will be excluded from ‘affordable rental housing’ approved under the State Environmental Planning Policy (Affordable Rental Housing) 2009 and State Environmental Planning Policy No 70 Affordable Housing as these policies are aimed at increasing affordable rental housing for long term residential use.</p>	<p>This restriction if imposed supports Council’s current position on ‘secondary dwelling’ use for permanent affordable housing dwelling stock not STRA. It will also afford protection to other forms of housing approved under the SEPP, which does not exist.</p> <p>https://www.byron.nsw.gov.au/Council/Media-centre/Media-Releases/Byron-Shire-to-start-issuing-fines-for-unauthorised-holiday-letting</p> <p>Impact on Council: Onus will be on Council to interpret, record and manage compliance with this restriction.</p>
<p>Introduce exempt and complying development pathways that enable STRA as:</p> <ul style="list-style-type: none"> ○ Exempt development for up to 365 days per year, when the host is present. ○ Exempt development, when not on bushfire prone land and when the host is not present, for: <ul style="list-style-type: none"> ▪ No more than 180 days per year in Greater Sydney ▪ Up to 365 days per year outside of Greater Sydney. Councils outside Greater Sydney will be able to decrease the 365 day threshold to no lower than 180 days per year. ○ Complying development, when on bushfire prone land under BAL29 rating and the host is not present for: <ul style="list-style-type: none"> ▪ No more than 180 days per year 	<p>The DPE has stated that it is proposed that no variations or development application pathways will be available to undertake STRA above the approved number of day limits. This means that the number of days will be fixed and not a development standard for variation.</p> <p>The term ‘host’ relied upon in the criteria is without a definition. It will become an interpretation issue. Council considers it critical to define the term host and to link it directly to the principle resident of the dwelling and or the property owner.</p> <p>It is important to note that Byron Shire through its LEP already provides for the one bedroom ‘bed and breakfast’ as exempt development. This recognises and enables the original intent of ‘home sharing’ to be realised by property owners without a development approval requirement.</p> <p>It is unclear and unstated how a host/</p>

<p>in Greater Sydney</p> <ul style="list-style-type: none"> ▪ Up to 365 days per year outside of Greater Sydney. Councils outside Greater Sydney will be able to decrease the 365 day threshold to no lower than 180 days per year; and • Introduce minimum fire safety and evacuation requirements for premises used for STRA. 	<p>property owner will be able to demonstrate for an old dwelling (pre Planning for Bushfire Protection) that compliance with the BAL 29 bushfire requirements are or can be met, recorded and managed.</p> <p>Council had made previous submissions that a Bush Fire Safety Authority from the Rural Fire Service be obtained to qualify for any exemption. This ensures that property's that do not meet current standards must comply through a formal approval process.</p> <p>Impact on Council: Onus will be on Council to interpret, record and manage compliance with this restriction.</p> <p>Properties that exceed BAL 29 would require a development application to Council. The number of potential DAs is not able to be exactly quantified but is likely to be substantial.</p>
<p>General requirements for exempt and complying in the Codes SEPP will be expanded for STRA.</p>	<p>Flood prone land is not considered in the exempt or complying criteria.</p> <p>This may result in a large number of dwellings in flood affected areas being used for a more intensive commercial use as STRA, without an appropriate assessment of risk. This is inconsistent with other flood affected land development requirements.</p> <p>On site sewage management is not considered in the exempt or complying criteria.</p> <p>This will become an environmental issue if the on site management system is not at a design capacity to accommodate peak use for STRA. It should also be of constraint for those properties in sensitive water catchment areas, like it is for other exempt and complying development types.</p> <p>System upgrades where necessary should be obtained via a separate approval under the Local Government Act upfront to qualify for any exemption.</p> <p>Potential for car parking overflow is not addressed in the exempt or complying criteria.</p> <p>Carparking conflict is already an issue in many town and village areas and is likely only to intensify with further increases in STRA numbers.</p>

	<p>Minimum additional parking requirements need to be set for STRA to qualify for any exemption. This ensures that property's that do not meet council standards for on site parking must then comply through a formal approval process or not used at all for STRA.</p> <p>Waste management is not addressed in the exempt of complying criteria</p> <p>Minimum additional waste management arrangements are necessary to reduce the potential impacts on residential amenity from overflowing bins and also to promote recycling consistent with council's broader waste management strategy. It is unclear and unstated how this is to occur for STRA.</p>
<p>New minimum safety and evacuation requirements to be set for STRA.</p>	<p>It is unclear and unstated how a host/property owner will be able to demonstrate compliance with the fire and evacuation requirements.</p> <p>Council made previous submissions that STRA should be considered as a Class 1B building and that a Fire Safety Certificate be required for this use. This has not been addressed in the controls and should be obtained to qualify for any exemption.</p> <p>A Council register for STRA is one way to ensure that the introduced minimum fire safety and evacuation requirements for premises used for STRA are present prior to use.</p> <p>Impact on Council: Onus will be on Council to interpret, record and manage compliance with these restrictions.</p>
<p>Enforcement of noise and amenity impacts will remain the responsibility of councils and the Police.</p>	<p>It is unclear and unstated how the enforcement matters for STRA are to be managed. It would appear that the DPE is relying on Council, Police and Office of Fair Trading to respond depending on the issue.</p> <p>As is the case at present, Council is the first port of call for the community to make a complaint to. This is likely only to escalate under the new framework given the increased number of dwellings that may be used for STRA.</p> <p>Impact on Council: Without a revenue source viz. council register, Council is unlikely to be able to</p>

	‘police’ the number of current ‘holiday lets’ effectively, if at all to meet the community expectations and protect long term residents amenity from the impacts of STRA.
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Impact on North Coast Regional Plan directions and dwelling targets

This issue has not been specifically addressed by the DPE. However, is noteworthy of mention.

5 The North Coast Plan sets a dwelling target for Byron Shire for residential housing based on population growth and demand. 2,720 new dwellings by 2036 is the target set by the DPE in the North Coast Regional Plan.

10 To meet this target, Council is required to maintain an annual land monitor which records the total numbers of dwellings built to meet permanent housing demands. There is no data on what number or percentage of this new housing stock that is being built that is or is likely to be removed from the target as it is no longer available for permanent occupation due to STRA. Based on the planning rules nearly all of Byron Shire’s dwellings old and new could be used for STRA.

15 The impact of this has significant implications given Council is currently finalising a Residential Strategy for the next 20 year planning horizon. Without the ability to ‘quarantine’ green-field and key grey-field areas through land use restrictions for permanent residential occupation only, Council is unlikely to meet its targets for permanent new housing and or address the current level of rental housing stress experienced by community and key workers. Byron Shire is already the least affordable regional local government area in NSW to rent!

20 <https://www.compasshousing.org/news/compass-report-shocking-gap-between-renters-costs-and-incomes-revealed>

25

LEAST AFFORDABLE LGAS - REGIONAL NSW

LGA	Median Rent (All Dwellings)	Income required to avoid housing stress	Median household income	% of income required to pay median rent	AHIG	INDEX
Byron	590	1,967	1,218	48%	749	61
Ballina	450	1,500	1,022	44%	478	47
Clarence Valley (Grafton)	350	1,167	907	39%	260	29
Tweed Shire	430	1,433	1182	36%	251	21
Shoalhaven	370	1,233	1048	35%	185	18
Coffs Harbour	395	1,317	1125	35%	192	17
Port Macquarie	390	1,300	1148	34%	152	13

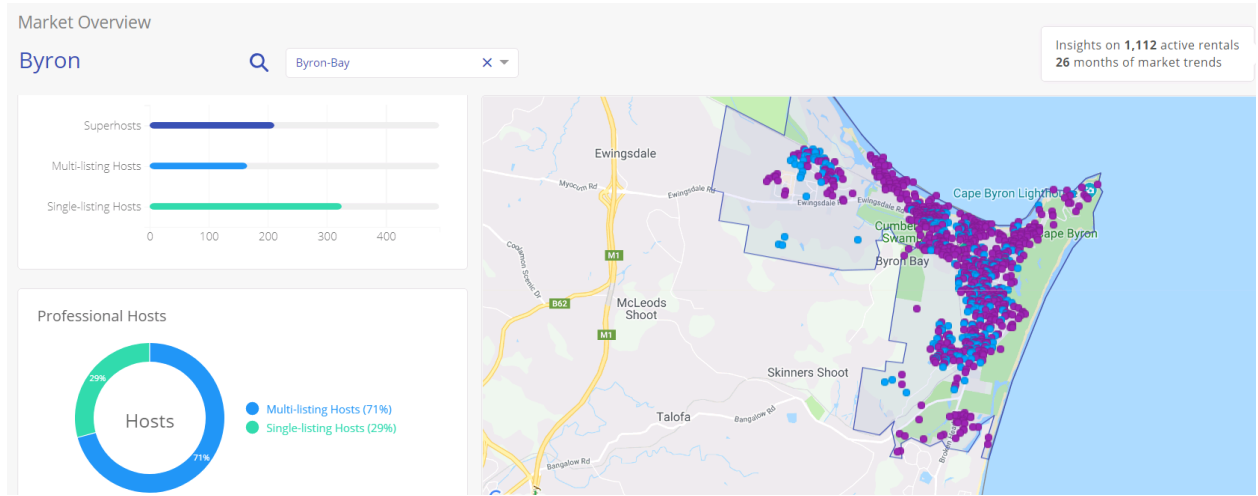
Clarification on rating categorisation

30 Separately, but importantly rating categories and any impact on same for ‘commercial use’ as STRA is not addressed in the controls and or framework. Current research calls whole houses let for short term rental accommodation a commercial enterprise / commercial let. It is hard to argue with this logic given the business model being used by many STRA property owners. Below are extracts from AIRDNA web site which provide a snapshot of current STRA activity in Byron bay, Bangalow and Brunswick. Of interest is the use of the categories – single listing hosts, multi listing hosts and super hosts.

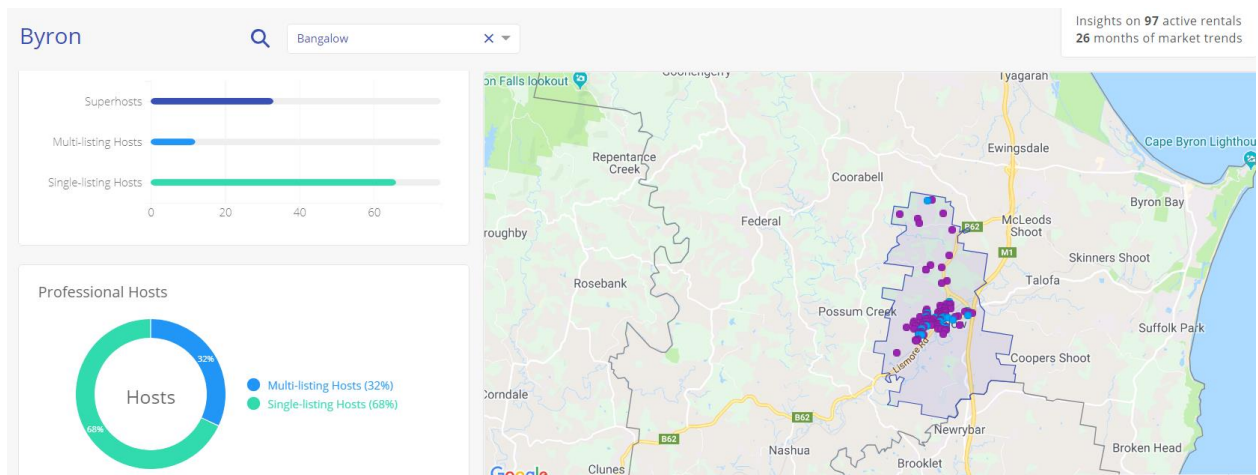
Accordingly the rating system should accord and categorise STRA properties as business where they are not the principle place of residence for the owner.

<https://www.airdna.co>

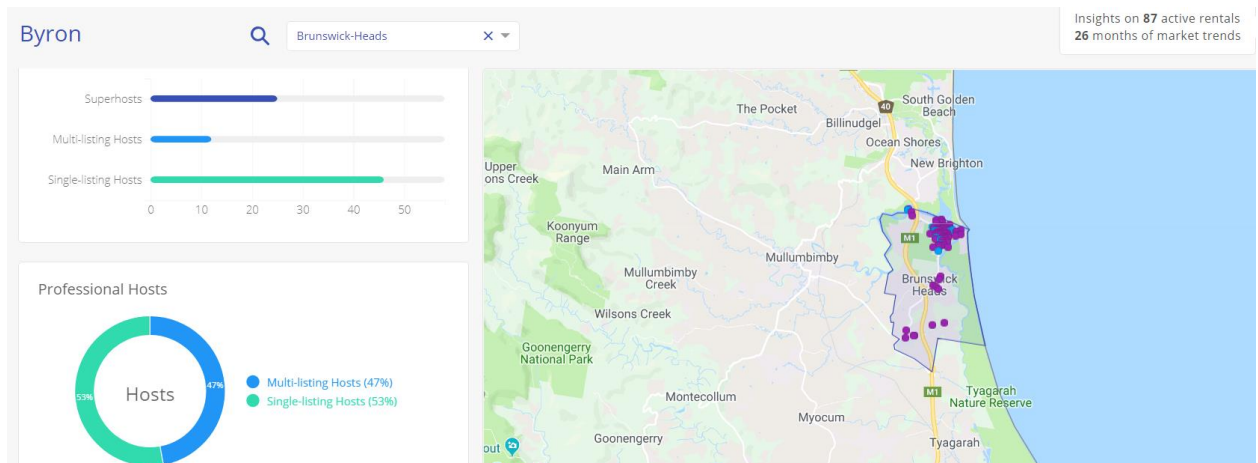
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Financial Implications

5 The impacts of the new state-wide planning framework for STRA on Byron Shire have not been able to be fully qualified and or quantified as yet. Time to undertake further economic and social impact analysis is needed.

10 Staff resourcing for enforcement monitoring and action will however be under increased demand by community. Cost implications and the ability to enforce will be dependant on and specific to any legislation passed.

Statutory and Policy Compliance Implications

Environmental Planning and Assessment Act 1979; Local Government Act, Protection of the Environment Operations Act, related Acts and Regulations.

Report No. 13.22 **Commercial Activities on Road Reserves Policy**
Directorate: Sustainable Environment and Economy
Report Author: Sarah Nagel, Community Enforcement Officer
File No: I2018/1994
5 **Theme:** Sustainable Environment and Economy
 Planning Policy and Natural Environment

Summary:

10 The purpose of this report is to provide Council with a discussion paper / report on location options for class 2 mobile vendors (food and products) licences within the Byron Shire. A decision on the appropriate locations will then determine the number of class 2 licences offered via a competitive process.

RECOMMENDATION:

1. **That Council approve the four (4) locations recommended for class 2 mobile vendor licences.**
2. **That Council recommend staff under a public tender to allocate the four (4) class 2 mobile vendor licences.**

Attachments:

- 20 1 Policy: Commercial Use of Road Reserves Policy (current_policies), E2018/90412 [⇒](#) 

Report

On 2 February 2017, Council resolved (17-031):

1. *That the petition regarding objection to “Designer Collective Markets and Food Truck Street Party” be noted.*
2. *That the petition be referred to the Director Sustainable Environment and Economy.*
3. *That a report be brought to Council concerning DA and or other approval requirements for designer collective markets and food truck street parties.*

On 26 October 2017, Council resolved (17-1341):

1. *That one Council policy incorporates the commercial use of road reserves authorised under the Roads Act;*
2. *That the policy incorporates all licenced/approved activities on those areas as authorised under the Roads Act i.e. mobile food vendors, mobile product vendors, footpath dining and goods and chattels;*
3. *That the policy works in conjunction with Council’s policy “Road Airspace”; and*
4. *That the policy works in conjunction with Council’s policy 5.52 “Commercial Activities on Coastal and Riparian Crown Reserves”.*

On 21 November 2017, the Commercial Activities on Road Reserves policy (the policy) was advertised and received no submissions. As a result, the policy was adopted by Council (E2018/28846). Despite being adopted, the locations for class 2 licensees and number of class 2 licences has not been finalised.

The objective of the policy is to facilitate the establishment of a burgeoning street food/food truck/product truck industry and to take advantage of the economic, cultural and social benefits within the Shire. This is balanced against the protection of the Shire’s current retail sector and the maintenance of public health.

The policy allows three (3) categories that may be authorised/licensed within the Byron Shire under the *Local Government Act 1993*:

1. Mobile vendor – class 1: selling food/drinks/products that do not require a kitchen with a maximum stopping time to trade of 15min. i.e. a Mr Whippy Van. These vendors would require a class 1 licence from Council to permit them to trade on road reserves but would not be permitted to trade on/in the ‘permitted zones’, on/in Council-owned land, on/in Crown-owned Council-managed land or on/in Crown owned/managed land. These vendors would be required to display a red compliance sticker on their vehicles, carts, stalls, etc.
2. Mobile vendor – class 2: selling food/drinks/products that may require a kitchen with allowance to trade within permitted trading hours. i.e. a taco van. These vendors would require a class 2 licence from Council to permit them to trade on/in one (1) specified permitted zone each. These vendors would be required to display a green compliance sticker on their vehicles, carts, stalls, etc.
3. Mobile vendor – class 3: selling food/drinks that may require a kitchen on private land. i.e. the Design Collective Markets. These vendors would require a DA.

Class 1 and class 2 licences

Whilst class 1 licensees operate within the Shire on road reserves, class 2 licensees only operate on/in certain “permitted zones” (see discussion below of possible locations). These permitted zones need to be chosen to create the least impact on paid parking/parking restrictions within the Shire, ensure pedestrian/road safety, ensure minimal impact on similar retail premises and create non-disruption to other services/public activities. For less complexity all areas identified within this

report are not located on Council-owned land, Crown-owned Council-managed land or Crown owned/managed land due to their restrictive nature of use.

5 Each class 2 licensee is only permitted to operate in one 'permitted zone' each (akin to exclusive possession). Whilst other councils have taken the approach of allowing licensees to operate on a first-in, first-served basis within their identified permitted zones, the limited number of suitable areas within the Shire (and the likelihood that only one class 2 licensee could reasonably operate in each permitted zone) resulted in the policy being termed to allow each class 2 licensee one permitted zone each. This will result in less conflict between licensees, more stability of business for licensees and a rationale for a higher licensing fee to be charged to each licensee. It will also allow for more protection and consideration of current retail operators within the Shire.

15 Once the number of permitted zones is determined, Council will offer an EOI for the number of permitted zones (i.e. the number of permitted zones shall determine the number of licences offered by Council).

Possible permitted zones for Class 2 licences

20 Some possible locations that have been identified for consideration/discussion by staff are as follows:

- Wategos Beach (1 location);
- Denning Park (1 location); and
- Brunswick Heads (2 locations).

Wategos Beach



Denning Park



5

Brunswick Heads 1



Brunswick Heads 2



Financial Implications

The Policy provides a methodology for Council to approve and collect revenue for the use of Council's road reserves for a commercial return.

5

Statutory and Policy Compliance Implications

1. Building Code of Australia
2. Byron Local Environmental Plan 2014
- 10 3. Byron Shire Development Control Plan 2014
4. Environmental Planning and Assessment Act 1979
5. Factories, Shops and Industries Act 1962
6. Food Act 2003
7. Local Government Act 1993
- 15 8. Local Government (General) Regulation 2005
9. Protection of the Environment Operations Act 1997
10. Retail Leases Act 1994
11. Road Transport Act 2013
12. Roads Act 1993
- 20 13. Work Health and Safety Act 2011
14. NSW Food Authority – Guidelines for Mobile Food Vending Vehicles
15. Council's Road Airspace Policy
16. Council's Footpath Dining Policy
17. Council's Itinerant Food Vendor Policy

25

Report No. 13.23 **PLANNING - Bike Share: Initial Investigations**
Directorate: Sustainable Environment and Economy
Report Author: Jamie Van Iersel, Planner - Place Planner
 Andrew Pearce , Traffic Engineer

5 **File No:** I2018/2004
Theme: Sustainable Environment and Economy
 Planning Policy and Natural Environment

10 **Summary:**

There are four car share operators interested in bringing their car share services to Byron Shire. In October, Council staff engaged the operators to gauge interest in bike sharing.

15 Three of the four stated that they will not be incorporating bike sharing into their services; one stated that they have not looked into it previously and therefore it is not completely ruled out for the future.

20 The implications of establishing a bike share pilot project are henceforth unknown at this stage as more investigation is needed.

Council staff will continue to look into possibilities and likelihoods for a bike sharing pilot, under provisions of a car share pilot/operator or otherwise.

25 This report outlines further details of the research that should be undertaken before reporting back to Council.

30 **NOTE TO COUNCILLORS:**

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

RECOMMENDATION:

That Council note the update provided in this report by staff on a bike share pilot project - initial investigations.

40

Report

At the 18 October Council meeting, Council resolved **(18-696)**:

1. *Endorse the following parking bay locations for the car share pilot:*
 - a. *Mullumbimby: four (4) spaces in the Station Street car park; and*
 - b. *Byron Bay: four (4) in Lawson Street, two (2) in Marvell Street east (subject to further consultation with nearby neighbours) and one (1) each in Browning and Shirley Streets.*
2. *Receive a report at the November 2018 Ordinary Council Meeting regarding the implications of establishing a Bike Share Pilot Project.*

Since the October 18 Council meeting, staff have conversed with all four interested car share operators to discuss the possibility of bike sharing. Three operators indicated that they are not currently providing bike sharing services and do not plan to in the near future. One operator stated that they are not providing bike sharing services at the moment but they have not investigated it previously and it is therefore not completely ruled out for the future.

The implications of establishing a bike share pilot project are henceforth unknown at this stage as more investigation is needed.

Planning staff will continue to liaise with the car sharing operators on the prospects of bike sharing as the car share pilot begins to be implemented.

Traffic Engineer and Planning staff together will continue to look into alternative methods for enabling and introducing bike sharing.

From initial investigations, ways that bike sharing could be provided within the Shire could be:

- In partnership
- Funded through a sponsor
- Provided by an external company (car share operator or otherwise)

Council staff in the Sustainable Environment and Economy directorate have recently had movement and access strategies prepared for Byron Bay, Bangalow and Mullumbimby. Council staff in the Infrastructure Directorate have currently on exhibition a Shire wide Bike Plan.

It is advised that a bike share pilot could be a project that best sits under one of these plans/strategies.

Below is a brief list of items that will need to be further researched to assist Council in decision making around the benefits and risks of bike sharing in the Shire:

1. Existing bike hire industry in Byron
2. Logistics of bike sharing, including feedback and advice from Brisbane City Council, and others
3. Objectives of a Byron bike hire scheme – what are we trying to achieve?
 - Traffic reduction
 - Public Transport solution
 - Health and wellbeing
 - Tourism product
4. What funds are available to put towards a scheme?
5. What plans/strategies does this proposal align with and which teams are currently working on delivery of those plans?

Work will continue on this research to inform a report back to Council in early 2019.

Financial Implications

Not applicable at this time.

Statutory and Policy Compliance Implications

5 Not applicable at this time.

**Report No. 13.24 PLANNING - L&E Court proceedings 2018/116820 DA 10.2017.712.1
Strata Subdivisions and dwelling Alterations, 25 Strand Avenue New
Brighton**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Rob Van Iersel, Major Projects Planner
Ralph James, Legal Counsel
Gray Blunden, Development Engineer

File No: I2018/2017

10 **Theme:** Sustainable Environment and Economy
Development and Certification

Summary:

15 On 12 December 2017, Development Application No.10.2017.712.1 (DA) was received by Council.

The DA form provided a description of the proposal, as follows: "Reconfiguration and repositioning of existing dwelling, tree removal and strata subdivision to create two allotments." The application was made in respect to No 25 Strand Avenue, New Brighton.

20 The DA was publically notified to adjoining and nearby owners between 28 December 2017 and 10 January 2018. Given that this notification period was during a holiday period, the application was re-notified to adjoining and nearby owners between 25 January and 7 February 2018. Council received no submissions.

25 On 13 April 2018 the applicant lodged an application in Class 1 of the Land and Environment Court jurisdiction appealing Council's deemed refusal of the development application.

30 The DA was reported to the Ordinary Council meeting of 19 April 2018, and was recommended for refusal by Council officers.

At the Council's Ordinary Meeting of 19 April 2018, Council resolved to refuse Development Application 10.2017.7212.1 (**Res 18-207**).

35 The appeal was listed for telephone directions on 7 May 2018.

On 14 June 2018 the appeal was listed on 24 and 25 October 2018 for a conciliation conference and hearing under section 34AA of the Land and Environment Court Act.

40 The conciliation conference commenced on 24 October 2018 and was adjourned to 26 November 2018 being a date after Council has had the opportunity to consider this report and resolve as to whether it would delegate authority to the General Manager.

45 If authority is delegated the appeal will be resolved by way of a conciliation agreement under section 34 of the *Land and Environment Court Act*.

If authority is not delegated the appeal will proceed to a hearing before the Court on a date to be fixed. In that case the Court will become the consent authority and stand in the place of Council.

50 **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 377(1)(u) of the Local Government Act the General Manager is delegated to enter into an agreement pursuant to s34(3) of the *Land and Environment Court Act* for the granting of conditional consent for the alterations, additions and repositioning of an existing dwelling; and the strata subdivision of Lot 2, DP536175 (No 25) The Strand New Brighton to create 2 strata title lots.

Attachments:

- 5 1 Confidential - Conciliation Conference Outcomes, E2018/88276
- 2 Confidential - Draft Conditions of Consent for s34 Agreement, E2018/87778
- 3 Confidential - Legal report and advice, E2018/88261

10

Report

On 12 December 2017, Development Application No.10.2017.712.1 (DA) was received by Council.

- 5 The DA form provided a description of the proposal, as follows: "Reconfiguration and repositioning of existing dwelling, tree removal and strata subdivision to create two allotments." The application was made in respect to No 25 Strand Avenue, New Brighton.

- 10 The DA was publically notified to adjoining and nearby owners between 28 December 2017 and 10 January 2018. Given that this notification period was during a holiday period, the application was re-notified to adjoining and nearby owners between 25 January and 7 February 2018. Council received no submissions.

- 15 On 21 December 2017, Council wrote to the applicant advising that Council was of the view that the development as proposed is inconsistent with the objectives of the 7(f2) zone and the provisions of clause 32 of the Byron Local Environmental Plan 1988. The letter advised that Council was unlikely to support the application and Council invited the applicant to withdraw the application.

- 20 The Applicant responded to Council by letter dated 19 January 2018, declining the application offer to withdraw the application.

- 25 Council wrote to the Applicant on 14 February 2018 outlining further concerns relating to the application, primarily associated with coastal hazard, but also including a number of ecological issues.

- 30 On 21 February 2018 a meeting was held between the applicant, his clients and Council staff including the Manager of Sustainable Development and Major Projects Planner. The items discussed included Council's concerns regarding the suitability of the site given the known coastal hazards. Council staff undertook to report the assessment of the application to an Ordinary meeting of the Council.

- 35 The Applicant provided further submissions by email dated 13 March 2018, including a legal opinion and further ecological assessment prepared by Environmental Assessments and Solutions Pty Ltd.

On 13 April 2018 the Applicant lodged an application in Class 1 of the Land and Environment Court jurisdiction appealing Council's deemed refusal of the development application.

- 40 The DA was reported to the Ordinary Council meeting of 19 April 2018, and was recommended for refusal by Council officers.

- 45 At the Council's Ordinary Meeting of 19 April 2018, Council resolved to refuse Development Application 10.2017.7212.1 (**Res 18-207**).

The appeal was listed for telephone directions on 7 May 2018.

- 50 On 14 June 2018 the appeal was listed on 24 and 25 October 2018 for a conciliation conference and hearing under section 34AA of the Land and Environment Court Act.

The conciliation conference commenced on 24 October 2018, presided over by Commissioner Bish. Paul Vergotis solicitor (McCabe Curwood) appeared on behalf of Council at the conciliation conference, instructed by Ralph James (Legal Counsel) and with Rob van Iersel (Major Projects

Planner) and Gray Blunden (Development Engineer). The Applicant was represented by James Smith of Counsell, instructed by Michael Young solicitor and with Joe Davidson (Town Planner). The parties' single expert, Coastal Engineer Dr Philip Haines Senior Principal, Managing Director Environment, Eastern Australia was also in attendance.

5

Confidentiality in the conciliation process is effected by section 34(11)(a) and (b) of the Land and Environment Court Act. Subsection 11(a) provides that "evidence of anything said or of any admission made in conciliation conference is not admissible in any proceedings before any court, tribunal or body." Subsection 11(b) applies the same constraint in 11(a) to "a document prepared for the purposes of, or in the course of, or as a result of, a conciliation conference, or any copy of such a document". The only exceptions to the constraints on admissibility in section 34(11) are in respect of a signed agreement (s34 (10)) and waiver of confidentiality by consent of both parties (s34(12)).

10

15 **Councillors should refer at this point to Confidential attachments 1, 2 and 3 which report on the conciliation conference phase of the proceedings. Confidential attachment 2 contains the draft consent conditions which would form part of any section 34 agreement. Confidential attachment 3 contains the conciliation conference report of McCabe Curwood and legal advice based thereon.**

20

The conciliation conference was adjourned to 26 November 2018, being a date after Council has had the opportunity to consider this report and resolve as to whether it will delegate authority to the General Manager.

25

If authority is delegated, the appeal will be resolved by way of a conciliation agreement under section 34 of the Land and Environment Court Act.

If authority is not delegated, the appeal will proceed to a hearing before the court on a date to be fixed. In that case, the Court will become the consent authority and stand in the shoes of Council.

30

The proposal

The proposal involves a strata subdivision of the land, to create two lots of 975m² and 1,030m²; alterations to an existing two-storey dwelling, including repositioning that dwelling on the land onto proposed Lot 2, and the removal of 13 trees.

35

Specifically, the proposal involves the following:

- Subdivision of the land under the provisions of the *Strata Schemes Development Act 2015*, to create:
 - 40 - Lot 1, with an area of 1,030m², which will be a vacant lot with a frontage of 15.525m to The Esplanade (eastern property boundary) and a northern boundary of 60.350m. The lot will include a 5.3m wide 'access-handle' on its western end to connect to Strand Avenue, providing a western boundary dimension of 33.225m; and
 - 45 - Lot 2, with an area of 975m², which will contain the repositioned and altered dwelling. It has eastern and western boundaries of 17.7m and northern and southern boundaries of 55.05m. The eastern frontage is to The Esplanade and the southern frontage is to Strand Avenue.
 - An existing concrete driveway off Strand Avenue will remain in place to provide access to Lot 2. A new concrete driveway is proposed immediately west of this to service proposed
 - 50 Lot 1.
- The existing six-bedroom, two-storey dwelling will be altered and repositioned on the site to be wholly within proposed Lot 2. The repositioning involves a 90° reorientation of the building. Other alterations include:
 - Lower level - demolition of part of a bedroom and rumpus room and removal of a deck;

reconfiguration of internal space to provide two bedrooms, a bathroom, laundry and new living area, and extension of external deck, including stairs to upper floor;

- Upper level - demolition of two bedrooms, a bathroom and deck, and reconfiguration to provide four bedrooms, two with ensuite bathrooms, two additional bedrooms, kitchen, dining, lounge and new external covered deck;
- The total floor space of the renovated and reorientated dwelling will be approx. 185m².
- The proposal includes removal of 13 trees, including 2 trees located in the road reserve of Strand Avenue.

10 The site

The subject site is a 2,023m² allotment, legally described as Lot 2 in DP 536175, known as 25 Strand Avenue, New Brighton.

15 The subject site is rectangular in shape, with a width of 33.225m and a depth of 60.35m. The site is generally flat, with elevations varying from RL 2.03m AHD near the north-west corner of the existing dwelling to around RL 2.3m AHD in the middle of the property.

20 The site has street frontages to both Strand Avenue and The Esplanade, with vehicular access from Strand Avenue.

25 The existing dwelling is set toward the western boundary of the land. It is a high-set, two- storey timber structure with a metal roof, containing a double garage, rumpus room, bathroom, laundry and three bedrooms on the lower level and lounge, dining, kitchen, family room, three bedrooms, toilet and bathroom and study on the upper level. The upper level includes a covered deck along the eastern elevation.

30 Mature trees are located along most of the southern and western property boundaries and along part of the northern boundary. The trees are predominantly native species, including Paperbark, Silky Oak and Tuckeroo. The trees appear to have been planted, rather than naturally occurring.

Financial Implications

35 The estimated professional legal costs of defending the appeal was \$14,000 excluding GST, assuming that the matter was not settled at the conciliation conference and the ultimate hearing in the matter only took an additional day. If the hearing took longer the legal costs would be higher.

In this matter it was necessary for Council to retain the services of an independent coastal expert.

40 The tasks that the coastal expert was required to do were:

- Site visit & inspection
- Review of experts brief
- Review of planning and relevant other controls
- Preparation of expert evidence
- 45 • Joint conferencing & joint reporting
- Conferencing with solicitors
- Attendance at section 34AA & hearing

50 The expert's costs estimate, on a hearing basis, was \$13,825 to \$15,800 excluding GST.

The total estimated professional costs and external expert costs were therefore in the vicinity of \$29,800 excluding GST.

Internal Council staff were appointed as the Planning, Flooding and Stormwater experts.

Professional and experts costs paid to date are \$23,952.97 excluding GST.

5

Statutory and Policy Compliance Implications

Local Government Act

377 General power of the council to delegate

10

(1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following:

15

(u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.

The Land and Environment Court Act prescribes the Conciliation process.

Land and Environment Court Act

20

34 Conciliation Conferences

(1) If proceedings are pending in Class 1, 2 or 3 of the Court's jurisdiction, the Court:

(a) may arrange a conciliation conference between the parties or their representatives, with or without their consent, and

25

(b) if it does so, must notify the parties or their representatives of the time and place fixed for the conference.
(1A) It is the duty of each party to proceedings where a conciliation conference has been arranged under subsection (1) to participate, in good faith, in the conciliation conference.

(2) A conciliation conference is to be presided over by a single Commissioner.

30

(3) If, either at or after a conciliation conference, agreement is reached between the parties or their representatives as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions), the Commissioner:
(a) must dispose of the proceedings in accordance with the decision, and
(b) must set out in writing the terms of the decision.

35

(11) Subject to subsections (10) and (12):

(a) evidence of anything said or of any admission made in a conciliation conference is not admissible in any proceedings before any court, tribunal or body, and

40

(b) a document prepared for the purposes of, or in the course of, or as a result of, a conciliation conference, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.

Conciliation is a process in which the parties to a dispute, with the assistance of an impartial conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach agreement.

45

The conciliation conference is conducted by a commissioner of the Court. Often, the commissioner will have technical knowledge and expertise on the issues relevant to the dispute.

50

At the conciliation conference, the conciliator facilitates negotiation between the parties with a view to their reaching agreement as to the resolution of the dispute.

If the parties are able to reach agreement on the terms of the decision in the proceedings that would be acceptable to the parties, and that decision is one the Court could have made in the proper exercise of its functions, the conciliation commissioner must dispose of the proceedings in accordance with the decision and set out in writing the terms of the decision.

55

A Conciliation Agreement is between Council and the applicant, i.e. Council stays the determining authority.

Use of a Conciliation Agreement would bring the appeal to an end immediately and without the need for Council to incur any expert witness costs or any legal costs beyond the relatively minor costs associated with attending a conciliation conference.

5

34AA Mandatory Conciliation and Arbitration

(1) This section applies to the following proceedings pending in Class 1 of the Court's jurisdiction relating to appeals, objections and applications under section 97 or 97AA of the Environmental Planning and Assessment Act 1979 :

- 10 (a) *proceedings concerning development applications, or modifications to development consents, for:*
 (i) *development for the purposes of detached single dwellings and dual occupancies (including subdivisions), or alterations or additions to such dwellings or dual occupancies, or*
 (ii) *development of a kind prescribed by the regulations,*
 15 (b) *particular proceedings that the Court orders, on the application of a party to the proceedings or of its own motion, to be dealt with under this section.*

(2) Section 34 applies to the proceedings with the following modifications:

- 20 (a) *the Court must arrange a conciliation conference between the parties and their representatives with or without their consent,*
 (b) *if no agreement of a kind referred to in section 34 (3) is reached, the Commissioner who presides over the conciliation conference must terminate the conciliation conference and, subject to this section, dispose of the proceedings:*
 (i) *following a hearing held forthwith, or*
 (ii) *if the parties consent, on the basis of what has occurred at the conciliation conference.*

25 (3) *The Court or the Commissioner may at any time, if the Court or Commissioner thinks it appropriate in the circumstances of the case, determine that proceedings are not to be dealt with or are not to continue to be dealt with under subsection (2). A determination may be made on the motion of the Court or Commissioner or on application by the parties.*

(4) If the Court or Commissioner determines that proceedings are not to be dealt with or are not to continue to be dealt with under subsection (2), the proceedings are to be dealt with under section 34C.

30 Section 34AA of the LEC Act is titled "mandatory conciliation and arbitration". It expressly applies only to appeals to the Land and Environment Court involving development applications, or modifications to development consents, for:

- 35 • detached single dwellings and dual occupancies (including subdivisions), or alterations or additions to such dwellings or dual occupancies, or
 • development of a kind prescribed by the regulations (of which there are none at this stage).

40 The procedure involves a conciliation stage and an arbitration stage. The conciliation stage involves both parties attending a conference presided over by a Commissioner of the Court, whose job it is to facilitate negotiation between the parties so that the parties themselves might achieve agreement as to the outcome of the proceedings. The Commissioner does not express his or her views as to the appropriateness of the proposal or likely outcome of the appeal.

45 The parties are not compelled to reach an agreement as to the outcome of the appeal. The arbitration part occurs if the parties do not reach agreement at the conciliation stage.

50 Arbitration involves the same Commissioner who presided over the conciliation determining the appeal in the usual way. In other words, if the conciliation phase produces no result, the Commissioner then receives expert evidence and takes submissions from both parties in the same way that merit appeals are currently determined. Evidence of anything said during the conciliation stage of the conference is not admissible at the arbitration, unless there is an agreement by both parties to do so.

Under section 34AA the procedure is as follows:

- 55 • the Court must arrange a conciliation conference between the parties and their representatives with or without their consent, and

- if no agreement is reached between the parties at the conciliation stage of the section 34 conference, the Commissioner who presides over the conciliation conference must terminate the conciliation conference and, subject to section 34AA, dispose of the proceedings:
 - following a hearing held immediately, or
 - if the parties consent, on the basis of what has occurred at the conciliation conference.
- the parties to the appeal are not compelled to reach an agreement at the conciliation stage of the conference, but neither party can stop the conciliator disposing of the appeal following termination of the conciliation conference.

5

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Report No. 13.25 Update on Environmental Zone review and Planning Proposal implementation process

Directorate: Sustainable Environment and Economy
Report Author: Alex Caras, Land Use Planning Coordinator
File No: I2018/2033
Theme: Sustainable Environment and Economy
Planning Policy and Natural Environment

5

10

Summary:

This report presents an update on the:

- status of the staged E zone implementation program; and
- additional 2018/19 budget requirements to complete remaining work.

15

The E zone program is progressing well with 65% of submissions reviewed and agreed outcomes reached on over 500 properties. This has resulted in approximately 2,310 ha being proposed for an environmental zoning.

20

The engagement process undertaken to date has been constructive and well received by those affected, and has also generated a tremendous amount of goodwill for Council. At the same time the robust nature of the engagement process has been more resource-intensive than anticipated and at the current rate of expenditure, the remaining 2018/19 E zone budget will be exhausted by the end of November. As a result, an additional \$30,000 is needed for the period December 2018 to 30 June 2019 to ensure the timely completion of Council's E zone implementation program as well as to continue building on the high level of community goodwill already generated.

25

NOTE TO COUNCILLORS:

30

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.

35

RECOMMENDATION:

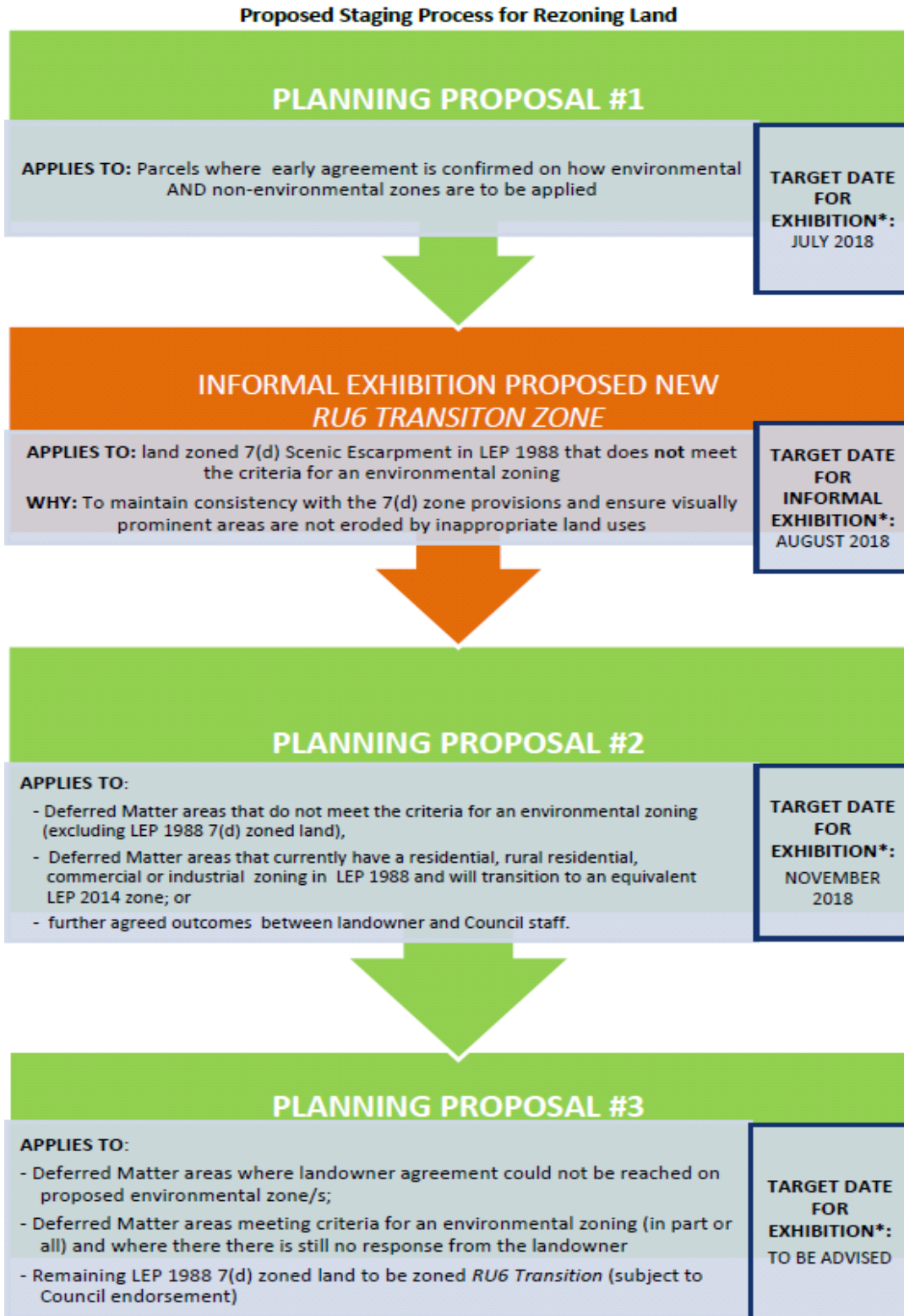
1. **That Council re-allocate \$30,000 as part of the December Budget Quarterly Review in order to: continue the staged E zone implementation program, build on the high level of community goodwill generated through the preparation of Planning Proposals 1 and 2; and resolve the deferred matters for our affected rural landowners in a timely manner.**
2. **That the \$30,000 be re-allocated as follows:**
 - **Employment Land Strategy (# 2605.106): \$10,000**
 - **Mullumbimby Masterplan Project Plan (# 2605.112): \$20,000**

40

Report

Background

5 Council at its 22 March 2018 Ordinary Meeting resolved (**Res 18-186**) to implement the E zone review outcomes in several stages to deliver more timely and effective outcomes for affected landowners. An overview of the staged implementation program is shown below.



10 **Staging program update**

Staff are making good progress with the E zone implementation program, with the following outcomes to date:

- 5 • Feedback received from nearly 800 affected landowners in the Shire.

- Overall the submissions review is about 65% complete and agreed outcomes reached on over 500 properties. This has resulted in approximately 2,310 ha being proposed for an environmental zoning (in Planning Proposal #1 & #2), as follows:
- 10 - E2 Environmental Conservation: 1,763 ha
- E3 Environmental Management: 547 ha

- **Planning Proposal #1** submitted to DPE for Gateway Determination at the end of June 2018, incorporating 60 properties with agreed outcomes. DPE have finally (early November) issued a gateway determination for (PP#1). Staff will progress the exhibition in accordance with the gateway determination in the new year.
- 15

- As per the diagram above, Planning Proposal #1 relates to land where early agreement has been confirmed between landowners and Council staff on how environmental and non-environmental zones are to be applied. This includes both 'Deferred Matter' and 'Non-Deferred Matter' areas identified in Byron LEP 2014.
- 20

- **Planning Proposal #2** is substantially advanced and should be finalised for submission to DPE before year end. This will include approximately 330 properties with agreed outcomes.
- 25

- As per the diagram above, Planning Proposal #2 includes:
- (i) Deferred Matter areas that do not meet the criteria for an environmental zoning and will have a suitable rural zone applied (excluding LEP 1988 7(d) zoned land); or
- (ii) Deferred Matter areas that currently have a residential, rural residential, commercial or industrial zoning in LEP 1988 that will transition to an equivalent LEP 2014 zone; or
- 30 (iii) reflecting further agreements reached between landowner and Council staff on how environmental zones are to be applied;

- **Proposed RU6 Transition Zone.** Six week informal exhibition completed 19 October. Notification letters were sent to affected landowners along with local newspaper advertisement and a media release. A submissions report will be presented to Council in early 2019.
- 35

Budget requirements to complete remaining stages

40 The process of reviewing landowner submissions and achieving agreed outcomes has been very constructive and well received by those affected, as well as the wider community. Indeed feedback received to date suggests that the staff engagement process has generated a tremendous amount of goodwill for Council. It is important to continue building on this goodwill as well as ensuring the timely completion of Council's E zone implementation program.

50 The robust nature of the E zone engagement process is essential to the program's success, but it has been more resource-intensive than anticipated for the first two planning proposals. At the current rate of expenditure the remaining E zone budget for 2018/19 financial year will be exhausted by the end of November. A review of remaining work to complete the staged implementation program has determined that the timetable will extend beyond the 2018-19 financial year, with an additional \$73,000 budget allocation required (from December 2018

onward). Of this amount, \$30,000 is needed for the period December 2018 to 30 June 2019 to undertake the following work:

- select ground-truthing of vegetation (only where required);
 - finalising review of feedback, agreed outcomes and associated mapping;
 - 5 ➤ following up with landowners that have yet to provide any feedback on sites having possible E zones;
 - planning proposal exhibition and enquiries;
 - submissions review and report to Council (post-exhibition); and
- 10 The remaining \$43,000 will be included in a budget bid for the 2019/20 financial year. This amount is required to exhibit and finalise Planning Proposal #3 and prepare a final Planning Proposal for mapped overlays (eg. vegetation; riparian), noting the mapped overlays will be subject to a separate report to Council and follow the completion of stages 1-3.

15 Financial Implications

The remaining 2017/18 budget for the E zone Implementation program will be exhausted by the end of November 2018. The timeframe for this project extends beyond the financial 2018-19 financial year and an additional \$30,000 budget allocation is required for the period 1 January to 30 June 2019.

In consultation with the Manager Finance an option to fund this work is through existing projects which will not be fully expended by the end of this financial year. This option would require paying back any project funds in the successive financial year. The option was reported to the Executive Team on 7 November 2018 where they supported the following recommendation:

That the \$30,000 be allocated as follows:

- *Employment Land Strategy (# 2605.106): \$10,000*
- *Mullumbimby Masterplan Project Plan (# 2605.112): \$20,000*

30 The remaining \$43,000 to complete Planning Proposal #3 will be included in a budget bid for the 2019/20 financial year.

Statutory and Policy Compliance Implications

35 The process of applying E zones and mapped overlays in Byron LEP 2014 must satisfy Section 117 Direction 2.5 – *Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs*. This direction specifically requires that a planning proposal that introduces or alters an *E2 Environmental Conservation* or *E3 Environmental Management Zone*, or an overlay and associated clause must be consistent with the *Northern Councils E Zone Review Final*

40 *Recommendations*.

Report No. 13.26 **West Byron Release Area Zone Application Review**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
 Rob Van Iersel, Major Projects Planner
5 **File No:** I2018/2105
Theme: Sustainable Environment and Economy
 Planning Policy and Natural Environment

10 **Summary:**

Council considered an urgency motion at its ordinary meeting 18 October 2018 and resolved as follows:

15 18-711 Resolved:

1. *That Council commence an urgent review of the current zoning of the West Byron Release Area to identify a zone regime for the development of the land that is logical, accounts for the site constraints, and provides for a sustainable development yield and form that*
20 *recognises the significance of the land to the Byron community and its potential impacts on the wider catchment area.*

2. *That a revised zone concept plan be brought to the next Council meeting.*

- 25 3. *That Council inform the Premier, the Hon. Gladys Berejiklian, the Planning Minister, and local state members of this resolution, acknowledging also the Premiers recent statements regarding that due to the constraints concerning this area the more appropriate outcome in this area would be a far smaller, more sustainable development yield and recognition of the significance of the land to the Byron community.*

30 As per items 1 and 2 above, staff have completed a review of the West Byron Release Area zone application and submit an alternate zone application to Council for its consideration.



35

RECOMMENDATION:

1. **That Council note the report on the West Byron Release Area zone application review.**

2. **That Council endorse the alternate West Byron Release Area zone application plan (Attachment #E2018/88447) for the purpose of a discussion with the Department of Planning and Environment to seek their early feedback about a future planning proposal for the West Byron Release Area.**

Attachments:

- 1 Suggested Alternative Zoning - West Byron, E2018/88447 [⇨](#) 
40 2 Housing typology template , E2018/86843 [⇨](#) 

Report

The West Byron Bay Urban Release Area comprises approximately 108 hectares located west of Belongil Creek and on the southern side of Ewingsdale Road.

Rezoning of the West Byron Urban Release Area was approved by the Minister for Planning and gazetted on 14 November 2014. Information on the zoning is detailed in the State Environmental Planning Policy Amendment (West Byron Bay) 2014, which amended the Byron Local Environmental Plan 1988 to include provisions that detail the zoning and associated requirements for the West Byron Urban Release Area.

There are two separate development applications currently under assessment by Council staff for the West Byron Urban Release Area. Both these development applications have generated strong public opinion about the future development that the Byron community would prefer to see occur on the land.

2018NTH007 DA - Subdivision of Six (6) Lots into Three Hundred and Eighty Seven (387) Lots consisting of Three Hundred and Seventy Eight (378) Residential Lots, Two (2) Business Lots, Two (2) Industrial Lots, One (1) Recreation Lot and Four (4) Residue Lots.

2017NTH013 DA - Staged Development Application for Subdivision of Land Stage 1 – Subdivision of Nine (9) Lots into Two Hundred and Ninety (290) Residential Lots in Nine (9) Sub- Stages, Stage 2 – Concept Plan for Residual Land including Medium Density Residential, Low Density Residential, Commercial, Industrial, Recreational and Environmental Management Precincts.

2018NTH007 DA has recently been deferred by the Northern Joint Regional Planning Panel (NJRPP) pending a further assessment by Council staff on amended plans. It is also set down for a Land and Environment Court conciliation conference in February 2019.

2017NTH013 DA is under assessment by Council staff, and is not anticipated to be reported to the NJRPP until 2019.

Notwithstanding the above, the assessment of both DAs by staff has confirmed that significant environmental constraints apply to the land including:

- A combination of class 2 and class 3 potential acid sulphate soils;
- Category 1 and buffer bushfire vegetation;
- Flood prone land (100 year flood);
- High environmental value vegetation including SEPP (Coastal Management) 2008 Wetlands and Buffers;
- Primary and tertiary koala habitat;
- Threatened flora and fauna habitat;
- Stormwater Management;
- Groundwater impacts; and
- Offsite impacts on the Belongil Creek ICOLL

Further, the shape of zone boundaries is, in part, illogical, creating issues which are difficult to manage where residential land is to interface with environmental protection zoned land in terms of bushfire and koala management.

To overcome these constraints to develop the land, both DAs rely on site modifications with excessive amounts of fill, impact / removal of sensitive habitats, and require hard engineering solutions for drainage, flooding and traffic management. There are alternative zone and design solutions to this.

As such, an urgent need to review the current zone application across the West Byron Release Area is deemed necessary by Council.

5 As a consequence of the above, Council resolved as follows at its ordinary meeting 18 October 2019:

18-711 Resolved:

- 10 1. *That Council commence an urgent review of the current zoning of the West Byron Release Area to identify a zone regime for the development of the land that is logical, accounts for the site constraints, and provides for a sustainable development yield and form that recognises the significance of the land to the Byron community and its potential impacts on the wider catchment area.*
- 15 2. *That a revised zone concept plan be brought to the next Council meeting.*
- 20 3. *That Council inform the Premier, the Hon. Gladys Berejiklian, the Planning Minister, and local state members of this resolution, acknowledging also the Premiers recent statements regarding that due to the constraints concerning this area the more appropriate outcome in this area would be a far smaller, more sustainable development yield and recognition of the significance of the land to the Byron community.*

25 As per items 1 and 2 above, staff have completed a review of the current West Byron Release Area zone application and attach an alternate for Council consideration (see Attachment 1). Note: item 3 has been actioned separately by letters sent to the Premier, Minister for Planning and local members.

30 Attachment 1 contains a draft alternate zone plan, together with a second plan showing how that relates to the current zoning of the land.

In summary the alternate zone application provides for a substantial reduction in the overall footprint allocated for 'urban development', and includes:

- Increased protection for sensitive wetland habitat on the southern parts of the land through expansion of the area subject to E2 Environmental Conservation zoning;
- 35 • Increased protection of the Belongil Creek ICOLL and catchment through expansion of the E2 zoning within the eastern part of the land, with a subsequent requirement for substantial revegetation (Note: an item of Aboriginal heritage significance is also located in this area, and the E2 zoning would provide ongoing protection) – the increased areas of E2 zoning on the southern and eastern edges of the land provide a substantially improved wildlife corridor that links important habitat areas;
- 40 • Protection for the area known as significant acid frog habitat, located in the western part of the land, through E2 Environmental Conservation zoning;
- E4 Environmental Living zoning for the area around the acid frog habitat, which would allow a greater variety of residential lot types through a provision of lot size averaging, which could be utilised to buffer important habitat areas;
- 45 • E3 Environmental Management zoning for a 20 metre wide strip along the Ewingsdale Road frontage of the land, which would 'push back' the footprint of the development to provide greater future flexibility for Ewingsdale Road and reduce the visual impact of the development through this corridor (also improving amenity outcomes for future lots created along this frontage);
- 50 • E3 Environmental Conservation zoning for the main drain through the property, leading to a smaller area of E2 Environmental Management zoning covering an important area of koala habitat (directly adjoining and contiguous with the larger area recommended for E2);

- A combination of urban zoning for the area north-east of the main drain, which could include B4 Mixed Use (for a Village Centre), RE1 Public Recreation to provide an area of local open space adjoining the centre, and R1 General Residential and/or R3 Medium Density Residential to provide for an innovative and contemporary mix of housing types close to the Village Centre (Note: Attachment 2 provides information around contemporary housing typologies that could be promoted for this urban area to provide a more sustainable and affordable housing mix);
- R2 Low Density Residential zoning for the remaining urban area south-west of the main drain.

In addition to the amended zones, an updated Development Control Plan (DCP) could be prepared to:

- promote and facilitate a wider range of housing typologies, particularly opportunities for “Byron Bespoke Intentional Communities” such as described in the housing typology summary contained at Attachment 2; and
- promote and facilitate a different approach to stormwater and flood management that significantly reduces the amount of fill required – e.g. investigate an approach that elevates the road network rather than the whole of the land, maximises swale/ bio-retention solutions and allows for elevated built form (pole homes etc.) that would allow a majority of individual lots to be at (or closer to) existing ground levels and provides for built form that better responds to the local climate (e.g. below floor breezes etc.).

The table below provides a summary of the objectives of the recommended zones, with brief comments the recommended application:

Zone	Objectives	Comments
R1 General Residential	<p><i>To provide for the housing needs of the community.</i></p> <p><i>To provide for a variety of housing types and densities.</i></p> <p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p> <p><i>To provide a secure supply of affordable housing stock that meets the needs of low to middle income residents.</i></p> <p><i>To enable the provision of non-residential land uses that are compatible with, and do not place demands on services beyond the level reasonably required for, residential use.</i></p> <p><i>To encourage adaptable housing that supports ageing in place</i></p> <p>[Note: Objectives as recommended for Lot 22 Mullumbimby]</p>	<p>A zone aimed at diverse and affordable housing options.</p> <p>Use in this case provides an opportunity to specifically tailor the land use table to facilitate contemporary low rise housing options with a different approach to density.</p> <p>Not currently used in BLEP 2014, but recommended for the future development at Lot 22 in Mullumbimby.</p>
R2 Low Density Residential	<p><i>To provide for the housing needs of the community within a low density residential environment.</i></p> <p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p>	<p>‘Standard’ residential zone currently used in BLEP 2014.</p>

BYRON SHIRE COUNCIL

Zone	Objectives	Comments
R3 Medium Density Residential	<p><i>To provide for the housing needs of the community within a medium density residential environment.</i></p> <p><i>To provide a variety of housing types within a medium density residential environment.</i></p> <p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p>	'Conventional' medium density zone currently used in BLEP 2014.
B4 Mixed Use	<p><i>To provide a mixture of compatible land uses.</i></p> <p><i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i></p>	Would be applied to the proposed Village Centre, to provide an area of local activity, ideally including shop-top housing options.
IN2 Light Industrial	<p><i>To provide a wide range of light industrial, warehouse and related land uses.</i></p> <p><i>To encourage employment opportunities and to support the viability of centres.</i></p> <p><i>To minimise any adverse effect of industry on other land uses.</i></p> <p><i>To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.</i></p> <p><i>To support and protect industrial land for industrial uses.</i></p> <p><i>To provide for creative industrial uses such as artisan and cultural industries.</i></p>	<p>Would apply to a small area in the north-western corner of the land, directly adjoining an existing industrial site (i.e. Sunnybrand Chickens) that is proposed for redevelopment as a business park.</p> <p>Could provide some employment opportunities for future residents.</p>
RE1 Public Recreation	<p><i>To enable land to be used for public open space or recreational purposes.</i></p> <p><i>To provide a range of recreational settings and activities and compatible land uses.</i></p> <p><i>To protect and enhance the natural environment for recreational purposes.</i></p>	Would apply to an area directly adjacent to the Village Centre to provide usable open space in an easily accessible location.
E2 Environmental Conservation	<p><i>To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</i></p> <p><i>To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</i></p> <p>[Note: Objectives as outlined in Standard Template LEP]</p>	<p>Would apply to extensive areas with high environmental values, also enabling restoration of degraded parts of those areas which would enhance those values.</p> <p>Not currently used in BLEP 2014, but recommended for various sites following Stage 1 of the "E Zone Review".</p>
E3	<i>To protect, manage and restore areas</i>	Would allow protection of the main

Zone	Objectives	Comments
Environmental Management	<p><i>with special ecological, scientific, cultural or aesthetic values.</i></p> <p><i>To provide for a limited range of development that does not have an adverse effect on those values.</i></p> <p>[Note: Objectives as outlined in Standard Template LEP]</p>	drain and provision of the Ewingsdale Road 'buffer'.
E4 Environmental Living	<p><i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i></p> <p><i>To ensure that residential development does not have an adverse effect on those values.</i></p> <p><i>To protect the size and shape of vegetation remnants if consistent with the protection of assets from bush fire.</i></p> <p><i>To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.</i></p> <p><i>To manage items, places and landscapes of Aboriginal cultural heritage significance into the future in collaboration with the local Aboriginal community.</i></p> <p>[Note: Example taken from Eurobodalla LEP 2012]</p>	Not currently used in BLEP 2014. Could provide flexibility of use and lot design around areas of importance, such as the frog habitat in the western part of the land.

5 Next steps for Council should it endorse the alternate West Byron Release Area zone application plan (Attachment #E2018/88447) is to seek early feedback from the Department of Planning about a future planning proposal for this land.

Financial Implications

10 Not applicable.

Statutory and Policy Compliance Implications

There are 5 steps in the planning process to rezone land.

- 15 1. The Planning Proposal – the relevant authority prepares the planning proposal. The relevant authority is usually the local council; however the Minister can appoint the Secretary of the Department of Planning and Environment, a joint regional planning panel or a Sydney planning panel to be the relevant planning authority.
- 20 2. Gateway – the Minister (or delegate) decides whether the planning proposal can proceed (with or without variation) and subject to other matters including further studies being undertaken, public consultation, public hearings, agency consultation and time frames. A planning proposal does usually not proceed without conditions of this nature. The conditions are then

complied with and if necessary, the proposal is changed. A decision on whether the relevant council is able to finalise particular types of LEPs is also determined at this stage.

- 5 3. Community Consultation – the proposal is publicly exhibited as required by the Minister. A person making a submission may also request a public hearing be held.
4. Assessment – the relevant planning authority reviews public submissions. Parliamentary Counsel then prepares a draft local environmental plan.
- 10 5. The Making of the LEP – with the Minister’s (or delegate’s) approval the local environmental plan is published on the NSW legislation website and becomes law.

Report No. 13.27 **PLANNING - Change of use - dwelling house to incorporate bed and breakfast accommodation, and use of existing shed to create dual occupancy (detached)**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Patricia Docherty, Planner

File No: I2018/2109

Theme: Sustainable Environment and Economy
Development and Certification

10

Proposal description: Change of use - dwelling house to incorporate bed and breakfast accommodation, and use of existing shed to create dual occupancy (detached)

Property description: LOT: 7 DP: 732056

Parcel No/s: 6320

Applicant: Mrs J M Douglas & Mr M P Douglas

Owner: Mr M P Douglas

Zoning: RU2 Rural Landscape

Date received: 13 June 2018

Integrated Development: Yes

Public notification or exhibition: – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

– Exhibition period: 22/6/18 to 5/7/18

– Two Submissions were received

Delegation to determination: Council

Issues:

- Clause 4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2
- Clause 4.6 Exception to development standards - 20% Variation to distance between dual occupancies over 100 metres and more than one driveway (existing)
- Bushfire prone land – 100B Special Fire Purpose

Summary:

15 Development consent is sought to formalise the conversion of an existing farm shed into a dwelling on the property as a dual occupancy and for the use of the primary dwelling house a bed and breakfast establishment. The proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site, other than the controls relating to the 100 metre separation distance between detached dual occupancies in the rural zones. In this regard consent is sought to use an existing shed as the second dwelling which is 120 metres from the primary dwelling house.

20

25 As the proposal involves the conversion and formalisation of an existing shed into a dwelling It would be onerous to require it's relocation to meet the numeric distance requirement having regard to the minor variation being sought (eg 20 metres). Further any relocation would ultimately result in increase environmental impacts including addition vegetation removal and earthworks. For these reasons it is considered to be reasonable in the circumstances of the case to permit an exception to the development standard.

The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development.

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

5

NOTE TO COUNCILLORS:

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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.

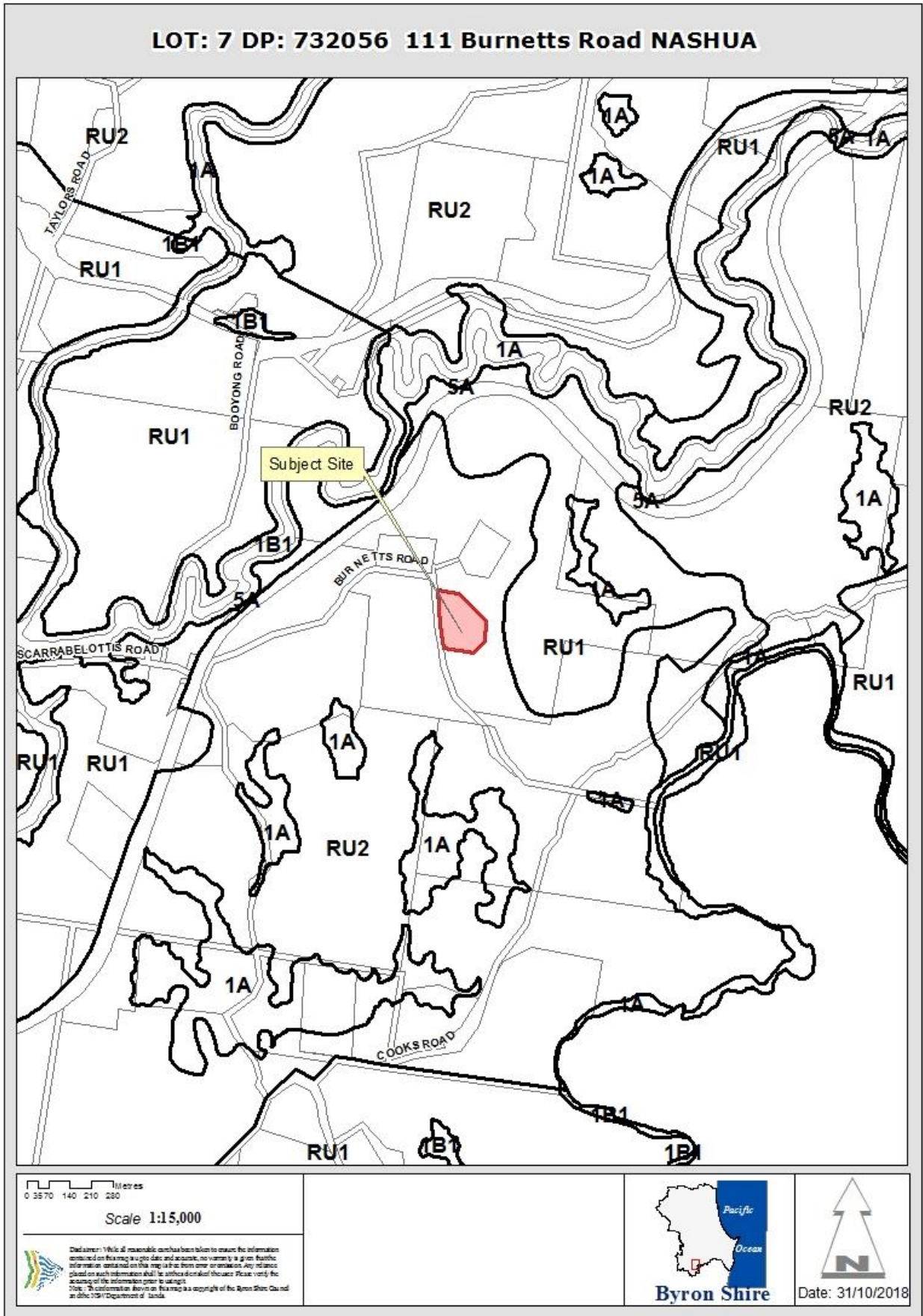
RECOMMENDATION:

That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application no. 10.2018.288.1 for change of use - dwelling house to incorporate bed and breakfast accommodation, and use of existing shed to create dual occupancy (detached), be granted consent subject to the recommended conditions of consent.

15

Attachments:

- 1 DA Plans 10.2018.288.1 111 Burnetts Road Nashua, E2018/87782 
- 2 CONDITIONS OF CONSENT 10.2018.288.1.docx, E2018/87797 
- 20 3 Attachment 3 Ordinary 22/11/18 Submissions Received 10.2018.288.1, E2018/89014 



Assessment:

1. INTRODUCTION

5 1.1. History/Background

Council records show the following approvals on the site:

006.1987.00002076.001	Building Applications	Dwelling	31/03/1987	Approved
016.2001.00005106.001	Complying Development Cert	New Swimming Pool	26/11/2001	Approved
010.1999.00000185.001	Development Application	ADDITION TO DWELLING	28/07/1999	Approved Delegation

10 1.2. Description of the proposed development

This application seeks approval for Change of use - dwelling House to incorporate bed and breakfast accommodation, and use of existing shed to create dual occupancy (detached).

15 Bed and Breakfast

The existing dwelling contains 7 bedrooms, with three of these downstairs and four upstairs. The dwelling also contains a writing studio, bathroom, laundry, living room, dining room and kitchen downstairs.

The upstairs section of the house also has a living area, bathroom and deck which leads to a yoga room. This yoga room is for the private use of residents and the guests of the proposed bed and breakfast

It is proposed to use 5 of the bedrooms for guest accommodation as part of the bed and breakfast. A maximum of 2 guests will be accommodated in each of the bedrooms. The remaining 2 bedrooms will be occupied by the homeowner/managers.

30 Dual Occupancy

The existing shed that was previously a piggery is proposed to be converted to a one-bedroom detached dual occupancy dwelling. The structure is timber clad with a colourbond roof. It has a floor area of 94.9m².

There are two existing driveways. It is proposed to retain both of these to reduce additional earthworks, vegetation removal and construction. As this does not comply with Clause 4.2D *Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2*, a request to vary the development standard under clause 4.6 of LEP 2014 was included in the application.

The proposed development does not involve the construction of any additional structures. The existing shed proposed to be used as a dual occupancy is 20 metres more than the maximum 100 metres separation distance allowed under Clause 4.2D and a request to vary the development standard applies to this also.

The percentage variation exceeds 10 % and must be determined by Council under assumed concurrence of the Secretary of Planning.

50

1.3. Description of the site

Land is legally described as LOT: 7 DP: 732056
Property address is 111 Burnetts Road NASHUA
Land is zoned: RU2 Rural Landscape
Land area is: 2.407 hectares
Property is constrained by: Bushfire prone land
High Environmental Value

5 The site contains an existing dwelling house and swimming pool in the south-eastern part of the site. A meeting room/yoga room is also attached to the dwelling and is only used by the private residents.



10 Existing dwelling house to be used as a B and B



Existing shed structure

An old piggery/shed structure is located approximately 120 metres to the north of the dwelling. This is separated from the main house by a large area of re-vegetated rainforest, however, can be accessed from the house by a pathway and boardwalk.

- 5 The shed structure has had some renovations and contains a bathroom, and a building certificate has been obtained for the works. Approval for this shed as a detached dual occupancy dwelling is being sought in this application to formalise its use as a dwelling house.

- 10 Both the existing dwelling and shed have a separate driveway access from Burnetts Road. The area around the dwelling house is landscaped and has a large vehicle turn around area.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions. Refer to Doc # A2018/18822
Development Engineer	No objections subject to conditions. Refer to Doc # A2018/18824
Building Surveyor	No objections subject to conditions.
S94 / Contributions Officer	No objections subject to conditions. Refer to Doc # E2018/50806
Rural Fire Service (100B)	No objections subject to conditions. Refer to Doc # E2018/71966

15 **3. SECTION 4.14 – BUSH FIRE PRONE LAND**

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document Planning for Bush Fire Protection 2006. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions which are reflected in the Recommendation of this Report below.

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

25 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.

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Environmental Health Comment: <i>The proposal seeks to legitimise existing building (shed) used as a dwelling the assessment referenced the building envelope for that unapproved development only. Previous approvals have been issued for the main dwelling, alterations to the dwelling and swimming pool.</i> No remediation required		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: A Basix Certificate was submitted with the application		
State Environmental Planning Policy (Rural Lands) 2008	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal has been assessed as satisfactory, the Rural Planning Principles, which are as follows: (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</i>		

	Satisfactory	Unsatisfactory
<p><i>agriculture and of trends, demands and issues in agriculture in the area, region or State,</i></p> <p><i>(c) 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></p> <p><i>(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,</i></p> <p><i>(e) 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></p> <p><i>(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</i></p> <p><i>(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,</i></p> <p><i>(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.</i></p>		

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 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development.

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

- 10 (a) The proposed development is defined in the LEP 2014 Dictionary as Dual occupancy (detached), Bed & breakfast accommodation;
- (b) The land is within the RU2 Rural Landscape according to the Land Zoning Map;
- (c) The proposed development is permissible with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To maintain the rural landscape character of the land. • To provide for a range of compatible land uses, including extensive agriculture. • 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. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>The proposed development is considered to be compatible with the zone objectives.</p>

15 The relevant 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:

20

What clause does the development not comply with and what is the nature of the	Further consideration, including whether the development application is recommended for
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non-compliance?	approval or refusal accordingly
<ul style="list-style-type: none"> • Clause 4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2 • Clause 4.6 Exception to development standards - 20% Variation to distance between dual occupancies over 100 metres and more than one driveway (existing) 	<p>The applicant has submitted a written Clause 4.6 Variation Request with the application for the use of an existing structure for the purposes of a dual occupancy (detached) being greater than the maximum 100m separation distance between dual occupancies.</p> <p>The request also seeks approval for the use of the existing second driveway access for use as a dual occupancy (detached).</p> <p>The structure is approx. 120 metres from the existing approved dwelling house and it would be onerous to require it's relocation to meet the numeric distance requirement.</p> <p>The relocation of the house or extension of the other driveway would ultimately result in increase environmental impacts including addition vegetation removal and earthworks.</p> <p>For these reasons it is considered to be reasonable in the circumstances of the case to permit an exception to the development standard.</p> <p>The proposed development meets the objectives of the zone and the following objectives of Clause 4.2D:</p> <p style="padding-left: 40px;">(a) to provide alternative accommodation for rural families and workers, (b) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land, (c) 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.</p> <p>On this basis the consent authority can be satisfied that:</p> <ul style="list-style-type: none"> • compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; • there are sufficient environmental planning grounds to justify contravening the development standard; • the applicant's written request has adequately addressed the matters required to be demonstrated; • the proposed development will be in the public interest because it is consistent with

	<p>the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p> <ul style="list-style-type: none"> • that the concurrence of the Secretary has been obtained
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5 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

Not applicable

10 4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies.

15 The relevant 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).

20 4.5 Any Planning Agreement or Draft Planning Agreement?

Not applicable

25 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	No	N/A	N/A
93	Yes	Yes	Yes subject to conditions
94	Yes	Yes	Yes subject to conditions
94A	No	N/A	N/A

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

30 4.7 Any coastal zone management plan?

Not applicable

35 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.

Relevant Council Policies that are applicable to the proposed development have been considered in this assessment.

4.9 The suitability of the site for the development

5 The site is a serviced, unconstrained property and is suitable for the proposed development subject to conditions of consent.

4.10 Submissions made in accordance with this Act or the regulations

10 The development application was publicly exhibited. There were 2 submissions made on the development application, both against:

15 Issues raised in the submissions:

- *Extra dust problems (especially to our tank water supply and house at 2 Burnetts Road) from the extra generated traffic from Burnetts Road (narrow gravel road). Previously another neighbour was told they would have to upgrade Burnetts Road to a bitumen road if they wanted to have a farm-stay approved.*

20 Response: A Farmstay can be up to 12 guest bedrooms and would be considered higher impact than the proposed bed and breakfast. A bed and breakfast is small scale with limitations on the number of guest bedrooms. The development is for change of use to incorporate a bed and breakfast with bedrooms for use by paying guests limited to 5 bedrooms. There is no increase in the existing number of bedrooms in the dwelling house (7 bedrooms). Council's engineer has assessed the access to be suitable subject to conditions of consent.

- *Bushfire conditions not being met.*

30 Response: The RFS has issued authority for the development under 100B of the Rural Fires Act (Special fire purpose). Conditions to apply

- *Noise is generated from an adjoining macadamia farm business as well as our cattle business/farm implements (both long established businesses in an RU1 zone). Will the approval of an extra dwelling (built illegally) as well as a B & B (writer's studio/yoga participation which would both require peace and quiet) if approved, cause problems for both our adjoining businesses. Should we wish to expand/intensify our land-use in the future will we be guaranteed there will be no affect on our business?*

- *Given that we are an established macadamia orchard we carry out agricultural practises such as harvesting, pruning and chipping of trees, spraying (fertilisers, herbicides and pesticides) and also dehusk our macadamias on site. Most of this practise occurs during day time hours but we also spray at night time (for best practise reasons) and also dehusk at night time as required. We are making this submission to the fact that we do not want the owners to lodge any complaints against noise from our macadamia farm given that the proposed buildings are becoming a 'writer's retreat'*

50 Response: The development has been assessed in accordance with the land use objectives of the RU2 Rural Landscape and the Rural Lands SEPP. Bed and Breakfasts are permissible in the RU1 and RU2 zones. The existing occupants of the dwelling have not made noise complaints in the extensive period that they have lived there. In terms of the Macadamia farm it is located some 200 plus metres from the nearest dwelling. Councils DCP 2014 provisions under Chapter B6 based on

the DPI handbook “Living and Working in Rural Areas – a Handbook for managing land use conflicts on the North Coast of NSW suggest a desirable buffer of 200 metres for rural dwellings and rural tourist facilities and 300 metres from de-husking sheds. It is considered the proposal is acceptable having regard to the existing buffer in place.

- 5
- *Our properties also have extra dwelling entitlements (in the near future extra houses/detached dual occupancies maybe placed on our land in Burnetts Road). Is there a Council guarantee if this DA is approved that we will be granted the same approvals as a precedent will have already been set? Will the other four neighbours on Burnetts Road also be granted the same assurances if DA288/2018 is approved? If Council sets a precedent for this DA then consistency with any new development applications in RU1/RU2 zones should apply.*
- 10

Response: The proposed development of a detached dual occupancy is permissible with consent in Zone RU1 and RU2 and any new development applications will be assessed and determined in accordance with the EP&A Act and on merit.

- 15
- *I attach a copy of a letter sent to Council in September 2015 on my mother’s behalf in regards to the above developments. It would be appreciated if Council could check its records in regards to DA185/1999 - as I don’t recall my parents receiving any neighbour notification of the additions to the dwelling and shed on the southern boundary.*
- 20

Response: A search of Council records under DA 10.1999.185.1 shows that the proposed development did not require notification at the time of application.

25

4.11 Public interest

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

30

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

35 No Section 64 levies will be required.

5.2 Section 7.11 Contributions

40 Section 7.11 Contributions will be payable.

6. CONCLUSION

45 The proposed development is consistent with the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a ‘gift’ from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

50

Provide Disclosure Statement register details here: Not applicable

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.

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.

BYRON SHIRE COUNCIL

Report No. 13.28 **PLANNING - DA10.2018.296.1 Construct Three New Sheds and approve the use of a fourth existing shed to be used by the Men Shed Organisation**

Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
File No: I2018/2113
Theme: Sustainable Environment and Economy
 Development and Certification

5

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DA No:	10.2018.296.1
Proposal description:	Construct three new sheds and approve the use of a fourth existing shed to be used by the Mens Shed organisation.
Property description:	LOT: 22 DP: 1073165
	156 Stuart Street MULUMBIMBY
Parcel No/s:	30230
Applicant:	Mullumbimby SEED Inc
Owner:	Byron Shire Council
Zoning:	RE1 Public Recreation under Byron LEP 2014
Date received:	18 June 2018
Integrated Development:	No
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Six submissions received: Five submissions from the public all of which object to the development. See issues below. One submission from T4NSW (John Holland Rail) referring Council to State government planning policy on development near railway lines.
Delegation to determination:	Council
Issues:	<ul style="list-style-type: none"> • Car parking and loading bay not provided consistent with DCP • Land has been filled already in a flood prone area • One shed has been built already without consent • No assessment of flood impacts from filling or shed construction • Consistency with Councils Community Gardens Policy 14/008 • Consistency with Plan of Management for the Mullumbimby Sports Fields.

Summary:

15 Development consent is sought to construct three new sheds and approve the use of a fourth existing shed to be used by the Mens Shed organisation. The site is entirely within that part of Lot 22 that is leased to the Mullumbimby SEED group.

20 The proposal raises various policy issues in terms of the Byron Shire Council Community Gardens Policy 14/008 or the Plan of Management for Community Land - Mullumbimby Sports Fields (adopted 26 June 2008). The Plan of Management identifies the Area for general community purposes but then goes onto nominate the area for a Community Garden. Although the Men Shed fits within the general classification of community purposes, it is considered the Community Garden Policy does not include “Men Sheds” as an ancillary use. It is therefore reasonable for the

Community to assume this area of the Mullumbimby Sports Fields will only be utilised for a Community Garden under these current policies.

5 Further part of the work has been carried out without development consent including filling of the site and construction of the first shed to be used as a Men's Shed. It is noted that this sets a poor example for the broader community if Council accepts these unapproved works on its own land. In addition to this, works under the Community Garden Policy are meant to be temporary and able to be removed within 12 hours. It is difficult to see how this requirement under the Policy could be achieved for the Mens Shed.

10 Whilst it is acknowledged the Mens Shed use is unlikely to generate deleterious impacts on the built or natural environment, whilst delivering positive social impacts to the community, it is recommended the application should not be approved under the current policy regime. Should Council be broadly supportive of the concept then the Plan of Management and the Community Garden Policy should be reviewed to facilitate a men shed on the site.

15 The application is recommended for refusal.

20 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:

It is recommended that Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, development application no. 10.2018.296.1 to construct three new sheds and approve the use of a fourth existing shed, be refused for the following reasons

1. Pursuant to Section 4.15(1)(e) the proposed development is not in the public interest as it is inconsistent with Byron Shire Councils Community Gardens Policy 14/008.
2. Pursuant to Section 4.15(1)(e) the proposed development is not in the public interest as works including earthworks and construction of a shed have occurred on Public land without consent.
3. Pursuant to Section 4.15(1)(a)(i) the proposed development has not satisfied the provisions under SEPP (Coastal Management) 2018
4. Pursuant to Section 4.15(1)(a)(i) the proposed development has not satisfied the provisions under Clause 6.2 Earthworks or Clause 6.3 Flood Planning under Byron LEP 2014
5. Pursuant to Section 4.15(1)(a)(iii) the proposed development has not satisfied the provisions under Byron DCP 2014 in relation to car parking, earthworks and flooding.

Attachments:

- 30
- 1 Attachment 1 Ordinary 22/11/18 Submissions Received 10.2018.296.1, E2018/88552 
 - 2 Attachment 2 Ordinary 22/11/18 Proposed Plans 10.2018.296.1, E2018/88653 

35 **Site Plan: Mullumbimby Community Gardens – Men Shed**



Assessment:

5

1. INTRODUCTION

1.1. History/Background

10 Mullumbimby Community Garden (MCG) commenced in 2008 when Council leased about 2.4 hectares of public land to a not for profit group. The group evolved over time into an organisation that changed in November 2012 to the Mullumbimby Centre for Sustainable Living and Environmental Education inc. and in May 2014 it was officially shortened to Mullum S.E.E.D. inc. (Sustainability Education and Enterprise Development).

15

Mullumbimby SEED has partnered with the Mens Shed group for this proposed development on the Mullumbimby Community Garden (MCG) land.

5 The MCG is located on approximately 2.4 hectares of land. Much of which is under production for small crops and fruit as a community garden. An area of approximately 350 m² has been filled to a depth of up to 500 mm with unspecified fill. This area is located at the rear of the MCG on its western edge and is now proposed for the mens shed buildings. One of the sheds has already been built on the filled land without Council approval. It has a water tank but is otherwise not connected to services. It is this shed that the applicant is seeking approval to use. The balance of
10 the filled land is where the other three sheds are proposed.

A request for further information was issued by Council on 31 July 2018. The written response was received on 21 September 2018.

15 Council officers inspected the land on 21 August 2018 with the site representatives and agreed that the key issue that needed to be dealt with before any expensive studies etc was item Number 4 of the Council letter of 31 July 2018 - "Consistency with the Plan of Management for the site and Community Garden Policy 14/008." It was agreed the other technical matters can be addressed if we can reach an agreement on this initial matter. Despite this agreement the applicants response
20 of 21 September 2018 contained information about parking and a loading bay and supplied a letter from J and M Bashforth indicating that the fill used on the site was virgin excavated natural material (VENM) from the Leela Quarry at Myocum delivered on 20, 21 and 22 December 2017.

1.2. Description of the proposed development

25 This application seeks approval to:

- Construct three new sheds and approve the use of a fourth existing shed (already constructed) to be used by the Mens Shed organisation. All four structures are to be located
30 on fill that has been placed on the land without development consent.
- The proposal fits within the definition of a *Community Facility* and is permitted in the RE1 Public Recreation with Council consent. Filling of land also requires Council consent.
- The sheds have a combined area of 233 m². One car space (also to be used as a loading bay) is proposed adjacent to the sheds. Other parking requirements are to be absorbed into
35 general parking in Stuart Street. Access to the sheds will be through the main MCG entrance and then the main spine road.

1.3. Description of the site

Land is legally described as LOT: 22 DP: 1073165
Property address is 156 Stuart Street MULUMBIMBY
Land is zoned: RE1 Public Recreation under Byron LEP 2014
Land area is: Approximately 350 m² of a 29.2 hectare parent lot
40 Property is constrained by: Flooding

2. SUMMARY OF REFERRALS

Referral	Issue
S 94 Contributions Officer	No objections. No contributions for community facilities.
S64 / Systems Planning Officer	No objections. Sheds will not be connected to reticulated water and sewerage.
Engineers	Insufficient information supplied to undertake a proper assessment. No advice provided.
Env Health Officer	No concerns regarding ASS or land contamination. The applicant

Referral	Issue
	confirm that the total maximum number of patrons attending the shed per day is 10 and the total maximum number of patrons attending the community gardens per day is 25. The existing sewage management facility contained on the property is considered to be suitably designed to manage this amount of wastewater. If approved a condition should be imposed restricting use of the shed to 10 persons a day.

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

5 Having regard to the matters for consideration detailed in Section 4.15 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

10 The subject site is affected by the SEPP (Coastal Management) mapping in particular the Coastal Environment Area mapping due to its proximity to the Brunswick River. It is not affected by Coastal Wetland or Littoral Rainforest mapping.

15 The site is not affected by coastal hazards, does not contain native vegetation or Aboriginal heritage and does not affect access to the coast. The proposed development is a relatively small addition to the community gardens and has been designed, sited and will be managed to avoid an adverse impact on most of the issues nominated in the SEPP.

20 However, the site is in the Brunswick River floodplain and the application does not address “the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment”. It is inconsistent with the SEPP in this regard.

The proposed alterations and additions raise no issues in terms of other SEPPs.

4. Byron Local Environmental Plan 2014 (LEP 2014)

30 Byron LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with section 4.15 of the EP&A Act. 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 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 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 checked="" type="checkbox"/> 4.3 <input type="checkbox"/> 4.4 <input type="checkbox"/> 4.5 <input 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 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 checked="" 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

In accordance with Byron LEP 2014

Clauses 1.4 and 2.1 – 2.3

35 (a) The proposed development is defined in the LEP 2014 Dictionary as a Community Facility;

- (b) The land is within the RE1 Public Recreation according to the Land Zoning Map and Community Facilities are permitted with consent in this zone;
- (c) The proposed mens sheds will expand the range of activities on the MCG site and is considered to be consistent with the second zone objective, viz: "To provide a range of recreational settings and activities and compatible land uses." A mens shed is a use potentially compatible with a community garden.

Clause 4.3 Height of Buildings

10 Complies. The LEP prescribes a 9 metre height limit. The existing and proposed buildings will not exceed 5.5 metres in height measured from ground level (existing). This level assumes that the fill has not been placed on the land. The highest point of any building will be 4.85 metres above the finished fill level.

15 Clause 6.1 Acid Sulfate Soils

Complies. The site is mapped at its Rajah Road frontage as ASS class 4. Class 4 means that earthworks 2 metres below the natural surface of the ground must have regard to an ASS management plan. In this case no works are required that will penetrate more than 2 metres below the ground surface.

Clause 6.2 Earthworks

Does not comply. Earthworks means excavation or filling.

25 The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this case approximately 350 m2 of the site has been filled to a depth of about 500 mm above natural ground level. Advice has been received that the fill is virgin excavated natural material and has probably been on the site since December 2017. No information has been supplied to verify the compaction of the fill to appropriate standards. No information has been supplied on sediment and erosion controls that are (or were) in place. No information has been supplied on:

- a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
- 35 (b) the effect of the development on the likely future use or redevelopment of the land, or
- (d) the effect of the development on the existing and likely amenity of adjoining properties.

Clause 6.3 Flood Planning

40 Does not comply. This land is at or below the flood planning level. The sheds are proposed to have floor levels of 3.72 metres AHD, but the existing shed is at 3.76 metres AHD according to a survey provided. The applicant suggests that this is above the 10 year ARI flood level. The 100 year ARI flood level is about 4.4 metres AHD at the site.

There is insufficient information supplied for Council to be satisfied that the development:

- 45 (a) is compatible with the flood hazard of the land, and
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- 50 (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

The applicant has suggested verbally that this information can be provided if other policy matters are to Councils satisfaction.

Clause 6.6 Essential Services

Complies. The subject land has potable water connected though the mens sheds are to be serviced by tank water. Electricity to the men’s shed will be supplied by a roof top solar system that will be fitted in due course. Sewerage is not connected to the site. A communal on site system will be available to men’s shed users. On balance the services are acceptable. A condition is required to limit the amount of people using the site if the application was to be approved to ensure the onsite wastewater system does not exceed its capacity.

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

No draft EPI’s affect the proposal

6. Byron Shire Development Control Plan 2014 (DCP 2014)

Chapter B4 - Traffic planning, vehicle parking circulation and access

The proposed mens sheds will be accessed from Stuart Street via an internal road through the MCG. Sturt Street is adequate to access the sheds other than when the causeway is flooded. Internal access is via a hardstand road that is the main access through the MCG.

One parking space is proposed and this will also be used as a loading bay. Site users will be required to park in the general 22 space parking area at Stuart Street and walk to the mens sheds. Some users will no doubt travel by bicycle or walk from Mullumbimby urban areas.

The DCP requires a Community Facility of 233m² to have a minimum of 6 spaces (at 1 space per 40 m²). The applicant suggests that the 22 spaces on Stuart Street are adequate as the balance of the MCG activities requires only 16 spaces. However, the 22 spaces are not specifically dedicated to the MCG and are therefore often used by the Mullumbimby Tennis court users across the road.

If more spaces are to be created to cater for the mens sheds (say an additional 5) then this will be Councils responsibility as it owns Lot 22 and has a Plan of Management that states it will provide parking and amenities for users of community gardens.

It is likely that approving the four mens sheds with only one on site car space that is also used as a loading bay will be unsatisfactory for shed users that may be elderly or disabled. Many projects at the sheds will involve machinery and materials that require door to door drop off and pick up.

If Council were to approve this development it would need to require additional car spaces at the sheds (at least one space per shed, being a total of four spaces) and be prepared to construct additional car spaces in Stuart Street should the demand be more than the applicant anticipates.

The plans as submitted cannot be supported in relation to parking and material loading and unloading.

Chapter B14 – Excavation and Fill

The purpose of this Chapter is to limit and control the extent of excavation and fill within development projects for aesthetic, character, engineering and geotechnical reasons.

The application does not adequately address the following:

- d) *Resultant drainage characteristics and systems both on the site and in the locality*

will be consistent with Chapter B3 Services and with Water Sensitive Urban Design Principles.

e) *The need for engineering and support works is minimised;*

f) *Risk of geotechnical instability and/ or landslip is minimised.*

5

It also does not address:

10 *Where filling is proposed to mitigate flooding and stormwater issues, details are to be submitted with the application demonstrating the fill will not have a significant adverse impact on the flow characteristics of flood waters or detrimentally increase the level of flooding or stormwater on other properties or development.*

The filling does comply with the prescriptive requirement that it be less than one metre. Evidence has also been supplied that the fill is virgin excavated natural material.

15 However, no engineering advice is supplied on compaction or site preparation in relation to its ability to support the structures existing and anticipated.

There is insufficient information to support the application in relation to filling of this site.

20 **Chapter C2 – Areas Affected by Flood**

25 The purpose of this chapter is to identify requirements relating to development on flood liable land that are appropriate to the degree of flood hazard on that land. An underlying principle of this Chapter is that any new development or modifications to existing development should always, as far as practical, result in an improvement to the existing flood risk and in no circumstances should the flood risk be made worse.

30 The subject land is flood affected in flood events larger than a 5 year ARI peak flood level. The southern end where the sheds are proposed is slightly lower than some other parts of the site. The whole site is substantially affected in 100 year ARI peak flood levels with water levels at about 4 metres AHD. About 350 m² has already been filled to a depth of about 0.5 metres above natural ground level.

35 In the 100 year ARI peak flood event about 0.35 metres of flood water would affect the filled land which has a finished level of about 3.65 metres AHD. Minimal velocity is anticipated in this location. About 0.85 metres of flood water would affect those parts of the site that have not been filled.

40 The DCP states in relation to floor levels for non-habitable sheds or buildings in a low or intermediate flood hazard area that "All floor levels to be greater than or equal to the 10 year flood level plus 0.3m." On this site the 10 year flood level is approximately 3.4 metres AHD so floor levels should be set at 3.7 metres AHD. Council will consider flood proofing and emergency storage above the recommended flood levels to minimise damage that may occur during flooding. The plans provided show that by using concrete pavers as flooring the sheds can achieve a finished floor level of 3.72 metres AHD which complies with the DCP requirements for non-habitable sheds or buildings. The applicant has suggested that storage and electrical fittings will be kept at 4.4 metres AHD or higher to avoid being affected by floodwater. This meets Council requirements that additional freeboard be provided for flood sensitive materials, etc.

50 The applicant has not supplied an analysis of the impact of filling this land or shed construction in relation to the subject land or surrounding land. No information has been supplied on the ability of the proposed buildings to withstand flood inundation. It is not possible to conclude what will happen to the flood risk on neighbouring land should the development be approved and the filling remain as sited.

55

The applicant has already filled the land without consent or other approval from Council. As a minimum Council as land owner/ manager should have been advised of these works prior to them occurring as a matter of course and general courtesy.

5 A shed has been erected on the filled land without Council consent. Neither of these actions is appropriate on flood prone Council land where the applicant is aware that all buildings are to be temporary. Fill is regarded as a permanent alteration of the landform and in this case is a structural feature of the existing and proposed sheds.

10 There is insufficient information to support this application in relation to flooding. However further technical studies from a qualified engineer would enable Council to make an informed decision as to what impacts the fill may have. These have not been pursued due to the applications non compliance with the Community Garden Policy and the Plan of Management for the Mullumbimby Sports Fields.

15 The development does not raise any other specific issues under the other chapters within the Byron DCP 2014.

7. 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"/>

8. Environmental Planning & Assessment Regulation 2000 Considerations

25 If the buildings are approved conditions would apply to ensure buildings comply with the BCA.

9. 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. 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 trees are to be removed. The development will not have a significant adverse impact on the natural environment of the urban locality.
Built environment	The proposed sheds at the MCG are separated from the nearest dwellings by about 200 metres and there is vegetation that blocks the line of site. Noise from machinery will be audible but limited to daylight hours and not every day. The proposed development is low rise and will not have a significantly visual adverse impact on the built environment of the locality. However, flooding impacts on the built environment have not been adequately assessed.
Social Environment	The need for four sheds to service the mens shed group has been questioned by some members of the public. The traffic generated by the sheds may have minor impacts but Stuart Street is adequate to deal with it. Proposed parking on site is inadequate but this can be addressed. There are strong positive social impacts from a mens shed

	including mental welfare, sense of purpose, skill transfer and charity outcomes. The SEED group consider it a direction they wish to move in with the use of the site.
Economic impact	The proposal will have minimal economic impacts on the locality. If it reduces mental health issues for men then this will be a positive impact on the wider community.

Conditions can be imposed in terms of hours of construction work, hours of operation of machinery and removing any waste and the like.

5 11. The suitability of the site for the development

The site is considered suitable for ongoing use as a community centre in Ocean Shores. The alterations and additions are well suited to improving the function of the centre.

10 12. Submissions made in accordance with this Act or the regulations

The application was exhibited and five objections were received from the public and a submission from John Holland Rail.

JHR submission – excavation within 25 metres of the rail corridor – Excavation is not proposed

- 15 - Traffic management and rail crossings – No additional rail crossings are proposed. The existing access into Mullumbimby has signalled crossing in the event that trains are reinstated.
- Cranes in air space over rail corridors – No cranes will work near the rail corridor
- 20 - Stormwater management – the stormwater leaving the MCG drains towards Saltwater Creek and not the rail corridor
- Noise from trains- The mens shed will not be impacted by rail noise in the event that trains are reinstated.
- Fencing and access – the rail corridor is not currently fenced and can be accessed in many places – not relevant to this proposal.
- 25 - Lighting and building finishes – No lighting or building finishes will be close enough to impact the rail corridor in the event that trains are reinstated.

Other issues raised by the public

- 30 a. Already two mens sheds in Mullumbimby. Why do we need more? – There is no planning limit to how many mens sheds can exist in one town. Council assumes there is a demand for this proposed suite of sheds. It has also attracted public funding from other sources. It is presumed that it is a genuine mens shed organisation that has the support of the SEED Group as licencees of the site.
- 35 b. Not consistent with Council Policy No. 14/008 – Agreed. See below.
- c. Site has been filled illegally – Agreed. Consent was required and should have been obtained for filling.
- d. One shed has been built already illegally – Agreed. Consent was required and should have been obtained for shed construction.
- 40 e. Is fill clean and has it been compacted properly? – Information has now been supplied that fill is VENM and therefore likely to be clean. No information on the structural issues of compaction, etc has been supplied.
- f. What is the impact on flooding from the fill etc? – This is a concern. No information on the impacts of filling or buildings on flooding issues has been supplied.
- 45 g. This is a precedent as to how Council deals with its own land and illegal development – Agreed. Council needs to set an example to the community about following planning process and complying with controls.

- h. MCG runs illegal community events on the site – a Mens shed is a community facility and is permitted with consent on the subject land. If events are being held on the site this is a separate matter.
- i. A mens shed does not fit the definition of a community garden – Agreed. See below.

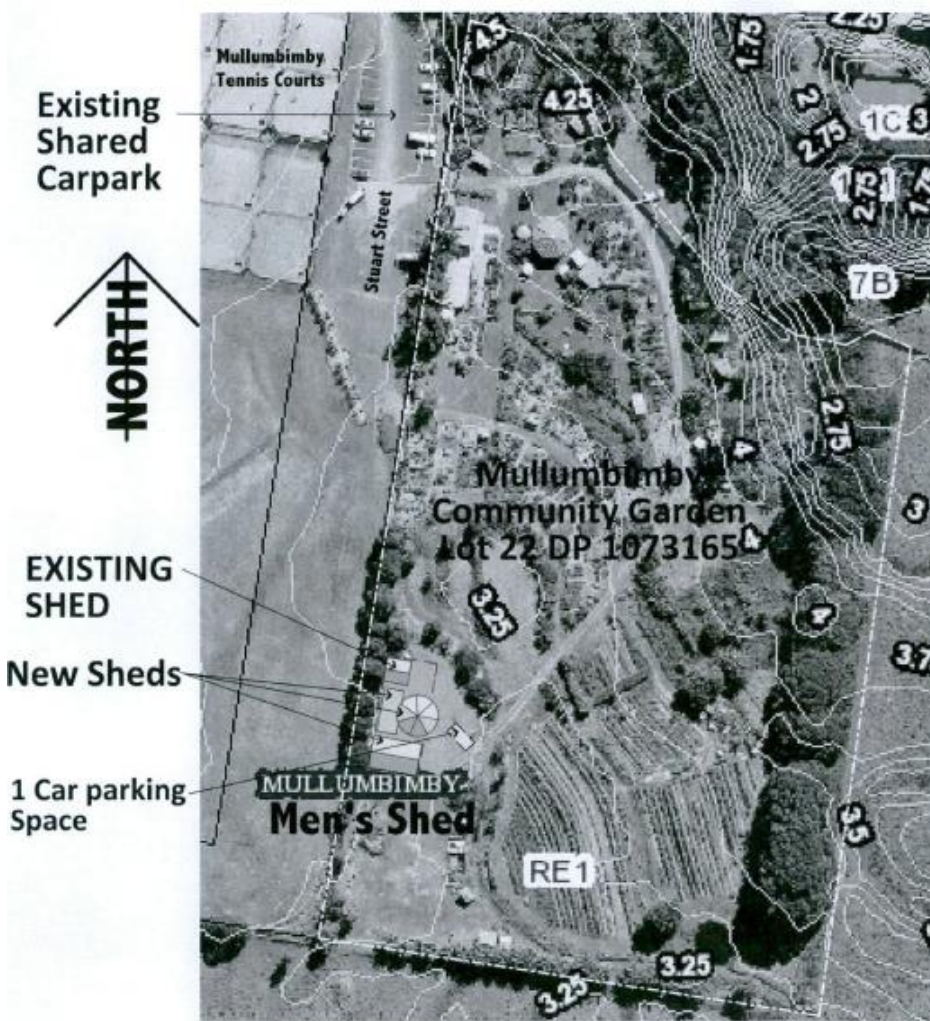
5

13. Other Issues

13.1 Plan of Management for Community Land - Mullumbimby Sports Fields (adopted 26 June 2008)

10

The applicant states that the men's shed is consistent with the definition of "General Community Use" and is located on land so designated.





- Comment:** The PoM designates a 2 hectare area on the proposed land use and land category maps (pages 21 and 22) that is different and apparently smaller than the area currently fenced off for use by the community garden. The survey supplied by the applicant shows that the area filled without Council approval and now proposed for use as a men's shed is located on land in the General Community Use category, which is then identified in the PoM as a Community Garden in terms of embellishment.
- 5
- 10 The applicant submits that this is consistent with the PoM in that it provides “facilities on the land to meet the current and future needs of the local community and wider public”. It is noted the PoM then nominates the area to be embellished for a Community Garden. It is considered the proposed Men Shed is not a use specifically anticipated in the PoM, but this is not considered as a reason for refusal.
- 15
- It is also noted that the community garden has now moved south (about 40 metres) beyond the area designated in the PoM for the Community Garden. The PoM when it is reviewed should be amended to ensure the SEED lease area for the Community Garden corresponds accordingly. Alternatively, the size of the community garden back could be reduced to comply with the area as

per the PoM. It should also clearly reflect the broader anticipated range of community uses on the site if that is what Council wants to occur here in the future (eg Men Shed) if appropriate.

13.2 Community Garden Policy 14/008

5 The applicant provides details of how a men's shed will assist in attaining the objectives of the use of the site as a community garden. In relation to the Policy definition of Community Garden -
 10 *"Community Garden – a not for profit, community managed enterprise licensed by council on public land for the primary purposes of growing fresh produce, providing recreational opportunities and educational activities. As multi-functional spaces, community gardens provide for a range of social, environmental and economic needs."*

15 The applicant states - "While the BSC Community Garden Policy refers to gardening as the main activity of a community garden, it also acknowledges that there are other benefits to be met – social, environmental & economic and Mullum SEED does this by offering a wide range of activities predominantly with environmental outcomes."

Comment: It is agreed that there is an overlap between some of the activities of the men's shed and some of the activities of the community garden. However, it is not agreed that a men's shed is a subset of the definition of community garden and the overlap is not sufficient to make them appear to be the same land use to the community. On balance they are different land uses. On this basis there is a reasonable community expectation that a policy outlining the location and circumstances in which a community garden can occur would not be used to facilitate a men's shed.

25 Annexure 2 of the Policy states on page 7 -
 a) *Gardeners must ensure all structures erected on the site are of a removable nature and located completely within the boundaries of the site. Removable nature would ensure relocation can be practically achieved in 12 hours by the use of not more than one 4WD vehicle for the entire relocation procedure and include the removal of all imported elements, including retaining walls, foundations and supports,*

35 The applicant states- "All buildings on site used by all groups are in compliance with BSC permits and approvals."

Comment: This assessment is not accurate. The proposed men's shed is to be located on fill deposited on the site without Council approval. One of the three sheds is already located on the site and is being used without Council approval. The fill is a structural support component of the sheds both existing and proposed. Fill is not in this case temporary and cannot be moved within 40 12 hours by one 4WD vehicle. The existing shed has not been shown to be of a removable nature as it will be fitted with solar electricity and tank water. The three other proposed sheds are to include a roof top solar system and will not be constructed so as to be removable within 12 hours. On balance it is not considered the proposed men's shed development is consistent with Council's policy for this land in relation to structures being of a removable nature.

14. Public interest

The proposed development has a mixed impact on the public interest issue as follows:
 50 A. A mens shed is a worthwhile community facility that has been successful in many locations in Australia with promoting mental and physical health messages, welfare, charity and training / skill transfer. These matters are positive outcomes in the public interest.
 B. The filling and shed construction already undertaken without consent on Council land is a serious matter. It is in the public interest that Council sets an example to the community about following planning process and complying with controls.

5 C. A Council Policy on Community Gardens is a clear statement of Council intent that should be followed or amended if it is no longer relevant. It should not be disregarded by permitting a development that it inconsistent with the public perception of what should be happening on a community garden site. It is in the public interest for Council after adopting a policy for land it manages to comply with it. .

10 The public interest is served when a community participates in creating policy and planning controls and then they are followed by both the community and Council wherever possible. In this case Council can revisit its Community Gardens Policy, Plan of Management, etc and publicly modify them to conform with different expectation about the subject land (if this is the case). A proper planning application can then be lodged to achieve development consent under the existing planning controls.

15 **15. Section 1.7 of the EP&A Act – Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994**

20 Having regard to section 1.7 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 proposal. It is not critical habitat.

16. Developer Contributions

As a community facility no section 7.11 contributions apply.

25 **17. Water & Sewer Levies**

As a community facility not connected to reticulated water or sewerage no water and sewer charges apply.

30 **18. CONCLUSION**

The proposed development is a permitted use under Byron LEP 2014 however it is

- 35 - Inconsistent with SEPP (Coastal Management)
- Inconsistent with Byron LEP 2014 Clause 6.2 Earthworks and Clause 6.3 Flood Planning
- Inconsistent with Byron DCP 2014 in relation to parking, earthworks and flooding
- 40 - Inconsistent with Community Garden Policy 14/008
- Not in the public interest

The application is recommended for refusal.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.29 **A proposal from the community to name a section of Heritage Park Mullumbimby 'Maslen Arboretum'**

5 **Directorate:** Infrastructure Services
Report Author: Andrew Erskine, Open Space Technical Services Officer
File No: I2018/1521
Theme: Infrastructure Services
10 Open Space and Recreation

Summary:

15 A proposal has been received from the Heritage Park Landcare Coordinator to formally identify the botanical area of Heritage Park in Mullumbimby as the Maslen Arboretum. The Maslen family were responsible for the formation of the park in 1980, and carried out much of its maintenance till 2003. A volunteer Landcare group now maintain the plantings and have made this request to honour the Maslen's for the significant arboretum left to this community.

20 To formalise this naming, Council's Policy is to exhibit the proposal for 28 days, at the end of the exhibition period any submissions are to be compiled with a report to Council for consideration. In the event that naming is supported, an application is to be made to the Geographic Naming Board.

25 The proposal to name the vegetated section of Heritage Park as Maslen Arboretum is in keeping with guidelines established by the GNB '*The person commemorated should have contributed significantly to the area around the geographic feature or locality. When such a name is applied, it shall be given posthumously, at least one year after the decease of the person*'. Both Rus and Beryl Maslen have passed.

30 The reserve as a whole was formally recognised by the Geographic Naming Board as Brunswick Valley Heritage Park in 1986.

35

RECOMMENDATION:

That in relation to the request to name a section of Heritage Park, Mullumbimby to 'Maslen Arboretum', that:

1. **Staff proceed to exhibit the proposal for 28 days as per Council's Naming of Public Places and Community Facilities Policy;**
2. **Staff report any submissions regarding the proposal to Council following this period; and**
3. **Should no objections be received for the proposal, that the new naming be adopted and submission made to the NSW Geographical Names Board for approval and registration.**

40

Report

Letter to Council from Landcare coordinator Diana Hughes

5 *I would like to propose a change of name for the botanical area of Heritage Park in Mullumbimby to the Maslen Arboretum. The Maslen family lived in Mullumbimby until 2003 and were responsible for the formation of the park, and its maintenance, until the time Landcare took over in 2007 and volunteers became responsible for its ongoing maintenance.*

10 *I have been the Landcare coordinator since 2014 and have personally taken a deep interest in its present-day appearance, and in planning for its future. I believe in its immense value to the community.*

15 *My understanding is that Heritage park is Crown Land, operating as a botanic reserve trust, with Council acting as land manager and Brunswick Valley Landcare Heritage Park Locality Group as the volunteer group via a MOU.*

Some background to the Maslen involvement as requested from staff:

- 20
- *In 1979 a proposal was put to Council for this empty river bank site to become a caravan park. Six poinciana trees, planted in 1935, were the only trees (although I suspect some of the riverbank vegetation could be original - Acacia bakeri included). Two Ficus microcarpa were retained, as they'd been planted in 1925, and I wonder if they are the ones beside the children's playground?*
- 25
- *The Byron Flora and Fauna Conservation Society (BFFCS) counter-proposed a botanic park, which was agreed to by Council. The Maslen family were founding members of this Society which was also directly responsible for the dedication of Brunswick Heads and Broken Head Nature Reserves, and heavily involved in the dedication of the Border Ranges National Park and the anti-woodchip campaigns of the north coast. Brunswick Valley Heritage Park is listed in the Directory of Australian Botanic Gardens, updated August 2016, and has been awarded many times by various Australian and international organisations.*
- 30
- *A letter of 18/7/1980 to the Brunswick Heads Progress Association says: 'It is intended that representative examples of all local trees and shrubs, walking paths, seating, picnic area, children's playground and relevant interpretative material be eventually provided.' Furthermore: 'It has come to notice that a set of Aboriginal ceremonial stones, originally from a location of Gray's Lane, Tyagarah, are in your Association's safe keeping. We therefore make formal request that these stones be released into our custody for permanent setting up in the above Park as part of the district heritage.'*
- 35
- *The Park was opened on 7 June 1980 by Stan Robinson, Mayor. In a letter to the Keep Australia Beautiful Program of 1998, the stated objectives of the park project included the establishment of an arboretum of local flora, with particular emphasis on rainforest species; to regenerate the banks of the Brunswick River and to provide habitat and food for native species of fauna which are dependent on fruits and foliage of local native species. Community education programs to raise awareness of local wildlife issues were undertaken. Moves were taken to establish wildlife corridors linking pockets of remnant bushland to the Brunswick River.*
- 40
- *It had always been envisioned that tree identification play a major role. I am happy to say that all trees are identified. Volunteer John Tann, has put together a document containing maps locating all species, including a number of rare, endangered and*
- 45
- 50
- 55

vulnerable trees. It would appear that the majority of plants are from the Richmond, Brunswick and Tweed River valleys as initially planned. There are over 260 species listed. A 'taster' of what this document will provide is attached. Hopefully by late August it will be ready for publication.

5

- The National Botanic Gardens, Canberra, considers our park a significant contribution towards the preservation of Australian flora, in addition to the well-being of local fauna by provision of habitat and food.

10

- It is interesting to note that the original town planning of 1897 provided for the establishment of botanical gardens. The site of the proposed caravan park was considered admirably suited to the establishment of such a botanical park.

15

- In 1992 Rus Maslen created much interest when he was advised that a plant growing freely in the park might help arthritis sufferers. He identified the plant as *Centella asiatica* (*Gota kola*) and tests over a couple of years, with case histories, fuelled the debate. Rus wrote a paper on the subject.

20

I have been honoured to be the keeper of a large file of information on Heritage Park. In addition, son Peter Maslen of Gulmarrad, has an archive and having been involved since the start, has a good anecdotal history. Beryl Maslen passed away on 8th June, and her husband Rus in June 2002. Ruth Fox, a former active Secretary of the BFFCS, also passed away last month. These were the last of the original team that created the park. The Heritage Society also has material.

25

I have an undated copy of what appears to be a Management Plan, circa 2007, which might have originated in Council. I consider it an important document.

30

For the numerous reasons mentioned above, I put forward the suggestion to re-name the botanic section of Heritage Park, Maslen Arboretum. I hope Council will favourably consider my request for this approval.

Financial Implications

35

Not applicable.

Statutory and Policy Compliance Implications

40

The proposal complies with protocols established by the Geographic Naming Board.

Report No. 13.30 **The Esplanade, New Brighton**
Directorate: Infrastructure Services
Report Author: Evan Elford, Team Leader Infrastructure Planning
File No: I2018/1356
5 **Theme:** Infrastructure Services
 Local Roads and Drainage



Summary:

10 The purpose of this report is to inform Council of the outcomes from Council Resolution **18-329** and the progress and issues associated with the implementation of parking management at The Esplanade, New Brighton.

RECOMMENDATION:

1. **That, subject to a suitable funding source being identified in the next 2018/19 quarterly budget review or being identified the 2019/20 budget:**
 - a) **Implement parking management Option 1 within the area hatched blue in Figure 1 of this report, being from No.1 to No.13 The Esplanade, New Brighton as detailed on drawing No. 2668-CP1/A and 2668-CP2/A at an estimated cost of between \$75,000 and \$90,000.**
 - b) **Restrict parking to a maximum of 4hr between the hours of 9.00am and 6.00pm daily and include restrictions for “No Camping”.**
2. **That Council consider the provision of a budget of \$20,000 as part of the 2019/20 budget process to advance further investigation and concept design preparation of parking options and associated indicative costs in the New Brighton beach area generally.**
3. **That Council receive a further report within 6 months after the implementation of Option 1 on the performance of the parking management measures and additional parking options for the New Brighton beach areas.**

Attachments:

- 20 1 The Esplanade access and parking options, E2018/88569 
- 2 The Esplanade - potential offset parking scheme in North Head Road.pdf, E2018/82957 

Report

At Council meeting of 24 May 2018, in response to a Notice of Motion in relation to parking control through regulatory signage at The Esplanade, New Brighton (area shown hatched blue in Fig 1 – Locality Plan), Council resolved as follows:

5

18-329 Resolved that Council expedite the installation of regulatory signage as per Res 18-090 and if the current budget is exhausted the 2018-2019 budget is used and signs installed in the 1st quarter of 2018-2019 financial year.

10



Figure 1. Locality Plan.

Staff have completed a site survey to enable a design to be completed for implementation of the regulatory signage to manage parking.

15

A street sign, “No Through Road” signage and a new sign advising the road is unsuitable for large RV’s and caravans have been installed at the entrance to this section of road.

Anecdotal advice from residents indicate that with the current haphazard parking arrangement there can be anywhere up to 50 cars parked in this section of roadway at certain times of the year and when this occurs , waste collection service vehicles and vehicles cannot access properties.

20

Two design options to manage access and parking have been prepared for Council’s consideration. (See Attachment 1 - E2018/88569).

25

Design Option 1 involves undertaking road works to provide a gravel surfaced roadway and parking bays for parallel parking spaces delineated by bollards and regulatory signage. The restrictive nature of this part of The Esplanade limits the options for parking arrangements to anything other than parallel parking in order to maintain 2 way traffic flow with 2.5m wide lanes.

5 The proposed works also include the construction of a small retaining wall structure and gravel surfaced vehicular manoeuvring area at the southern end of the street which is considered necessary works to minimise the amount of damage to local properties that is occurring from vehicles turning in private driveway areas. Whilst this area will provide a level of improvement to existing turn around options it falls well short of any applicable standard usually applied in these cases due to the restricted road reserve width from dune encroachment at this location. Waste collection trucks and other similar large vehicles will be required to either enter or leave in reverse as there is no ability to turn within the road reserve.

15 Consideration was given to providing a larger retaining structure at the end of the street to provide a larger turning head area or cul-de-sac by way of a "Y" or "T" shape standard however, whilst the work could be undertaken in the road reserve, it still would have required significant excavation of approximately 10 metres into the frontal dune system and a retaining structure in the order of 2 to 3 metres high. Accordingly, provision of a larger turn area was determined to be unacceptable due to visual amenity and the potential impact on the dune system.

20 Option 1 will provide for up to 10 car parking spaces interspersed between existing trees and private driveways and will require the installation of approximately 170 bollards and 34 regulatory signs in order to manage parking and for enforcement officers to be able to legally enforce the parking restrictions. The approximate cost for this option is outlined below under financial implications.

25 Design Option 2 involves a substantially reduced level of road works apart from that required to provide a gravel surfaced vehicular manoeuvring area at the southern end of the street including the construction of a small retaining wall structure as proposed in Option 1. The provision of improved turn around areas at the southern end of the street is considered necessary for either option albeit the facility would not be to any current standard.

30 Option 2 provides for a 2 lane roadway only without provision for any parking, delineated by bollards and regulatory signage. This option reduces the number and extent of bollards and regulatory signage to be installed. The approximate cost for this option is outlined below under financial implications.

35 Option 2, if adopted, will have the greatest impact on parking availability for the local community and place additional parking pressures on other local streets and nearby areas.

40 There is currently no formed or regulated parking available in this part of New Brighton.

45 The implementation of timed parking or other parking demand management schemes may become necessary to manage parking at New Brighton Beach areas in the future.

50 A high level concept plan for parking has been developed for North Head Road between Strand Avenue and Brunswick St to inform Council of possible parking options and costs associated with providing regulated in this area generally. Concept designs could be developed for other roads in this area to identify other parking options and to determine likely costs associated with improvement works which may be necessary to enable parking management to be successfully undertaken. (See Attachment 2 - E2018/82957)

55 Due to the increased pressure on surrounding streets and in order to resolve the current access problems being experienced by residents, restricting parking altogether from The Esplanade is not

considered an appropriate course of action noting the popularity and high demand for parking for beach access at this location.

5 Accordingly, it is recommended that Council implement Option 1 as the preferred option to manage parking in this location and that due to the high demand for parking in this location, Council consider imposing timed parking of 4 hr duration between the hours of 9am and 6pm daily as a further parking management measure together with restrictions for “No Camping”.

Financial Implications

10 All of the works under either Option 1 or 2 are new works and therefore cannot be funded from existing maintenance budgets. There is currently no identified budget in the 2018-2019 financial year to implement any of these works.

15 Funding options may be considered as part of the next quarterly review and if no funding options are identified, the project could be considered for funding as part of the 2019/20 budget process.

20 The indicative cost for Option 1 is in the order of \$75,000 to \$90,000 including the cost of the small retaining wall structure and the manoeuvring area which is estimated to cost approximately \$12,000 alone.

The indicative cost for Option 2 is in the order of \$20,000 to \$30,000 including the cost of the small retaining wall structure and the manoeuvring area proposed under Option A.

25 The indicative cost for formalising parking in North Head Road between Strand Ave and Brunswick St is in the order of \$220,000 to \$300,000 subject to detailed investigation and design.

30 A budget of \$20,000 would be required to advance further investigation and concept design preparation of parking options and associated indicative costs in the New Brighton beach area generally

35 Enforcement of parking regulations will be required if the works are to be effective in managing parking issues and this will need to be incorporated into existing work programs, however, due to the small area being managed it is not considered there will be any major impacts on current enforcement activities or budgets.

Statutory and Policy Compliance Implications

40 Roads Act.

Report No. 13.31 **Asbestos Policy**
Directorate: Infrastructure Services
Report Author: Geoff Bailey, Work Health and Safety Officer
File No: I2018/1912
5 **Theme:** Infrastructure Services
 Facilities Management

Summary:

10 This Report has been prepared to enable Council to consider and adopt an Asbestos Policy.


15 The attached draft *Asbestos Policy* is an over arching document that provides information and guidance for Byron Shire staff and the community and does not negate the requirement for training, licensing (where required by legislation), the development of asbestos registers or management plans.

20 The draft Asbestos Policy has been drafted based on the LGNSW Model Asbestos Policy.

RECOMMENDATION:

That Council adopt the Draft Asbestos Policy (Attachment 1 - #E2018/31878).

Attachments:

25 1 Byron Shire Council Asbestos Policy 2018, E2018/31878 

Report

5 Asbestos has long been a health issue within the community and the incidence of asbestos related health issues has been rising in recent times with the advent of lifestyle DIY TV shows encouraging home owners to renovate and not always being aware of the hazards associated with the work.

10 Also the unchecked importation of asbestos containing materials and other exposures has meant that greater effort must be made by regulatory bodies to ensure the safety, health and wellbeing of the community.

15 A Model Asbestos Policy was developed by Local Government NSW (LGNSW), in partnership with the Heads of Asbestos Coordination Authorities (HACA) and provided to NSW Councils in May 2013 by the Office of Local Government under section 23A of the *Local Government Act 1993* (NSW) as a guideline to be considered by councils in carrying out their functions. The 2012 Asbestos Policy has since been updated and that updated 2015 version provided to Councils in 2018.

20 An internal staff working group was established at the direction of the Council's Workplace Health and Safety (WHS) Committee and using the Model Asbestos Policy the attached contextualised Byron Shire Council Asbestos Policy 2018 was developed.

The policy has been out for consultation within the Council's staff for 28 days and was endorsed by the Executive Team on 3 October 2018.

25 The policy is an over arching document that provides information and guidance for Byron Shire staff and the community and does not negate the requirement for training, licensing (where required by legislation), the development of asbestos registers or management plans.

Financial Implications

30 There are no additional financial implications envisaged for Council over what may already exist for the management of asbestos in the community.

Statutory and Policy Compliance Implications

35 Compliance with the provisions of section 23A of the *Local Government Act 1993 (NSW)*

Report No. 13.32 **Pedestrian safety improvements - South Beach Road pathway, Brunswick Heads**

Directorate: Infrastructure Services

Report Author: Evan Elford, Team Leader Infrastructure Planning

5 **File No:** I2018/2152

Theme: Infrastructure Services

Open Space and Recreation

10 **Summary:**

Brunswick Heads Progress Association have requested Council undertake pedestrian safety improvement works at the existing pathway linking South Beach Road and Simpsons Creek footbridge, Brunswick Heads.

15 The proposed works involve the installation of bollards and alternative vehicular access arrangements at an estimated cost of \$10,000.

20 Approval to fund the works from Sect 94A levy reserve is sought.

RECOMMENDATION:

That Council allocate \$10,000 from the Sect 94A levy reserve to provide bollards to the existing pedestrian pathway and adjustments to vehicular access arrangements to the crown reserve and scout hall at South Beach Road, Brunswick Heads for pedestrian safety improvement.

25

Report

5 Following a request from the Brunswick Heads Progress Association, a site inspection was undertaken to determine the best solution to manage pedestrian and vehicles currently using the pathway between South Beach Road and Simpsons Creek footbridge, Brunswick Heads which is creating a dangerous safety issue for pedestrians.

10 Pedestrian safety can be improved by excluding vehicles from accessing the pathway through the installation of bollards at the entrance to and along the southern side of the pathway.

15 However, the entrance to the pathway is currently being used for vehicular access to the crown reserve area and the scout hall and by the Brunswick Heads Surf Club for access to launch watercraft from the small beach area behind the scout hall. Vehicles are forced to use the pathway entrance as a consequence of an open drainage channel which drains from the pathway south along South Beach Road which restricts vehicular access options.

20 Accordingly, the safety improvement works will need to incorporate the installation of a small pipe culvert crossing or concrete driveway apron graded to provide and maintain existing drainage paths whilst providing a separate vehicular access which when combined with suitably placed bollards will restrict vehicles from the pathway altogether.

25 The final design will be developed in consultation with the Brunswick Heads Progress Association, Brunswick Heads Surf Club and Brunswick Heads Scouts to ensure access and use arrangements are managed.

Completion of the works prior to Christmas is considered a high priority from a public safety aspect and Council is requested to endorse the recommendation noting that there would only be about 4 weeks to procure materials and complete construction which could be problematic.



Financial Implications

The proposed works would be additional to the works programs currently adopted in Council's budget.

5

It is estimated that to design, procure and complete all these works would cost approximately \$10,000.

10

Council's Developer Contributions Officer has indicated that funds for this project could be made available from the Section 94A levy for Brunswick Heads beach and river access.

Statutory and Policy Compliance Implications

There are no statutory or policy compliance implications that would exclude the provision of these works.

15

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 14.1 Report of the Sustainability and Emissions Reduction Advisory Committee Meeting held on 25 October 2018

5 **Directorate:** Sustainable Environment and Economy
Report Author: Hayley Briggs, Sustainability and Emissions Reduction Officer
File No: I2018/2104
Theme: Sustainable Environment and Economy
10 Planning Policy and Natural Environment

Summary:

15 This report provides the minutes of the Sustainability and Emissions and Reduction Advisory Committee Meeting held on 25 October 2018.

RECOMMENDATION:

20 1. That Council note the minutes of the Sustainability and Emissions Reduction Advisory Committee Meeting held on 25 October 2018.

2. That Council adopt the following Committee Recommendation:

Report No. 4.4 Climate Emergency Declaration
File No: I2018/1987

Committee Recommendation 4.4.1

1. That the Sustainability and Emissions Reduction Advisory Committee provides the following input into terms of reference, membership for, and where Council has a role to play in a community-led Climate Emergency Guidance Group as it develops a Shire-wide Community Climate Emergency Plan:

a) That the Terms of Reference for the community-led climate change adaptation plan consider:

- i) resilience in coastal erosion risk & sea level rise areas
- ii) agriculture
- iii) heat waves
- iv) bush fires
- v) floods
- vi) social dislocation / impacts
- vii) food security.

b) That the following be invited via newspaper ad, email, or direct contact to the first meeting to be held in about a month with Cr Coorey to be champion of meeting:

- Foundation for Rural & Regional Renewal (FRRR),
- Zero Emissions Byron (ZEB),
- disaster and emergency response,
- social services.

- c) **That the Scope be:**
 - i) **implementation plan/ action checklist;**
 - ii) **acknowledging and supporting work already being done by existing mitigation groups (including ZEB and Community-Owned Renewable Energy Mullumbimby [COREM])**
 - iii) **identifying gaps.**

- d) **That Council support through facilitation of the initial meeting and identify desirable membership that covers the Shire and areas listed in the first dot point.**

5

Attachments:

- 1 Minutes 25/10/2018 Sustainability and Emissions Reduction Advisory Committee, I2018/2005 [⇒](#) 

10

Report

5 The attachment to this report provides the minutes of the Sustainability and Emissions Reduction Advisory Committee Meeting of 25 October 2018 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2018/10/SERAC_25102018_AGN_878_AT_WEB.htm

Committee Recommendation

10 The committee recommendations are supported by management and are provided in the attachment to this report.

Financial Implications

15 As per the Reports listed within the Sustainability and Emissions Reduction Advisory Committee Meeting of 25 October 2018.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Sustainability and Emissions Reduction Advisory Committee Meeting of 25 October 2018.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.2 Report of the Coastal Estuary Catchment Panel Meeting held on 27 September 2018

5 **Directorate:** Infrastructure Services
Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services
File No: I2018/1951
Theme: Infrastructure Services
10 Emergency Services and Flood Management

Summary:

15 The attachment to this report provides the minutes of the Coastal Estuary Catchment Panel Meeting held on 27 September 2018 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Coastal Estuary Catchment Panel Meeting held on 27 September 2018.

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

Report No. 4.1 Water Sensitive Urban Design Policy Strategy
File No: I2018/957

Committee Recommendation 4.1.1

1. That the Panel note the report and commend Council for undertaking this initiative.
2. That staff circulate questions from the presentation to Panel members and Panel provide feedback within 2 weeks.
3. That the Panel will have a workshop to discuss questions in the end of October 2018.

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

Report No. 4.2 Belongil Entrance Opening Strategy Update
File No: I2018/1654

Committee Recommendation 4.2.1

That the Panel note the report.

Attachments:

- 25 1 Minutes 27/9/2018 Coastal Estuary Catchment Panel I2018/1719, I2018/1880 

Report

5 The attachment to this report provides the minutes of the Coastal Estuary Catchment Panel Meeting of 27 September 2018 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2018/09/CECP_27092018_AGN_813_AT.PDF

Committee Recommendation

10 The committee recommendations are supported by management and are provided in the attachment to this report.

Financial Implications

15 As per the Reports listed within the Coastal Estuary Catchment Panel Meeting of 27 September 2018.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Coastal Estuary Catchment Panel Meeting of 27 September 2018.

Report No. 14.3 **Report of the Water, Waste and Sewer Advisory Committee Meeting held on 1 November 2018**

Directorate: Infrastructure Services
Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services
File No: I2018/2150
Theme: Infrastructure Services
 Water Supplies

5

Summary:

10

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 1 November 2018 for determination by Council.

15

RECOMMENDATION:

1. That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 1 November 2018.

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

Report No. 4.1 Effects of water mining in Byron and surrounding shires on groundwater resources

File No: I2018/1920

Committee Recommendation 4.1.1

1. That the committee note the report.
2. That Council request information from surrounding shires, Rous County Council, Southern Cross University and DOI on:
 - a) Current water extraction quantities and locations
 - b) Research on short term and long term impacts of these activities on aquifers and ground water resources.

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

Report No. 4.2 Inflow and Infiltration Update

File No: I2018/1957

Committee Recommendation 4.2.1

1. That the Committee note the report.
2. That the Inflow and Infiltration staff ensure that there is communication plan established for the project.
3. That staff investigate the potential compliance aspects around Inflow and Infiltration defects.

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

**Report No. 4.3 Minutes of 13 September 2018 meeting - Water, Waste and Sewer
Advisory Committee**


File No: I2018/2020

Committee Recommendation 4.3.1

That the Water, Waste and Sewer Advisory Committee note the minutes of 13 September 2018 meeting which were reported to 18 October 2018 Council meeting.

Attachments:

5

1 Minutes 01/11/2018 Water, Waste and Sewer Advisory Committee, I2018/2022 

Report

5 The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 1 November 2018 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2018/11/WWSAC_01112018_AGN_803_AT.PDF

Committee Recommendation

10

The committee recommendations are supported by management and are provided in the attachment to this report.

15 Financial Implications

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 1 November 2018.

20 Statutory and Policy Compliance Implications

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 1 November 2018.

CONFIDENTIAL REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 16.1 **CONFIDENTIAL - Request for review of Footpath Dining Fees**
Directorate: Sustainable Environment and Economy
5 **Report Author:** Vicki Viel, Business Support & Community Enforcement Program Leader
File No: I2018/2038
Theme: Sustainable Environment and Economy
 Economic Development

10 **Summary:**

15 This report was prompted by a request from Mr Fady Soliman, owner of Safya Café, located at 19-23 Lawson Street, Byron Bay. Mr Soliman has requested Council review the fees currently being charged to his business for footpath usage under Section 125 of the Roads Act 1993, pursuant to the Byron Shire Council 2018/19 Fees and Charges, adopted 28 June 2018.

20 Following a protracted dispute between Council and Mr Soliman in relation to the payment of overdue fees relating to his business' continued use of Council's road reserve for footpath dining, Mr Soliman requested a review of the fees and charges currently in place for his business in the Byron Bay precinct, with the view to obtaining a reduced rate.

25 Council Officers have advised Mr Soliman that the current fees and charges applied to his business are in accordance with the fees and charges adopted by Council for the relevant financial year and are consistently applied to all approved users of Council's road reserves.

RECOMMENDATION:

- 30 1. That pursuant to Section 10A(2)(a) and (b) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Request for review of Footpath Dining Fees.
- 35 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
a) personnel matters concerning particular individuals (other than councillors)
b) discussion in relation to the personal hardship of a resident or ratepayer
- 40 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:
the report pertains to personnel financial matters concerning a particular individual

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.2 **CONFIDENTIAL - 2017-0069 RFT Byron Shire Council Bioenergy Projects – Bankable Feasibility Study**

5 **Directorate:** Infrastructure Services
Report Author: Dean Baulch, Principal Engineer, Systems Planning
File No: I2018/1892
Theme: Infrastructure Services
10 Sewerage Services

Summary:

15 Pursuant to the Byron Shire Council Resolution **18-395**, a Request for Tender for the Bankable Feasibility Study for a Bioenergy Project, to obtain suitable pre-design, costings and business case suitable to advance the design and implementation of a Bioenergy Facility for Byron Shire was sort from previously qualified organisations as a result of an Expression of Interest process.

20 The Request for Tender was advertised from 28 August 2018 to 09 October 2018 Tenders were received from the following organisations:

- 1. Aquatec Maxcon
- 2. HZ-Inova
- 3. Skala
- 25 4. Stark Group

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 2018-0069

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RECOMMENDATION:

- 35 1. **That pursuant to Section 10A(2)(c), (d)i, (d)ii and (d)iii of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report 2017-0049 RFT Bioenergy Facility.**
- 40 2. **That the reasons for closing the meeting to the public to consider this item be that the report contains:**
 - a) **information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business**
 - b) **commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it**
 - c) **information that would, if disclosed, confer a commercial advantage on a competitor of the council**
 - 45 d) **information that would, if disclosed, reveal a trade secret**
- 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:**
 - a) **disclosure could adversely impact Council's position in any upcoming negotiations.**

55 **OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:**

RECOMMENDATION:

- 5 1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, 2017-0049 RFT Bioenergy Facility are to be treated as confidential as they relate to matters specified in s10A(2)(c), s10A(2)(d)i, s10A(2)(d)ii and 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.

10 **Attachments:**

- 1 Confidential - 24.2018.72.1 Bio Energy Facility - RFT Contract 2017-0069 Tender Evaluation Plan - Bankable Feasibility Study, E2018/88096
- 15 2 Confidential - 24.2018.72.1 Bio Energy Facility - RFT Contract 2017-0069 Tender Evaluation Report - Bankable Feasibility Study, E2018/88099

Report No. 16.3 CONFIDENTIAL - TENDER 2018-0033 - PUBLIC AMENITIES CLEANING SERVICES

Directorate: Infrastructure Services
Report Author: Michael Matthews, Manager Open Space and Resource Recovery
File No: I2018/2128
Theme: Infrastructure Services
Sewerage Services

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10 **Summary:**

On 23 June 2018 the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2018-0033 Public Amenities Cleaning.

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The Request for Tender was advertised from 7 July 2018 to 6 August 2018. Tenders were received from the following organisations:

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- Advanced National Services
- Deep Water Cleaning PTY LTD
- House with No Steps
- The Trustee for ASF Cleaning Trust
- TJS Services Group PTY LTD

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The Tender panel have assessed submissions in accordance with the provisions of the Local Government (General) Regulations 2005.

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The Tender Panel has determined that the Tender specifications and activity schedule with respect to the pricing returnable scheduled is significantly ambiguous as to result in the Tender panel being unable to satisfactorily assess the Qualitative Price criteria. The price criterion was set with a 35% weighting in accordance with the evaluation plan.

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In addition, the Tender Panel have concluded that the levels of service set within the performance specification and frequency schedule likely exceed current levels of service for some or more of the facilities, resulting in probable budget exceedances.

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It is recommended that a revised specification be established and that the specification be separated into separable portions aligned with budget funding source. It is also recommended that the current facility level of service and service schedule form the basis of the performance specification.

RECOMMENDATION:

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1. That pursuant to Section 10A(2)(c) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report TENDER 2018- 0033 - PUBLIC AMENITIES CLEANING SERVICES.

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2. That the reasons for closing the meeting to the public to consider this item be that the report contains:

- a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business**

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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:

Commercial information from supply competitors

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OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:

RECOMMENDATION:

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1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, TENDER 2018- 0033 - PUBLIC AMENITIES CLEANING SERVICES are to be treated as confidential as they relate to matters specified in s10A(2)(c) of the Local Government Act 1993.

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2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

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1 2018-0033 Public Amenities Cleaning Services Tender Evaluation Report, E2018/90146