



Agenda

Ordinary Meeting

Thursday, 12 December 2019

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 Code of Conduct for Councillors (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

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

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

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

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

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

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person’s spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

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

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

Disclosure and participation in meetings

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL

ORDINARY MEETING

BUSINESS OF ORDINARY MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 6.1 Ordinary Meeting held on 28 November 2019
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION
 - 9.1 Front and Centre Customer Service at The Counter 6
 - 9.2 Byron Shire Youth Challenge 8
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
 - 12.1 Presentation to Virtual Power Plants, New Energy Storage, and Renewable Energy 2019 Conference, 15 November 2019 in Melbourne 11
13. STAFF REPORTS
 - General Manager**
 - 13.1 TAFE NSW and Lot 12 Bayshore Drive Byron Bay 12
 - 13.2 Byron Rail Corridor Restoration 16
 - 13.3 Acquisition and surrender of land - Byron pool complex..... 22
 - Corporate and Community Services**
 - 13.4 Policy Review 2019 - Policies for repeal (part 2) 25
 - 13.5 Report of the Public Art Panel meeting held on 14 November 2019 29
 - 13.6 Review of Northern Beaches Council Gambling and Poker Machine Harm Management Strategy 31
 - 13.7 Submission to Office of Local Government - Discussion Paper - A New Risk Management and Internal Audit Framework for Local Councils in NSW 34
 - 13.8 Investments - 1 November 2019 to 30 November 2019 40
 - Sustainable Environment and Economy**

BYRON SHIRE COUNCIL

ORDINARY MEETING

13.9	Sustainable Visitation Strategy - Project update.....	48
13.10	Climate Emergency Response - update on Resolution 19-341	53
13.11	Review of Affordable Rental Housing (Res 19-233)	58
13.12	PLANNING - Development Application 10.2018.307.1 - Alterations and additions to dwelling, new artists studio and boundary adjustment	66
13.13	PLANNING - Development Application 10.2019.458.1 Multi Dwelling Housing Comprising Eight (8) Dwellings at 6 Julian Rocks Drive Byron Bay	88
13.14	Final Business and Industrial Lands Strategy for adoption.....	109
13.15	Our Mullumbimby Masterplan - Submissions Report.....	120
13.16	Integrated Pest Management Strategy (Resolution 19-519)	124
13.17	Annual Emissions Inventory and Achieving Net Zero Emissions Target	128
13.18	PLANNING - Report Exceptions to Development Standards 1 July to 30 September 2019.....	134
13.19	Expressions of Interest for the Place Planning Collective (Res 19-451).....	137
13.20	Residential Strategy and affiliated projects update.....	140
13.21	PLANNING - 24.2019.53.1 Habitat DCP Amendment; Chapter E5 Certain Locations in Byron Bay and Ewingsdale	147
13.22	Report of Planning Review Committee held on 14 November 2019	152
13.23	PLANNING - Update on Environmental Zone review and Planning Proposal implementation process.....	154
13.24	PLANNING - 26.2019.1.1 - Planning Proposal for an amendment to Byron LEP 2014 to permit Community Title subdivision and dwellings at Lot 38 DP 1059938, Alidenes Road, Wilsons Creek.....	159
13.25	PLANNING - DA10.2018.466.2 - 61 Kingsley Street Byron Bay - S4.55 modification to change the Condition of Consent (approved by Council Meeting) in relation to the Height and FFL of the proposed building, change to pool dimensions and tree removal.	167
13.26	Byron Shire Council Agricultural Action Plan Update	180
13.27	PLANNING - Draft Planning Controls for Short Term Rental Accommodation in response to Ministerial Direction 3.7 Reduction in non-hosted rental accommodation period.....	185
13.28	PLANNING - S4.55 for Modification of development consent DA 10.2017.402.3 to dedicate Lot 130 to Council as a Public Reserve, and amend stormwater design, bushfire asset protection zones and provide habitat connectivity between Management Zones 7b and 9.	194

Infrastructure Services

13.29	Building Asset Management Plan.....	203
13.30	Reducing Streetlight Use - Update	207
13.31	Part Road Reserve Closure and Sale to adjoining Lot 5 DP 714077 255 Repentance Creek Goonengerry	210
13.32	Part Road Closure and purchase Robert Street Bangalow adjoining 5 Deacon Street Lot 7 Section 10 DP 4974 and Lot 1 DP 122670.....	215
13.33	Road Reserve Closure and Purchase 149 Federal Drive Eureka Lot 22 DP 1014053220	
13.34	1 Broken Head Road Project	225
13.35	Bungalow Christmas Eve Carnival	232
13.36	Minor changes to car parking signage in vicinity of Byron Youth Activity Centre Sandhills Reserve.....	235

14. REPORTS OF COMMITTEES

Corporate and Community Services

14.1	Report of the Audit, Risk and Improvement Committee Meeting held on 14 November 2019	239
------	--	-----

BYRON SHIRE COUNCIL

ORDINARY MEETING

- 14.2 Report of the Finance Advisory Committee Meeting held on 14 November 2019 244

Infrastructure Services

- 14.3 Report of the Local Traffic Committee Meeting held on 19 November 2019 248
- 6.1 Event Road Closure - New Year's Eve and New Year's Day, Byron Bay 2019/2020 247
 - 6.2 Byron Bay Paid Parking Time Changes - Jonson St 248
 - 6.3 Restricted Parking Area - Broken Head Reserve Rd & Seven Mile Beach Road 249
 - 6.4 Bay Lane - Traffic Management 249
 - 6.5 No Parking Area - Seven Mile Beach Road 249
 - 6.6 Byron Bay CBD - Loading Zones 250
 - 6.7 Event - Summer Holiday Traffic Management in Byron Bay 250
 - 7.1 Engineering Advice - Intersection of Rajah Rd & Yengarie Way (Petition) 250
 - 8.1 Events - Byron Bay Bluesfest 2020 251
- 14.4 Report of the Byron Shire Floodplain Risk Management Committee Meeting held on 26 November 2019 255

15. QUESTIONS WITH NOTICE

Questions with Notice: A response to Questions with Notice will be provided at the meeting if possible, that response will be included in the meeting minutes. If a response is unable to be provided the question will be taken on notice, with an answer to be provided to the person/organisation prior to the next Ordinary Meeting and placed on Councils website www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice


Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director prior to the meeting. Any suggested amendments to the recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

NOTICES OF MOTION

5 **Notice of Motion No. 9.1 Front and Centre Customer Service at The Counter**
File No: I2019/1939

I move that Council take the opportunity to assist the community with a postal service to receive mail over the counter from the public for posting standard sized, fully stamped, with a return address into the Australia Post network.

Attachments:

- 10 1 Australia Post Group Mail Delivery Poll Policy, E2019/86006 

Signed: Cr Alan Hunter

15 **Councillor's supporting information:**

The post office in Mullumbimby is at the western end of Burringbar Street, 4 blocks away from the Council offices at the eastern end. There are no other postal receivable points in the CBD. As a service to our customers and residents such a service will be of convenience and incur no notice-able expense for Council.

In a time when all levels of government are addressing customer satisfaction and comparing the results through the communities like ours this is an opportunity to assist bridge the gaps.

25 **Staff comments by Esmeralda Davis, Acting Manager Corporate Services, Corporate and Community Services:**

Management recognises the importance of community satisfaction and strongly supports continuous improvement in customer service to our community. In this instance however, the provision of a second postal collection service in such close proximity to an Australia Post branch may not be the best solution or most efficient use of Council resources.

If Council wishes to review its operations and service delivery to become an agent for Australia Post, further investigation and the preparation of a cost/benefit analysis would be required prior to a decision.

Preliminary investigations indicate that there are two formal options for Council to provide this service:

- 40 1. Become a Licensed Post Office (LPO)

Council would need to apply through a tender process at a time when Australia Post invites submissions for this type of service. LPOs must offer a range of Australia Post products and services, including mail acceptance and processing, postage stamps, money orders, bill payment and banking. Council would also be responsible for the training of staff in accordance with legislative requirements.

OR

2. Become a Community Postal Agent (CPA)

5 Council would need to wait for a CPA opportunity to become available. At a minimum, Council would need to offer basic postage assessment, stamp sales and over-the-counter mail acceptance and delivery, however bill payment and banking would not be required.

Alternatively, or in the absence of such opportunities being forthcoming, staff could write to Australia Post inviting them to install a post box outside the Mullumbimby Administration building.

10 Financial/Resource/Legal Implications:

15 In the performance of its functions, Australia Post is governed by The Australian Postal Corporation Act 1989 and associated Regulations. It is unclear, without further investigation, how Council would be impacted by this legislation as an agent for Australia Post.

20 If Council wishes to consider becoming a Licenced Post Office or Community Postal Agent it should note that the roles and workload of the Customer Service and Records Management (and potentially Finance and IT) teams would undoubtedly be significantly impacted; however further investigation would be required to understand the specific financial and resource implications for Council.

25 There are also considerable potential liability issues involved in handling public mail which could result in customer dissatisfaction, insurance claims and reputational damage should mail be misplaced, damaged or incorrectly handled.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	L2	CSP Strategy	L3	DP Action
Community Objective 5: We have community led decision making which is open and inclusive	5.3	Deliver a high level of customer service	5.3.1	Enhance external and internal customer service effectiveness

This could be considered an improvement to customer service, but the viability of such an initiative would require further investigation and assessment.

Co-Design Workshop	A number of activities designed to engage and discover: - What are the most pressing issues for young people in the Shire? - What can Council do in this space? - How can youth get involved in democracy?
Introduction to Local Government	This session focused on LG101 for young citizens, in the context of the challenges and issues identified in the co-design phase. Young people received a condensed Local Government induction with guest speakers from across Council in their identified areas of interest.
Byron Youth Challenge (one day)	Young people picked their ‘wicked problem’ from the co-design workshop and were guided by staff through a series of challenges related to how to respond from a Local Government perspective.
Celebration	Young presented and discussed their “wicked problem” and solutions to Councillors and received feedback from Councillors on the solutions and how to present their ideas at the Council Meeting.
Formal Meeting of Council	Young people witnessed democracy in action including public access, debate and decision making. The young people presented at public access and joined Councillors for morning tea, before observing an hour of debate in the Chambers.

Outcome

- 5 Through the program the young people identified a ‘wicked problem’ that they wanted to investigate **“How can we reduce food waste in the Byron Shire?”**. They worked with a number of staff from across the organisation, Councillors, and a representative from North East Waste to consider the issue and research possible solutions.
- 10 They developed an admirable goal **“That businesses in the Byron Shire have zero food waste to landfill by the time we finish school in 2021”** and presented their proposed solution to the Ordinary Council Meeting on 28 November 2019.
- 15 Their proposed solution is to work with Council and other relevant organisations to coordinate a food waste expo on 29 April 2020 (being ‘Stop Food Waste Day’) at the Cavanbah Centre in Byron Bay. They intend to invite all businesses in the Byron Shire to come and learn about food waste and ways to reduce and prevent it, through guest speakers, demonstrations, and case studies. They particularly want to promote the existing organisations and services that provide leftover food to people experiencing homelessness (for example, Liberation Larder).
- 20 The students have also proposed that they would like to develop a program to influence change at their school, Mullumbimby High School, and use this as a case study to show businesses that if they can make these changes then so can businesses. They would like to purchase green bins to distribute throughout the school and educate and promote their use to encourage fellow students to dispose of food waste appropriately.
- 25 During their presentation to Council the young people indicated that they are seeking support from Council for a number of elements of their proposal:
- 30
- Continued support from Council officers to assist with development and implementation of their initiative
 - Seed funding for the purchase and implementation of internal green bins at the Mullumbimby High School
 - Financial support to deliver the food waste expo on 29 April 2019, including funding of displays and waiving the hire fee of the Cavanbah Centre
- 35
- Allocation of staff resources to work with the young people to promote the initiative, commencing in Youth Week 2020 in the lead up to the event

Consultation and Engagement

5 The Byron Shire Youth Challenge program was promoted to each of the high schools in the Byron Shire. Mullumbimby High School was the only school that indicated an interest in participating in the program.

This year was run as a pilot program and, given its success, it is anticipated that it will be delivered again in 2020 where all schools will again have an opportunity to participate.

10 Financial/Resource/Legal Implications:

15 It is anticipated that this year's outcomes from the Youth Challenge will continue to be led by Corporate Services with support from the Resource Recovery team, given the nature of the 'wicked problem' and proposed solution.

\$5,000 is available from the 'Youth Council' budget that can be used to support the young people to develop and deliver their proposed food waste expo, and this will include marketing and promotion, graphic design, and collateral for use at the expo.

20 The Resource Recovery team has identified that there is potentially some seed funding available to assist the young people to purchase internal green bins for use at Mullumbimby High School, should the school wish to implement a green bin service.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.1	Engage and involve community in decision making	5.1.1	Facilitate inclusive community consultation and stakeholder engagement to inform Council decision making (SP)	5.1.1.7	Develop and implement youth advisory/ leadership program

25

DELEGATES' REPORTS

- 5 **Delegate's Report No. 12.1** **Presentation to Virtual Power Plants, New Energy Storage, and Renewable Energy 2019 Conference, 15 November 2019 in Melbourne**
File No: I2019/1935

Delegate notes provided by Mayor Cr Simon Richardson, Keynote Speaker at Virtual Power Plants, New Energy Storage, and Renewable Energy 2019 Conference in Melbourne on 15 November 2019, "*Case Study – The Zero Emissions Byron project*", are attached to this Report.

Signed: Cr Simon Richardson

10 **Attachments:**

- 1 Delegates Report - Mayor Cr Simon Richardson Presentation Case Study - The Zero Emissions Byron project Nov 2019 Melbourne, E2019/85221 

15

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **TAFE NSW and Lot 12 Bayshore Drive Byron Bay**
Directorate: General Manager
5 **Report Author:** Claire McGarry, Place Manager - Byron Bay
 Shannon Burt, Director Sustainable Environment and Economy
File No: I2019/1837

10 **Summary:**

The purpose of this report is to update Council on the latest discussions with TAFE NSW in relation to a Connected Learning Centre (CLC) being located in Byron Shire in the near future.

15 In February 2019, the State Government made an election commitment to establish a TAFE campus in Byron Bay. A number of new regional campuses have been flagged by the Minister to Parliament, including one at Batemans Bay, Nambucca Heads, Nelson Bay, Byron Bay, Cobar, Hay, Jindabyne and West Wyalong.

20 A formal announcement from the Minister for Skills and Tertiary Education (The Hon Dr Geoffrey Lee MP) to confirm the above CLCs is anticipated early 2020. This announcement will determine whether a project will progress to the next stage of planning or not.


25 Prior to this announcement, TAFE is seeking a formal commitment from Council in support of establishing a TAFE campus on Council land in the Byron Shire.

RECOMMENDATION:

That Council:

1. **Note the separate report included in this agenda titled ‘Residential Strategy and affiliated projects update’ and the section of the Report relating to Lot 12 Bayshore Drive, Byron Bay.**
2. **Confirm its in principle support for TAFE NSW to progress plans for a Connected Learning Centre, subject to appropriate probity and planning considerations, through the urban design investigation for Lot 12 Bayshore Drive, Byron Bay.**
3. **Authorise the General Manager to negotiate and enter into a non-binding Heads of Agreement with TAFE NSW for a Connected Learning Centre on Lot 12 Bayshore Drive, Byron Bay.**

30 **Attachments:**

- 1 Confidential - Draft non-Binding Heads of Agreement TAFE NSW, E2019/88003
- 2 Letter of support - TAFE NSW for Byron Shire, E2019/88106 

REPORT

Background

5 Through 2017 and 2018, the Byron community and Council worked together to purchase the former Byron Hospital site to retain it for community use. During this period, the community steering committee collected 'expressions of interest' from organisations wanting to be tenants of the site in future.

10 NSW TAFE were one of these organisations (refer Attachment 2 - letter of support).

In February 2019 the NSW Coalition made an election commitment to establish a TAFE campus in Byron Shire Local Government area.

15 Since the March State Election, NSW TAFE representatives have met with Council regularly to discuss their proposal for a campus in Byron Bay – being a 'Connected Learning Centre' (CLC). These Centres operate regionally around the state. Supported by mobile training units, simulations and virtual reality experiences, the CLCs enhance TAFE's ability to deliver interactive, flexible, accessible training across a wider range of locations.

20 Since purchasing the Byron Hospital site from the State Government, Council and the community have further developed and refined their plans for the future use of site. Through this process, the consistent message has been that the community wishes to adaptively reuse this site, rather than demolish it and build a purpose-built facility for community use.

25 In order to accommodate a TAFE CLC on the former Byron hospital site, part of the building would need to be demolished. This outcome would not meet the expectations of Council or the community for this site. As a result Staff in consultation with representatives from TAFE NSW has identified other potential sites for a TAFE campus in the Shire. These potential sites include Lot 12 Bayshore Drive in the Byron Arts and Industrial Estate (BAIE) being the now preferred site.

30 The consideration of a TAFE CLC on Lot 12 Bayshore Drive is included in the urban design investigations for the site. Note the separate report included in this agenda titled '*Residential Strategy and affiliated projects update*' and the section of the Report relating to Lot 12 Bayshore Drive, Byron Bay.

35 The landing of a TAFE CLC in Byron Shire is considered a highly desirable from a community education perspective.

40 **Lot 12 Bayshore Drive, Byron Bay**

Lot 12 on DP 1189646, highlighted in yellow on the figure below, is situated off Bayshore Drive in northern part of the BAIE. It is a key Council-owned land parcel, likely to become available for development in the next couple of years.



5 Leading on from a recent Enquiry by Design workshop for BAIE, Council staff working with a group of representative stakeholders from within the BAIE have prepared a draft Arts and Industry Estate Precinct Plan. The Enquiry by Design and draft Precinct Plan identified Lot 12 as an opportunity for the development of a *sustainability and innovation hub*.

Web link here:

10 <https://www.yoursaybyronshire.com.au/byron-arts-and-industry-estate>

By resolution (**Res. 19-452**) staff have now sought to progress a structure plan for Lot 12. To this aim a request for quotation has been issued for a consultant to prepare a design blueprint for the site.

15 The design blueprint will enable Council to undertake a feasibility assessment of a preferred delivery option for its future development.

The brief issued requested that 3 options be explored in the context of the land functioning as a sustainability and innovation hub by either:

20 1. *Urbanised* - a plan that develops the conceptual plan contained in the Draft Byron Arts and Industry Estate Precinct Plan shown in Appendix A of the '*Residential Strategy and affiliated projects update*' report in this agenda.

25 2. *Anchor based* - a Plan testing the suitability of including a TAFE site (development footprint approx. 5,000m²) and/or a social enterprise commercial laundry site (development footprint approx. 2,500m²) on the site, in conjunction with other uses.

30 3. *Reimagined* - an explorative plan; with all other possibilities on the table, looking to maximise the potential of the site as a sustainability and innovation hub.

The three options seek to optimise the potential design and use outcomes for the site.

35 The timetable for completion of this urban design work is set to coalesce with the exhibition of the draft precinct Plan in early 2020. Both the draft precinct plan and the 3 option plans will be exhibited concurrently. A further report will follow for final endorsement of a preferred option plan for Lot 12 by Council.

40 With the above in mind, it is understood that the TAFE NSW campus requirements are as follows:

- a ground lease of between 4700 sq m and 5000 sq m with a 10 year lease and two five-year options);
- frontage to Bayshore Drive;
- a campus style building to serve as a 'Connected Learning Centre'.

45 These requirements are more than likely able to be accommodated on Lot 12, subject to a satisfactory design being agreed to by both parties. Discussions have commenced and will ensue in this regard should Council resolve for staff to do so.

50 For the TAFE NSW CLC to progress, a development application satisfying all of the relevant planning controls will be necessary. The cost of development and applicant will determine the approval pathway for any development application which is likely to be the Regional Planning Panel.

55

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.6	Develop the Byron Arts and Industry Estate Precinct Plan

5 *Legal/Statutory/Policy Considerations*

The recommendations in this report are not intended to bind Council to any agreement for lease. Instead, they are intended to allow discussions between Council and TAFE to continue and signal Council's in-principle support for a TAFE campus in Byron Bay. The details of which, should this be Lot 12 Bayshore Drive, Byron Bay, to be confirmed in a Heads of Agreement.

This Report seeks the Council to authorise the General Manager to negotiate and then enter into a non-binding Heads of Agreement with TAFE NSW for a Connected Learning Centre on Lot 12 Bayshore Drive, Byron Bay.

TAFE NSW have provided Council with a draft non-binding Heads of Agreement document as the basis for the negotiation process (refer Confidential Attachment 1).

It is understood that an executed Heads of Agreement document is a prerequisite to the Minister determining to progress the project.

Financial Considerations

Project currently funded in 19/20 OP.

In September 2019, Council commissioned a Valuation Report for Lot 12 Bayshore Drive to provide a broad indicative value range for rental on this site, based on Council retaining ownership of the land. The rental amount discussed with TAFE NSW is in accordance with the Valuation Report commissioned by Council.

Consultation and Engagement

As discussed in the report.

Report No. 13.2 **Byron Rail Corridor Restoration**
Directorate: General Manager
Report Author: Claire McGarry, Place Manager - Byron Bay
File No: I2019/1862

5


Summary:

10 This report seeks endorsement of concept plans for restoration of the rail corridor in Byron Bay for community use.

RECOMMENDATION:

1. **That Council endorse the concept plans for the Byron Rail Corridor (Attachment 1 E2019/86660).**
2. **That Council allocate \$493,400 from the Byron Town Centre Masterplan Reserve towards this project.**

15 **Attachments:**

- 1 Byron rail corridor concept plans November 2019, E2019/86660 

20

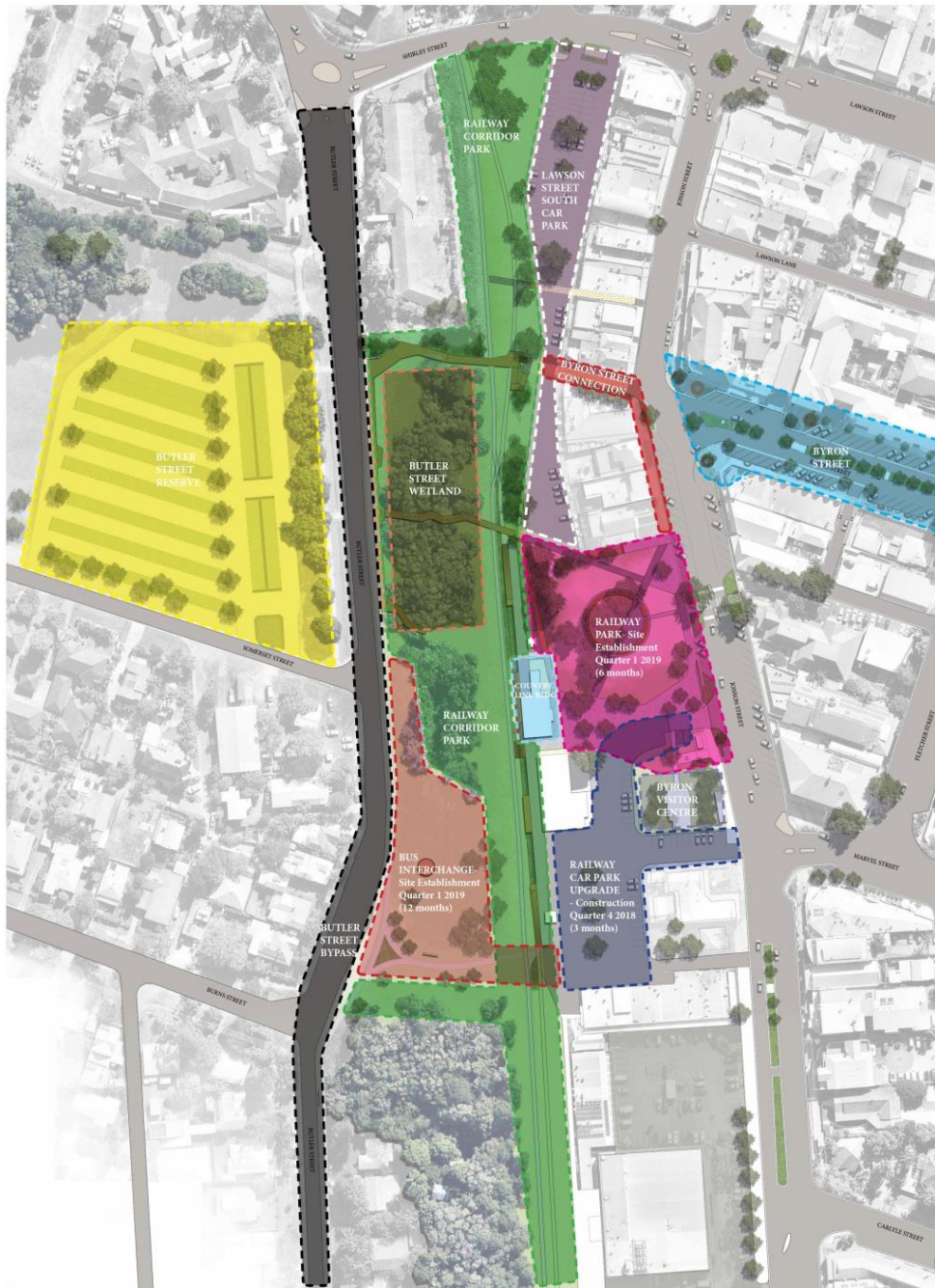
REPORT

Background

5 In 2016, Council adopted the Byron Bay Town Centre Masterplan – a vision and strategy to guide the future of the town centre, and to set out realistic actions and projects that achieve that vision.

The Masterplan identifies the Byron ‘rail precinct’ (map below) as a local community focal point and critical piece of land to improve pedestrian connectivity through the town centre.

10



BYRON RAIL PRECINCT REVITALISATION PROJECT

STP-PRECINCT AREAS

- BUTLER STREET RESERVE
- RAILWAY CORRIDOR PARK
- BYRON STREET CONNECTION
- RAILWAY CAR PARK UPGRADE
- BUTLER STREET WETLAND
- BYRON VISITOR CENTRE UPGRADES
- BUTLER STREET BYPASS
- RAILWAY PARK
- BYRON STREET UPGRADES
- LAWSON STREET SOUTH CAR PARK POTENTIAL TEMPORARY EVENT ZONES
- COUNTRY LINK BUILDING SOCIAL ENTERPRISE PROJECT
- BUS INTERCHANGE

SCALE 1:100 000
0 10 20 30 40 50 60 70 80 90 100

ORIENT

PLUMMER & SMITH

In 2019, Council has:

- 5 - Completed the Railway Park upgrade;
- Progressed investigations on Butler Street Reserve to inform its future uses; and
- Commenced construction of the Byron Bay bypass.

10 Additionally, Council has worked closely with Transport for NSW to advocate for delivery of the Byron Bay Bus Interchange and the upgrade of the car parks either side of Railway Park (Rails car park and Lawson St South car park).

15 It is evident that as these projects progress towards completion, the Byron rail corridor will be the final 'piece of the puzzle' in this precinct to achieve the vision set out in the Masterplan – a rail precinct that supports passive recreation; redirects vehicular traffic away from the town centre; activates public spaces; improves connectivity; enhances heritage features; and connects key 'green spaces' across the town centre.

20 This report seeks endorsement of concept plans for the Byron Rail Corridor so that staff can progress with:

- detailed design
- identification of internal and external funding sources
- planning approval pathways
- further community consultation

25

Concepts

30 As outlined above, the Rail Corridor occupies a critical space within the town centre and in particular in relation to a number of adjacent town centre project areas including Railway Park, Butler Street Reserve, potential transport interchange and car parks. The Byron Bay Town Centre Master Plan also nominated the improvement of cross town circulation routes (particularly east/west) as a critical component of improving town wide connectivity. The Rail Corridor occupies a critical space that has previously acted as a barrier to this connectivity. This project has the potential to improve circulation across town and to improve the viability and health of a number of public spaces and town centre spaces.

35

40 The key component of the Concept for the Rail Corridor area is to provide safe and equitable circulation paths connecting the town centre to the western side of the corridor. The Concept also forms an important part of improving links into and through the recently completed Railway Park upgrade. By doing so these works would considerably increase the footprint and integrity of town centre public spaces. This project can also play an important role in complimenting and safeguarding the heritage value of the Rail precinct by enabling passive use and appreciation for the space.

45 The connectivity improvements that this project enables are important day to day (for general circulation and access to car parking areas and the like), but they become vitally important on days of high frequency use such as market days. As use of this space as an informal circulation route increases, so do associated safety and accessibility concerns. This project acknowledges the requirement of linkages through the corridor and provides them in a way that promotes safe and equitable use of this space.

50

To improve the viability of the circulation links and the associated open spaces, small gathering spaces and moments of outlook and repose have been included in the design. This will increase use of the space and improve the passive surveillance of this and adjacent spaces. A simple

design approach has been taken to the open areas of the site - improving grass areas and increasing natural shade will allow for improved passive recreational uses such as picnicking.

5 The Concept proposes materials and designs that are simple and robust. The intention is to use tough and low maintenance solutions that are complimentary to the industrial heritage of the rail corridor. Existing rail infrastructure will be retained and celebrated as an integral part of the site experience. Existing trees along the corridor fringes will be retained and in some cases provide shade and amenity for small seating areas associated with the circulation paths. The detailing of surface finishes such as turf and gravel will ensure that safety concerns such as trip hazards and the like are managed in required areas.

15 The concepts also include *Memento Aestates* – the Giovanni Veronesi artwork originally commissioned for Railway Park. Council resolved to remove this artwork from the scope of works for Railway Park and instead include it in concept plans for other town centre projects. The Public Art Panel endorse the relocation of the artwork to the rail corridor as the form and material of the piece complements the rail heritage of the site.

20 In the context of Council’s feasibility for multi-use of the rail corridor, this project constructs infrastructure that is temporary in nature and can easily be adapted or removed if the rail corridor were to be reactivated for multi-use transport options.

Next steps

25 This report seeks endorsement of concept plans for the Byron Rail Corridor so that staff can progress with:

- detailed design
- confirmation of internal and external funding sources
- planning approval pathways
- further community consultation

30

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.7	Implement identified projects of the Byron Bay Town Centre Master Plan	1.2.7.3	Undertake landscaping works in Byron rail corridor (action from Byron Bay Town Centre Masterplan)

35 ***Legal/Statutory/Policy Considerations***

In September 2019, Byron LEP 2014 was amended to allow the following land uses to be permitted with consent in the rail corridor:

- Community facilities;
- 40 • Information and education facilities; and
- Existing markets.

45 The amendments also clarified that landscaping works and recreation areas (i.e. playgrounds) can occur without development consent.

As the section of rail corridor within the Town Centre is a State-listed heritage area, Council has been working with Sydney Trains to prepare a Conservation Management Plan (CMP) for the corridor. The CMP addresses Council's concepts for the activation/ community use of the corridor; Sydney Trains proposals to construct the bus interchange; and concepts for the adaptive reuse of the former ticket office.

The CMP has been submitted to the State Government for endorsement. At the time of writing this report, it has not yet been sign-off.

Adoption of the CMP will allow Council to apply for approval under Section 60 of the NSW *Heritage Act 1977* and planning approval (DA) under the *Environmental Planning & Assessment Act 1979*.

Additionally, Council has a licence over the rail corridor from Transport for NSW which will enable this work to occur. Under this licence, Council must inform Transport for NSW of the concept plans and must not make any changes to infrastructure, or install new infrastructure without the prior written approval of Transport for NSW. Council has sought approval from Transport for NSW on the concept plans and is awaiting a response.

Financial Considerations

Preliminary cost estimates for this project are \$1,005,963.

Two sources of funding will be used to deliver this project:

1. Byron Bay Bypass money
2. Byron Bay Town Centre Masterplan Reserve

Bypass

The Byron Bay Bypass project team allocated \$600,000 as a provisional sum within the bypass contract for the construction of a walkway between Butler Street and Lawson South car park. The construction of the walkway joining the new bypass road into town is in accordance with the overall grant outcomes for the bypass project.

It is important to note that project delays associated with protest action and referral to the Department of Environment and Energy referral are likely to result in additional project costs for the Bypass. The above allocation for the walkway may be reviewed as the Bypass project progresses.

Masterplan Reserve

Council may recall that it has resolved to allocate revenue from pay parking based on the existing scheme after accounting for scheme costs and revenue derived on the Crown Reserve as follows:

- 50% to projects outside of Byron Bay
- 50% to projects within Byron Bay and of this amount 50% is allocated to Byron Bay Town Centre Master Plan projects.

As at 30 June 2020, there is estimated to be \$151,200 available that is unallocated assuming the projects being funded from the Byron Bay Town Centre Masterplan reserve are completed. This also includes \$342,200 in Masterplan projects that are yet to be determined. If this amount is designated to the subject of this report, there is potentially a total of \$493,400 available. Coupled with the Bypass funding, this should provide sufficient funding to cover the preliminary cost estimate for this project.

External funding applications

Finally, Council has applied for \$200,000 of funding for this project under the NSW Government's Stronger Country Communities Fund Round 3, and is anticipating notification of the outcome in January 2020.

Council has also successfully partnered with the Byron Bay Historical Society to secure heritage funding to complete a Statement of Heritage Impact for this project. This will be undertaken as part of the approvals process.

5

Staff intend to submit an application to the Building Better Regions Fund (Infrastructure) for this project in mid-December 2019 and anticipate notification of the outcome in June 2020.

Consultation and Engagement

10

The Byron Bay Town Centre Masterplan was developed over 18 months of in-depth community consultation and identified the rail corridor as a critical component of improving town-wide connectivity in Byron Bay.

15 Since the adoption of the masterplan, the community has formed the Byron Masterplan Guidance Group to guide Council's development, and oversee implementation of key projects from the Masterplan.

20 The Byron Masterplan Guidance Group identified the rail corridor as the next key project for delivery following the construction of Railway Park. They have been involved in development of the concept plans for the corridor and will continue to be involved as the project team moves towards detailed design.

25 Additionally, once concept plans have been adopted by Council they will be made available on Council's website and promoted through local media to encourage community feedback on concepts, which can then be incorporated into finalising detailed design.

Report No. 13.3 **Acquisition and surrender of land - Byron pool complex**
Directorate: General Manager
Report Author: Matt Meir, Solicitor
File No: I2019/1942

5

Summary:

10 This report asks Council to accept the vesting of some Crown land and to surrender certain Council land to the Crown ('land swap') comprising part of the Byron Bay pool complex.

The land swap's purpose is to allow the pool complex to belong solely to Council, and for the building currently comprising the restaurant to sit entirely within Crown reserve.



15 The land swap will allow the long term lease of both the pool and the restaurant building. This has not previously been possible.

RECOMMENDATION:

1. That Council acquire proposed lot 17 in the attached plan of subdivision (E2019/86293), with lot 17 to be vested in Council under the *Crown Lands Management Act 2016*.
2. That Council agree to dispose of proposed lot 15 in the attached plan of subdivision (E2019/86293) by surrendering it to the Crown under the *Crown Lands Management Act 2016*.
3. That Council note the Department of Planning Industry and Environment – Crown Land's support (S2019/8983) for acquisition and disposal at no cost for the land.
4. That Council authorise the affixing of Council's seal to the plan of subdivision and any associated section 88B instrument necessary to register resolutions 1 and 2 with NSW Land Registry Services.

20

Attachments:

- 1  Proposed Plan of Subdivision - Byron Bay Memorial Pool and Crown Reserve 82000, E2019/86293
- 25 2 Letter from NSW Government - Planning Industry & Environment - Proposed exchange of lands regarding Byron Bay Memorial Pool Complex, S2019/8983 

REPORT

This report is about the Byron Bay pool complex and the ownership of the land which comprises it.

5 For many years, the Byron Bay pool complex has suffered from a mismatch between the land use and its owners. There are two principal problems:

- The Crown currently owns part of the land comprising the Byron Bay pool. This is the land known as lot 17 in the attached plan of subdivision.
- Council currently owns part of the land comprising Fishheads restaurant. This is the land known as lot 15 in the attached plan of subdivision.

10
15 The current land misalignment of boundaries and ownership has prevented Council and the Crown from entering into long term lease arrangements for both the Byron pool and the building currently housing Fishheads restaurant. This has led to a series of short term agreements regarding the land's occupation. These short term arrangements have created uncertainty for Council, the Crown and the occupants.

20 To end the uncertainty and allow long term arrangements through competitive processes that are in the public interest, the Crown has given its support for the following land swap to take place:

- Proposed lot 17 to be acquired by Council via vesting under the *Crown Lands Management Act 2016* (CLM Act); and
- Proposed lot 15 to be surrendered to Crown by Council under the CLM Act ('land swap') for it to be added to Reserve 82000.

25
30 Council should note that under the CLM Act, proposed lot 17 will be taken to be classified as community land for the purpose of the *Local Government Act 1993* when it vests in Council. However, the CLM Act also allows for the Minister to declare the land as operational land in the Gazette notice which vests the land in Council.

35 If Council resolves in accordance with the above resolutions, staff will ask the Crown to have the Minister declare proposed lot 17 as operational land at the time of vesting. This is because the rest of the Byron pool (lot 14 in the attached plan of subdivision) is classified as operational land. The intention is for proposed lot 17 and lot 14 to eventually be consolidated into one lot.

40 There is little utility in a small part of this future, consolidated lot being classified as community land, while the rest is operational land. Split classifications would make management of the Byron pool site needlessly complex. This runs counter to this project's principal objective.

The above land swap will achieve the following:

- Ensure that the ownership of the relevant land reflects the actual current use of the land; and
- Allow Council (as the outright owner of the Byron pool and/or as the Crown Land Manager for the restaurant building, with Crown Lands approval) to call competitive processes for long-term leases for the pool and building.

50 Crown's recent letter to Council (refer attachment 2) regarding the proposed land swap noted that 'the exchange is in the public interest as it will substantially improve the on-going administration and management of this important local public and community complex'.

For the land swap to proceed, Council needs to resolve for it occur. It then needs to notify Crown of its resolutions.

STRATEGIC CONSIDERATIONS

5

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.5	Ensure ongoing maintenance and upgrade of inclusive community buildings and swimming pools	1.2.5.3	Finalise public land tenure matter for Byron Bay pool

Legal/Statutory/Policy Considerations

10 The CLM Act provides a mechanism for the vesting of ‘transferable Crown land’ to Council under certain circumstances. The proposed vesting of lot 17 in Council meets the criteria for vesting under the CLM Act.

15 The CLM Act also provides a mechanism for the surrender of non-Crown land to the Crown. This allows the surrender of lot 15.

20 Under the *Local Government Act 1993*, Council cannot acquire or dispose of land except by Council resolution and land acquired by Council needs to be classified, and if appropriate categorised, by Council resolution.

Financial Considerations

25 Crown’s letter to Council on the proposed land swap notes that ‘the application of the above provisions of the CLM Act will result in a nil financial impact on either party’. Council is contributing to the costs of preparation of applications and plans to finalise the land tenure matters and these are being accommodated within existing crown land budget allocation.

Consultation and Engagement

30 The development application seeking approval for the boundary adjustment will have to go through the normal development assessment process that can be started once Council has confirmed its agreement to the proposal by resolution.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**Report No. 13.4 Policy Review 2019 - Policies for repeal (part 2)****Directorate:** Corporate and Community Services5 **Report Author:** Mila Jones, Corporate Governance Coordinator**File No:** I2019/190510 **Summary:**

As per previous reports to Council on 18 April and 22 August 2019, 139 Council policies are currently being reviewed by staff as a result of internal audit recommendation made by OCM in November 2017.

15 At the Ordinary Meeting on 22 August 2019 Council received a report recommending that 21 public policies be repealed. During the public access session, there were three submissions made regarding six policies. It was resolved at the meeting that this matter be presented to a Strategic Planning Workshop for further discussion. Following the Strategic Planning Workshop on 7
20 November 2019, it was agreed that a further report will be provided to Council in February 2020 discussing the next steps for those six policies.

This report covers the remaining 15 policies that were listed as redundant in the Ordinary Meeting Agenda of 22 August 2019, and recommends that these policies be removed from Council's
25 register for the same reasons stated in the earlier report.

RECOMMENDATION:**That the following redundant policies be removed from Council's Policy Register:**

- a) **Community Halls and Sporting Facilities - Management by Community Groups 1994**
- b) **Excess of Power and Procedural Fairness 1996**
- c) **Footpath Dining 2001**
- d) **Freedom of Information 1996**
- e) **Inspection, Evaluation and Maintenance of Public Infrastructure 2003**
- f) **Interactions between Councillors and Council Staff 2002**
- g) **Interactive Management and Supervisory Training 1994**
- h) **Maintenance and Improvement of Council Owned Community Buildings 1994**
- i) **Procedures for Cases of Financial Hardship to undertake repair works to prevent adverse Environmental or Public Health Impacts 2002**
- j) **Review of the Stormwater Management Service Charge 2007**
- k) **Sewerage Charges - Charitable Nursing/Aged Care Homes 1994**
- l) **Smoke Free Environment 1994**
- m) **Water and Sewer Charges – Religious Properties 1994**
- n) **Water Meters and Charges on Strata Units 1994**
- o) **Work Health Safety 2015**

30

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.4

REPORT

5 This report covers the 15 policies that were not the subject of the Strategic Planning Workshop on 7 November 2019. These policies are presented below with reasons for repeal reproduced. It is recommended that these policies be removed from Council's Policy Register for the reasons outlined in the table below.

Policy	Reviewed	Responsibility	Reason for repeal
<u>Community Halls and Sporting Facilities - Management by Community Groups 1994</u>	29-Mar-94	Manager Social and Cultural Planning and Manager Open Space and Resource Recovery	<ul style="list-style-type: none"> Change in legislative framework requiring plans of management replaces need for overarching policy.
<u>Excess of Power and Procedural Fairness 1996</u>	12-Dec-96	Legal Counsel	<ul style="list-style-type: none"> Covered by the adoption of the provisions of the Code of Conduct
<u>Footpath Dining 2001</u>	09-Oct-01	Manager Sustainable Development	<ul style="list-style-type: none"> Replaced by Commercial Use of Road Reserves 2018 (E2018/28846) and all provisions included
<u>Freedom of Information 1996</u>	25-Jun-96	Manager Business Systems and Technology	<ul style="list-style-type: none"> Replaced by GIPA Act requirements
<u>Inspection, Evaluation and Maintenance of Public Infrastructure 2003</u>	26-Aug-03	Manager Assets and Major Projects	<ul style="list-style-type: none"> The content is covered by the Asset Management Policy
<u>Interactions between Councillors and Council Staff 2002</u>	22-Oct-02	Manager Corporate Services	<ul style="list-style-type: none"> Principles are covered in the Code of Conduct and Councillors' Expenses and Facilities Policy. New councillor service level agreement developed which includes interactions
<u>Interactive Management and Supervisory Training 1994</u>	29-Mar-94	Manager People and Culture	<ul style="list-style-type: none"> Outdated. Now covered by other training modules and Great Managers course
<u>Maintenance and Improvement of Council Owned Community Buildings 1994</u>	29-Mar-94	Manager Social and Cultural Planning	<ul style="list-style-type: none"> Strategic Asset Management Plan captures the long term asset maintenance as part of a broad organisational approach
<u>Procedures for Cases of Financial Hardship to undertake repair works to prevent adverse Environmental or Public Health Impacts 2002</u>	04-Apr-02	Manager Finance	<ul style="list-style-type: none"> Policy is prior to introduction of Best Practice Water and Sewerage Pricing Guidelines that Council must comply with. Policy is inconsistent with these guidelines and should be repealed.
<u>Review of the Stormwater Management Service Charge 2007</u>	30-Aug-07	Manager Finance	<ul style="list-style-type: none"> Policy is out of date. Stormwater Management Service Charges are a regulated charge and are governed by the guidelines issued by the Office of Local Government in 2006 referred to in the policy. Council also details these charges annually in its Statement of Revenue Policy.
<u>Sewerage Charges - Charitable Nursing/Aged Care Homes 1994</u>	27-Feb-96	Manager Finance	<ul style="list-style-type: none"> Policy is prior to introduction of Best Practice Water and Sewerage Pricing Guidelines that Council must comply with. Policy is inconsistent with these guidelines.
<u>Smoke Free Environment 1994</u>	29-Mar-94	Manager People and Culture	<ul style="list-style-type: none"> The information in the Policy is outdated and covered by legislation

Policy	Reviewed	Responsibility	Reason for repeal
			and a council resolution: <ul style="list-style-type: none"> The NSW Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016 are the legislative documents governing smoking in public places. Resolution 11-801 is the Council resolution governing smoking in Council workplaces.
<u>Water and Sewer Charges – Religious Properties 1994</u>	29-Mar-94	Manager Finance	<ul style="list-style-type: none"> Policy is prior to introduction of Best Practice Water and Sewerage Pricing Guidelines that Council must comply with. Policy is inconsistent with these guidelines.
<u>Water Meters and Charges on Strata Units 1994</u>	29-Mar-94	Manager Finance	<ul style="list-style-type: none"> Policy is prior to introduction of Best Practice Water and Sewerage Pricing Guidelines that Council must comply with. Policy is inconsistent with these guidelines
<u>Work Health Safety 2015</u>	11-Jun-15	Manager People and Culture	<ul style="list-style-type: none"> Covered by other WHS Policies and Statement

Next steps

5 The six reports that were the subject of public access submissions at the meeting on 22 August and discussed at the Strategic Planning Workshop on 7 November 2019, will be the subject of a further report to Council in February 2020. The policies are:

- Affordable Housing on Council Owned Land 2009
- Camphor laurel management in Byron Shire 2011
- 10 • Commercial and other activities on public land and roads 1994
- Interim policy on genetically modified agriculture in Byron Shire 2001
- Positive Ageing Policy 2010
- Youth Policy 2010

15 The final phase of the policy review for 2019 will be covered by separate reports to Council, as and when major updates become necessary, either due to statutory or legislative requirements or to update Council’s policy position where changes occur.

STRATEGIC CONSIDERATIONS

20

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.3	Provide access to publicly available corporate registers	5.2.3.4	Update and publish Council's policies online

Legal/Statutory/Policy Considerations

Council is required to comply with a varying suite of corporate compliance obligations originating from sources such as:

5

- Federal and State Based legislation, such as the Local Government Act 1993;
- Council's own internal policies and procedures; and
- Obligations which Council has elected to comply with (e.g. contracts).

10 ***Financial Considerations***

There are no financial implications raised by this project.

Consultation and Engagement

15 Consultation has been held with the Councillors, Executive Team, Managers and relevant Document Development Officers.

Report No. 13.5 **Report of the Public Art Panel meeting held on 14 November 2019**
Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Project Officer
File No: I2019/1908
5 **Theme:** Corporate Management
 Community Development

Summary:

10 A Public Art Panel meeting was held on 14 November 2019 to consider a new location for *Memento Aestates*, strategic priorities and planning, and the final draft of the revised Public Art Guidelines. Panel recommendations are provided for Council's consideration.



RECOMMENDATION:

1. **That in relation to *Memento Aestates* artwork, Council:**
 - a) **Supports the location of the Byron rail corridor for the artwork.**
 - b) **Supports corten steel as the preferred material for the artwork.**
 - c) **Supports the most recent design of the artwork and acknowledges the artist will continue to refine it.**

2. **That in relation to the revised Public Art Guidelines, Council:**
 - a) **Notes that the Panel have reviewed the draft and provided any further feedback for incorporation into the final draft; and**
 - b) **Adopts the final draft as attached (E2019/83965).**

3. **That in relation to implementing a proactive approach to encouraging and enabling public art across the Shire, the following strategic priorities be noted:**
 - a) **Staff initiate discussions with the project team for the Suffolk Park Recreational Area about public art opportunities in the area.**
 - b) **Staff commence scoping a plan for public artwork in the Ocean Shores area.**
 - c) **A draft of an annual competitive grant process for public art be provided for consideration to the next Panel meeting.**
 - d) **That budget for public art projects on water and sewer infrastructure be investigated.**

Attachments:

- 1 Minutes 14/11/2019 Public Art Panel, I2019/1871 
- 20 2 Public Art Guidelines - draft presented to Council for adoption December 2019, E2019/83965 

REPORT

5 A Public Art Panel meeting was held on 14 November 2019 to consider a new location for Memento Aestates, strategic priorities and planning, and the final draft of the revised Public Art Guidelines.

The Panel made recommendations to Council as noted in the attached minutes of the meeting and as described in this report.

10 Please note that the Public Art Panel recommends that Council adopts the final version of the revised Public Art Guidelines as attached to this report.

STRATEGIC CONSIDERATIONS

15 ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.3	Enhance opportunities for interaction with art in public spaces	2.1.3.1	Implement Public Art Strategy

Legal / Statutory / Policy Considerations

20 Public Art Policy
Public Art Strategy
Public Art Guidelines and Criteria

Financial Considerations

25 Nil in relation to this report.

Consultation and Engagement

30 This report provides the minutes of the Public Art Panel, made up of 6 community representatives, 2 invited members and 2 councillors.

Report No. 13.6 Review of Northern Beaches Council Gambling and Poker Machine Harm Management Strategy

Directorate: Corporate and Community Services

Report Author: Emily Fajerman, Project Officer (Generalist)

5 **File No:** I2019/1910

Summary:

10

This report provides a review of the Northern Beaches Gambling and Poker Machine Harm Management Strategy.

15

Resolution **18-335** required Council staff to review the Northern Beaches Council Gambling and Poker Machine Harm Management Strategy that was due to be finalised in August 2018, and provide a report back to Council.

20

Gambling has not been highlighted by the community as a particular priority need thus far, however if Council were minded to give it a greater priority, the review of the Northern Beaches Council's Strategy would inform work in the space.

RECOMMENDATION:

1. That Council notes the review.
2. That, if Council wishes to highlight Gambling Harm Management as a key local priority, an activity be included in the 2020 - 2021 Operational Plan under the Delivery Program Action *Support Community Driven Safety Initiatives* as follows: *Support Gambling Harm Minimisation Initiatives*.

Attachments:

25

1 Northern Beaches Gambling and Poker Machine Harm Management Council Policy, E2019/85154 

2 Northern Beaches Council Gambling and Poker Machine Management Plan 2018-2023, E2019/85153



3 Analysis of Northern Beaches Councils Gambling Harm Management Policy, E2019/85156 

30

REPORT

A Notice of Motion (**18-161**) was adopted at the Ordinary Meeting of 22 March 2018:

- 5 *Prepare a report for the May 2018 Ordinary Meeting outlining options to develop a comprehensive gambling policy to reduce the harm in the Byron Shire from the use of poker machines*

The report went to the Ordinary Meeting of 24 May 2018 where Council resolved (**18-335**) that:

- 10 1. *Council note the report on policy options in relation to Poker Machines*
2. *Review and receive a report on the development of the Northern Beaches Council Gambling and Poker Machine Harm Management Strategy that is due to be finalised in August 2018.*

15 Northern Beaches Council adopted its Gambling and Poker Machine (EGMs) Harm Management Strategy 2018 – 2023 on 25 September 2018. This followed an extensive 8 week community consultation process.

20 Northern Beaches Council is the second council in NSW to adopt such a strategy. This is in contrast to nearly 50% of Victorian councils that have a policy or plan in place.

25 The Strategy is focused on Electronic Gambling Machines (EGMs, Poker Machines, 'Pokies'), as current research suggests they cause the greatest harm in our communities. It acknowledges that the control of EGMs is the responsibility of the NSW Government, Department of Liquor and Gaming and recognises that councils have limited capacity to directly impact the increase of poker machine numbers in their area.

30 In light of this, the Strategy suggests that the most effective way for councils to create positive long-term impact is to lobby State and Federal Government to put further restrictions and controls in place.

35 The attached Northern Beaches Policy Statement focusses on the harm caused by EGM gambling; the benefits of harm minimisation strategies and evidence-based approaches; the role of local councils in lobbying, education and advocacy and the need for effective collaboration. This is supported by extensive research summarised in the policy documents.

The actions in the Northern Beaches Strategy include:

- 40 • Advocacy and Lobbying to State and Federal Ministers
- Seeking to engage Local Government NSW in research and lobbying efforts
- Carrying out local impact assessment for each request for an increase in EGMs
- Community Education on the harms of gambling and services available to support those affected
- 45 • Working with clubs to ensure fair and equitable distribution of Club Grant funding to a range of community organisations
- Provide Community Leadership by exploring the option of banning future advertising of gambling on its buildings and properties and in any form of sponsorship.
- Providing Community Leadership by assessing the potential harms from gambling when applying or renewing leases on Council property, and where suitable, implement appropriate
- 50 clauses in a lease to restrict EGMs

The Alliance of Gambling Reform (AGR) assessed the Strategy and supporting documentation .

Key issues

Ongoing community consultation has identified a range of priority community issues in Byron Shire, primarily:

5

- homelessness,
- affordable housing, and
- mental health.

10 Consultation to date has not identified gambling as a high priority area for Council's operational work.

15 While acknowledging that EGMs generate significant harm for a proportion of the community, development of a dedicated Strategy or gambling harm minimisation initiatives should be considered within a broader context of local priorities.

STRATEGIC CONSIDERATIONS

20 ***Community Strategic Plan and Operational Plan***

There is currently no Operation Plan activity related to gambling harm minimization initiatives.

If identified as a priority, a new activity can be considered as part of the development of the 2020/2021 Operational Plan.

25

Legal/Statutory/Policy Considerations

Nil

30 ***Financial Considerations***

Nil

35 ***Consultation and Engagement***

Nil

Report No. 13.7 **Submission to Office of Local Government - Discussion Paper - A New Risk Management and Internal Audit Framework for Local Councils in NSW**

Directorate: Corporate and Community Services

5 **Report Author:** Heather Sills, Corporate Planning and Improvement Coordinator
Emma Fountain, Strategic Risk & Business Continuity Coordinator

File No: I2019/1924

10

Summary:

The *Local Government Act 1993* was amended in August 2016 to require each council and joint organisation in NSW to appoint an audit, risk and improvement committee (ARIC).

15

The Office of Local Government (OLG) has developed a draft internal audit and risk management framework to support and inform the operations of ARICs. The proposed framework is based on international standards and the experience of Australian and NSW Government public sector agencies who have already implemented risk management and internal audit, and has been adapted to reflect the unique needs and structure of NSW councils and joint organisations.

20

OLG has issued a discussion paper, “*A New Risk Management and Internal Audit Framework for Local Councils in NSW*” which sets out the proposed framework in detail and a “snapshot” guide that summarises its key elements. The OLG is seeking submissions on the framework by 31 December 2019.

25

Following an internal review and consultation with the Audit, Risk and Improvement Committee, a submission to OLG has been prepared and is attached to this report (E2019/83762).




30

RECOMMENDATION:

1. **That Council considers the discussion paper, “A New Risk Management and Internal Audit Framework for Local Councils in NSW”**
2. **That Council makes a submission to the Office of Local Government during the submission period covering the considerations outlined in this report.**

Attachments:

35

- 1 A new risk management and internal audit framework for local councils in NSW - snapshot guide, E2019/76197 
- 2 A new risk management and internal audit framework for local councils in NSW - discussion paper, E2019/76198 
- 3 Submission to Office of Local Government (OLG) - A New Risk Management and Internal Audit Framework - Discussion Paper, E2019/83762 

40

REPORT

5 The Local Government Regulation will provide for a Model Internal Audit Charter and Model Terms of Reference for Audit, Risk and Improvement Committees which all councils must adopt and comply with. The discussion paper describes the key requirements that will ultimately be prescribed by the *Local Government (General) Regulation 2005*.

The NSW Government's objective is to ensure that councils have:

- 10
- an independent ARIC that adds value to the council
 - a robust risk management framework
 - an effective internal audit function

15 Councils will have until March 2021 to establish their Audit, Risk and Improvement Committees in line with the regulatory requirements proposed in the discussion paper. It is proposed that councils will then have a further 18 months, until December 2022, to establish and resource their internal audit function and risk management framework (guided by the Audit, Risk and Improvement Committee).

20 It is expected that over time, as resources allow, the role of each Council's Audit, Risk & Improvement Committee will be expanded to include compliance, fraud control, financial management, governance, integrated planning and reporting, service reviews and performance management, with full compliance achieved by 2026.

Implementation timeline

By March 2021

- Audit, Risk and Improvement Committee established and appointed (core requirement 1 or 9 for shared arrangements)

By December 2022

- Risk management framework developed, including appointment of Risk Management Coordinator (core requirement 2)
- Internal audit function established, including employment of Chief Audit Executive and personnel (core requirements 3-4 or 9 for shared arrangements)

By 2024

- Risk management framework fully implemented throughout council and operating in compliance with regulatory requirements (core requirement 2)
- Internal audit function fully implemented by council and operating in compliance with regulatory requirements (core requirements 5-8)

By 2026

- Audit, Risk and Improvement Committee's role expanded to include compliance, fraud control, financial management, governance, integrated planning and reporting, service reviews, performance measurement data and performance improvement in compliance with s 428A of the Local Government Act.

Core Requirements

5 The discussion paper outlines nine core requirements that councils will be required to comply with when establishing their Audit, Risk and Improvement Committee, risk management framework and internal audit function.

10 **Core requirement 1:** Appoint an independent Audit, Risk and Improvement Committee (must be independent members from prequalified panel (i.e. no Councillors))

Core requirement 2: Establish a risk management framework consistent with current Australian risk management standards

Core requirement 3: Establish an internal audit function mandated by an Internal Audit Charter

15 **Core requirement 4:** Appoint internal audit personnel and establish reporting lines

Core requirement 5: Develop an agreed internal audit work program

Core requirement 6: How to perform and report internal audits

Core requirement 7: Undertake ongoing monitoring and reporting

Core requirement 8: Establish a quality assurance and improvement program

20 **Core requirement 9:** Councils can establish shared internal audit arrangements

Key considerations from the discussion paper

Implications for Joint Organisation

The framework will apply to councils, county councils, and joint organisations, meaning that the Northern Rivers Joint Organisation will be required to have an ARIC. There are potential opportunities to establish a shared ARIC with the joint organisation and its member councils.

5 *Implications for Membership*

The ARIC is to comprise of three to five independent members who are prequalified via the NSW Government's *Prequalification Scheme: Audit and Risk Committee Independent Chairs and Members*.

10

ARIC members and the Chair are to serve a three to five-year term. A member's term cannot exceed eight years and the Chair's term cannot exceed five years.

15

All ARIC members must be independent. To be classified as 'independent', a member must be:

1. Free of any relationships that could be perceived to result in bias or a conflict of interest or interfere with their ability to act independently.
2. Selected from the panel of prequalified audit and risk committee independent chairs and members administered by the NSW Government.

20

Further details on specific exclusions and requirements are provided on page 36-37 of Attachment 1, but notably, under the new regulations Councillors would not be members of the Audit, Risk, and Improvement Committee.

25

The discussion paper outlines recommended fees to be paid to Audit, Risk, and Improvement Committee members, while noting that members will be able to serve on Audit, Risk, and Improvement Committees on a voluntary basis. The suggested member fee for a council the size of Byron Shire is \$1,621 per meeting date including preparation time and \$16,213 per annum for the Chair.

30

The proposed submission response below includes comment on the membership and fee proposals.

35

Reporting Lines

ARIC is to have direct and unrestricted access to the General Manager, senior management and staff and contractors of the council in order to perform its role. ARIC is also to have direct and unrestricted access to the council resources and information it needs to perform its role.

40

The General Manager is to appoint a Chief Audit Executive (CAE) to oversee internal audit activities. The CAE is to report functionally to ARIC and administratively to the GM. In Byron Shire it is likely that this role would be undertaken by the Director Corporate & Community Services.

45

An Annual Assurance Report to the governing body of the council is to be prepared and be assessed by an external party at least once each council term.

Implications for Risk Management

50

Council is required to establish a risk management framework that is consistent with current Australian standards for risk management which includes the implementation of a risk management policy, risk management plan and risk management process.

55

Council is to fully integrate risk management into its decision making, operational and integrated planning and reporting processes and formally assign risk management responsibilities to the GM, senior managers and other council staff and ensure accountability.

5 The General Manager is to appoint a Risk Management Coordinator who will be responsible for the operational activities required to implement the risk management framework and provide specialist risk management skills and knowledge. The Risk Management Coordinator will report directly to the GM or other member of senior management of Council in relation to Council's risk management function.

10 Byron Shire is already well advanced on the path of establishing an appropriate risk management framework as outlined above and already has a Risk Management Coordinator.

The risk management framework is to be regularly monitored and reviewed, with ARIC providing independent assurance of risk management activities.

15 The GM is to attest to Council's compliance with the risk management requirements in the Annual Report.

Next steps

20 Submissions to the Office of Local Government (OLG) are to be made in writing by 31 December 2019. OLG has suggested consideration of the following questions to inform submissions:

- Will the proposed framework achieve the outcomes sought?
- What challenges do you see for your council when implementing the proposed framework?
- Does the proposed framework include all important elements of an effective internal audit and risk framework?
- Is there anything you don't like about the proposed framework?
- Can you suggest improvements to the proposed framework?

30 A submission has been prepared (Attachment 3 - E2019/83762) in accordance with the key points of feedback, outlined below:

<p>Will the proposed framework achieve the outcomes sought?</p>	<ul style="list-style-type: none"> • The proposed framework will assist Council to improve its internal audit and risk management framework, noting that Byron already has a number of the measures in place
<p>What challenges do you see for your council when implementing the proposed framework?</p>	<ul style="list-style-type: none"> • Councillors have a valuable role on ARIC which provides them with opportunities to understand the audit and risk process and monitor outcomes. Council believes that to lose this opportunity would be detrimental • Sourcing ARIC members that meet the independence and prequalification requirements may also be a challenge • Rotating ARIC members when the pool is potentially small • As proposed the framework creates ambiguity between the roles, responsibilities, and authority between the administration, elected body and ARIC. For example: What is the process if Council rejects recommendations from its ARIC?
<p>Does the proposed framework include all important elements of an effective internal audit and</p>	<ul style="list-style-type: none"> • Council considers the proposed framework covers all important elements of an effective internal audit and risk management framework

risk framework?	
Is there anything you don't like about the proposed framework?	<ul style="list-style-type: none"> • Overall Council is supportive of the proposed framework and is on track to meet the requirements within the proposed timeframes. • Council has concerns with the lack of flexibility for councils to establish membership guidelines that are suitable to individual locations, organisations and operations. • Council also has concerns with the proposed extension of functions of Audit Risk & Improvement Committees, noting that the full scope is very broad and may prove unmanageable in terms of the amount of work the ARIC is realistically able to cover. Council already has established mechanisms to monitor financial management.
Can you suggest improvements to the proposed framework?	<ul style="list-style-type: none"> • Council submits that consideration should be given to creating a sliding scale for payment of fees to ARIC members during the transition phase, commensurate with the actual functions performed. There is an expectation that the role of the ARIC will expand over time to cover a range of functions with full compliance achieved by 2026 but there is no differentiation in the fees between an established ARIC that is or will be fully compliant ahead of the proposed timelines and an ARIC that has a limited focus whilst that council is developing its internal functions in line with its resources and capabilities.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.6	Manage Council's resources sustainably	5.6.7	Develop and embed a proactive risk management culture	5.6.7.4	Manage Audit, Risk and Improvement program including coordinating committee recommendations

5

Legal/Statutory/Policy Considerations

The operation of sections 428A and 428B of the *Local Government Act* will be supported by new regulations in the *Local Government (General) Regulation 2005*.

10

Financial Considerations

Not applicable at this stage.

15

Consultation and Engagement

Internal feedback from relevant officers and from the Executive Team was has informed the proposed submission. Further, the Audit, Risk and Improvement Committee considered the discussion paper at its 14 November meeting and provided feedback to the draft submission prior to the report being prepared for Council.

20

Report No. 13.8 **Investments - 1 November 2019 to 30 November 2019**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2019/1979

5

Summary:

10 This report includes a list of investments and identifies Council's overall cash position for the period 1 November 2019 to 30 November 2019 for Council's information.

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

15

RECOMMENDATION:

That the report listing Council's investments and overall cash position as at 30 November 2019 be noted.

20

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

REPORT

5 Council has continued to maintain a diversified portfolio of investments. At 30 November, the average 90 day bank bill rate (BBSW) for the month of November 2019 was 0.91%. Council's performance to 30 November was 1.95%. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits, bonds and purchasing floating rate notes with attractive interest rates. It should be noted that as investments mature, Council's % return will start to decrease due to the lower rates available in the current market.

10

The table below identifies the investments held by Council as at 30 November 2019

Schedule of Investments held as at 30 November 2019

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
24/03/17	1,000,000	NAB Social Bond (Gender Equality)	Y	AA-	24/03/22	Y	B	3.25%	1,044,263.16
15/11/18	980,060	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	Y	B	3.00%	1,108,880.00
20/11/18	1,018,290	QLD Treasury Corp (Green Bond)	N	AA+	22/11/24	Y	B	3.00%	1,077,720.00
28/03/19	1,000,000	National Housing Finance & Investment Corporation	Y	AAA	28/03/29	Y	B	2.38%	1,062,980.00
21/11/19	1,000,250	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	Y	B	1.25%	1,000,250.00
27/11/19	500,000	National Housing Finance & Investment Social Bond	N	AAA	27/05/30	Y	B	1.57%	500,000.00
31/03/17	1,000,000	CBA Climate Bond	Y	AA-	31/03/22	Y	FRN	3.01%	1,008,850.00
16/11/17	750,000	Bank of Queensland	Y	BBB+	16/11/21	N	FRN	2.97%	753,667.50
30/08/18	500,000	Bank Australia Ltd (Sustainability Bond)	Y	BBB+	30/08/21	Y	FRN	3.17%	502,795.00
07/12/18	2,000,000	Credit Union Australia	Y	BBB	07/12/20	Y	TD	3.02%	2,000,000.00
13/12/18	1,000,000	Summerland Credit Union	Y	NR	13/12/19	Y	TD	3.01%	1,000,000.00
05/01/19	2,000,000	NAB	N	AA-	06/01/20	N	TD	2.75%	2,000,000.00
18/01/19	1,000,000	Westpac	Y	AA-	16/01/20	N	TD	2.73%	1,000,000.00
30/01/19	1,000,000	Defence Bank	Y	BBB	30/01/20	Y	TD	2.85%	1,000,000.00
04/02/19	1,000,000	Summerland Credit Union	N	NR	04/02/20	Y	TD	2.95%	1,000,000.00
06/03/19	1,000,000	Bananacoast Credit Union	Y	NR	04/03/20	Y	TD	2.90%	1,000,000.00
04/06/19	2,000,000	Beyond Bank Australia	Y	NR	06/12/19	Y	TD	2.40%	2,000,000.00
04/06/19	1,000,000	AMP Bank	Y	BBB	03/12/19	N	TD	2.45%	1,000,000.00
24/06/19	2,000,000	NAB	N	AA-	20/01/20	N	TD	1.90%	2,000,000.00
28/06/19	2,000,000	Bankwest	Y	AA-	27/12/19	N	TD	1.90%	2,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
28/06/19	2,000,000	Bank of Queensland	N	BBB+	24/01/20	N	TD	2.10%	2,000,000.00
01/07/19	1,000,000	Police Credit Union Limited (SA)	Y	NR	03/01/20	Y	TD	2.23%	1,000,000.00
03/07/19	1,000,000	Australian Military Bank	Y	NR	02/07/20	Y	TD	2.12%	1,000,000.00
04/07/19	1,000,000	NAB	N	AA-	30/03/20	N	TD	1.95%	1,000,000.00
24/07/19	1,000,000	Bankwest	N	AA-	24/01/20	N	TD	1.85%	1,000,000.00
30/07/19	2,000,000	AMP Bank	N	BBB	28/01/20	N	TD	2.20%	2,000,000.00
01/08/19	2,000,000	NAB	N	AA-	02/12/19	N	TD	1.80%	2,000,000.00
06/08/19	2,000,000	Bankwest	N	AA-	06/12/19	N	TD	1.70%	2,000,000.00
15/08/19	1,000,000	Maitland Mutual Building Society	Y	NR	12/02/20	Y	TD	1.78%	1,000,000.00
16/08/19	1,000,000	ME Bank	Y	BBB	12/02/20	Y	TD	1.73%	1,000,000.00
26/08/19	1,000,000	Suncorp	Y	A+	21/02/20	Y	TD	1.62%	1,000,000.00
27/08/19	2,000,000	Bank of Queensland	N	BBB+	27/02/20	N	TD	1.75%	2,000,000.00
27/08/19	1,000,000	AMP Bank	N	BBB	26/08/20	N	TD	1.80%	1,000,000.00
29/08/19	1,000,000	Macquarie Bank	Y	A	25/02/20	N	TD	1.80%	1,000,000.00
02/09/19	1,000,000	Maitland Mutual Building Society	N	NR	02/12/19	Y	TD	1.75%	1,000,000.00
03/09/19	2,000,000	Macquarie Bank Ltd	N	A	02/03/20	N	TD	1.75%	2,000,000.00
04/09/19	1,000,000	Australian Military Bank	N	NR	02/03/20	Y	TD	1.70%	1,000,000.00
10/09/19	2,000,000	NAB	N	AA-	09/12/19	N	TD	1.72%	2,000,000.00
25/09/19	1,000,000	TCorp Green Deposit	N	AAA	25/03/20	N	TD	1.00%	1,000,000.00
25/09/19	2,000,000	NAB	N	AA-	24/09/20	N	TD	1.60%	2,000,000.00
30/09/19	1,000,000	NAB	N	AA-	28/01/20	N	TD	1.68%	1,000,000.00
08/10/19	1,000,000	NAB	N	AA-	06/04/20	N	TD	1.93%	1,000,000.00
08/10/19	1,000,000	My State Bank	Y	NR	06/02/20	Y	TD	1.70%	1,000,000.00
21/10/19	2,000,000	NAB	N	AA-	21/04/20	N	TD	1.57%	2,000,000.00
25/10/19	2,000,000	NAB	N	AA-	25/02/20	N	TD	1.60%	2,000,000.00
29/10/19	1,000,000	ME Bank	N	BBB	28/07/20	Y	TD	1.58%	1,000,000.00
30/10/19	1,000,000	My State Bank	N	NR	29/01/20	Y	TD	1.70%	1,000,000.00
30/10/19	2,000,000	Macquarie Bank Ltd	N	A	29/04/20	N	TD	1.60%	2,000,000.00
04/11/19	1,000,000	NAB	N	AA-	03/02/20	N	TD	1.58%	1,000,000.00
06/11/19	1,000,001	AMP Bank	N	BBB	06/05/20	N	TD	1.75%	1,000,001.00
07/11/19	2,000,000	NAB	N	AA-	06/04/20	N	TD	1.58%	2,000,000.00
08/11/19	2,000,000	Suncorp	N	A	04/08/20	Y	TD	1.60%	2,000,000.00
25/11/19	1,000,000	AMP Bank	N	BBB	25/05/20	N	TD	1.90%	1,000,000.00
27/11/19	1,000,000	Coastline Credit Union	Y	NR	26/11/20	Y	TD	1.80%	1,000,000.00
28/11/19	2,000,000	Macquarie Bank Ltd	N	A	12/03/20	N	TD	1.60%	2,000,000.00
N/A	706,211.67	CBA Business Saver	N	AA-	N/A	N	CALL	1.20%	706,211.67

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
N/A	3,563,370.52	NSW Treasury Corp	N	AAA	N/A	Y	CALL	1.30%	3,563,370.52
Total	77,018,183.19						AVG	1.95%	77,328,988.85

Note 1. CP = Capital protection on maturity
 N = No Capital Protection
 Y = Fully covered by Government Guarantee
 P = Partial Government Guarantee of \$250,000 (Financial Claims Scheme)

Note 2. No Fossil Fuel ADI
 Y = No investment in Fossil Fuels
 N = Investment in Fossil Fuels
 U = Unknown Status

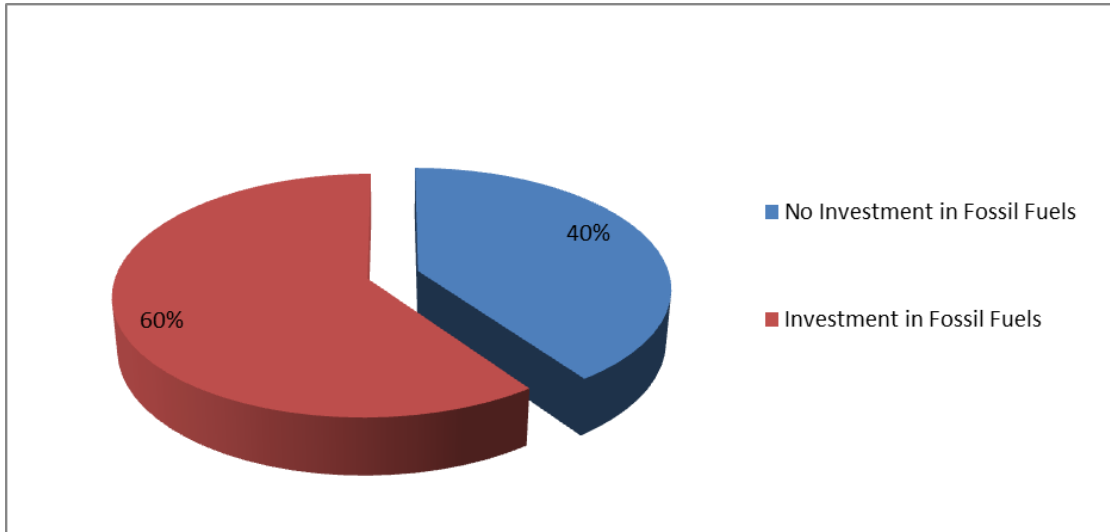
Note 3.

Type	Description	
B	Bonds	Principal can vary based on valuation, interest payable via a fixed interest, payable usually each quarter.
FRN	Floating Rate Note	Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.
TD	Term Deposit	Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.
CALL	Call Account	Principal varies due to cash flow demands from deposits/withdrawals, interest is payable on the daily balance.

Environmental and Socially Responsible Investing (ESRI)

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

15 The notion of Environmental and Socially Responsible Investing is much broader than whether a financial institution as rated by 'marketforces.org.au' invests in fossil fuels or not. Council's current Investment Policy defines Environmental and Socially Responsible Investing at Section 4.1 of the Policy which can be found on Council's [website](#).



5 Council has two investments with financial institutions that invest in fossil fuels but are nevertheless aligned with the broader definition of Environmental and Socially Responsible investments i.e.:

1. \$1,000,000 investment with the National Australia Bank maturing on 24 March 2022 known as a Social Bond that promotes Gender Equity.
- 10 2. \$1,000,000 investment with Commonwealth Bank maturing on 31 March 2022 known as a Climate Bond.

New Environmental and Socially Responsible Investments (ESRI) November 2019

15 During November 2019, Council was able to secure two new ESRI Investments as follows:

1. NSW Treasury Corporation Sustainability Bond. Investment proceeds for the Sustainability Bond are to be invested into sustainable water and wastewater projects, a transport access program and the construction of nine new schools and upgrades to a further 19 schools. Council was able to secure a \$1,000,000 investment in this Bond. The Bond issuance was looking to raise \$1.8billion and firm offers in excess of \$2.25billion were received.
- 20 2. The National Housing Finance and Investment Corporation Social Bond. Investment proceeds are to finance or refinance a portfolio of assets and projects associated with affordable housing. Council was looking to secure a \$1,000,000 investment in this Bond but was only able to secure \$500,000. The Bond issuance was looking to raise \$315million and firm offers of in excess of \$1.235billio were received.
- 25

Investment Policy Compliance

30

Investment policy compliance			ACTUAL	Variance
% per institution should not exceed the following				
AAA to AA	A1+	100%	53%	Meets policy
A+ to A-	A1	60%	9%	Meets policy
BBB to NR	A2,NR	40%	38%	Meets policy

35 The above table identifies compliance with Council’s Investment Policy by the proportion of the investment portfolio invested with financial institutions, along with their associated credit ratings compared to parameters in the Investment Policy. The parameters are designed to support prudent short and long-term management of credit risk and ensure diversification of the investment

portfolio. Note that the financial institutions currently offering investments in the 'ethical' area are still mainly those with lower credit ratings (being either BBB or not rated at all i.e. credit unions).

Associated Risk

5 Moving more of the investment portfolio into the 'ethical' space will lower the credit quality of the investment portfolio overall and continue to increase the organisation's credit risk (i.e. exposure to potential default). To monitor this issue the 'Investment Policy Compliance' table is now produced for each monthly Investment Report to Council.

10 The investment portfolio is outlined in the table below by investment type for the period 1 November 2019 to 30 November 2019:

Dissection of Council Investment Portfolio as at 30 November 2019

15

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
65,000,001.00	Term Deposits	65,000,001.00	0.00
2,250,000.00	Floating Rate Note	2,265,312.50	15,312.50
706,211.67	Business On-Line Saver (At Call)	706,211.67	0.00
3,563,370.52	NSW Treasury Corp (T Corp)	3,563,370.52	0.00
5,498,600.00	Bonds	5,794,093.16	295,493.16
77,018,183.19		77,328,988.85	310,805.66

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

The table below provides a reconciliation of investment purchases and maturities for the period of 1 November 2019 to 30 November 2019 on a current market value basis.

Movement in Investment Portfolio – 30 November 2019

Item	Current Market Value (at end of month) \$
Opening Balance at 1 November 2019	77,328,738.85
Add: New Investments Purchased	11,500,251.00
Add: Call Account Additions	1,000,000.00
Add: Interest from Call Account	0.00
Less: Investments Matured	11,000,001.00
Add: T Corp Additions	0.00
Add: Interest from T Corp	0.00
Less: Call Account Redemption	1,500,000.00
Less: T Corp Redemption	0.00
Less: Fair Value Movement for period	0.00
Closing Balance at 30 November 2019	77,328,988.85

Term Deposit Investments Maturities and Returns – 1 November 2019 to 30 November 2019

5

Principal Value (\$)	Description	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
1,000,001	AMP Bank	06/11/2019	91	1.90%	4,736.99
2,000,000	Suncorp	08/11/2019	273	2.75%	41,136.99
1,000,000	NAB	04/11/2019	90	1.83%	4,512.33
1,000,000	AMP Bank	25/11/2019	182	2.45%	12,216.44
2,000,000	NAB	07/11/2019	90	1.80%	8,876.71
1,000,000	Auswide Bank LTD	12/11/2019	92	2.03%	5,116.71
1,000,000	ME Bank	13/11/2019	91	1.78%	4,437.81
2,000,000	Macquarie Bank Ltd	26/11/2019	90	1.85%	9,123.29
11,000,001					90,157.27

Council's overall 'cash position' 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 for operational purposes. In this regard, for the month of November 2019 the table below identifies the overall cash position of Council as follows:

10

Dissection of Council Cash Position as at 30 November 2019

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	65,000,001.00	65,000,001.00	0.00
Floating Rate Note	2,250,000.00	2,265,312.50	15,312.50
Business On-Line Saver (At Call)	706,211.67	706,211.67	0.00

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
NSW Treasury Corp (T Corp)	3,563,370.52	3,563,370.52	0.00
Bonds	5,498,600.00	5,794,093.16	295,493.16
Total Investment Portfolio	77,018,183.19	77,328,988.85	310,805.66
Cash at Bank			
Consolidated Fund	4,226,313.82	4,226,313.82	0.00
Total Cash at Bank	4,226,313.82	4,226,313.82	0.00
Total Cash Position	81,244,497.01	81,555,302.67	310,805.66

STRATEGIC CONSIDERATIONS

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.5	Manage Council's finances sustainably	5.5.2	Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.5	Identification of ethical investment opportunities with environmental and social inclusion outcomes

Legal/Statutory/Policy Considerations

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

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

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

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

Financial Considerations

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

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.9 Sustainable Visitation Strategy - Project update

Directorate: Sustainable Environment and Economy

5 **Report Author:** Sarah Workman, Tourism Officer
Lisa Richards, Tourism Officer

File No: I2019/905

10

Summary:

15 Council is currently finalising a draft Byron Shire Sustainable Visitation Strategy 2020-2030 (SVS) which is based on research and engagement from the community, visitors, stakeholders and industry and aims to establish Byron Shire as a leading sustainable tourism destination.

20 It is written in line with the Global Sustainable Tourism Council's destination criteria for sustainable tourism, recognising the impacts visitation has on our environment and the community whilst also supporting our tourism economy. This new approach to Strategy development sees Council looking to the future of tourism in the Shire for the next ten years and valuing what our community see as priorities.

25 The following report provides an update on the Sustainable Visitation Strategy.

RECOMMENDATION:

That Council note the staff update on the Byron Shire 2020 – 2030 Sustainable Visitation Strategy.

30

REPORT

5 Council is currently finalising a draft Byron Shire Sustainable Visitation Strategy 2020-2030 (SVS) which is based on research and engagement from the community, visitors, stakeholders and industry and aims to establish Byron Shire as a leading sustainable tourism destination.

This report provides an outline of the following work completed to date:

- 10 1. The research and engagement undertaken to develop the strategy
- 2. Development of a SVS framework and vision
- 3. Revised project timeline and next steps

Web link:

15 <https://www.byron.nsw.gov.au/Business/Business-in-Byron/Tourism/Talking-Future-Tourism-Sustainable-Visitation-Strategy-2020-2030>

Research and Engagement

20 The following outlines the primary and secondary research conducted to inform the strategy, which occurred from February to August 2019.

Primary Research and Engagement:

- 25 1. Talking Future Tourism Kitchen Table Handbook and Discussions
 - a. 11 facilitated community sessions
 - b. 1200 individual responses received from community members
- 30 2. Visitor Focus Groups
 - a. 3 focus groups held
 - b. Topics reflected content in the kitchen table handbook
- 35 3. Stakeholder Interviews
 - a. 20 interviews held with Council staff impacted by the visitor economy
- 40 4. Byron Shire Accommodation Audit
 - a. An audit of accommodation and capacity was conducted
- 45 5. Byron Shire Tourism Product Audit
 - a. An audit of tourism attractions, restaurants, wellness centres and activities were undertaken.
- 6. Community Solutions Panel
 - a. A group of 26 randomly selected residents and/or ratepayers met over three weekends to discuss the following – *what actions can Council take to align visitor behaviour with community values?*

Secondary Research:

- 50 1. Tourism Research Australia – National and International Visitor Surveys
- 2. ID Profile – Byron Shire Economic Profile
- 3. Tourism reports from other Local Government Areas including Waverly, Noosa, Blue Mountains, Kangaroo Island and Shoalhaven.
- 55 4. Future tourism trends and case studies.

Values and Principles from Engagement

The following values and principles as expressed by our community through the engagement process will underpin the SVS vision, strategies and actions.

5

1. Respect of community, nature, others and self

2. Appreciation of culture, nature and social diversity

10

3. Conservation of the natural environment and biodiversity

4. Welcoming all and acceptance of diversity

5. Balance between economy, society, culture and environment

15

6. Acceptance of indigenous, historical and spiritual cultures

7. Live in harmony and safety

20

8. Work life balance that embrace activity and healthy and sustainable lifestyles

9. Embracing education, innovation and enlightenment

10. Balance between the laid-back and relaxed lifestyle with the engaged activism.

25

The research and feedback from the engagement is being incorporated into the draft SVS to be presented to Council at its meeting in February 2020.

Sustainable Visitation Strategy Framework – Summary

30

The SVS is divided into four key areas, which covers background information, the Byron Shire community profile, tourism facts and figures, key themes and the action plan. A summary of the SVS contents page is provided below.

35

SECTION 1- Sustainable Tourism and the Sustainable Visitation Strategy

1.1 Introduction

1.2 Our Vision

1.3 Key Changes to the Byron Shire Visitor Economy

40

1.4 Tourism Management Plan 2008-2018 Achievements

1.5 Preparing for the Next Ten Years- Sustainable Tourism and Our Byron Shire Sustainable Visitation Strategy

1.6 What is the Global Sustainable Tourism Council?

1.7 Engagement and Research for Informing the Strategy

SECTION 2- Byron Shire Profile

- 2.1 Our People and Our Land
- 2.2 Community Profile
- 5 2.3 Community Values and Guiding Principles
- 2.4 Government Legislation, Regulations and Activities

SECTION 3- Sustainable Tourism in Byron Shire

- 10 3.1 Tourism Facts and Figures
- 3.2 Accommodation Summary
- 3.3 Tourism Product Inventory
- 3.4 Emerging Trends and Drivers of Change

15 SECTION 4 Sustainable Visitation Strategy Themes:

- 1. Leadership and Coordination
- 2. Funding
- 3. Marketing
- 20 4. Culture
- 5. Events
- 6. Environment
- 7. Transport, Infrastructure and Open Spaces
- 8. Planning

25 *Example of how each section will be laid out:*

SECTION 4.1 – Leadership and Coordination

- 4.1.1 Background and Engagement*
- 4.1.2 Case studies*
- 4.1.3 Case study learnings for Byron Shire*
- 30 *4.1.4 Strategies*
- 4.1.5 Actions*
- 4.1.6 GSTC Compliance Criteria*
- 4.8.4 Strategies*
- 4.8.5 Actions*
- 35 *4.8.6 GSTC Compliance Criteria*

SECTION 5 - ACTION PLAN

SVS Vision

40 To ensure the SVS is written in full collaboration with the community, engagement is underway to develop the vision for the SVS. The community is providing feedback through Bang the Table and awareness is being raised through Council's website and social media channels. Feedback closes on 20 December 2019 and this feedback will be used to present the SVS vision to Council in
45 February 2020.

A link to community call-out for feedback on the visions statement for the SVS is below:

<https://www.yoursaybyronshire.com.au/talking-future-tourism>

One example vision developed through a recent Councillor workshop with staff follows:

- 5 *Byron Shire supports a visitor economy that cares for and respects our residents, protects our natural environment, celebrates our cultural diversity and shares our social values.*

Next steps

- 10 The following table shows the key timelines for the SVS.

Task	Delivery
Community engagement on the SVS vision	28 November to 20 December 2019
SVS draft considered by Council and approval provided to proceed to public exhibition	February 2020
SVS on public exhibition	February/March 2020
Final draft SVS considered by Council and adopted	May 2020

STRATEGIC CONSIDERATIONS

- 15 ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.4	Promote and support local business development, education and employment opportunities	4.4.1	Build a tourism industry that delivers local and regional benefits in line with the community's values	4.4.1.1	Develop a new Byron Shire Sustainable Visitation Plan

Legal/Statutory/Policy Considerations

- 20 Planning, Environment and Local Government legislation.

Financial Considerations

- 25 Funded within existing operational budget.

Consultation and Engagement

Consultation and engagement provided in body of report.

Report No. 13.10 **Climate Emergency Response - update on Resolution 19-341**
Directorate: Sustainable Environment and Economy
Report Author: Sharyn French, Manager Environmental and Economic Planning
File No: I2019/1489

5

Summary:

10 Council resolved (**Res. 19-341**) at its Ordinary Meeting 27 June 2019 the following matters in relation to Council’s Climate Emergency Response. This report accords with item vii of this resolution to ‘report to Council on the outcome of actions (i-vi) in December 2019’.



- 15
1. *That Council note the report Byron Shire Climate Emergency Response.*
 - 20 2. *That Council endorse the following actions as the result of the report:*
 - 25 i. *Include an action in the Operational Plan FY2019/20 about a ‘Climate Emergency Plan’;*
 - 30 ii. *Hold a facilitated workshop between Councillors and the Executive Team to better understand and articulate what ‘climate emergency’ means in the Byron Shire context, and available mechanisms and resourcing for stronger action;*
 - 35 iii. *Establish a Climate Emergency Cluster Group as defined in the body of the report;*
 - iv. *Undertake a review of relevant climate policy and literature to establish an overarching framework for attracting grant funding and developing and delivering climate adaptation projects;*
 - v. *In concert with item (iv) undertake a review of all Council programs to ensure alignment with our Climate Emergency commitment;*
 - vi. *Request ADAPT NSW to deliver Council and community workshops on ADAPT NSW/NCERA workshop outcomes; and*
 - vii. *Report to Council on the outcome of actions (i-vi) in December 2019.*
 3. *That the Climate Emergency Group continues its role as a subgroup of the SERAC and provides representation to the Climate Emergency Cluster Group.*

35

RECOMMENDATION:

1. **That Council note the response to items 2.iv &.v of resolution 19-341 which includes a gap analysis of Council programs in Attachment 2 (E2019/86487), which will be further developed to inform the proposed Action Tank workshop.**
2. **That Council request staff to convene an Action Tank workshop in the new year to advance the development of the Climate Change Adaptation Plan to be reported to Council within six months of the workshop.**
3. **That Council fund the Action Tank Workshop and development of the Climate Change Adaptation Plan by allocating \$60,000 from the Land and Natural Environment Reserve.**

Attachments:

- 40
- 1 Climate Emergency Workshop outcomes, 6 September 2019, E2019/67841 
 - 2 Response to item 2.iv & v of resolution 19-341 for Report to Council Meeting 12 Dec 2019, E2019/86487 

REPORT

Council at the 27 June 2019 meeting resolved:

5 Resolution 19-341:

1. *That Council note the report Byron Shire Climate Emergency Response.*
2. *That Council endorse the following actions as the result of the report:*
 - 10 *i. Include an action in the Operational Plan FY2019/20 about a 'Climate Emergency Plan';*
 - ii. Hold a facilitated workshop between Councillors and the Executive Team to better understand and articulate what 'climate emergency' means in the Byron Shire context, and available mechanisms and resourcing for stronger action;*
 - 15 *iii. Establish a Climate Emergency Cluster Group as defined in the body of the report;*
 - iv. Undertake a review of relevant climate policy and literature to establish an overarching framework for attracting grant funding and developing and delivering climate adaptation projects;*
 - v. In concert with item (iv) undertake a review of all Council programs to ensure alignment with our Climate Emergency commitment;*
 - 20 *vi. Request ADAPT NSW to deliver Council and community workshops on ADAPT NSW/NCERA workshop outcomes; and*
 - vii. Report to Council on the outcome of actions (i-vi) in December 2019.*
3. *That the Climate Emergency Group continues its role as a subgroup of the SERAC and provides representation to the Climate Emergency Cluster Group.*

This report provides an update on item 2 parts i-vi.

30 2(i) Include an action in the Operational Plan FY2019/20 about a 'Climate Emergency Plan'

Complete - action has been included in the OP.

35 2 (ii) Hold a facilitated workshop between Councillors and the Executive Team to better understand and articulate what 'climate emergency' means in the Byron Shire context, and available mechanisms and resourcing for stronger action

The workshop was held on 6 September 2019 and was proceeded by a presentation open to the public by Dr Joelle Gergis, Senior Lecturer in Climate Science at Australian National University.

40 Dr Gergis is an internationally-recognised climate scientist in Australian and Southern Hemisphere climate variability and member of the Climate Council, who spoke about the latest reports, climate science and what it means to communities like Byron Shire.

45 The Councillor and staff workshop considered what other councils' are doing regarding climate emergency, the ADAPT NSW North Coast Enabling Regional Adaptation report (NERA), what climate emergency means and the areas in which council can have the most impact out of the nine regional systems identified in NERA:

- 50 1. Settlements and land-use planning
2. Resilient communities
3. Cultural heritage
4. Biodiversity
5. Emergency management
6. Food and agriculture

- 7. Infrastructure and water
- 8. Energy
- 9. Tourism

5 Attachment 1 includes the workshop outcomes which will be used to inform the proposed Action Tank workshop in the New Year.

2(iii) Establish a Climate Emergency Cluster Group as defined in the body of the report

10 The formation of a Cluster Group was discussed at the above facilitated workshop and it was decided that the role of the cluster group would be to participate in an Action Tank two to three day enquiry by design style facilitated workshop to provide recommendations and feasible actions to Council to inform our Climate Change Adaptation Plan to be delivered within 6 months.

15 Potential participants were identified to be invited to this workshop, Attachment 1.

The role of the Cluster Group and the outcome of the enquiry by design Action Tank workshop is to:

- 20 1. Participate in an Action Tank to provide recommendations and feasible actions to Council for our Climate Emergency Response
- 2. Coordinate actions between Council and Community
- 3. Deliver a Climate Change Adaptation Plan to Council in the next six months

25 ***2(iv) Undertake a review of relevant climate policy and literature to establish an overarching framework for attracting grant funding and developing and delivering climate adaptation projects***

30 ***2(v) In concert with item (iv) undertake a review of all Council programs to ensure alignment with our Climate Emergency commitment***

Attachment 2 reviewed international and national climate emergency frameworks and found that there are varied approaches depending on their needs.

35 In NSW the only designated climate change fund is from ADAPT NSW for projects that are included in or consistent with the pathways identified in the *North Coast Enabling Regional Adaptation* report.

40 Attachment 2 also provides a gap analysis of applicable Council programs including strategies, policies and plans, some of which directly deal with the issue of climate change and others indirectly. The gap analysis found that approximately 50% of council programs addressed mitigation while 6% dealt with adaptation directly.

45 This information will inform further investigations into our climate plan at the proposed Action Tank workshop in the New Year.

2(vi) Request ADAPT NSW to deliver Council and community workshops on ADAPT NSW/NCERA workshop outcomes

50 NSW Adapt internal staff workshop was successfully held on 16 October 2019. Council staff and Councillors were presented with information on the climate change projects for Byron Shire and the North Coast Enabling Regional Adaptation report.

55 This was followed by a lively Q&A session and two interactive activities – Prioritised pathways for Byron Shire Council (discuss pathways likely to move the system towards 2050 for Byron Shire

Council LGA) and Adaptation solutions (formulate transition projects that occur along the transition pathways).

5 An evening community information session was then run by Malcolm and Stephen, updating the community on the same report, as well as providing useful advice to community members on what they can do as individuals.

10 Malcolm Robertson, Senior Project Officer, Climate Resilience and Net Zero Emissions team, NSW Department of Planning, Industry and Environment.

Dr Stephen Bygrave, Director Climate Resilience and Net Zero Emissions, NSW Department of Planning, Industry and Environment.

STRATEGIC CONSIDERATIONS

15 ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.6	Develop a Climate Emergency Plan

Legal/Statutory/Policy Considerations

20 Nil

Financial Considerations

25 The two to three day facilitated Action Tank workshop to provide recommendations and feasible actions to Council, and the preparation of our Climate Change Adaptation Plan within 6 months of the workshop is expected to cost \$60,000. It is proposed that these funds come from the Land and Natural Environment reserve.

Report No. 13.11 **Review of Affordable Rental Housing (Res 19-233)**
Directorate: Sustainable Environment and Economy
Report Author: Kylie Graineey, Business Improvement Officer
File No: I2019/1120

5

Summary:

10 Council resolved on 23 May 2019 (**Resolution 19-233**) that staff prepare a report for Council consideration on the following:

- 15 a) the number and type of developments approved under the State Environmental Planning Policy (Affordable Rental Housing) 2009 since this Policy came into effect; and
- b) where able, the status of compliance these developments have with post approval requirements for affordable housing imposed by Council on development consents including current rental costs.

20 This report outlines the developments issued and where possible the status of compliance with the SEPP.

RECOMMENDATION:

25 **That Council note the staff report on Review of Affordable Housing in response to Resolution 19-233.**

REPORT

[State Environmental Planning Policy \(Affordable Rental Housing\) 2009](#) commenced 31 July 2009. The policy's intent was to facilitate the increase in supply and diversity of affordable rental and social housing. Numerous amendments to the original SEPP have occurred since. These can be reviewed in the [Historical Notes](#) section of the NSW Legislation website.

The majority of development consents issued under the Affordable Rental Housing SEPP have been for Secondary Dwellings. There have been consents issued other for affordable housing developments under the legislation for boarding houses, group homes and residential units. These are discussed below.

Development Applications issued under SEPP

10.2010.603.1	Neighbourhood shops and affordable housing development including central pedestrian plaza, perimeter vehicle access and car parking, a restaurant, a food shop, four neighbourhood shops and 15 residential units.
9-13 Clifford Street Suffolk Park <i>Approved 25 August 2011</i>	
Approval granted with conditions 2, 31, 42:	
<p>2) Affordable Rental Housing Units 5, 6 and 7 to be used for the purposes of affordable housing will be used for the purposes of affordable housing for a minimum period of 10 years from the date of the issue of the Occupation Certificate. The three units are to be managed by a community housing provider with such detail to be submitted to Council prior to the issue of the Occupation Certificate.</p> <p>31) Affordable Rental Housing A Section 88E Instrument, benefitting Byron Shire Council, to be registered on the title of the land prior to the issue of the Occupation Certificate requiring:</p> <ul style="list-style-type: none"> • Units 5, 6 and 7 to be used for the purposes of affordable rental housing in accordance with SEPP (Affordable Rental Housing) 2009 for a minimum period of 10 years from the date of the issue of the Occupation Certificate ; and • that the three units are to be managed by a registered community housing provider. <p>Details demonstrating the S88E instrument have been registered to be submitted to the PCA.</p> <p>42) Affordable Rental Housing Units 5, 6 and 7 to be used for the purposes of affordable housing In accordance with Clause 17 of SEPP (Affordable Rental Housing) 2009 for a minimum period of 10 years from the date of the issue of the Occupation Certificate. The three units are to be managed by a registered community housing provider.</p>	
Development not commenced.	

16.2013.9.1	Group Home
14 Bangalow Road, Byron Bay <i>Approved 22 January 2013</i>	
This Complying Development Certificate was issued by a Private Certifier.	
Approval was granted as a Permanent group home means a dwelling:	
(a) <i>that is occupied by persons as a single household with or without paid supervision or care</i>	

and whether or not those persons are related or payment for board and lodging is required, and
 (b) *that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,*

The property is owned by Community Housing Provider, North Coast Community Housing.

Approval as a permanent group home has no ongoing requirements for affordable housing.

16.2013.82.1	Group Home	
<i>41 Rajah Road Ocean Shores</i>		<i>Approved 29 November 2013</i>

This Complying Development Certificate was issued by a Private Certifier.

Approval was granted as a **Permanent group home** means a dwelling:

- (a) *that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
- (b) *that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,*

The property is owned by Community Housing Provider, On Track Community Programs.

Approval as a permanent group home has no ongoing requirements for affordable housing.

10.2013.584.1	Conversion and expansion of existing dwelling to create a transitional home, under the Affordable Rental Housing SEPP, including new carpark and disabled access provisions	
<i>60B Kingsvale Road Myocum</i>		<i>Approved 1 May 2014</i>

Approval was granted as a **Transitional Group home**, meaning a dwelling:

- (a) *that is occupied by persons as single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
- (b) *that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people*

Approval as a transitional group home has no ongoing requirements for affordable housing.

10.2014.157.1	Two boarding houses each containing nine accommodation units and one managers residence	
<i>18 Sunrise Boulevard Byron Bay</i>		<i>Approved 2 April 2014</i>

Development granted for a boarding house comprising a total of 20 x 1 bedroom units. Two of these units are to be allocated to onsite managers, and a further two units are to single storey wheelchair accessible. The remaining 16 units are for residents and designed in a compact two storey "A" frame style with a small ground floor kitchen, living and storage area and an upper level bedroom and ensuite. The units have a floor area of 28 m2 and are to be clad in timber and masonry grooved weatherboards with a colourbond roof. Eight car parking spaces are proposed including two disabled spaces, four motorbike spaces and 8 spaces for pushbikes.

Consent was conditioned:

- 36) *Use of Boarding House*
The boarding house to:
- a) *Accommodate no more than 2 tenants per room*
 - b) *Not to be used for holiday letting, tourist and visitor accommodation or as a backpackers*
 - c) *To have a lease arrangement with tenants for a minimum period of 6 months or more*
 - d) *Have a manager onsite at all times.*
 - e) *Operate in accordance with the Management Plan prepared by Boston Blyth Flemming – Town Planners dated March 2014. Any Conditions of this consent which are inconsistent with the Plan will prevail over the Plan.*
 - f) *A sign with an area no greater than 0.5m2 to be sited at the front of the premises advising the public and prospective tenants of the managers contact details. This is to include a 24 hour phone number for emergencies and complaints.*
 - g) *Residents within 100 metres for the boarding house in Sunrise Court and Cape Court to be contacted by way of a letter box drop of the contact details of the managers for emergency purposes and complaints.*
- 37) *State Tax Exemption*
Details to be submitted to Byron Shire Council demonstrating the boarding house is charging rents below the Office of State Revenues affordable rental benchmarks for boarding houses. Such details to be provided annually to Councils Section 94 Officer to ensure the Boarding house is providing affordable rental housing.

An occupation certificate 15.2014.157.1 was issued by a Private Certifier on 7 July 2015.

Compliance with consent conditions 36 and 37:

- 36. Approval as a boarding house has no ongoing requirements for affordable housing, although the land owner has confirmed that items A-G above will continue to be managed by the appointed manager and real estate.
- 37. Council has received copies of Statutory Declarations provided to the Department of Family & Community confirming rental rates charged over the past three years.

10.2015.182.1	Change of use from two boarding houses containing nine rooms and managers residence to eighteen infill affordable dwellings and two managers dwellings
----------------------	---

<i>18 Sunrise Boulevard Byron Bay</i>	<i>Approved 9 June 2015</i>
---------------------------------------	-----------------------------

The application was to change the use by definition under the SEPP Affordable Rental Housing 2009. It did not involve any changes to the built form nor intensity of development on the site.

The description changed from 'Boarding House' to 'Infill Affordable Housing' relating to 10.2014.157.1 above.

Contributions were not payable whilst ever four of the units are used permanently used for the provision of affordable housing as defined by clause 6 of State Environmental Planning Policy (Affordable Rental Housing) 2009.

Should the development cease to be used for affordable housing then all contributions owing under this condition shall become payable and shall be indexed to the date of payment.

Condition 8 stated

8) S.88E Restriction to be placed on title – Affordable Housing for 10 years
 A restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919 that will ensure that the following requirements are met.

For 10 years from the date of the issue of the occupation certificate:

- (i) the four dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and
- (ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider.

Please note: Documents requiring the endorsement of Council associated with the creation or cancellation of easements, restrictions, covenants are subject to fees listed within Council's Fees & Charges.

No occupation certificate has been issued for this development, contributions have not been paid, and there is no evidence that a restriction has been placed on the title as per Condition 8.

The DA will lapse 9 June 2020.

10.2018.498.1 Alterations and additions to an approved boarding house – two (2) new boarding rooms and conversion of one (1) manager's suite to a boarding room (total 22 rooms).

18 Sunrise Boulevard Byron Bay

Approved 30 May 2019

This application sought approval for alterations and additions to an approved boarding house – two (2) new boarding rooms and conversion of one (1) manager's suite to a boarding room (total 22 rooms).

This will result in a total increase in boarding rooms from 18 to 21 and reduce the number of manager's rooms from 2 to 1.

Conditions 26 and 27 (to be complied with at all times) were imposed.

26 Use of Boarding House

The boarding house to:

- a) Accommodate no more than 2 tenants per room
- b) Not to be used for holiday letting, tourist and visitor accommodation or as a backpackers
- c) To have a lease arrangement with tenants for a minimum period of 6 months or more
- d) Have a manager onsite at all times.
- e) Operate in accordance with the Management Plan prepared by Boston Blyth Flemming – Town Planners dated March 2014 and as amended in accordance with this Consent. Any Conditions of this consent which are inconsistent with the Plan will prevail over the Plan.
- f) A sign with an area no greater than 0.5m² to be sited at the front of the premises advising the public and prospective tenants of the managers contact details. This is to include a 24 hour phone number for emergencies and complaints.
- g) Residents within 100 metres for the boarding house in Sunrise Court and Cape Court to be contacted by way of a letter box drop of the contact details of the managers for emergency purposes and complaints.

27 State Tax Exemption

Details to be submitted to Byron Shire Council demonstrating the boarding house is charging

rents below the Office of State Revenues affordable rental benchmarks for boarding houses. Such details to be provided annually to Councils Section 94 Officer to ensure the Boarding house is providing affordable rental housing.

A Construction Certificate has not been issued for these works.

10.2015.624.1 Affordable Rental Housing: Multi Dwelling Housing

22 Sunrise Boulevard Byron Bay

Approved 13 January 2016

SEPP ARH required that Council condition the development to ensure that an appropriate part of the development is retained for affordable housing purposes for at least 10 years. The Department of Planning Circular [Supporting infill affordable rental housing](#) (August 2014) suggests that 20% to 50% of the total floor area is an appropriate part of the development for this purpose.

Condition 33 required a restriction be placed on title.

- 33) S.88E Restriction to be placed on title – Affordable Housing for 10 years
A restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, which will ensure that the following requirements are met.

For 10 years from the date of the issue of the occupation certificate:

- (i) the two dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and
- (ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider.

Please note: Documents requiring the endorsement of Council associated with the creation or cancellation of easements, restrictions, covenants are subject to fees listed within Council's Fees & Charges.

Notification of registration of the Restriction to User was received on 9 March 2017 over units 6 and 7.

10.2015.398.1 and 2 Multi dwelling housing -12 dwellings

1 Kendall Street, Byron Bay

Approved 19 October 2015

The application sort development consent for the erection of a two (2) storey multi dwelling housing development containing twelve (12) attached dwellings.

Conditions were imposed in the determination to require the provision of all twelve (12) dwellings as affordable housing and for the housing to be managed by a social/community housing provider (as defined under Part 1 Clause 6 of SEPP (Affordable Rental Housing) 2009. The applicant advised in writing that they were willing to accept a condition of consent to provide affordable rental housing as specified above.

Modification 10.2015.398.2 approved on 8 December 2015 modified the number of dwellings to be used as affordable housing from 12 to 2.

Condition 3 now reads:

3) Provision of Affordable Housing

For ten (10) years from the date of the issue of an Occupation Certificate for the subject development two (2) dwellings are to be used only for the purposes of 'affordable housing'

(as defined in the *Environmental Planning and Assessment Act 1979* and *State Environmental Planning Policy [Affordable Rental Housing] 2009*), and these dwellings are to be managed by a registered community housing provider (*registered community housing provider* has the same meaning as in the [Housing Act 2001](#)).

An Occupation Certificate was issued by a Private Certifier on 5 May 2017.

Two units have been allocated for the purpose of 'affordable housing'.

10.2016.189.1 Multi Dwelling Housing Development under the State Environmental Planning Policy (Affordable Rental Housing) 2009, Comprising Eight (8) Dwellings, Parking for Four (4) Vehicles and Demolition of Existing Structures

116 Stuart Street, Mullumbimby

(Court) Approved 1 February 2017

Court approval, condition 3) states:

3) Provision of Affordable Housing

From the date of the issue of an Occupation Certificate for the subject development two (2) dwellings are to be used only for the purposes of 'affordable housing' (as defined in the *Environmental Planning and Assessment Act 1979* and *State Environmental Planning Policy [Affordable Rental Housing] 2009*), and these dwellings are to be managed by a registered community housing provider (*registered community housing provider* has the same meaning as in the [Housing Act 2001](#)).

An Occupation Certificate was issued by a Private Certifier on 20 January 2019.

Dwellings 6 and 8 have been allocated for the purposes as 'affordable housing' and are managed by a Community Housing Provider. Council has been provided with a copy of the lease agreements.

10.2017.474.1 Multi Dwelling Housing Consisting of Twenty Five (25) 1 Bedroom Dwellings (Under the Provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009): Infill Affordable Housing

70 Station Street, Mullumbimby

Approved 22 February 2018

Council owned, managed by North Coast Community Housing. Condition 2 requires:

1. Provision of Affordable Housing

- i. From the date of the issue of an Occupation Certificate for Stage 1 of the subject development, four (4) dwellings in Stage 1 are to be used only for the purposes of 'affordable housing' (as defined in the *Environmental Planning and Assessment Act 1979* and *State Environmental Planning Policy [Affordable Rental Housing] 2009*), and these dwellings are to be managed by a registered community housing provider (*registered community housing provider* has the same meaning as in the [Housing Act 2001](#)).
- ii. From the date of the issue of an Occupation Certificate for Stage 2 of the subject development, two (2) dwellings in Stage 1 are to be used only for the purposes of 'affordable housing' (as defined in the *Environmental Planning and Assessment Act 1979* and *State Environmental Planning Policy [Affordable Rental Housing] 2009*), and these dwellings are to be managed by a registered community housing provider (*registered community housing provider* has the same meaning as in the [Housing Act 2001](#)).

2001).

A restriction will be registered, before the date of the issue of the occupation certificate for each stage, against the title of the property, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that these requirements of Conditions 4(i) and 4 (ii) are met.

A Construction Certificate has not been issued.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

5

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.4	Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock (Action in Residential Strategy)

Legal/Statutory/Policy Considerations

10

Compliance with the requirements of the Affordable Housing Rental State Environmental Planning Policy 2009 and any associated development consent required.

Financial Considerations

15

N/A

Consultation and Engagement

N/A

Report No. 13.12 **PLANNING - Development Application 10.2018.307.1 - Alterations and additions to dwelling, new artists studio and boundary adjustment**
Directorate: Sustainable Environment and Economy
Report Author: Ben Grant, Planner
File No: I2019/1821

5

DA No: 10.2018.307.1
Proposal description: Alterations and Additions to Existing Dwelling House, New Expanded Dwelling Module, New Artists Studio and Boundary Adjustment
 LOT: 3 DP: 601327, LOT: 2 DP: 580115
Property description: 286 Mafeking Road GOONENGERRY, 300 Mafeking Road GOONENGERRY
Parcel No/s: 47100, 47090
Applicant: Matt Walker Town Planning
Owner: Mr N & Mrs R M Peterson
Zoning: DM Deferred Matter
Date received: 27 June 2018
Integrated Development: Yes: Bush Fire Safety Authority under S100B *Rural Fires Act 1997*
Public notification or exhibition: – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 6/7/18 to 19/7/18
 – Submissions received: Nil
Planning Review Committee: Not applicable
Other approvals (S68/138): Not applicable
Delegation to determination: Council (SEPP 1 objection >10% of development standard)
Issues: • Bushfire Prone Land.
 • Biodiversity - development requires entry into the biodiversity offsets scheme.
 • Variation to minimum lot size under clause 11 of LEP 1988 for boundary adjustment.

10 **Summary:**

This development application seeks consent for alterations and additions to an existing dwelling house, new expanded dwelling module, artist's studio and a boundary adjustment.

15 The application is being reported to Council due to a SEPP 1 objection to vary the 40 hectare minimum lot size standard under Clause 11 of LEP 1988. As the variation exceeds 10% of the standard, the application must be determined by the Council.

20 The proposed development is relatively modest in scale, but is located on a sensitive site surrounded by lowland rainforest, an endangered ecological community. A small amount of clearing is required to site the new buildings.

As a result of the clearing occurring within the Biodiversity Values Map, (which covers the whole site), the application is required to enter into the biodiversity offsets scheme under the *Biodiversity*

Conservation Act 2016. A Biodiversity Development Assessment Report (BDAR) has been submitted, providing an assessment of the impacts and a calculation of the biodiversity credits that are necessary to offset the impact of the development.

- 5 Council's Natural Resource Planner and the NSW Biodiversity Conservation Division (formerly OEH) have reviewed the BDAR and supported its conclusions, noting that the proposal is unlikely to result in significantly adverse impacts to threatened species or ecological communities.

10 The only issue raised by BCD is the potential for a clearing entitlement under Part 5A of the *Local Land Services Act 2013*. This will allow for clearing 3m on either side of the new boundary alignment, which passes through an area of Lowland Rainforest. To account for this potential impact, one (1) additional biodiversity credit of the same PCT type is recommended, in accordance with the advice from BCD.

- 15 To ensure environmental values of the site are improved, a condition is recommended for a vegetation management plan to be prepared, requiring at least 120 local native trees to be planted, along with weed removal and provisions for monitoring and maintenance.

20 The design of the new buildings is considered to be an appropriate response to the characteristics of the site and satisfies the relevant State and local planning controls. For reasons explained further in the body of this report, the SEPP 1 objection relating to the boundary adjustment is considered to be well founded and warrants support in the circumstances.

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








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.

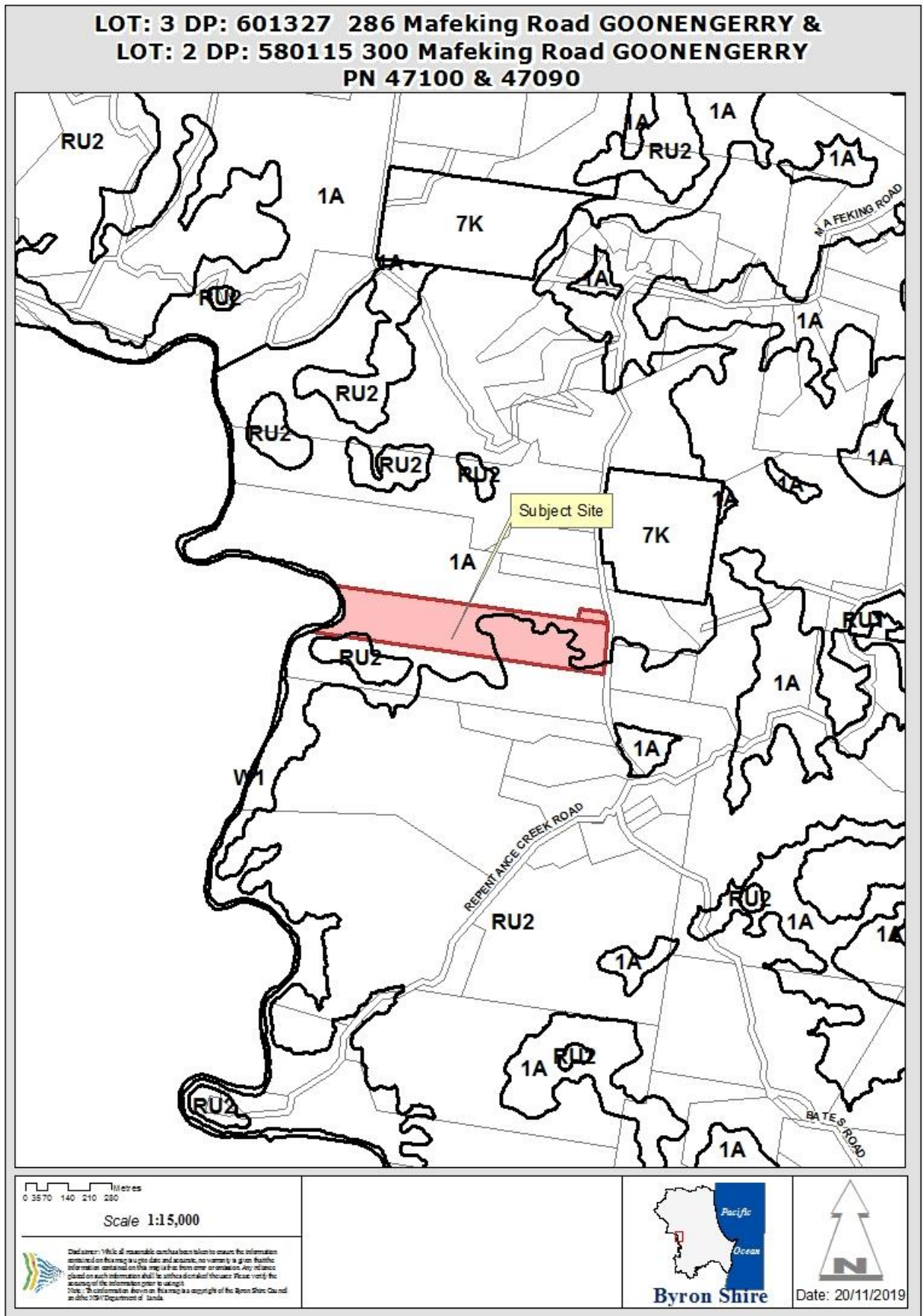
RECOMMENDATION:

That Development Application No. 10.2018.307.1 for Alterations and Additions to Dwelling, new habitable outbuildings, artists studio and boundary adjustment, be granted consent, subject to the conditions listed in Attachment 1 (E2019/85243).

35 **Attachments:**

- 1 10.2018.307.1 - Recommended Conditions of Consent, E2019/85243 
- 2 10.2018.307.1 - Development Plans, E2018/112197 
- 3 10.2018.307.1 - Subdivision Plan, E2018/112196 
- 40 4 10.2018.307.1 - Biodiversity Development Assessment Report (final), E2019/63769 
- 5 10.2018.307.1 - Arboricultural Report Final, E2019/63770 
- 6 10.2018.307.1 - Bush Fire Safety Authority, E2019/85244 
- 7 10.2018.307.1 - SEPP 1 Objection, E2019/85246 

45



REPORT

1. INTRODUCTION**5 1.1. Previous determinations**286 Mafeking Road:

- DA 91/297 for a dwelling house, approved 5 September 1991.
- 10 • DA 10.2006.23.1 for use of unauthorised alts/adds, approved 5 September 2006.
- Modification 10.2006.23.2 to change building condition, approved 2 September 2008.
- Modification 10.2006.23.3 to remove conditions, approved 28 September 2010.
- Modification 10.2006.23.4 to modify internal layout, approved 15 June 2011.

15 300 Mafeking Road:

- DA 90/88 for a multiple occupancy comprising five dwellings, approved 19 December 1990.

20 1.2. Description of the proposed development

The applicant is seeking approval for alterations and additions to a dwelling house, expanded house outbuilding, artist's studio, replacement of a dilapidated carport and a boundary adjustment.

The following is proposed:

- 25
- (a) Alterations and additions to dwelling**
An extension to the main dwelling, involving partial removal of the rear deck and expansion of the family room, along with an addition bedroom and outdoor laundry area. A study area is to be constructed at ground level requiring minor earthworks.
- 30
- (b) Expanded house outbuilding and studio**
Construction of a two storey expanded house habitable outbuilding comprising a bedroom and ensuite on the ground floor and a music studio on the first floor. The two floors are not internally connected, with the upper floor accessed via an external staircase. The first floor studio has no internal walls or bathroom facilities. The building has a gross floor area of 59m² and will be constructed with a mixture of timber or fibre cement cladding and a metal roof. Foundations utilise pier footings supporting a suspended flooring system.
- 35
- (c) Boundary adjustment**
40 Realign the boundaries between Lot 2 DP 580115 to Lot 3 DP 601327 to rectify the encroachment of an existing carport. The boundary adjustment will transfer 250m² of land from Lot 2 in to Lot 3.
- (d) Replace carport**
45 Demolish the existing dilapidated carport and construct a new double carport and attached storage room in the same location.
- (e) Vegetation clearing and associated works**
50 Clearing of the following nine (9) canopy trees and understory vegetation:
- Black Teak (*Pentaceros australis*)
 - Black Teak (*Pentaceros australis*)
 - Guioa *Guioa semigluaca*
 - Red Cedar *Toona ciliate*
 - Lilli Pilli *Syzygium* sp.
 - 55 • Bangalow Palm *Archontophoenix Cunninghamiana*

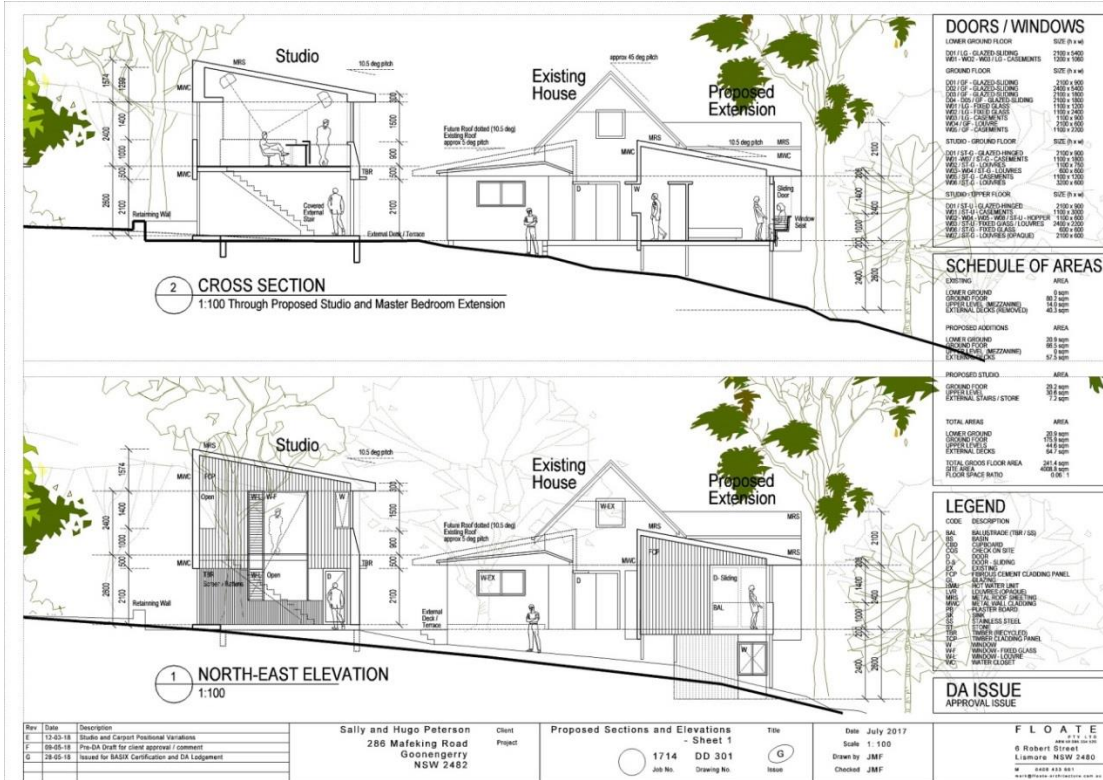
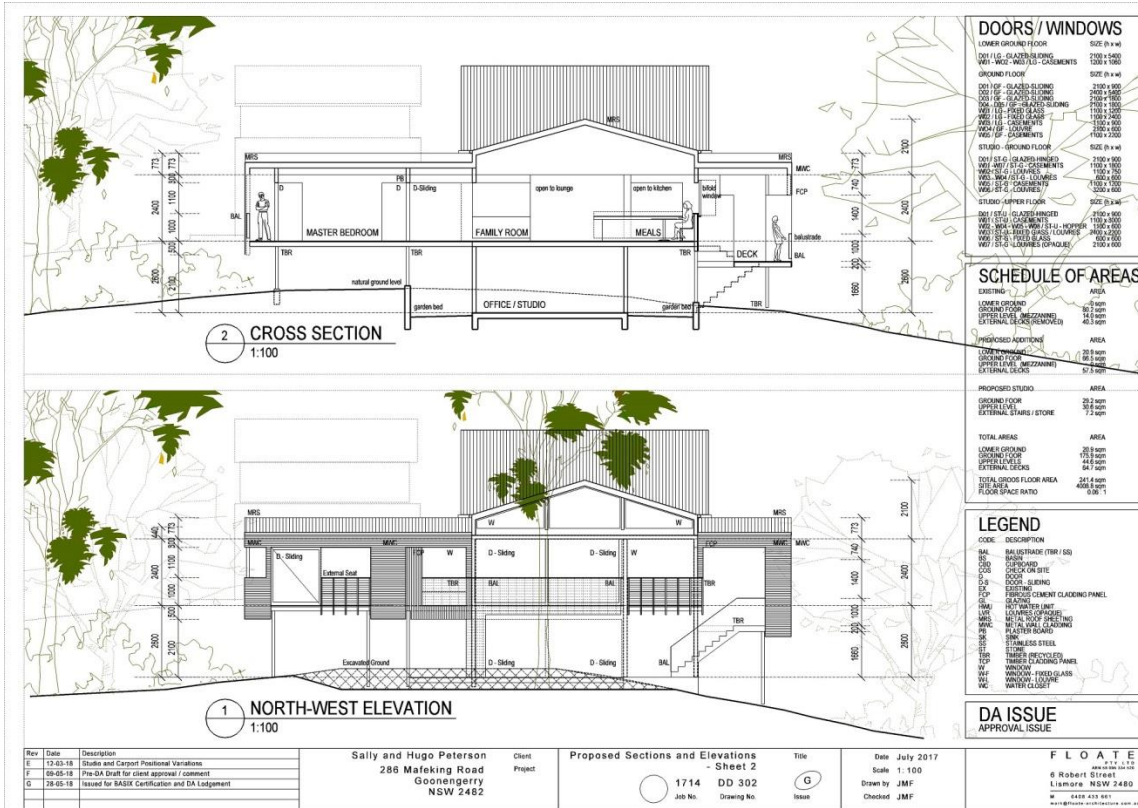


Figure 2: North-east elevation



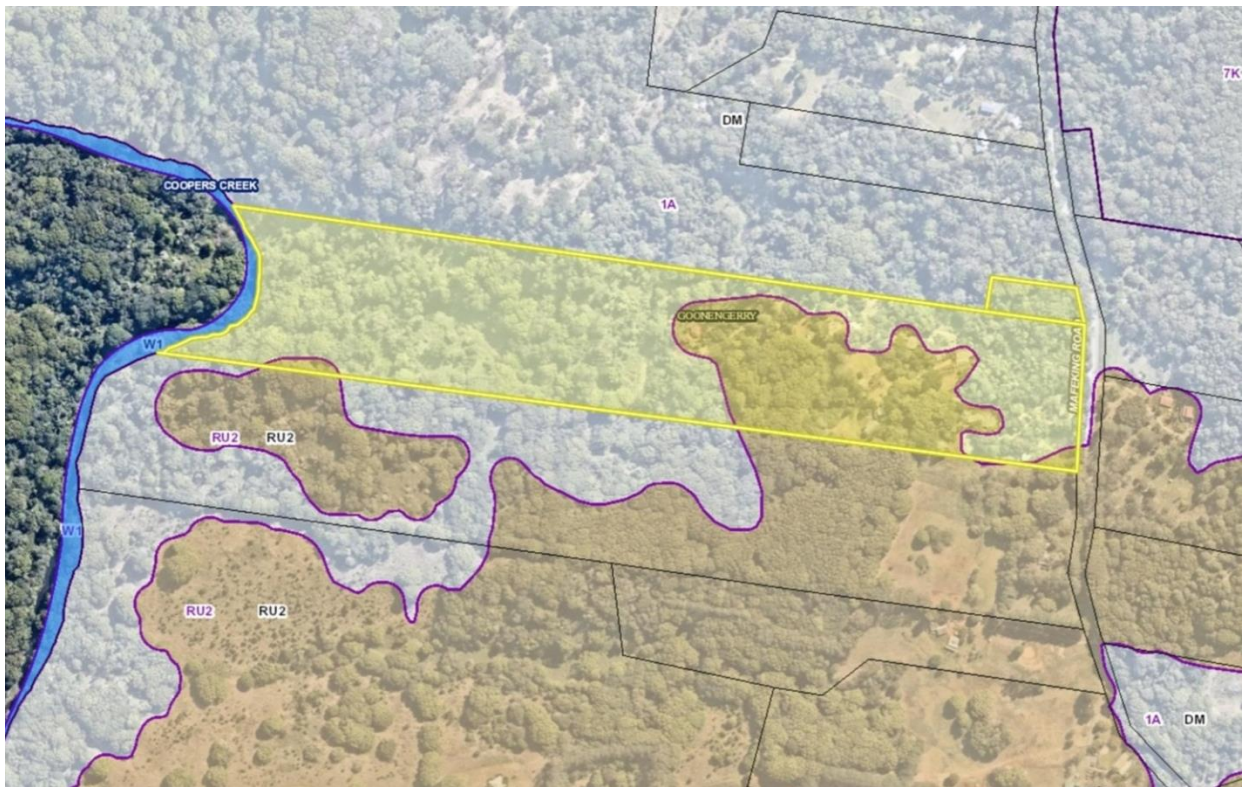
5 The site comprises two properties legally described as Lot 3 DP 580115 and Lot 2 DP 601327 commonly known as 286 and 300 Mafeking Road, Goonengerry. 286 Mafeking Road is the smaller of the two properties with an area of 4000m² and contains a small residence and a timber carport (although the survey plan indicates this is located on the adjoining property). 300 Mafeking Road is a 15.46 hectare property containing an approved multiple occupancy with five dwellings.

Access to both properties is obtained off Mafeking Road. The land is relatively flat near the road boundary, but drops away steeply in a westerly direction towards Coopers Creek.

10 Both properties have a dense coverage of vegetation, identified as being representative of the endangered ecological community *Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions* (Biodiversity Conservation Act 2016). One threatened flora species, Red Boppel Nut (*Hicksbeachia pinnatifolia*) also occurs within the site.

15 The bulk of the land is a deferred matter and reverts to the 1(a) (General Rural Zone) zone under LEP 1988. A section of Lot 3 is within the RU2 Rural Landscape zone under LEP 2014.

Site photos are shown in **Figures 4–7** below.



20 **Figure 4:** Aerial image of the subject site with zoning overlay. The site is within the 1(a) (General Rural Zone) under LEP 1988 (light grey) and RU2 Rural Landscape zone under LEP 2014 (light brown).
25



Figure 5: Existing dwelling house, looking north-west. The proposed studio and bedroom is to be located in the area shown above (centre frame).

5



Figure 6: Proposed location of the studio and bedroom - adjacent to the existing dwelling house.



Figure 7: View of an existing carport, looking south. The structure is located within the boundaries of the neighbouring allotment at 300 Goonengerry Road.

5

2. SUMMARY OF REFERRALS

The following referrals were undertaken as part of the assessment process:

10 **External**

Authority	Comments
NSW Department of Planning, Environment and Industry (formerly OEH)	The Biodiversity Conservation Division recommends that an additional biodiversity credit should be included to account for potential clearing entitlements created by the development. See discussion in the issues section below.
Rural Fire Service - s100B	A Bush Fire Safety Authority and general terms of approval have been issued. Refer to Attachment 6. Further discussion below.

Internal

Authority	Comments
Environmental Health Officer	No objection subject to standard conditions. An upgraded on-site sewage management system will be required.
Development Engineer	No objection subject to standard conditions.
Natural Resource planner	No objections subject to conditions. Specific measures for tree protection are required during construction, and a vegetation management plan is required to ensure maintenance and improvement of the sites ecological values. Refer to discussion of issues below.

Issues:**NSW Biodiversity Conservation Division**

5 The application was referred to the NSW Biodiversity and Conservation Division (BCD) for comment. BCD was formerly part of the Office of Environment and Heritage and is now part of the Department of Planning, Industry and Environment.

10 BCD noted that the applicant's amended Biodiversity Development Assessment Report (BDAR) has addressed the relevant requirements of the legislation. Support was given for the proposal to restrict the 10/50 Clearing Code of Practice through a condition of consent.

15 The only point of disagreement relates to the applicants proposal to 'switch off' a fence line clearing entitlement under Part 5A of the Local Land Services Act 2013 by imposing a condition of consent. BCD questioned whether such an approach would be legally enforceable. BCD noted that Council may consider imposing an additional biodiversity credit of the same PCT to offset the clearing entitlement.

20 Further discussion of this matter is addressed in section 4.7 – impacts on the natural environment.

Natural Resource Planner

25 Council's Natural Resource Planner noted that the amended BDAR addresses the relevant requirements of the legislation, but agreed that an additional biodiversity credit should be retired to offset the clearing entitlements.

30 Conditions are recommended for a vegetation management plan to be prepared to for environmental enhancement of the site.

NSW Rural Fire Service

35 The RFS have issued a Bushfire Safety Authority that requires the mid and lower storey to be pruned and/or cleared within the asset protection zone, but allows the upper canopy to be retained. Standard conditions apply for access, water supply and levels of construction apply.

3. BIODIVERSITY CONSERVATION ACT 2016**Biodiversity framework**

40 The Biodiversity Conservation Act 2016, together with the Biodiversity Conservation Regulation 2017, outlines the framework for addressing impacts on biodiversity from development. A central feature of the new framework is the introduction of a biodiversity offsets scheme.

45 Under the offset scheme, developers who undertake clearing generate a credit obligation which must be 'retired' to offset their activity. Landholders can also establish biodiversity stewardship sites on their land to generate credits which are sold to developers who require those credits to offset their activities at other sites.

50 Entry into the offsets scheme is triggered by two main threshold tests:

- Whether the amount of native vegetation being cleared exceeds a specified area (i.e. more than a certain number of hectares specified in the Regulations); or

- Whether the impacts occur on an area mapped on the Biodiversity Values Map published by the Minister for the Environment.

If either of these two tests is met, the development application must be accompanied by a biodiversity development assessment report (BDAR). A BDAR is an ecological impact assessment report undertaken in accordance with a prescribed biodiversity assessment methodology (known as the BAM). Depending on the extent and nature of the impact, the BDAR may include a calculation of biodiversity credits that need to be purchased to offset the impacts of the development.

Consideration of biodiversity impacts

This application will require entry into the offsets scheme due to a small amount of clearing occurring within the Biodiversity Values Map. The applicant has provided a BDAR which includes an assessment of the impacts on biodiversity and a calculation of biodiversity credits to be retired.

Impacts on biodiversity are considered in section 4.7 of this report – impacts on the natural environment.

4. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

4.1 Section 4.46 Integrated Development

The proposed development includes subdivision of bushfire prone land and requires a Bush Fire Safety Authority (BFSA) under S100B of the *Rural Fires Act 1997*. The RFS have issued a Bush Fire Safety Authority for the proposed development, with conditions for asset protection zones, water supply and access.

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

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.

5.1 State Environmental Planning Instruments

State Environmental Planning Policy No 1—Development Standards

The proposed boundary adjustment results in a contravention of the 40 hectare minimum lot size standard under clause 11 of LEP 1988. The applicant has provided a written objection pursuant to clause 6 of SEPP 1 which seeks to justify the variation (refer to Attachment 7). The written objection is addressed further in section 4.2B of this report.

State Environmental Planning Policy No 44—Koala Habitat Protection

An ecological survey of the property did not identify any preferred koala feed trees species or evidence of Koalas or Koalas breeding. On this basis, the subject land is not considered to be a core Koala habitat and a Koala plan of management is not required. The applicant's BDAR notes that Koalas may utilise the subject land on occasion, however, most canopy species are intended to be retained and the proposal will not fragment habitat for this species.

State Environmental Planning Policy No 55—Remediation of Land

Land contamination was previously considered for this site as part of the assessment of development application no. 10.2006.23.1. The land was found to be suitable for residential use.

Council's Environmental Health Officer did not consider further investigation to be warranted for this application as there is no increase in the sensitivity of the use.

State Environmental Planning Policy (Rural Lands) 2008

5 The proposed dwelling house and boundary adjustment are compatible with surrounding land uses in the area which are predominantly characterised by small orchards, grazing and rural living. The proposal is unlikely to cause any significant conflict with any existing or likely future land uses in the area.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

10 The development application was lodged prior to the commencement of the primary production SEPP. In accordance with the transitional arrangements specified in clause 9, the SEPP is not applicable to the application.

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

Part 1	<input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input checked="" type="checkbox"/> 1.8A <input checked="" type="checkbox"/> 1.9 <input checked="" 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 checked="" type="checkbox"/> 2.4 <input checked="" type="checkbox"/> 2.5 <input checked="" type="checkbox"/> 2.6 <input checked="" type="checkbox"/> 2.7 <input checked="" type="checkbox"/> 2.8
Part 4	<input checked="" type="checkbox"/> 4.1 <input checked="" type="checkbox"/> 4.1C <input checked="" type="checkbox"/> 4.3
Part 5	<input checked="" type="checkbox"/> 5.16
Part 6	<input checked="" type="checkbox"/> 6.2 <input checked="" type="checkbox"/> 6.5 <input checked="" type="checkbox"/> 6.6

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as *dwelling, clearing native vegetation, subdivision* (boundary adjustment);
- (b) The land is within the RU 2 Rural Landscape zone according to the Land Zoning Map;
- 30 (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Note: The provisions of LEP 2014 only relate to the boundary adjustment. All building works and vegetation clearing are occurring within the 1(a) (General Rural Zone).

Zone Objective RU 2 Rural Landscape	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposed boundary adjustment will have no impact on the primary production potential of the land or impact on the rural character of the landscape. The development is considered to be compatible with the zone objectives.
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.	

5 The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

Clause 4.1C Minimum subdivision lot size for boundary adjustments in certain rural and residential zones

10 Clause 4.1 C permits the minimum lot size to be disregarded for the purposes of boundary adjustments in zones RU1, RU2 and R5 under certain circumstances. Council must be satisfied that the subdivision will not create any additional lots or dwelling opportunities, result in fragmentation of rural land, create land use conflict or affect the rural character or scenic qualities of the land.

15 The proposed boundary adjustment is a minor realignment intended to rectify a building encroachment and is considered to satisfy the matters for consideration under clause 4.1C.

Clause 6.5 Drinking water catchments

20 The proposed development is unlikely to adversely affect the quality or quantity of water entering the drinking water catchment. The upgraded on-site sewage management system will be approximately 850m from Coopers Creek and erosion and sediment runoff during building works can be controlled via conditions of consent.

Clause 6.6 Essential services

25 Rainwater harvesting and on-site sewage disposal can be provided subject to conditions of consent. Electricity and telecommunications are available to the site.

30 Vehicular access is provided off an existing driveway that connects to Mafeking Road. The driveway will need upgrading and widening to meet RFS standards, including the provision of a 6m by 8m reversing bay. Conditions are recommended.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

40 LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 1988 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2A <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input checked="" type="checkbox"/> LEP 1988 Dictionary <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8 <input checked="" type="checkbox"/> 9
Part 3	<input checked="" type="checkbox"/> 10 <input checked="" type="checkbox"/> 11 <input checked="" type="checkbox"/> 15 <input checked="" type="checkbox"/> 31 <input checked="" type="checkbox"/> 40 <input checked="" type="checkbox"/> 45 <input checked="" type="checkbox"/> 49 <input checked="" type="checkbox"/> 52

In accordance with LEP 1988 clauses 5, 8 and 9:

- 45 (a) The proposed development is defined in the LEP 1988 Dictionary as Dwelling House, Subdivision;
 (b) The land is within the 1(a)—(General Rural Zone) according to the map under LEP 1988;
 (c) The proposed development is permitted with consent; and

- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective 1(a) (General Rural Zone)	Consideration
to encourage and permit a range of uses creating a pattern of settlement, at a scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron,	The proposed development is considered to be consistent with the zone objectives. The proposal is unlikely to result in conflict with surrounding land uses or result in significantly adverse impacts on the environment.
to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character,	
to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses,	
to allow the use of land within the zone for agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture,	
to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development,	
to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in road side service areas,	
to ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry,	
to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality, and	
to permit the development of limited light industries which do not pose any adverse environmental impact, (eg software manufacture and film processing), and	
to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora.	

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to which considered further as follows:

Clause 11 Subdivision in rural areas for agriculture etc

Clause 11 stipulates a 40 hectare minimum lot size in the 1(a) (General Rural Zone). The proposed boundary adjustment will result in two lots, each with an area of less than 40 hectares. The applicant has submitted a written objection seeking to vary the 40 hectare standard in accordance with clause 6 of *State Environmental Planning Policy No 1—Development Standards* (SEPP 1), detailed in the LEP issues section below. The objection is considered to be well founded.

Clause 40 Height

Clause 40 provides that the maximum height of buildings on the site must not exceed 9m and the topmost floor height must not exceed 4.5m. The proposed development will have a maximum height of 6.6m and a topmost floor height of 3.3m.

Clause 45 Provision of services

Rainwater harvesting and on-site sewage disposal can be provided subject to conditions of consent. Electricity and telecommunications are available to the site.

Byron Local Environmental Plan 1988 issues

State Environmental Planning Policy No 1—Development Standards

State Environmental Planning Policy No 1 (SEPP 1) provides flexibility in the application of planning controls in circumstances where strict compliance with those standards would be unreasonable or unnecessary or tend to hinder the attainment of the objects of the Act.

An applicant may make a written objection, specifying why strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Where the consent authority is satisfied that the objection is well founded and consistent with the aims of the Policy it may grant consent to the development application.

The Development Standard to be varied

Clause 11 of Byron LEP 1988 specifies a **40 hectare** minimum subdivision lot size for agriculture, forestry or a dwelling-house in the 1(a) (General Rural Zone). The numerical lot sizes stipulated in clause 11 of LEP 1988 are development standards that are able to be varied by way of SEPP 1.

Extent of Variation to the Development Standard

The proposed boundary adjustment will transfer 250m² of land from the larger lot into the smaller lot for the purposes of correcting a building encroachment. The resulting layout will be substantially the same as the lots currently in existence.

As detailed in the table below, the degree of variation varies from 39.575 hectares for Lot 3 to 24.565 hectares for Lot 2.

<i>Property</i>	<i>Standard</i>	<i>Proposed</i>	<i>Difference</i>
Lot 3 DP 601327	40 ha	0.425 ha	39.575 ha

Lot 2 DP 580115	40 ha	15.435 ha	24.565 ha
-----------------	-------	-----------	-----------

Objective of the Development Standard

5 There are no underlying objectives listed in clause 11. In addition to the numerical standards listed in the lot size table, Council is required to be satisfied that each allotment is of satisfactory shape and has a satisfactory frontage.

Objectives of the Zone

10 Refer to Section 4.2B of this report.

Is compliance unreasonable or unnecessary in the circumstances of the case?

15 The judgment in *Wehbe v Pittwater Council* [2007] NSW LEC 827 established five different ways in which an objection may be considered well founded and that approval of the objection may be consistent with the aims of the policy.

(1) The objectives of the standard are achieved notwithstanding non-compliance with the standard

20 Clause 11 does not have any stated aims or objectives. In terms of planning policy, the maintenance of large lot sizes is a mechanism to preserve productive rural land or land with special scenic or environmental characteristics.

25 In this particular case, the proposed lots are considered to be of an adequate size, shape and frontage for the proposed use and will not adversely affect the environmental characteristics of the land.

30 Strict adherence to the standard would serve no planning purpose and would likely result in an inferior outcome as the smaller of the two lots would have less land available for car parking and manoeuvring. Additional vegetation may need to be cleared to provide an alternative carport location with sufficient access that meets Council and RFS standards.

(2) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

35 The underlying purpose of the standard is relevant, however, as explained above, strict compliance is unreasonable in the circumstances as it would result in an inferior outcome and would tend to hinder the attainment of the objects of the Act.

(3) The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

40 The underlying purpose of the standard would not be thwarted if strict compliance with the standard was required. Adhering to the standard is, however, unreasonable in the circumstances because allowing the minor adjustment of boundaries will result in a superior planning outcome that achieves the underlying objectives of the standard.

(4) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable and unnecessary

50 The 40 hectare standard has been upheld with relative consistency for subdivisions that result in new lots with additional dwelling opportunities. Council has regularly allowed variations to the 40 hectare minimum lot size for minor boundary adjustments.

(5) Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone
 The 1(a) zoned parts of the site are likely to be transitioned into an environmental zone under LEP 2014 at some point in the future. The 40 hectare standard will likely apply under the new zoning, however, strict compliance is considered unreasonable for the reasons listed above.

Does the non-compliance with the development standard raise any matters of significance for state or regional environmental planning?

There are no matters of State or regional planning significance that will be affected by this minor realignment of boundaries.

Is there a public benefit in maintaining the planning controls adopted by Byron LEP 1988?

Strict compliance would hinder the orderly development of the site and would not serve any planning purpose. There is no public benefit in maintaining the development standard in this particular case.

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

The subject sites are not included in Phases 1 or 2 or the E-zones Planning Proposal. It is understood that the properties are likely to be included in Phase 3 with the bulk of the land identified as potential E2 Environmental Conservation zone and E3 Environmental Management zone.

As Phase 3 has not yet been submitted for gateway determination, future environmental zoning has not been given significant weight in this assessment.

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

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

Part A	<input checked="" type="checkbox"/> Preliminary
Part B Chapters:	<input checked="" type="checkbox"/> B2 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input checked="" type="checkbox"/> B6 <input checked="" type="checkbox"/> B8 <input checked="" type="checkbox"/> B9 <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C2 <input checked="" type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D2 <input checked="" type="checkbox"/> D6

These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
B6.3.1 Lot Size, Shape and	Yes. Divergence from the	Yes. The proposed boundary

<p>Configuration</p> <p><u>Prescriptive Measure</u> Lot sizes must not be less than the minimum area specified in Byron LEP 2014 on the lot size map.</p> <p><u>Proposed Development</u> Each lot is substantially less than the 40 hectare minimum lot size.</p>	<p>minimum lot size standard is addressed in section 4.2B of this report. The boundary adjustment satisfies the relevant planning objectives and has sufficient merit to warrant support.</p>	<p>adjustment is considered to satisfy the performance criteria, including the provisions of Chapter B6 Buffers and Minimising Land Use Conflict.</p>
--	---	---

4.4B Byron Shire Development Control Plan 2010 (DCP 2010)

5 DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988. The DCP 2010 Chapters/Parts that are checked below are of relevance to the proposed development:

Chapter 1 Parts:	<input checked="" type="checkbox"/> A <input checked="" type="checkbox"/> B <input checked="" type="checkbox"/> C <input checked="" type="checkbox"/> F <input checked="" type="checkbox"/> G <input checked="" type="checkbox"/> H <input checked="" type="checkbox"/> N
------------------	---

10 These checked Chapters/Parts 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.

What Section and prescriptive measure does the development not meet?	Does the proposed development meet the Element Objectives of this Section? Address.	Does the proposed development meet the Performance Criteria of this Section? Address.
<p>B4.1 Element – Lot Size and Shape</p> <p><u>Prescriptive Measure</u> All lots are to conform to the minimum area prescribed in the relevant planning instruments</p> <p><u>Proposed Development</u> Each lot is substantially less than the 40 hectare minimum lot size.</p>	<p>Yes. Divergence from the minimum lot size standard is addressed in section 4.2B of this report. The boundary adjustment satisfies the relevant planning objectives and has sufficient merit to warrant support.</p>	<p>Yes. Each lot is a satisfactory size and shape for existing and proposed development. The boundary adjustment will not result in any additional impacts on the natural or built environments, interfere with access arrangements or increase the potential for land use conflict.</p>

15 **Chapter 1: Part C Residential Development**

C14. Studios

20 The proposed studio complies with the prescriptive measures of Element C14. The studio is less than 60m², is located close to the existing dwelling, and comprises a single room with no facilities or internal partitions.

The studio is located above an additional bedroom (not typical for a studio), and is provided with a separate external access to separate the two uses. The applicant notes this arrangement is intended to minimise the footprint of the development to minimise the amount of vegetation removal.

4.5 Any Planning Agreement or Draft Planning Agreement?

Not applicable.

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause 92 Additional matters that consent authority must consider

The carport and minor elements of the dwelling will require demolition as part of the proposed building works. A condition can be applied requiring demolition to comply with AS2601—the *demolition of structures*.

Clause 94 Consent authority may require buildings to be upgraded

The NSW Rural Fire Service has included a condition that requires the existing building to be upgraded to improve ember protection.

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

Natural environment

Biodiversity Conservation Act 2016

The proposal involves clearing of native vegetation on land included on the Biodiversity Values Map and is therefore required to enter into the biodiversity offsets scheme. The application is accompanied by a BDAR, in accordance with sections 7.2 and 7.7 of the BC Act. Refer to Attachment 4.

Consideration of impacts on biodiversity

Section 7.13 of the BC Act provides that the consent authority is to consider the likely impacts of the development on biodiversity values, as assessed in the biodiversity development assessment report. The consent authority may (but is not required to) further consider the likely impact of the proposed development on biodiversity values.

Vegetation types

Vegetation within the site has been identified as representing the Lowland Subtropical Rainforest, listed as *Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions* endangered ecological community under the BC Act.

Vegetation across the study area has been subject to various levels of disturbance including previous historical clearing, APZ management and general disturbance associated with being adjacent to a residence. Vegetation immediately surrounding the dwelling has been cleared while regrowth and remanent patches of Lowland Rainforest were present in various stage of moderate to good condition in areas further from dwelling, particularly on the eastern and southern extents of the property.

Amount of vegetation to be cleared

The Arboricultural report (Attachment 5) identifies the following nine (9) canopy trees to be removed:

5

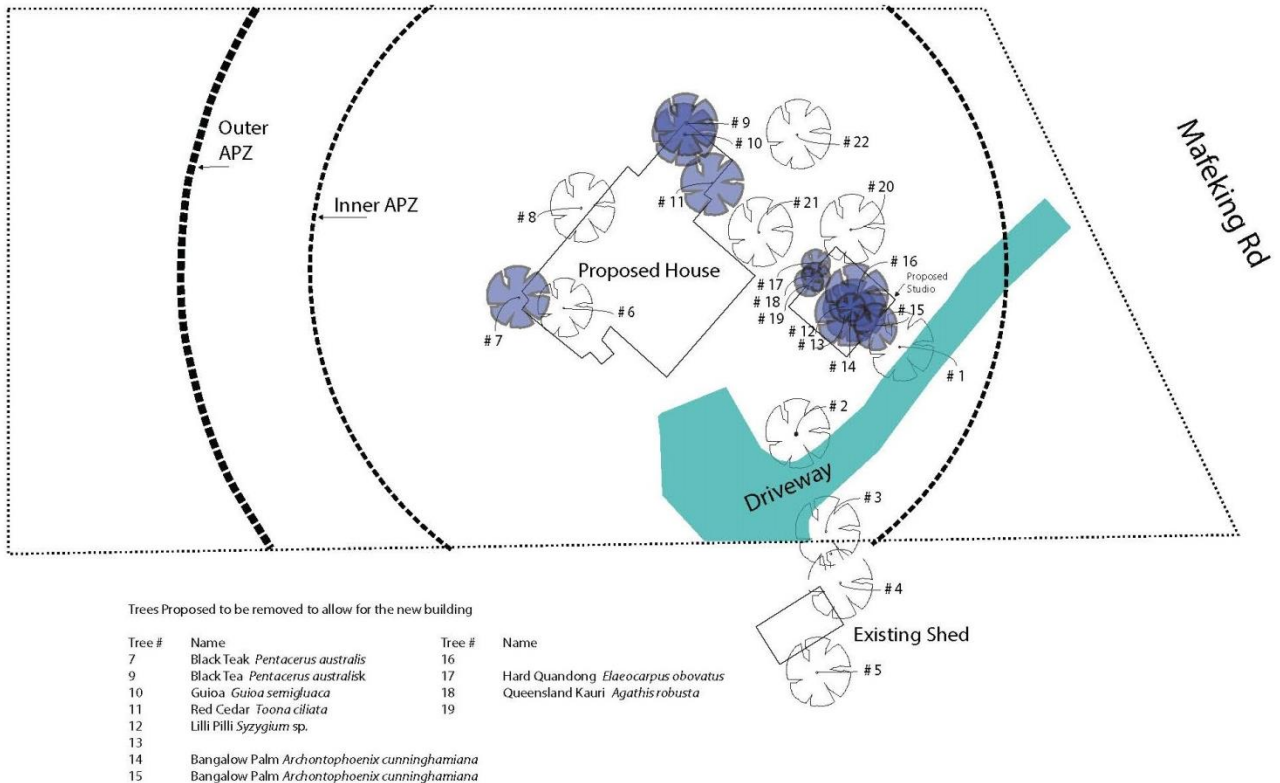
- Black Teak (*Pentaceros australis*)
- Black Teak (*Pentaceros australis*)
- Guioa *Guioa semigluaca*
- Red Cedar *Toona ciliata*

10

- Lilli Pilli *Syzygium* sp.
- Bangalow Palm *Archontophoenix Cunninghamiana*
- Bangalow Palm *Archontophoenix Cunninghamiana*
- Hard Quandong *Elaeocarpus obovatus*
- Queensland Kauri *Agathis robusta*

15

The location of the trees is identified in **Figure 8** below.



Direct impacts and offset obligation

20 The BDAR provides that the proposed development will result in the following direct impacts:

- Removal of 0.016 hectares of Lowland Rainforest, occurring as two condition types.
- Relocation of fauna habitat components from the subject land to adjacent areas.

25 The impact of the vegetation removal has been calculated using the Biodiversity Assessment Method. The biodiversity payment summary report provided in the BDAR provides that one ecosystem credit for PCT 1302 – White Booyong – Fig subtropical rainforest of the NSW North Coast Bioregion must be retired to offset the impact of the proposed development.

30 Increase to offset obligation

The proposed boundary adjustment will create a new vegetation clearing entitlement under Part 5A of the *Local Land Services Act 2013*. This will allow for clearing 3m on either side of the new boundary alignment, which passes through an area of Lowland Rainforest.

- 5 To account for this potential impact, one (1) additional biodiversity credit of the same PCT type is recommended.

10 The likely hood of the clearing entitlement being acted on is uncertain, but is considered to be relatively low in light of a likely future zone change to zone E2 or E3 in phase three (3) of Council's E Zone implementation program. Once the site transitions to an environmental zone, Part 5A will no longer apply and the clearing entitlement will be lost. In this scenario, any future clearing would require permission from the Native Vegetation Panel under the Vegetation SEPP.

15 If Council views the additional biodiversity credit as unnecessary, the number of credits could be reduced to one (1) without concurrence from the Environment Agency Head.

Avoid and Minimise

20 The scale of the new building work is relatively modest and has been located close to the existing dwelling. The BDAR notes that proposed development has been designed to minimise native vegetation removal by locating the house extension within the existing garden and placing the new habitable outbuilding in a location with no large trees. The proponents have also redesigned the deck to retain the existing Red Boppel Nut, and have made provision for its continued survival by seeking advice from a qualified tree expert.

25 Additional environmental considerations

30 Byron Development Control Plan 2014, Chapter B2, requires compensatory plantings at a ratio of 10:1 for local indigenous species. Council's Natural Resource Planner has recommended that 120 trees be planted to account for the loss of vegetation and subsequent impacts on biodiversity. This account for the nine (9) trees removed, with an additional requirement to account for trees close the development footprint that may be impacted over time.

35 In addition, Madeira vine (*Anredera cordifolia*), a Weed of National Significance, is present on the site and should be controlled and removed. Successful removal of this weed requires control activities to be repeated over several years.

40 A condition of consent is recommended that requires a vegetation management plan to be with provisions for restoration, weeding, monitoring and maintenance. The plan is to be submitted to Council for approval prior to the commencement of the development.

Conclusion

45 The proposed development affects a relatively small area of vegetation in the context of the site and greater locality and is unlikely to have a significant impact on the threatened species or ecological communities. Conditions are recommended for environmental enhancement of the site including regeneration, weed removal, monitoring and maintenance.

Built Environment

50 The proposal will not have a significantly adverse impact on the built environment of the locality.

Social and Economic Impacts

55 The proposal will not have a significant social or economic impact on the locality.

4.8 The suitability of the site for the development

5 Sites constraints including vegetation and bushfire prone land have been addressed through appropriate design and conditions of consent. The site is considered to be suitable for the proposed development subject to conditions of consent.

4.9 Submissions made in accordance with this Act or the regulations

10 The development application was publicly exhibited for a period of 14 days in accordance with DCP 2014 and DCP 2010. No public submissions were received.

4.10 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

20 No development servicing levies need to be imposed under the Water Management Act. Reticulated water and sewer infrastructure is unavailable to the development.

5.2 Section 7.11 Contributions

25 No development contributions are applicable because the boundary adjustment will not create any additional dwelling opportunities.

6. CONCLUSION

30 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. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

35 *Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
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.
The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed

40 The DA was notified/advertised in accordance with Development Control Plan 2014. No submissions were received.

BYRON SHIRE COUNCIL

Report No. 13.13 **PLANNING - Development Application 10.2019.458.1 Multi Dwelling Housing Comprising Eight (8) Dwellings at 6 Julian Rocks Drive Byron Bay**
Directorate: Sustainable Environment and Economy
Report Author: Luke Munro, Planner
 Noreen Scott, EA Sustainable Environment and Economy
File No: I2019/1630

5

10 **Proposal:**

DA No:	10.2019.458.1		
Proposal description:	Multi Dwelling Housing Comprising Eight (8) Dwellings		
Property description:	LOT: 41 DP: 714410		
	6 Julian Rocks Drive BYRON BAY		
Parcel No/s:	36140		
Applicant:	Lismore Venture Pty Ltd		
Owner:	PD Lismore Pty Ltd & Windmill Property Investments & others		
Zoning:	R2 Low Density Residential		
Date received:	30 August 2019		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
Concurrence required	No		
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Exhibition period: 12/9/19 to 25/9/19 - Submissions received: 21 – including 5 petitions - https://www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information (#E2019/86404) 		
Planning Review Committee:	Not applicable / Date of PRC		
Variation request	<input type="checkbox"/> Clause 4.6	<input type="checkbox"/> SEPP 1	<input checked="" type="checkbox"/> Not applicable
Delegation to determine	Council		
Issues:	<ul style="list-style-type: none"> • Inconsistent with character of the locality; • Non-compliance with key controls in Byron DCP 2014 – building height plane, setbacks, private open space; • Design provides poor residential amenity; and • Inconsistent with <i>SEPP (Affordable Housing) 2008</i> 		

Summary:

15

The development application is made under the provisions of State Environmental Planning Policy (SEPP) - Affordable Rental Housing 2009. The proposal consists of eight (8) two storey townhouses; two (2) being studio dwellings, two (2) containing a single bedroom, and four (4) containing two bedrooms. The dwellings are arranged in three groups, with the four two-bedroom townhouses arranged in groups of two, and the third group of townhouses consisting of the two one-bedroom townhouses and the two studios.

20

All townhouses are arranged around a central internal car parking area. Two (2) dwellings are proposed to be set aside for affordable housing as defined by the SEPP.

The studio dwellings are in fact one bedroom units and have a floor space of 46m².

The proposed dwelling size is less than that set by way for the non-discretionary standard within the SEPP, resulting in units that provide poor internal amenity for future residents.

5 Further the development provides 50% of the proposed dwellings with adequate solar access which is below the non discretionary standard of 70% under the SEPP further reducing the amenity for future residents.

10 The proposal also takes advantage of the reduced car parking provisions of the SEPP, proposing six (6) spaces, arranged in a central uncovered parking area.

The proposal is inconsistent with the following requirements of Byron DCP 2014:

- Building height plane – encroachments on both residential boundaries;
- Setbacks – covered external decks intrude within the front setbacks to Julian Rocks Drive; and
- 15 • Private open space – a number of the units do not comply with the quantum of open space required. The space provided for Units 1 & 2 is located in the frontage setback. The low fencing results in these spaces lacking privacy and being essentially unusable.

20 The provision of housing diversity addresses an identified need in Byron Bay. In this case, however, the application proposes a scale of development that is inappropriate in the context of the site and the R2 Low density Zoning. It will result in a development that is significantly out of character with the locality, individual dwellings with poor residential amenity and no useable private open space, and encroachment into the building height plane, which will lead to privacy and overlooking issues for neighbouring properties.

25 The applicant has commenced a Class 1 appeal in the Land and Environment Court against the deemed refusal of the application.

30 Council's contentions in the Land and Environment Court proceedings could be addressed by way of a redesign of the proposal, to reduce floor space and address the issues raised above, which could provide an outcome that would be acceptable in the context of the site and its locality.

The development in its current form, however, is not supported and it is recommended that the application be refused.

35 NOTE TO COUNCILLORS:

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

RECOMMENDATION:


That, pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application no. 10.2019.458.1 for construction of multi dwelling housing comprising eight (8) dwellings under State Environmental Planning Policy (Affordable Rental Housing) 2009, be refused for the following reasons:

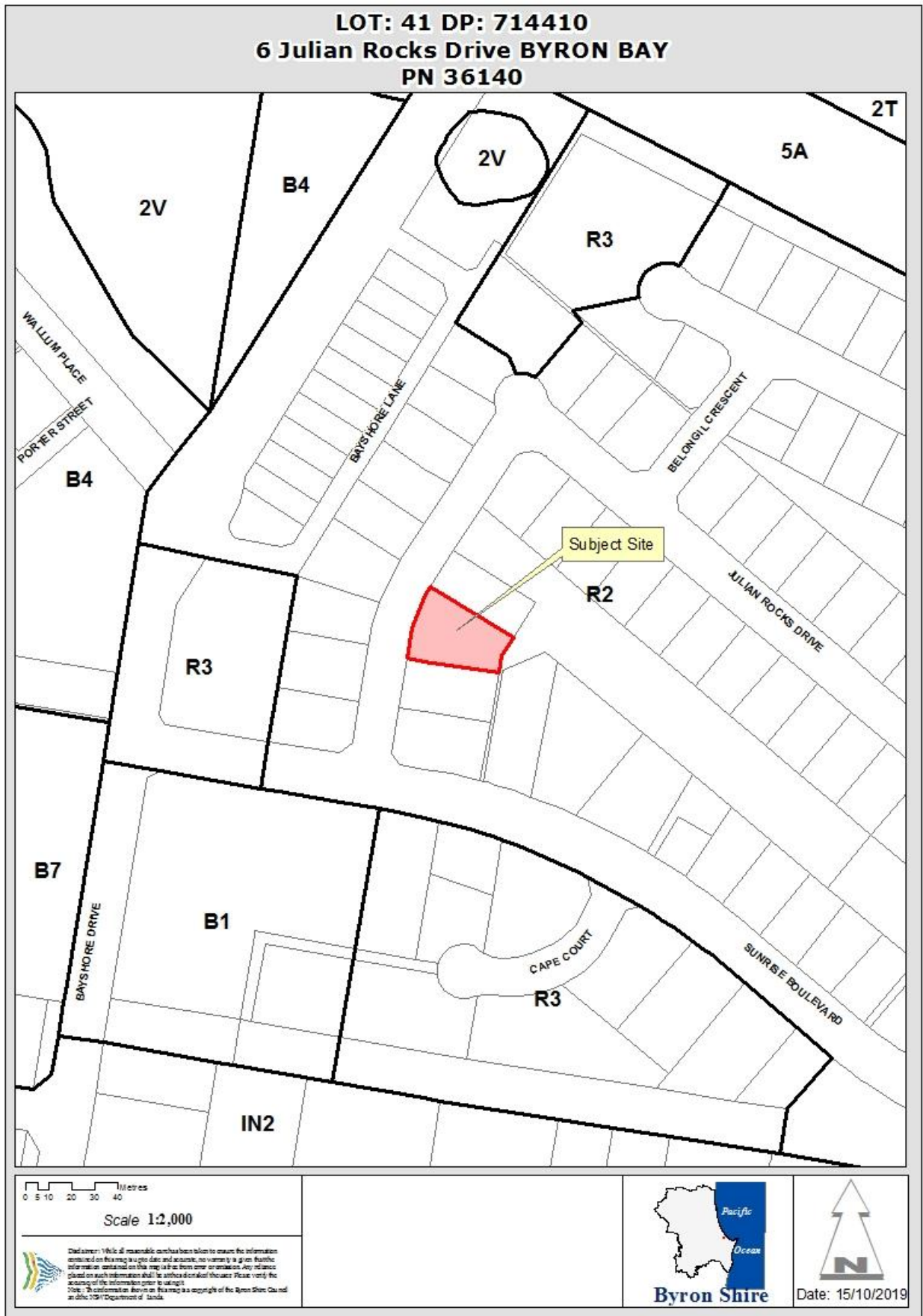
- a) Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal is inconsistent with the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 in that:
 - i. the units do not achieve adequate solar access and is inconsistent with the *SEPP*

(Affordable Housing) 2008;

- ii. the density and scale of the development is inconsistent with the character of the area; and
 - iii. the proposed development is inconsistent with *Seniors Living Policy Urban design guidelines for infill development.*
- b) Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the first objective of the R2 Low Density Residential Zone under Byron LEP 2014, in that:
- i. The proposed 8 dwellings is inconsistent with the character of a low density environment.
- c) Pursuant to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with Byron Development Control Plan 2014, in that:
- i. street boundary setbacks do not comply with the standard contained at Chapter D1.2;
 - ii. the proposed development encroaches into the Building Height Plane on southern boundary, resulting in impacts on neighbouring residential properties;
 - iii. inadequate useable private open space is provided to the units, with private spaces proposed within the front setbacks and overlapping private open spaces between units; and
 - iv. the internal unit design does not provide adequate internal amenity for future residents.

Attachments:

- 1 Plans - DA10.2019.458.1, E2019/65116 



Assessment:

1. INTRODUCTION

5 1.1. History/Background

The site is subject to the following approvals:

- | | |
|---------------|---|
| 6.1990.2636.1 | Patio Approved 13.12.1990 |
| 10.2000.93.1 | Change of use – Existing dwelling to Bed & Breakfast establishment Refused 14.03.2000 |
| 10.2000.661.1 | Bed & Breakfast establishment Court Approved 06.04.2002 |
| 1.02009.54.1 | Tree removal – Three (3) trees Approved 12.02.2009 |

15 1.2. Description of the proposed development

This application seeks approval for Multi Dwelling Housing Comprising Eight (8) Dwellings. The proposal relies on the provisions for Infill Affordable Housing under *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)*.

20 The proposal as described by the applicant consists of eight, two-storey townhouses: two studio dwellings, two single-bedroom dwellings, and four two-bedroom dwellings. The dwellings are arranged in three groups, with the four two-bedroom townhouses arranged in groups of two, and the third group of townhouses consisting of the two one-bedroom townhouses and the two studios. All townhouses are arranged around a central internal car parking area.

- 25 • The studio units have a floor space of 46m², containing a lounge, kitchen, laundry and storage at ground floor and a bedroom, bathroom and study on the upper level.
- The one-bedroom units have a floor space of 51m², containing a lounge, kitchen, laundry and storage at ground floor and a bedroom, bathroom and study on the upper level.
- 30 • The two-bedroom units have a floor space of 70m², with the same room configuration at ground floor (i.e., lounge, dining, kitchen, laundry and storage), and two bedrooms and a bathroom on the upper level.

35 The units will be constructed as slab on ground construction with the two-bedroom townhouses having a ground floor level at RL 4.65m (existing ground level is at approx. RL 3.50m at the front of the site). External timber decks are proposed off the ground floor, similarly elevated above existing ground level.

40 The third group of townhouses (i.e., the two one-bedroom townhouses and two studios) are located toward the site's rear and will be constructed as slab on ground construction with the studio and one-bedroom townhouses having a ground floor level of RL 4.90m (existing ground level is at approx. RL 4.70m at the site's rear). External timber decks are proposed off the ground floor, similarly elevated above existing ground level.

45 Vehicle access is proposed off Julian Rocks Drive to a central, uncovered parking area containing six spaces. A central bin storage area is proposed on the southern edge of the driveway in an enclosed structure, between unit 2 and the frontage of the site.

50 1.3. Description of the site

50 The property is known as Lot 41 DP714410 and is located on Julian Rocks drive, Byron Bay. It is irregular in shape with a 23.25m slightly curved primary frontage which tapers to 16.72m wide at the rear. The property is 951.7m² and is oriented roughly east / west. The western boundary, which is the Julian Rocks Drive frontage, has a length of 23.25m. The eastern boundary backs onto a public reserve, with a length of 16.72m.

55

5 The property currently contains a single dwelling with attached garage. Development consent was issued in February 2009 for the removal of tree (3) trees on the property. Two development applications were lodged (15 February 2000 and 7 December 2000) to convert the existing dwelling house into a bed and breakfast establishment, both applications were refused. There is no substantial vegetation on the land, other than landscape plantings.

The property is gently sloping from the rear down towards the site frontage with an elevation of approx. RL 3.50-4.73m AHD.

10 A site inspection was carried out on 11 September 2019

Land is legally described as	LOT: 41 DP: 714410	
Property address is	6 Julian Rocks Drive BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	951.7 m2	
Property is constrained by:	Acid Sulfate Soils Class 3	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Acid Sulfate Soils Class 3

15 The property is mapped as Class 3 Acid Sulfate Soils there are no works proposed more than 1 metre below the natural ground surface and no works by which the water table is likely to be lowered more than one metre below the natural ground surface. A condition applies that no works are to be carried out more than 1 metre below the natural ground surface without submitting an Acid Sulfate Soil Management plan to Council for assessment.

20 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objections subject to conditions. Refer to Doc #A2019/28041
Development Engineer	Amendments required which can be managed through conditions, should the application be approved. Refer to Doc #A2019/28043
S64 / Systems Planning Officer	No objections subject to conditions. Refer to Doc #A2019/28045
S94 / Contributions Officer	No objections subject to conditions. Refer to Doc #A2019/28044

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

25 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 not bush fire prone land.

30

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

The site is not identified as bushfire prone. The site is located in an area where this entitlement is available. However, there is no significant vegetation on the property.

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

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 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site has an area less than 1ha. The development control provisions of this SEPP, therefore do not apply.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Councils Environmental Health Officer has assessed the site and concluded: <i>The property is not on Council's contaminated land register, the land was not used for any contaminating activities. The proposed development is for continued use of the land and there is no increase in sensitivity as a result of this development.</i>		
State Environmental Planning Policy (Affordable Rental Housing) 2009	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development has been submitted under the provisions of Division 1 of this SEPP. See detailed assessment below		
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Certification provided.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The site is mapped within the Coastal Environment Area. No substantive issues are raised in regard to this.		

State Environmental Planning Policy (Affordable Rental Housing) 2009

Policy requirement/summary	Proposed	Complies
8. Relationship with other environmental planning instruments <i>If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.</i>	The provisions of this SEPP prevail over any inconsistencies with Byron LEP 2014.	Noted
Part 2 New affordable rental housing		
Division 1 In-fill affordable housing		
10. Development to which Division		

Policy requirement/summary	Proposed	Complies
<p>applies</p> <p>(1) <i>This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:</i></p> <p>(a) <i>the development concerned is permitted with consent under another environmental planning instrument, and</i></p> <p>(b) <i>the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the Heritage Act 1977.</i></p> <p>(2) <i>Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.</i></p> <p>(3) <i>Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.</i></p>	<p>The site is zoned R2 Low Density Residential.</p> <p><i>Multi dwelling housing is permissible in the R2 zone.</i></p> <p>The site does not contain a heritage item.</p> <p>Not applicable.</p> <p>The site is located approximately 180m (walking distance) from the nearest edge of the B4 Mixed Use Zone (Habitat).</p>	<p align="center">Yes</p> <p align="center">Yes</p>
<p>13. Floor space ratios</p> <p>(1) <i>This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.</i></p> <p>(2) <i>The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:</i></p> <p>(a) <i>if the existing maximum floor space ratio is 2.5:1 or less:</i></p> <p>(i) <i>0.5:1 - if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or</i></p> <p>(ii) <i>Y:1 - if the percentage of the</i></p>	<p>The application proposes to use a minimum of 20% of the gross floor area of the development for affordable housing.</p> <p>The existing FSR applicable in this location is 0.5:1.</p> <p>Based on the formula contained in the clause, the applicable FSR will be 0.5:1 plus 0.2 = 0.7:1.</p> <p>The proposal complies with this requirement.</p>	<p align="center">Yes</p>

Policy requirement/summary	Proposed	Complies
<p><i>gross floor area of the development that is used for affordable housing is less than 50 per cent,</i> <i>where:</i> AH is the percentage of the gross floor area of the development that is used for affordable housing. $Y = AH \div 100$</p>		
<p>14. Standards that cannot be used to refuse consent (1) Site and solar access requirements <i>A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</i> (a) (repealed) (b) site area <i>if the site area on which it is proposed to carry out the development is at least 450 square metres,</i> (c) landscaped area <i>if:</i> <i>(i) in the case of a development application made by a social housing provider—at least 35 square metres of landscaped area per dwelling is provided, or</i> <i>(ii) in any other case—at least 30 per cent of the site area is to be landscaped,</i> (d) deep soil zones <i>if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed:</i> <i>(i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the deep soil zone), and</i> <i>(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and</i> <i>(iii) if practicable, at least two-thirds</i></p>	<p>The site has an area of 951.7m²</p> <p>Application not made by a social housing provider. Plans show a total of 328m² landscaped space, which is 34% of the site.</p> <p>A total of 135m² deep soil zone is provided, being 15% of the site area. It is provided in 7 areas, each having a minimum dimension of at least 3m. The nature of the site, being a corner lot, makes it impractical to provide all of the deep soil zone to the rear. In this case, the design intention of having the internal car parking located behind the buildings has taken priority, leaving the deep soil zones throughout the property. In the circumstances, this is considered acceptable.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

BYRON SHIRE COUNCIL

Policy requirement/summary	Proposed	Complies
<i>of the deep soil zone is located at the rear of the site area,</i>		
<p>(e) solar access <i>if living rooms and private open spaces for a minimum of 70 per cent of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</i></p>	<p>In relation to solar access (14(1)(e)), Council must not refuse development made under Division 1 if living rooms and private open spaces achieve a minimum of 70 per cent of a development's dwellings and receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter.</p> <p>The proposed development does not provide adequate solar access to the living rooms and private open space areas to the units as described below:</p> <ul style="list-style-type: none"> • unit 4 – there is limited solar access to the living room of unit 4 via a small high level louvre window adjacent to the entry porch which is setback under the upper level of the dwelling and will not allow a minimum of 3 hours direct sunlight into the dwelling. • unit 8 – there is limited solar access to the living room of unit 8 as the private open space of unit 7 runs along the full width of the eastern elevation of unit 8. This interface will require a fence or screening to separate these two private open space areas which will limit the access to sunlight for unit 8 to significantly less than 3 hours direct sunlight. • units 6 and 7 – there is limited solar access to the living rooms of units 6 and 7, demonstrated on plan D-P-04 prepared by The Collective, and dated 21 August 2019. <p>Only 50% of the units are provided with adequate solar access to living rooms. The proposed development fails to provide a minimum of 70% of the dwellings with adequate solar access.</p> <p>4 of the 8 units (50%) received the required solar access and fail to achieve the minimum solar access requirements.</p>	No
(2) General		

Policy requirement/summary	Proposed	Complies
	<p>dwelling, at:</p> <ul style="list-style-type: none"> • 46m² for each of the two 'studio' dwellings when considered as one (1) bedroom dwellings. <p>Any increase in the size of the 'Studio' (one bedroom units would result in the development exceeding the maximum FSR for the site.</p> <p>The reduced floor area results in design of the dwellings that does not provide an acceptable level of amenity, in that:</p> <ul style="list-style-type: none"> • units do not have adequate internal area to provide a comfortable or reasonable living environment; and • laundries are accessible only from the external decks. 	
<p>(3) <i>A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).</i></p>	<p><i>Noted</i></p>	
<p>15. Design requirements</p> <p><i>(1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.</i></p>	<p><u>Part 1 – Responding to context</u> Proposal is inconsistent with existing character in terms of scale and density. It does not appropriately respond to the context of the site, given the issues associated with the internal amenity of the units as proposed and their relationship to neighbours (encroachment into Building Height Plane).</p> <p><u>Part 2 – Site Planning & Design</u> In addition to character concerns, encroachment into the Building Height Plan raises the potential for privacy, overlooking and overshadowing issues.</p> <p><u>Part 4 – Impacts on neighbours</u> Encroachment into the Building Height Plan raises the potential for privacy, overlooking and overshadowing issues.</p> <p><u>Part 5 Internal site amenity</u> The development does not provide</p>	<p align="center">No</p>

BYRON SHIRE COUNCIL

Policy requirement/summary	Proposed	Complies
	<p>adequate useable private open space for each of the dwellings. The private space for units 1-2 is predominantly within the front setback of Julian Rocks Drive, which severely limits the privacy of the space.</p> <p>This is also exacerbated by the raised nature to the private open space areas relative to the road reserve with bin and bike parking areas being directly adjacent to these open space areas.</p> <p>In relation to units 6 and 7, the area of private open space overlaps the rear elevations and private open space areas of the adjoining units 5 and 8.</p> <p>The private open space area of unit 7 will significantly impact on the private open space area for unit 8, as it directly overlooks both external and internal areas of unit 8. Any mitigation measures such as screening or fencing devices would significantly restrict access to sunlight for unit 8.</p>	
<p>16A Character of local area <i>A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</i></p>	<p>Julian Rocks Drive provides a local access loop for movement through the Sunrise residential estate, which was developed from the mid 1980s onwards.</p> <p>In the main, the residential character is dominated by single one-storey dwellings with a small number of single storey, dual-occupancy developments throughout the area. The overriding character of Julian Rocks Drive is single storey brick and tile (or tin) dwellings with a small number of dual occupancies proximate to the subject site that are predominantly low density in nature.</p> <p>Within the residential area north of Sunrise Boulevard, single one-storey dwellings are the majority land use, with a small number of dual occupancy dwellings, predominantly single-storey.</p> <p>More variety exists to the southern side</p>	No

Policy requirement/summary	Proposed	Complies
	<p>of Sunrise Boulevard, primarily in the form of multi-dwelling housing and dual occupancy developments. The areas to the south of Sunrise Boulevard are appropriately zoned as medium density residential R3 for multi-dwelling housing. Sunrise Boulevard provides a separation from the predominantly lower density residential land uses to the north and medium density residential land uses to the south. The dwellings in this area remain, however, a mixture of one and two storeys in height.</p> <p>In this case, there is an inherent inconsistency in character, given the character described above, and the proposal for multi-dwelling housing within a low density residential area.</p>	
<p>17. Must be used for affordable housing for 10 years</p> <p>(1) <i>A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:</i></p> <p>(a) <i>for 10 years from the date of the issue of the occupation certificate:</i></p> <p>(i) <i>the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and</i></p> <p>(ii) <i>all accommodation that is used for affordable housing will be managed by a registered community housing provider, and</i></p> <p>(b) <i>a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.</i></p> <p>(2) <i>Subclause (1) does not apply to</i></p>	<p>A condition can be included in to require that 2 of the proposed dwellings are to be used for the purposes of affordable housing for a period of ten years from the date of issue of an occupation certificate. (Dwellings 7 & 8 are nominated)</p> <p>This affordable housing is also required to be managed by a registered community housing provider.</p> <p>An appropriate condition can be applied.</p> <p>Noted</p>	<p>*Yes (Subject to conditions)</p>

Policy requirement/summary	Proposed	Complies
<i>development on land owned by the Land and Housing Corporation or to a development application made by, or on behalf of, a public authority.</i>		
18. Subdivision <i>Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.</i>	The subject development application does not seek consent for subdivision at this time.	Noted

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as *multi dwelling housing*;
- (b) The land is within the R2 Low Density Residential 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:

10 **R2 Low Density Residential Zone**

Zone Objective	Consideration
To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal will provide additional rental accommodation, with an affordable component, which is an identified housing need for Byron Bay. However the scale of the proposal comprising 8 dwellings is considered to be inconsistent with a low density environment, and it is considered to be inconsistent with the first objective of the zone

CI.4.1E Minimum lots sizes for dual occupancies, multi dwelling housing and residential flat buildings

15 Development consent must not be granted to development for multi dwelling housing on land within the R2 zone, unless the property has an area of 1,000m². This requirement is inconsistent with clause 14(1) of *SEPP (Affordable Housing) 2008*, which sets a minimum site area of 450m². As indicated above, the provisions of the SEPP prevail in respect of any inconsistency.

CI.4.4 Floor space ratio

20 The FSR specified for the locality is 0.5:1. See comments above – an FSR ‘bonus’ of 0.2:1 is available under the provisions of *SEPP (Affordable Housing) 2008*. Notwithstanding the proposal has a complaint FSR of 0.49:1.0 with the LEP controls.

25 The proposed development raises no other issues in terms of the LEP.

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

30 None applicable

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

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

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B2 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input checked="" type="checkbox"/> B5 <input type="checkbox"/> B6 <input type="checkbox"/> B7 <input checked="" type="checkbox"/> B8 <input type="checkbox"/> B9 <input type="checkbox"/> B10 <input type="checkbox"/> B11 <input type="checkbox"/> B12 <input checked="" type="checkbox"/> B13 <input type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1 <input type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D1 <input type="checkbox"/> D2 <input type="checkbox"/> D3 <input type="checkbox"/> D4 <input type="checkbox"/> D5 <input type="checkbox"/> D6 <input type="checkbox"/> D7 <input type="checkbox"/> D8
Part E Chapters	<input type="checkbox"/> E1 <input type="checkbox"/> E2 <input type="checkbox"/> E3 <input type="checkbox"/> E4 <input type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7

10 The proposed development complies with all sections of DCP2014, except in relation to certain prescriptive measures, which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:

Non-compliance	Comments
B4.2.5 Car Parking Requirements Proposal does not comply with parking numbers outlined in Table B4.1	The provisions of <i>SEPP (Affordable Housing) 2008</i> take precedent over the DCP controls. Cl. 14(2) of the SEPP establishes minimum parking requirements. The proposal meets those requirements.
D1.2.1 Building Height Plane	The proposed development encroaches into the Building Height Plane: <ul style="list-style-type: none"> • upper levels of Units 5 & 8, • upper floor of Units 1, 2 3 & 4, include bedroom windows, overlooking a single-storey dwelling on the neighbouring property. The encroachment has the potential to result in privacy and overlooking issues for neighbouring properties.
D1.2.2 Setbacks	The majority of existing dwellings fronting the eastern side of Julian Rocks Drive have a front setback of between 4.8m and 6.0m and the setback is consistently greater than the minimum of 4.5m setback required under the Byron DCP 2014. The proposed development has a setback to the front walls of units 1 and 2 of 4.9m. However, each unit includes a deck structure which protrudes into this setback area, set at between 2.7m and 3.1m from the street frontage. The existing dwelling on the subject land maintains a setback of approx. 8.5m from the Julian Rocks Drive frontage. On this basis, setbacks of 4.5m to Julian Rocks Drive would be appropriate. However, the introduction of the deck elements encroaching into the setbacks is inconsistent with the streetscape character.
D1.6.1 Private Open Space	The development does not provide adequate useable private

Courtyards	open space for each of the dwellings. The private space for units 1-2 is predominantly within the front setback of Julian Rocks Drive, which severely limits the privacy of the space. This is also exacerbated by the raised nature to the private open space areas relative to the road reserve with bin and bike parking areas being directly adjacent to these open space areas. In relation to units 6 and 7, the area of private open space overlaps the rear elevations and private open space areas of the adjoining units 5 and 8. The private open space area of unit 7 will significantly impact on the private open space area for unit 8, as it directly overlooks both external and internal areas of unit 8. Any mitigation measures such as screening or fencing devices would significantly restrict access to sunlight for unit 8.
------------	--

The proposed development does not comply with the relevant Objectives of DCP 2014.

4.5 Any Planning Agreement or Draft Planning Agreement?

5

	Yes	No
Is there any applicable planning agreement or draft planning agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration:		

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
92	Yes	Yes	Yes
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

* Non-compliances and any other significant issues discussed below

10

4.7 Any Coastal Zone Management Plan?

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

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

15

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	Yes. The encroachment into the Building Height Plane results in a

	proposal that will have an adverse impact on the built environment of the locality.
Social Environment	Yes. While the provision of additional rental accommodation would be a benefit in the area, particularly with an affordable component 'locked-in', the proposal has tried for too many dwellings which do not provide an acceptable level of amenity for future residents, resulting in cramped spaces for future residents and no useable private open space. This will result in an adverse social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

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

4.9 The suitability of the site for the development

5 The site is a serviced, unconstrained property and is suitable for residential development. While the existing character of the locality relates to very low scale housing, the provisions of Council's LEP and DCP and the SEPP ARH are such that it is reasonable to expect an increase in scale and density in the future.

10 The proposed development, however, seeks a quantum of development that is in excess of what would be a reasonable expectation for this site and context. The combination of poor residential amenity associated with minimal internal floor space, open spaces for many of the units that is not private or useable, and the encroachment into the building height plane on boundaries adjoining existing dwellings demonstrates that the development as proposed is an overdevelopment of the site.

4.10 Submissions made in accordance with this Act or the regulations

20 The development application was publicly exhibited. There were **21** submissions objecting to the development. Five (5) of the submissions came in the form of petitions which received a total of 289 signatures.

25 The submission can be viewed at <https://www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information> (E2019/86404)

Issue	Comment
Traffic generation and safety on Julian Rocks Drive and impacts on bus stop; additional traffic would create/ add to safety issues/ conflicts with buses and pedestrians.	A traffic impact assessment has not been provided. The development will generate 40 vehicles per day including 4 peak hour trips. This volume can be accommodated within the existing capacity of the road and the road network and the development will create a significant increase in local traffic. Overall, it is considered that traffic impacts are manageable and would not create significant safety or efficiency issues.
Car parking + bicycle parking The proposal only provided 6 parking spaces for 8 units and this is considered totally inadequate.	As outlined above, the provisions of SEPP ARH prevent Council from refusing an application made under that Policy on the basis of car parking if the minimum standards outlined in the SEPP are met. The development meets those standards, and Council can therefore not refuse this application on parking grounds.

BYRON SHIRE COUNCIL

<i>Issue</i>	<i>Comment</i>
	The applicant has provided a bike parking area within the frontage setback which is generally not supported – with bike parking better provided in individual dwellings.
Pedestrian safety	If approved the proposed development would provide a 1.5m wide footpath along the full frontage and would improve the current pedestrian movements along Julian Rocks Drive.
Excessive Bulk and Scale (two storey development) / Overdevelopment of the site and intrusion into the BHP.	See discussion above – this objection is supported in relation to the overdevelopment and intrusion of the BHP and setbacks.
Out of character of area	See discussion above – this objection is supported.
Lack of affordable housing in the development	As required by SEPP ARH, 20% of the total floor space – in this case two of the proposed units would be set aside for affordable rental for a period of at least 10 years. The SEPP does not require all of the units to meet this requirement.
Overlooking / privacy	See discussion above – this objection is supported.
Noise	The proposed development is residential in nature within an existing residential environment. Future residential use of the site will be similar to the surrounding environment.
Lack of appropriate solar access to the individual units and surrounding properties.	See discussion above – this objection is supported.
The proposed density of the development is inconsistent with LEP zone objectives for low density zoning	The Byron LEP 2014 - Cl.4.1E Minimum lots sizes for dual occupancies, multi dwelling housing and residential flat buildings is inconsistent with clause 14(1) of <i>SEPP (Affordable Housing) 2008</i> , which sets a minimum site area of 450m ² . As discussed above, the provisions of the SEPP prevail in respect of any inconsistency.
Impact of similar future development at 7 & 9 Julian Rocks Drive	The current proposal seeks approval for development on 6 Julian Rocks Drive and consideration of additional lots and 'potential' development is not relevant to the current application.
Environmental impact of demolition	The proposed demolition of the existing dwelling would be undertaken in accordance with the required standards.
Vegetation removal	The site contains no vegetation of significance and removal of vegetation onsite is considered appropriate.
Precedence of the development	The development is seeking approval under the provisions of the <i>SEPP (Affordable Housing) 2008</i> . <i>Similar proposals have been approved in the Shire including developments at Sunrise Boulevard and Kendall St Byron Bay.</i>
The development does not achieve the requirements of dwelling design under the	See discussion above – this objection is supported.

Issue	Comment
Seniors Living Urban Design Guidelines	
Inadequate infrastructure to service development	If the development were approved relevant developer infrastructure contributions would be applied to the development.
Impact to Council Reserve	Development will not encroach into the Council Reserve at the rear off the site.
Insufficient private open space for units.	See discussion above – this objection is supported.
Safety of children in adjoining preschool	The proposed development is for residential purposes within a residential neighbourhood and there will be no impact on the operation of the existing pre-school. Council cannot dictate who occupies the development, similar to all other forms of residential accommodation in the Shire.
Safety of neighbourhood – crime etc	The proposal seeks approval under the <i>SEPP (Affordable Housing) 2008</i> and it would be prejudicial to assume that future tenants of the development are criminals.
Occupant limits on dwellings	The number of bedrooms will determine the number of occupants within the development.
Provisions of bins	The proposal proposes shared garbage bins.
Who Monitors the rental price for affordable housing and how is it enforced	As required by SEPP ARH, 20% of the total floor space – in this case two of the proposed units would be set aside for affordable rental for a period of at least 10 years. The market would dictate rental prices for the other units Under the SEPP this is to be administered by a community housing provider.

4.11 Public interest

5 Given the issues raised in this report, primarily associated with the combination of resident amenity concerns and inconsistency with character of the locality, approval of the development in its current form would prejudice or compromise the public interest.

5. DEVELOPER CONTRIBUTIONS

10 **5.1 Water & Sewer Levies**

Section 64 levies would be payable for this development. Given the recommendation of this report to refuse, calculation of the applicable levies has not been completed.

15 **5.2 Section 7.11 Contributions**

No Section 7.11 Contributions would be payable for this development. Given the recommendation of this report to refuse, calculation of the applicable contributions has not been completed.

20 **6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be	No

determined by the Director or Manager of the Planning, Development and Environment Division.	
--	--

Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

5 The development in its current form is considered to be an overdevelopment of the site and is at a scale that is inappropriate in the context of the neighbourhood. It will result in a development that is significantly out of character with the locality, individual dwellings with poor residential amenity, limited solar access and no useable private open space, and encroachment into the building height
10 plane, creating privacy and overlooking issues for neighbouring properties. The application is not supported and it is recommended for refusal.

8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

15 *Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

Statement of Reasons

The proposed development is inconsistent with the character of the locality.
The proposed development does not comply with significant provisions of Byron Development Control Plan 2014.
The proposed development is inconsistent with State Environmental Planning Policy (Affordable Rental Housing) 2009.

How community views were addressed

The DA was notified/advertised in accordance with Development Control Plan 2014. There were 21 submissions made on the development application objecting to the development. Five (5) of the submissions came in the form of petitions which received a total of 289 signatures.
As summarised in the table at Section 4.10 of this report, a number of the issues raised in submissions have been identified in this assessment of the application, resulting in the recommendation for refusal.

Report No. 13.14 **Final Business and Industrial Lands Strategy for adoption**
Directorate: Sustainable Environment and Economy
Report Author: Natalie Hancock, Senior Planner
Steve Daniels, Project Officer - Planning Reforms
5 **File No:** I2019/1633

Summary:

10 Council has prepared a Business and Industrial Lands Strategy (BILS) with a strategic policy framework and action plan for guiding business and industrial land development over the next 20 years in Byron Shire. The BILS focuses on land designated for industrial, retail and commercial office uses under the *Byron Local Environmental Plan 2014* (BLEP). It also provides guidance on
15 knowledge- and creative-industry precincts, co-operative business and innovation hubs, and development close to Byron Central Hospital.

20 At the Planning Meeting, 20 June 2019 Council resolved (**Res 19-281**) to update and reformat the strategy and to consult with the community on an additional industrial investigation area at Gulgan Road North, Brunswick Heads.

The resolution has been actioned by Council staff, and this report:

- 25 • summaries government agency and community responses received during consultation on the additional land
- summaries key BILS updates and/or amendments
- presents a final BILS and supporting documents for adoption to enable endorsement by Department of Planning, Industry and Environment.







30 Overall, the Business and Industrial Lands Strategy promotes opportunities for Byron Shire Council to manage business and industrial land development in a way that supports the community's desire to leave a better place for future generations of residents and workers.

RECOMMENDATION:

1. **That Council note the Business and Industrial Lands Strategy has been updated to reflect the outcomes of consultation, as applicable on Area 5 Gulgan North described as part of Lot 2 DP 1159910, 66 The Saddle Road, Brunswick Heads which has been included as a possible industrial and business park area.**
2. **That Council adopt the Business and Industrial Lands Strategy as contained in Attachment 4 (E2019/85987) and together with the Background Report contained in Attachments 3, 5 and 6 (E2019/86202, E2019/83593 and E2019/86203) send to the NSW Department of Planning, Industry & Environment for final endorsement.**
3. **That Council note that the colour contrasts used on some figures in the Business and Industrial Lands Strategy will be reviewed and if necessary, changed to enhance readability under the Web Content Accessibility Guidelines before sending to NSW Department of Planning, Industry & Environment for final endorsement.**

Attachments:

- 35 1 Minutes Resolution 19-281 - 20 June Planning Meeting, E2019/78652 

- 2 Confidential - Submission from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) Business and Industrial Lands Strategy Additional Lands, E2019/83634
 - 3 Additional lands submission summary report, E2019/86202 
 - 4 Business and Industrial Lands Strategy, E2019/85987 
 - 5 5 Business and Industrial Lands Strategy Background Report, E2019/83593 
 - 6 Business and Industrial Lands Strategy State consistency check, E2019/86203 
 - 7 Combined submissions additional lands Business and Industrial Lands Strategy, E2019/86296 
 - 8 Special Disclosure of Pecuninary Interest Annexure, E2012/2815 
- 10

REPORT

The Business and Industrial Lands Strategy (BILS) has been prepared as part of a staged process that commenced in mid-2017. The BILS provides a strategic policy framework and action plan for guiding business and industrial land development over the next 20 years in Byron Shire. Maintaining the Byron Shire as an attractive place to invest means building on its competitive advantages, making the best use of existing land, and providing a supply of additional land to meet needs.

The strategy focuses on land designated for industrial, retail and commercial office uses under the *Byron Local Environmental Plan 2014* (BLEP). It also provides guidance on knowledge- and creative-industry precincts, co-operative business and innovation hubs, and development close to Byron Central Hospital.

At the Planning Meeting of 20 June 2019 Council considered an Employment Lands Strategy - Submissions Report and resolved (**Res 19-281**) to update and reformat the strategy and to exhibit for community feedback, an additional industrial investigation area at Gulgan Road North, Brunswick Heads (resolution attached as Attachment 1).

The resolution has been actioned by Council staff, and this report:

- summaries government agency and community responses received during consultation on the additional land
- summaries key BILS updates and/or amendments
- presents a final BILS and supporting documents for adoption to enable endorsement by Department of Planning, Industry and Environment.

Overall, the Business and Industrial Lands Strategy promotes opportunities for Byron Shire Council to manage business and industrial land development in a way that supports the community's desire to leave a better place for future generations of residents and workers.

Consultation on additional industrial land

Res 19-281 Item 14 required:

'That prior to reporting a final strategy back to Council for adoption before the end of the year:

- a) staff consult with the community and relevant government agencies in regard to the Gulgan North Precinct 'A' & 'B' (part of Lot 2 DP 1159910, 66 The Saddle Road, Brunswick Heads), as identified in 'Table 1' of this report,; and*
- b) update the Employment Lands Strategy to reflect the outcomes of this consultation, as applicable.'*

In accordance, a 4 week consultation was held from 1– 28 August 2019. In addition, **Res 19–281** Item 16 supported the inclusion of additional industrial land, Lot 4 DP 635505, 150 Lismore Road, Bangalow. This land not previously exhibited, was included in the consultation on the recommendation of the NSW Department of Planning, Industry and Environment.

Fifty (50) community submissions (Attachment 7) were received, the majority pertaining to the Gulgan North area. The following NSW government agencies made a submission:

- Department of Planning, Industry and Environment:
 - Planning Division
 - Biodiversity and Conservation Division

- Department of Primary Industry
- Roads and Maritime Services (RMS)
- Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) (Attachment 2 - confidential).

5 Attachment 3 provides an Additional Land Submissions Summary Report. It makes recommendations for updating the Business and Industrial Lands Strategy to reflect the outcomes of consultation on Gulgan North Precinct 'A' & 'B' (part of Lot 2 DP 1159910, 66 The Saddle Road, Brunswick Heads). The updates are tabled in BILS under Area 5 Gulgan North, an extract is provided below:

10 **Extract of Business and Industrial Lands Strategy – Area 5: Gulgan North**

Area Number	5.
Description	Part of Lot 2 DP 1159910 66 The Saddle Road, Brunswick Heads
Image of investigation area	
Potential developable land (ha)	6.5 ha
Preferred role	'A' proposes business park type development – buildings housing multiple small businesses 'B' a traditional industrial estate, allowing larger footprints for warehouse style uses requiring truck manoeuvring.

Strengths/ advantages	<ul style="list-style-type: none"> • under single ownership • proximity to direct north and south-bound ingress and egress to Pacific Highway • on existing public transport route • flood free and Area B relatively flat • proximity to workforce including expanding residential area of Bayshore, Brunswick Heads with potential for 250 plus homes • links with the proposed new on-road cycle lane on Mullumbimby Road and Gulgan Road between Manns Road and Gulgan North Pacific Highway interchange
Key issues and further investigations	<ul style="list-style-type: none"> • community views • Aboriginal cultural heritage sensitivities - sites and a 100m buffer to a site (requested by Arakwal) to be excluded from a business or industrial zone • non-indigenous cultural sensitivities • biodiversity and ecological sensitivities including prime koala habitat (verification by qualified and experienced ecologist) • land containing HEV vegetation to be excluded and designated as Environmental Zone • distance from existing water and sewerage infrastructure and connection to existing infrastructure • bushfire prone • traffic impacts and safe access point to Gulgan Road • linkages to urban areas (workforce) using pedestrian/cycling pathways • landscaping to enhance visual amenity as it pertains to view lines from Gulgan Road and Pacific Highway • SEPP 55 assessment of dip site implications
Anticipated delivery timeframe	Medium term (this means the anticipated progression to a planning proposal for inclusion in a business and/or industrial zone within the following 3 to 5 years)

Business and Industrial Lands Strategy updates

5 As endorsed by Council under **Res 19-281** Item 3, the Employment Lands Strategy (ELS) has been renamed 'Business and Industrial Lands Strategy'.

The final Business and Industrial Lands Strategy (Attachment 4) is generally consistent with the content table endorsed by Council under **Res 19-281** Item 4 and contains five sections. Table 1 below lists the sections and provides key points of each section. The right column references the **Res 19-281** item number/s generally facilitating the edit.

10

Table 1: Summary of key updates to the strategy

Section and content overview & key points	Res 19-281 Item Ref.
<p>Section 1 – Overview: contains the introduction, strategy aim, an overview of what business and industrial lands are and why a strategy is needed.</p> <p>Key points of note:</p> <ul style="list-style-type: none"> Executive summary rephrased to provide readers with a quick overview of the strategy. Inclusion of an ‘aim’ worded as follows: <i>‘Create business centres and industrial areas that work for people, commerce and the environment.’</i> 	4 & 5
<p>Section 2 – Background: contains informative details about our people, workforce, economy and the drivers of change.</p> <p>Key point of note:</p> <ul style="list-style-type: none"> A new ‘driver of change’ has been inserted regarding the Shire’s growing Indigenous workforce and business sector. The inclusion of this driver offers respect and acknowledgement to the importance of local Bundjalung workers and businesses cultural connection to Country as part of the Byron Shire’s economy. 	4
<p>Section 3 – Directions: outlines the directions and actions to deliver the strategy aim.</p> <p>Key point of note:</p> <ul style="list-style-type: none"> The strategic directions as contained in the draft ELS have been revised. Each direction is provided with a context to the direction being taken and a set of planning actions to achieve the outcome. 	4
<p>Direction 1: <i>Enable business centres to retain an individual identity and fulfil their potential.</i></p> <p>Key points of note:</p> <ul style="list-style-type: none"> Figure 10 (draft ELS Figure 15) is presented in a more simplified format and incorporates information on the future role of a centre. For example, Ocean Shores business centre, currently a neighbourhood centre, is supported in taking a more of a ‘town’ centre role, whilst Bangalow and Brunswick Heads business centres are to retain a ‘village’ centre role. This delineation is consistent with public exhibition community feedback and the Bangalow Village Plan. 	4 & 5
<p>Actions under Direction 1</p> <ul style="list-style-type: none"> Relationship with place plans actions <p>The place plans developed for towns and villages contain a series of actions. To avoid duplication or potential inconsistencies, where an action under the draft ELS or Res 19-</p>	1 d) & 9

Section and content overview & key points	Res 19-281 Item Ref.
<p>281 endorsement is captured under a place plan, the action has been removed from the BILS. For example the BILS action that read as follows has been deleted:</p> <p><i>'That a new Employment Lands Strategy action be inserted to investigate opportunities for use of the Mullumbimby surplus rail corridor lands for mixed use purposes.'</i></p> <p>as the draft Mullumbimby Masterplan states:</p> <p><i>'Liaise with Transport for NSW to ensure that any future use of the rail corridor lands are consistent with community needs and values. These uses include medium density housing for key workers and compatible commercial/live work uses, along with peripheral parking and open space.'</i></p> <p>The BILS encourages the reader to refer to place plan documents for additional local area actions.</p>	
<p>Direction 2: <i>Improve the use of existing industrial areas for industrial and urban services.</i></p> <p>Key point of note:</p> <ul style="list-style-type: none"> • Parts of Directions 1 and 5, and subsequent actions as contained in the draft ELS are combined to provide an integrated direction centred on monitoring of existing industrial areas under a new Direction 2. This approach recognises the importance of bringing vacant zoned lands on line. Furthermore, in doing so, having actions to maintain a healthy balance between lands to meet every-day urban service needs of residents such as a car maintenance garage and enabling new ways for business to operate. Such as recent trends for increased on-line retailing or hosting a local 'shop front' as exemplified by Stone and Wood in the Byron Arts and Industry Estate so as to support established 'Byron' brands. 	1d) & 4
<p>Direction 3: <i>Secure a sustainable long-term supply of suitable industrial lands.</i></p> <p>Key points of note:</p> <ul style="list-style-type: none"> • This Direction identifies possible new industrial areas. • Figure 36 (draft ELS Figure 7) has been edited to a more simplified format with information combining existing and possible new industrial areas. • Tables are inserted for each possible new industrial areas detailing: <ul style="list-style-type: none"> ○ description of the land ○ image of the land, with potential environmental zone areas excluded ○ potential developable area ○ strengths/advantages ○ key issues and further investigations such as infrastructure servicing ○ anticipated delivery timeframe – to provide comparison among the possible release areas in terms of anticipated development timeframes having regard to the issues for further investigation and to assist with infrastructure planning. <p>Extract Area 5: Gulgan North from the BILS earlier in this report, is an example of the new template for possible industrial areas.</p>	1,4 & 5
<p>Actions under Direction 3</p>	1 & 5

Section and content overview & key points	Res 19-281 Item Ref.
<ul style="list-style-type: none"> • Three actions have been inserted providing a reference to the possible investigation areas and a process for their consideration by Council for development. 	
<p>Direction 4: <i>Promote an attractive investment environment with people-friendly industrial areas and business centres.</i></p> <p>Key points of note:</p> <ul style="list-style-type: none"> • The ‘employment land principles’ and a number of actions contained in the draft ELS have been reformatted into a set of: <ul style="list-style-type: none"> ○ Business and industrial suitable land principles to better align with the NSW government requirement for land release criteria ○ Design principles to better align with the NSW government <i>Better placed design policy</i> and <i>Urban design guide for Regional NSW</i>: https://www.governmentarchitect.nsw.gov.au/policies/better-placed https://www.planning.nsw.gov.au/Plans-for-your-area/Urban-Design-for-Regional-NSW • Criteria have been inserted providing guidance on: <ul style="list-style-type: none"> ○ development close to the Byron Central Hospital ○ knowledge- and creative- industry precincts ○ co-operative business and innovation hubs. 	<p>1 c) & d)</p> <p>18</p>
<p>Actions under Direction 4</p> <ul style="list-style-type: none"> • An action is inserted to require inclusion of the above criteria in the Byron Shire Development Control Plan to provide linkage between the strategy’s criteria and potential development. 	<p>1d) & 18</p>
<p>Direction 5: <i>Improve infrastructure in business centres and industrial areas.</i></p> <p>Key points of note:</p> <ul style="list-style-type: none"> • Inclusion of a Direction requiring the delivery of industrial and business lands to be linked to the servicing and infrastructure delivery framework. • The context statement promotes innovative sustainable and resilient infrastructure technologies such as water reuse and renewable energies. 	<p>1b)</p>
<p>Actions under Direction 5</p> <ul style="list-style-type: none"> • Actions inserted to plan for infrastructure delivery to industrial and business land as part of future infrastructure delivery programs of Council, other agencies and private providers. • As for Direction 1 actions, to avoid duplication or potential inconsistencies, where strategy infrastructure and servicing actions are already reasonably captured in place plans or other Council infrastructure strategies, they are not duplicated in the strategy. One such example is the proposed new on-road cycle lane on Mullumbimby Road between Manns Road and Gulgan North Pacific Highway interchange that is already contained in the Byron Shire Bike Plan. 	<p>1b)</p> <p>1d)</p>
<p>Section 4 - Making it happen: specifies actions needed to implement the strategy.</p>	<p>1d)</p>

Section and content overview & key points	Res 19-281 Item Ref.
<p>This section contains a table of actions, including measures and timeframes for implementing the strategy. It also outlines plans for monitoring and review.</p> <p>Key points of note:</p> <p>The timing of actions will be subject to consideration at as part of the annual budget process and allocation. The Summary Action Plan (p 91 of the strategy) provides an indicative timing as follows:</p> <ul style="list-style-type: none"> ○ Short term means a budget bid will be considered in the Operational Plan within the next 3 years ○ Medium term means a budget bid would be considered within the following 3 to 5 years ○ Long term means a budget bid or landowner initiated development would be considered within the following 5 - 10 years. 	
<p>Section 5 – Key Terminologies: This is a new section inserted to help explain terms that are used within the BILS such as ‘Trade area’.</p>	4
<p>Appendix A - Protocol framework for participatory working with the Aboriginal community.</p> <p>Key point of note:</p> <ul style="list-style-type: none"> • Council has a statutory obligation for environmental and heritage protection under the <i>Commonwealth Native Title Act 1993</i> and NSW state cultural heritage legislation. The preservation of cultural practices, traditional sites, significant places and expressions of cultural identity are fundamental to Indigenous health and social and emotional wellbeing and hence important to the Closing the Gap, a term arising from the Council of Australian Government’s pledge to close key gaps in health, education and employment in response to the Social Justice Report 2005. <p>The process of cultural heritage appraisal and mapping requires resources, time and funds, both Council and the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal).</p> <p>A protocol has been identified as a means for starting this process and enabling guidance for all parties concerned – Arakwal, Council, community, developers and government agencies until such time as the mapping has been completed.</p>	1a) & c)

Background Report

- 5 The draft Background Report floor space/land demands and land scenarios prepared in early 2018 are considered to remain reasonable. Employment and business numbers have continued to increase and the earlier NSW Department of Planning, Industry and Environment Projections projected population for 2036 remains the same. The data provides a useful base line measure for future monitoring and review.
- 10 It is noted however that:
- if the planning proposal to reduce the current zoned industrial and business land at West Byron, (**Res 19-137**) is effected, or

- the North Byron Flood Risk Management Study investigations identify limitations to the additional capacity within existing Billinudgel industrial area

5 it could lead to a heightened requirement in the short term for the other industrial lands to be brought on line.

List of documentation for forwarding to the Department of Planning, Industry and Environment

- 10 a) Business and Industrial Lands Strategy (Attachment 4)
- b) Background Report compiled of:
- Submissions summary report on additional lands (Attachment 3)
 - HillPDA (consultant) background analysis report including exhibition submissions summary report (Attachment 5)
 - 15 - Updated NSW State Policy Consistency Check to include the additional lands and remove east Bangalow RMS land (Attachment 6).

20 The NSW State Policy Consistency Check was requested by the Department of Planning, Industry and Environment as part of their submission on the draft ELS in November 2018 and includes:

- Table 1 Appraisal of Important Farmland Variation Criteria (North Coast Regional Plan & Section 117 Direction 5.3)
- Table 2.1 Section 117 Directions Policy - Localities for New Industrial Land
- Table 2.2 Section 117 Directions Policy - Extension of Business Zones
- 25 - Table 3 North Coast Regional Plan 2036
- Table 4 Settlement Planning Guidelines - Mid and North Coast Regional Strategies*

30 * It is noted that the NSW government has recently released North Coast Settlement Planning Guidelines – the transitional arrangement contained in these guidelines states that where a land use planning strategy has already been publicly exhibited compliance with the new Guidelines will not be mandatory.

Conclusion

35 The Business and Industrial Lands Strategy (Attachment 4) is consistent or justifiably inconsistent with State policies and directions and the North Coast Regional Plan. It has sufficient merit to be supported for forwarding to the NSW Department of Planning, Industry and Environment for endorsement. This forms the basis of the report recommendation.

40 **STRATEGIC CONSIDERATIONS**

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.5	Work to improve community resilience in our changing environment	4.5.1	Develop and implement strategies for our community's needs	4.5.1.1	Finalise the Employment Lands Strategy

45

Legal/Statutory/Policy Considerations

The Business and Industrial Lands Strategy is informed by the relevant state, regional and/or local planning framework and best practice planning principles.

5

Disability and Inclusion Action Plan compliance

It is acknowledged that the 'predominant floor space use' and capacity analysis figures as contained in the strategy may contain colour contrasts that do not meet best practice for visibility under the Web Content Accessibility Guidelines. The figures will be reviewed and if necessary, reformatted prior to sending to the Department of Planning, Industry and Environment for endorsement. In this review the spelling error for the word 'additional' in the legend of the capacity analysis figures will also be corrected.

10

Financial Considerations

The cost of preparing the draft BILS has been met by Council.

15

Consultation and Engagement

NSW government agencies and the community were consulted on the inclusion of additional lands at Gulgan Road, Brunswick Heads and Lismore Road Bangalow. A Submission Summary Report has been prepared for Council's consideration (Attachment 3).

20

The Executive Team and Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) senior staff were consulted on the proposal for the inclusion of an action for a protocol to address cultural heritage mapping.

25

Report No. 13.15 **Our Mullumbimby Masterplan - Submissions Report**
Directorate: Sustainable Environment and Economy
Report Author: Isabelle Hawton, Planner
File No: I2019/1712

5

Summary:

10

Council resolved in 2015 to prepare a 'Masterplan for Mullumbimby' through a collaborative process involving a community Guidance Group representing the wider Mullumbimby community.

15

The Group was established with 16 community members and worked with Councillors and staff to identify the key values of Mullumbimby, key issues to be addressed and suggested visions, initiatives and ideas for the future.

20

The process was put on hold in 2017 for resourcing reasons, recommencing in late 2018. As a result, community participation in the Guidance Group reduced and the final stages of development of the draft Masterplan was guided by a smaller number of community representatives.

25

Council resolved in September 2019 (**Res 19-453**) to publicly exhibit the draft Our Mullumbimby Masterplan for a period of six weeks. That exhibition has now concluded.

30

During the exhibition period, Council staff conducted media interviews, emailed schools for inclusion in newsletters, posted to social media, attended a farmers' market, and set up street stalls to gather feedback from the wider community. There was also a series of web-based engagement opportunities and a photography competition was run as a part of the Masterplan exhibition.

35





A summary of the submissions received, and the resulting changes to the Draft Masterplan, attached to this report, along with staff responses to other issues raised. Key issues have been discussed in the body of the report.

Based on the feedback and recommended updates, it is recommended that Council adopt the Masterplan, which will facilitate planning for the delivery of priority actions.

RECOMMENDATION:

1. **That Council adopt Our Mullumbimby Masterplan as contained in Attachment 1 (E2019/85870).**
2. **That Council commence work on the priority actions, and consider the required budget in the 2020/2021 budget process.**

Attachments:

- 1 Our Mullumbimby Masterplan - updated following submissions, E2019/85870 
- 2 Changes to the Draft Our Mullumbimby Masterplan based on the Public Exhibition, E2019/81604 
- 3 Staff comments on submissions to draft Our Mullumbimby Masterplan, E2019/81605 
- 45 4 Combined submissions Our Mullumbimby Masterplan, E2019/85460 

REPORT

Background

5 Our Mullumbimby Masterplan sets out the visions and aspirations for our town. It is a long term guiding document that will sustainably guide change. It also includes future Council projects and opportunities for community-led initiatives.

The Public Exhibition

10 In accordance with a previous Council resolution (**Res 19-453**) the draft Masterplan was publically exhibited from 7 October to 15 November 2019.

Engagement activities included:

- 15 • two 'parklets', where Council staff established an on-street stall to talk to the community - on Burringbar Street, on a Tuesday from 9am to 1pm, and on Station Street, alongside Flock, on a Thursday afternoon from 2pm to 6pm;
- a stall at the Mullumbimby Farmer's Market on a Friday morning
- publication of the draft and associated engagement events via traditional and social media, and a media release;
- advertisements in school newsletters;
- 20 • notification at a Mullumbimby Chamber of Commerce collective event;
- online engagement through the 'YourSay' webpage (14 map pins, 2 separate discussion forums); and
- several radio interviews (ZZZ FM and ABC North Coast) and an interview with the Byron Shire News.

25 During the exhibition period, Council staff spoke to scores of community members at street stalls and the market stall and received over 40 written submissions on the plan.

Key issues

30 The feedback in general was largely positive, with many applauding the intended outcomes of the plan. Some key features that gained support were:

- Burringbar Talking Street;
- Improved pedestrian and cycle accessibility; and
- 35 • More trees under a comprehensive street tree plan.

40 Community members also expressed concerns that the 'affordable housing' talked about as a part of the plan is *genuinely* affordable *in perpetuity*. It is important to the community that this key part of the plan is delivered in a meaningful and transparent fashion to ensure ongoing community support.

In addition, community members expressed concerns about ongoing flooding issues and the impacts of changing demographics on the town.

During the exhibition period, submissions were received on many issues, including:

- 45 • Flooding;
- Suggestions for new actions to be included in the plan (including weeding creeks, upgrading road surfaces and upgrading the swimming pool); and
- Support for improved pedestrian and cycling infrastructure.
- 50 • Support for placemaking initiatives.

Crossover between the Draft Residential Strategy and the Mullumbimby Masterplan

Much of the feedback received over the course of the exhibition period related to the suggested new release housing areas contained in the Byron Shire Draft Residential Strategy, which was exhibited in the weeks prior to Our Mullumbimby Masterplan.

5 In conversation with members of the public, staff were eager to stress that Our Mullumbimby Masterplan is not a growth management strategy, and does not directly designate land for future development, but rather aims to ensure that the values and principles of the town are carried through change over time.

10 The values and principles of the Masterplan will guide whatever outcomes are implemented from the Byron Shire Residential Strategy, but the Masterplan's primary role is not to designate specific parcels of land for development or to project population growth.

15 Nevertheless, many conversations at the street stalls were concerned with the delivery of new housing, including questions around the style of housing, the ability to enable affordable housing in perpetuity, and unresolved issues relating to flooding.

20 Many of these questions will be answered with the delivery of new research, including the holistic flood study for South Mullumbimby and the current work underway to research models for the delivery of affordable housing.

Traffic and Parking

25 Key issues were raised during the exhibition around traffic and parking. Though there was general support for the formalisation of the alternate routes along Fern and Tincogan Streets, and the introduction of the Burringbar Street Talking Street, some residents expressed concern about the impacts on traffic and parking in the town centre. In addition, concerns were also raised about the potential impacts of an increase in housing on transport and what many community members considered to be an already burgeoning number of cars in the town centre.

30 Mullumbimby is and will remain a local service centre for the Brunswick Valley, meaning that many people who use its services will need to drive to access the town centre. With this in mind, it is imperative that alternate parking options are provided where parking is proposed to be removed, particularly in relation to the longer-term plan for the Burringbar Street Talking Street.

35 As such, the proposal to include some peripheral parking in the rail lands south of Argyle Street should be pursued as an alternate parking location if car parks are removed from Burringbar Street. This was a point emphasised throughout the community consultation.

40 In addition, some residents of Tincogan and Fern streets expressed concern over their streets gaining increased traffic. It is suggested that any detailed designs for the formalisation of the alternate routes include traffic calming measures to ensure safety and noise minimisation.

45 Many submissions were eager for Brunswick Terrace to become a cul-de-sac. Residents expressed their concerns over the safety of the intersection and pedestrian crossing near Federation Bridge and suggested that creating a cul-de-sac at the southern edge of Brunswick Terrace might alleviate many issues. The support for this action should be noted as the plan moves forward.

50 Council staff also considered a submission that suggested adding a path to Clay's Road. Though this is considered a logical connection, the challenging topography and the nature of the existing narrow road mean that a desktop analysis and rough estimate places the cost of a pedestrian path at around \$800,000. At this stage, Council staff have decided not to proceed with adding this to the Masterplan and the Byron Shire Bike Plan, given the anticipated cost and the likelihood that other projects would take precedence.

55

Other issues raised during the submission period have been covered in Attachment 3.

Written Submissions

5 Council received 44 written submissions (Attachment 4) during the public exhibition period. Much of the focus of the written submissions was not directly relevant or was outside the scope of the Masterplan. However, some changes were suggested through the written submissions and have since been incorporated into the Plan (see **Attachment 2**).

10 **Changes made to the plan based on the public exhibition period**

A number of changes have been made to the draft plan based on the public exhibition period. An overview of all changes is included in **Attachment 2**. Key changes to the document include:

- Updates to wording for further respectful inclusion of the Arakwal people (as per their submission);
- 15 • Minor wording changes to assist in clarity and legibility;
- Minor mapping corrections to better integrate with other Council documents and for clarity and legibility;
- An action to upgrade the bus stop near the scout hall;
- An action to upgrade the toilets at the Station Street Carpark; and
- 20 • Additional references to Water Sensitive Urban Design (WSUD).

Next steps

Should Council adopt the Masterplan, the next step will be to begin implementation of priority actions early in 2020.

25

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.2	Continue to develop Our Mullumbimby Masterplan

30 **Legal/Statutory/Policy Considerations**

Nil

Financial Considerations

35

Funds have been allocated to finalise the development of Our Mullumbimby Masterplan.

Council will need to consider the allocation of funds in order to implement actions within the plan. These should be looked at as a part of the 2020/2021 budget bid process.

Report No. 13.16 **Integrated Pest Management Strategy (Resolution 19-519)**
Directorate: Sustainable Environment and Economy
Report Author: Karen Love, Research Officer – Integrated Pest Management
File No: I2019/1820

5

Summary:

10 As a result of **Resolution 19-519** the adoption of the Draft Integrated Pest Management Strategy 2019-2029 (the Strategy) was rescinded and a review of six items were to be completed before presenting the Strategy back to the next available Planning Meeting of Council.


15 This report outlines the actions taken for each of the six items reviewed and seeks to confirm each requirement has been met before the graphics are finalised.

RECOMMENDATION:

1. That Council acknowledge that items 1 to 6 of Resolution 19-519 have been satisfactorily met.
2. That Council endorse the changes in Attachment 1 (E2019/84783) for inclusion into the Integrated Pest Management Strategy 2019-2029.
3. That Council note that item 7 of Resolution 19-519 *“on completion of items 1-6 above, present the revised draft to the next available Planning Meeting of Council”*, will be reported in February 2020.

Attachments:

20

- 1 Draft Planting Control Method for inclusion into IPMS, E2019/86506 

REPORT

At the Council Planning meeting on 17 October 2019, Council considered a rescission motion on the Integrated Pest Management Strategy 2019-2029 and resolved as follows:

5 https://byron.infocouncil.biz/Open/2019/10/PLAN_17102019_AGN_1093.PDF

19-519:

10 *Resolved that Council review the draft Integrated Pest Management Strategy 2019 – 2029 (IPMS) as follows:*

1. *Improve readability by use of more appropriate placement of text, particularly over graphics, and choice of ink colours and transparency.*
- 15 2. *Redesign layout to ensure better coherence and relationship of text and adjacent graphics.*
3. *Amend all statements that refer to the cessation of chemical/pesticide/spraying on rural roadsides and redraft to align with actual practice between 2013 and the present, ensuring that all such statements are consistent and able to be clearly understood by readers.*
- 20 4. *Include full description of weed removal and native vegetation replacement methodology for weed management on roadsides (Small Steps to Healthier Roadside Vegetation) in the IPMS.*
5. *Consult with Goonengerry Landcare to provide full description of the development and practice of partnership with Goonengerry Landcare including acknowledgement of volunteers, pictures and demonstrated understanding of the role of Small Steps in achieving IPMS objectives.*
- 25 6. *Amend the first paragraph on page 3 to add the sentence "Whilst maximising our best practice weed management of our biodiversity rich areas."*
- 30 7. *On completion of items 1-6 above, present the revised draft to the next available Planning Meeting of Council.*

With regard to the above resolution the following actions have been actioned by staff as follows:

35 Points 1 and 2 completed:

- The document has been accessibility tested and passed the PDF accessibility test.
- Graphics and text have had transparency contrast increased.
- The document is also integrated with assistive technology.

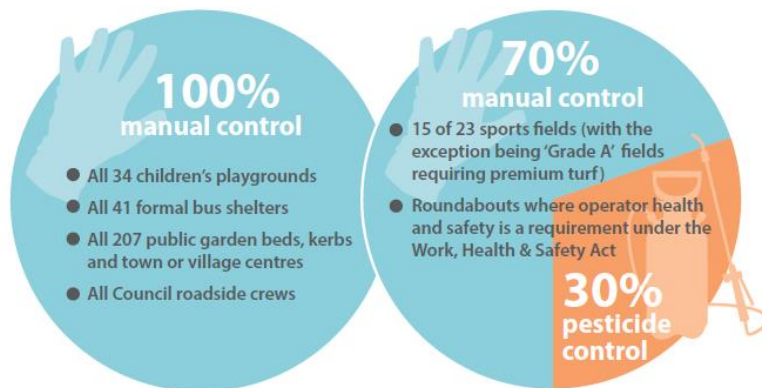
40 Point 3 for approval:

Within the document there were four instances where the term 'rural roadsides' was used in the context of ceasing herbicide use. The following amendments made:

45 - Page 4: Replace 'ceasing' with 'substantial reduction' as follows - 'This resulted in a substantial reduction in the use of pesticide across children's playgrounds, bus shelters, town centres, garden beds, rural roadsides and Sports fields'.

50 - Page 9: Amend sentence to: 'Following the 2013 Council resolution (13-621), pest control methodologies changed to achieve a major reduction in the use of pesticides through the application of alternative control methods'.

-Page 9: Delete following infographic and replace with icons for mechanical control, biological control, steam weeding and manual control.



5 - Page 17: Amend sentence to: 'After the Resolution in 2013, pesticide use for the maintenance of roadside vegetation was considerably reduced through the replacement of broad scale herbicide control with a program of selective slashing (along rural roadsides) and brush cutting (around fences and guard rail)'.

10 - Page 27: Remove roadsides and Statement: No Council rural roadside crews currently use pesticide (2018) from infographic.

Point 4 and 5 for approval:

Draft document of planting information with photo's Attachment 1 subject to approval.

Point 6 completed:

15 - Page 3 add: "Whilst maximising best practice weed management of our biodiversity rich areas." To the last sentence of the first paragraph.

Next steps

20 Once approved, the planting information and amendments to wording will go to graphics for inclusion into the final Strategy to be presented to Council at the Council meeting in February 2020.

STRATEGIC CONSIDERATIONS

25 **Community Strategic Plan and Operational Plan**

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.1	Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1	Protect and enhance our natural environment and biodiversity	3.1.1.4	Prepare a Shire Wide Integrated Pest Management Strategy

Legal/Statutory/Policy Considerations

Related Legislation:

- 30 Agricultural and Veterinary Chemicals Administration Act 1992
 Agricultural and Veterinary Chemicals Code Act 1994
 Biodiversity Conservation Act 2016
 Biosecurity Act 2015 & Biosecurity Regulations 2017
 Companion Animal Act 1998
 35 Crown Land Management Act 2016

Crown Land Legislation Amendment Act 2017
Environmental Planning and Assessment Act 1979
Forestry and National Park Estate Act 1998
Game and Feral Animal Control Act 2002 & Game and Feral Animal Control Regulations 2012
5 Local Government Act 1993
Local Land Services Act 2013
National Parks & Wildlife Act 1974
NSW Pesticide Act 1999 & Pesticide Regulation 2017
Prevention of Cruelty to Animals Act 1979
10 Protection of the Environment Operations Act 1997
Roads Act 1993
Work Health and Safety Act (2011) & Work Health and Safety Regulations (2017)

Related Council Policies

15 Integrated Pest Management Policy 2018
Personal Protective Equipment Policy 2016
Planting and Landscaping on Footpaths and Nature Strips within Road Reserves and Drainage
Easements Policy 4.16
Procurement and Purchasing Policy 2.6
20 Work Health & Safety Policy

Related Plans/ Standards and Registers

Byron Shire Pest Animal Management Plan 2018-23
Byron Shire Council Pesticide Use Notification Plan
25 Byron Shire Roadside Vegetation Management Plan 2012
Byron Shire Tree and Vegetation Removal Procedure 2017
Byron Shire Chemical Sensitive Residents and Organic Growers Register
National Standards for the practice of Ecological Restoration in Australia 2017
North Coast Regional Strategic Weed Management Plan 2017-2022
30 North Coast Regional Strategic Pest Animal Management Plan 2018-2023
Pesticide Use Notification Plan 2018
Strategic Asset Management Plan 2016-2026
AS 4373-2007 Pruning of amenity trees - SAI Global

35 Financial Considerations

IPMS project is funded within the current OP budget 19/20.

Consultation and Engagement

40 Council's Manager of Works consulted with a representative of the Goonengerry Landcare group for information relating to partnership development, and advocacy of Landcare groups wanting to work in conjunction with Council on rural roadsides.

Report No. 13.17 Annual Emissions Inventory and Achieving Net Zero Emissions Target

Directorate: Sustainable Environment and Economy

Report Author: Kim Mallee, Sustainability Officer
Julia Curry, Sustainability and Emissions Reduction Officer

File No: I2019/1823

5

10 **Summary:**

This report outlines the annual emissions inventory for the 2018/19 financial year for Byron Shire Council and provides an update showing that Council is on track for meeting the Net Zero Emissions Target.

15


This report also seeks endorsement for Byron Shire Council to become Carbon Neutral Certified under the National Carbon Offset Standard (NCOS) and outlines work needing to be progressed regarding carbon offsets.

20

RECOMMENDATION:

- 1. That Council note the annual emissions inventory and progress toward meeting the Net Zero Emissions Target.**
- 2. That Council become Carbon Neutral Certified under the National Carbon Offset Standard (NCOS) commencing in the 2025/26 financial year.**
- 3. That Council note that a Councillor and staff workshop will be organised in the 2020/21 financial year in order to fully understand the scope and implications associated with offsetting and that the workshop report will form the foundation for an offsetting policy and procedure as identified in the Net Zero Emissions Strategy.**

Attachments:

- 1 Report on FY2018-19 Detailed Annual Emissions Inventory, E2019/83875 

25

REPORT

Byron Shire Council has experienced a 19.7% reduction in organisational carbon emissions compared to the previous year. This was predominantly due to the new electricity contract with Powershop that fully offset electricity use from January to June 2019 and the natural decline of landfill gas fugitive emissions. This reduction brings Council on track to meeting the target of net zero emissions so long as this level of electricity offset is maintained in perpetuity.

Figure 1 and Table 1 below show how Council is tracking towards the Net Zero Target.

Figure 1 – 2018-19 Emissions tracking towards 2025 target

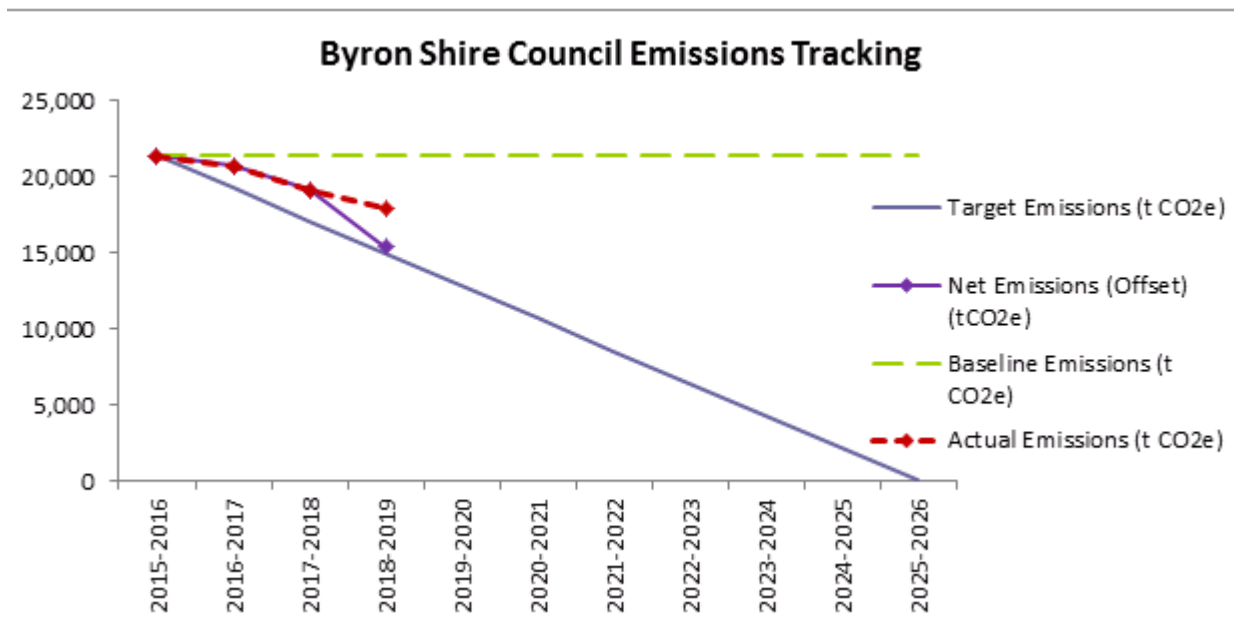


Table 1 – 2018-19 Actual and net emissions over time

Financial Year	Actual Emissions (tCO ₂ e)	Net Emissions (Offset) (tCO ₂ e)	Target (tCO ₂ e)
2016	21,389	21,389	21,389
2017	20,701	20,701	19,250
2018	19,122	19,122	17,111
2019	17,984	15,358	14,972

Table 2 – Summary of Emissions Sectors

Summary of Emissions Sectors		
	Highlights	Emissions Change (tCO ₂ e)
Electricity	<ul style="list-style-type: none"> New supplier Powershop providing 100% carbon offset electricity. 1.5 % reduction in electricity use 52% reduction in emissions Annual cost \$1,290,919 	-2,432
Streetlight	<ul style="list-style-type: none"> New supplier Powershop providing 100% carbon offset electricity. LED streetlight trial of 260 lights at Ocean Shores due Dec 2019 	-319

	<ul style="list-style-type: none"> • Cost benefit analysis of bulk roll out of LED's being investigated • Negligible electricity use change and a 50% reduction in emissions • Annual cost \$355,420 	
Fleet	<ul style="list-style-type: none"> • 3% Increase in fuel consumption created a 21% increase in cost • 51% of fuel used in light (passenger) vehicle fleet and 49% used in heavy plant and equipment • Significant action required to reduce fleet sector emissions • Annual cost \$633,308 	+36
Bottled Gas	<ul style="list-style-type: none"> • Negligible emissions footprint • No action required • Annual cost \$14,972 	+1
Waste	<ul style="list-style-type: none"> • 9% reduction due to natural decline of landfill • Composting emissions included for first time • Investigating not selling carbon credits generated from methane gas flare to enable carbon reduction to be counted by Council. 	-982
Waste Water	<ul style="list-style-type: none"> • 5.8% reduction in fugitive emissions due to drier than normal year • Main area of action required is reducing waste water generation from the community and inflow and infiltration from storm water to the sewer system. 	-68
Total		-3,763

A full and detailed analysis of each sector and suggested action is provided in Attachment 1.

Carbon Neutrality – to certify or to not certify

5

It is recommended that Council work towards carbon neutral certification under the National Carbon Offset Standard (NCOS) for the 2025/26 financial year. Council's decision now to certify or not certify under NCOS will directly impact how Council monitors and reports its annual emissions, and how it will claim to have reached net zero in 2025. It will take time for Council's monitoring and reporting processes to adapt to be able to achieve this which is why commitment to this certification is sought so early on.

10

The National Carbon Offset Standard (NCOS) is a voluntary framework to assist in the management of greenhouse gas emissions and achieve credible carbon neutral certification under the Australian Government. NCOS certification is recommended as it displays rigour and will enable Council's emissions reduction efforts to count at a national level, and ultimately contribute towards meeting international climate agreements such as the Paris accord. Council is currently undertaking the first two, of the five steps towards achieving certification:

15

1. Measure – prepare annual emissions inventory report
2. Reduce – reduce emissions where possible
3. Offset – purchase certified offset units and retire any LGC offset units
4. Report – prepare a public report on Council's carbon account
5. Audit – engage consultant to conduct an independent audit on Council's account and public report.

25

The current NCOS annual certification fees, which Council would incur upon certification in FY2025/26, are approximately \$13,000. This covers the use of the certification and is charged according to the organisation's annual emissions (currently around 17,000t CO₂-e each year).

Additionally there is also an independent audit fee once every three years which costs between \$10,000 and \$15,000, this would first be incurred in FY2025/26.

5 The NCOS standard aligns with the scopes of emissions currently being measured – all scope 1 and 2 and some scope 3. Refer to Table 3 below for an example of an organisational emissions boundary, according to scope.

Other local governments certified under NCOS scheme are Brisbane, Sydney, Melbourne and Randwick.

10

Emissions Reporting Boundaries

Table 3. Example of a defined Emissions Boundary.

Measures required to achieve certification				
Scope 1 Direct Emissions	Scope 2 Indirect Emissions	Scope 3 Indirect Emissions (Currently measuring)	Scope 3 Indirect Emissions (need to measure for certification)	Certification Excluded Indirect Emissions
<ul style="list-style-type: none"> • Diesel, petrol, ethanol, biodiesel & liquid gas used in Council’s fleet. • Diesel on-site for stationary energy used in Council owned buildings & managed buildings. • Natural gas on-site used in Council owned buildings and managed parks. • Fugitive emissions from Council’s closed landfill. • Fugitive emissions from STPs. 	<ul style="list-style-type: none"> • Combustion of fossil fuels off-site to provide mains electricity for Council owned and managed assets. 	<ul style="list-style-type: none"> • Business related flights • Paper used by Council • Water usage • Fuel use associated with collection and transfer of waste 	<ul style="list-style-type: none"> • Disposal of Council waste • Taxi trips • Accommodation • Diesel, petrol, ethanol, biodiesel & liquid gas used for major outsourced services. • Extraction, production & transport of fuels used by fleet & major outsourced activities. • Employee commute. 	<ul style="list-style-type: none"> • Rental vehicles • Embodied energy of road & building materials. • Events. • Freight & couriers. • Paper that is certified carbon neutral. • Business flight offset • Impact of equipment, consumables, repairs, maintenance & communications. • Minor outsourced activity • Scope 3 emissions from ethanol & biodiesel consumption • Food & catering

15

How will Council offset emissions?

In accordance with the Net Zero Emissions Strategy, Council will need to purchase carbon offsets to meet a net zero target by 2025. Carbon offsets will be required from 2025/26 onwards regardless of Council’s decision to become NCOS certified just to meet the target. Carbon offset units are reductions of greenhouse gases or removals of greenhouse gases from the atmosphere by sinks, are tradeable and can be used to negate (or offset) all or part of Council’s emissions.

The most common way to invest in an offset program is through government regulated offsets. Examples of approved offsets include, but are not limited to:

- Australian approved offset schemes include– Australian Carbon Credit Units (ACCUs) and Large-Generation Certificates (LGCs) which are created per megawatt hour (MWh) of eligible electricity generated by a power source, such as the Dingo Lane solar farm.
- International offsets include Certified Emissions for Clean Development Mechanism projects; Removal Units in countries around land use, land-use change and forestry activities; Verified Emissions Reductions and Carbon Units.

In order to understand fully the scope and implications associated with offsetting, it is planned that a Councillor and staff workshop will be organised in the 2020/21 financial year, to include:

- Introduction to offsetting plus case studies and examples of what other Councils are doing
- Certified versus non-certified offsets
- Specific modelling for different procurement options eg: tree planting offsets in India compared to revegetation ACCUs in Grafton.
- Procurement process and associated risks
- Retirement of offsets
- Reporting and accountability.

The workshop report will form the foundation for an offsetting policy and procedure as identified in the Net Zero Emissions Strategy. In order to develop the policy an analysis of type, location, provider and cost of offsets will need to occur. This analysis would also need to take into account that the most beneficial option likely to be supported by the local community would be localised offsetting, such as uncertified tree planting in the Byron Shire as proposed by Zero Emissions Byron. The closest vegetation ACCUs project is in Grafton (see <http://www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/interactive-map>).

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.1	Implement Net Zero Emissions Strategy for Council Operations 2025

Legal/Statutory/Policy Considerations

Nil – Certification in the National Carbon Offset Standard is voluntary.

Financial Considerations

Cost of Carbon Neutral Certification will need to be budgeted for in the 2025/26 financial year. Current best estimate is approximately \$28,000.

5

Consultation and Engagement

This report has been prepared with contribution across all Council directorates and presented to the executive team and endorsed.

Report No. 13.18 **PLANNING - Report Exceptions to Development Standards 1 July to 30 September 2019**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 Noreen Scott, EA Sustainable Environment and Economy

File No: I2019/1846

10 **Summary:**

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

15

NOTE TO COUNCILLORS:

20

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 adopt the report on exceptions to development standards for the period 1 July to 30 September 2019.

25

REPORT

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

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

10 The period of reporting is for the 1 July 2019 to 30 September 2019 for the following DAs:

DA No	10.2019.28.1
Development	New Dwelling House to Create Dual Occupancy (Detached) and Swimming Pool
Property:	119 Lawlers Lane BANGALOW
Lot and DP:	LOT: 2 DP: 629528
Zoning:	RU1 Primary Production
Development Standard being varied	4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2
Justification Summary	That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. That there are sufficient environmental planning grounds to justify contravening the development standard. The dwelling site was chosen to minimise earthworks and also to reduce the potential for land use conflict.
Extent of variation	9% (9 metres above the 100m distance)
Concurrence	Director- delegate of Council under assumed concurrence
Determination Date	9/8/2019
Determined by	Director
DA No.	10.2018.529.3
Development	S4.55 to Amend Layout, Floor Level, Window Sizes, Plant Room and Storage Areas
Property:	657B Broken Head Road BROKEN HEAD
Lot and DP:	LOT: 4 DP: 713515
Zoning:	7 (k) Habitat zone
Development Standard being varied:	Height of upper floor
Justification Summary	That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. That there are sufficient environmental planning grounds to justify contravening the development standard. The 100 mm modification to the upper floor level is of minor significance and results in no adverse impact on adjoining land or development.
Extent of variation	7.77% (0.35 metres over 4.5 metres)
Concurrence	Director- delegate of Council under assumed concurrence
Determined Date	14/8/19
Determined By	Director

BYRON SHIRE COUNCIL

DA No.	10.2019.129.1
Development	Boundary Adjustment Two (2) Lots Subdivision Two (2) Lots
Property:	480 -544 Coolamon Scenic Drive COORABELL
Lot and DP:	LOT: 3 and LOT 4 DP: 579176
Zoning:	7(d) - Scenic/Escarpment, RU1 - Primary Production
Development Standard being varied:	Proposed lots less than minimum lot size (c.11 - Byron LEP 1988, c.4.1 - Byron LEP 2014)
Justification Summary	Objectives of development standard and relevant zones are met.
Extent of variation	Increase size of Lot 3 by 93.3%, by reducing size of Lot 4 by 1.3%
Concurrence	Secretary of Department of Planning & Environment issued concurrence.
Determined Date	15/8/19
Determined By	Council
DA No.	10.2019.245.1
Development	Two (2) Lot Subdivision, of two (2) existing lots, Siting of Future Building Envelope and Ancillary Works
Property:	1859 Hinterland Way EWINGSDALE
Lot and DP:	LOT: 23 DP: 1239353 and LOT 21 DP 877915
Zoning:	7(d) - Scenic Escarpment, RU1 Primary Production
Development Standard being varied:	Proposed lot less than minimum Lot size (c.4.1 - Byron LEP 2014)
Justification Summary	That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. That there are sufficient environmental planning grounds to justify contravening the development standard. Objectives of development standard and relevant zones met.
Extent of variation	Reduce size of lot 101 by 1.725% of 40ha
Concurrence	Director- delegate of Council under assumed concurrence
Determined Date	30/8/19
Determined By	Director

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.1	Assess and determine development applications

5

Legal/Statutory/Policy Considerations

The report is provided as a requirement of [NSW Department of Planning circular PS 17-006](#).

Report No. 13.19 **Expressions of Interest for the Place Planning Collective (Res 19-451)**
Directorate: Sustainable Environment and Economy
Report Author: Isabelle Hawton, Planner
File No: I2019/1860

5

Summary:

10 In September 2019 Council resolved to establish a Place Planning Cluster Group (known from here on as the “Place Planning Collective”) to manage the implementation of the Mullumbimby, Bangalow, and Byron Arts and Industry Estate place plans (**Res 19-451**).

15 Council also resolved to put out an Expression of Interest (EOI) process in order to recruit members for that group. This has now been undertaken. Advertisements were run in local newspapers, a notice was placed on council’s website, there were social media posts, Council staff spoke with numerous community members during the public exhibition of the draft Our Mullumbimby Masterplan and emails went out to the Community round table and previous guidance groups.

20 This wide publication has resulted in 19 expressions of interest to be a part of the place planning collective (Confidential Attachment 1). Council must now nominate six (6) members from the EOIs to sit on the collective, alongside six (6) randomly selected community members.

25

RECOMMENDATION:

That Council nominate the following six representatives from the nominations contained in Attachment 1 (E2019/86209) to be part of the Place Planning Collective: _____, _____, _____, _____, _____ and _____.

Attachments:

1 Confidential - Responses Place Planning Collective Expressions Of Interest Form, E2019/86209

30

REPORT

In September 2019 Council resolved to establish a Place Planning Cluster Group (known from here on as the “Place Planning Collective”) to manage the implementation of the Mullumbimby, Bangalow, and Byron Arts and Industry Estate place plans (**Res 19-451**).

Council also resolved to put out an expression of interest process in order to recruit members for that group. This has now been undertaken. Advertisements were run in local newspapers, a notice was placed on council’s website, there were social media posts, Council staff spoke with numerous community members during the public exhibition of the draft Our Mullumbimby Masterplan and emails went out to the Community round table and previous guidance groups.

This wide publication has resulted in 19 nominations to be a part of the place planning collective (Attachment 1). Council must now nominate six (6) members to sit on the collective, alongside six (6) randomly selected community members.

Feedback from the Community Roundtable

During the expression of interest process, some early feedback was received from a former member of the Bangalow guidance group. This community member was eager for a sense of continuity to be upheld through the Place Planning Process, by including some members from previous guidance groups in the new place planning collective. This community member argued, it would allow for a natural continuation of the narrative and for some of the group to have the previous experience and skills necessary to dive into projects.

This community member suggested that as a minimum, those selected through the random selection process should also have a basic set of skills. This feedback has been taken on board.

Next steps

A random selection process will occur early in 2020. Once the membership of the Place Planning Collective has been finalised, the first meeting will be scheduled for early in 2020.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.2	Ensure consistency of place-based projects with community Place Plans through embedding a governance framework that includes planning, implementation and ongoing management	4.1.2.1	Facilitate Guidance Groups

Legal/Statutory/Policy Considerations

Nil

Financial Considerations

Nil

5

Consultation and Engagement

Extensive consultation was undertaken in order to seek members - advertisements were run in local newspapers, a notice was placed on council's website, there were social media posts, Council staff spoke with numerous community members during the public exhibition of the draft Our Mullumbimby Masterplan and emails went out to the Community round table and previous guidance groups.

10

Report No. 13.20 **Residential Strategy and affiliated projects update**
Directorate: Sustainable Environment and Economy
Report Author: Natalie Hancock, Senior Planner
File No: I2019/1903

5

Summary:

10 The purpose of this report is to provide Council with an update on the status of the draft Residential Strategy and a number of affiliated projects, namely:

- Lot 12 Bayshore Drive
- Old Mullumbimby Hospital
- 15 • Low Rise Medium Density Code planning proposal
- SEPP 70 Affordable Housing Contribution Scheme.



The report also report seeks Council support for consideration of all Residential Strategy new release investigation lands for inclusion under the SEPP 70 Affordable housing contribution scheme.

20

RECOMMENDATION:

1. **That Council note that the findings of the urban design investigation for Lot 12 Bayshore Drive will be reported to Council in early 2020 with the intent to exhibit it concurrently with the draft Byron Arts and Industry Estate Precinct Plan.**
2. **That Council note that the old Mullumbimby Hospital Site was considered in the draft Alternative Housing Models Research Paper (Attachment 1 E2019/87788) with testing of the concepts against housing governance and delivery models to occur over the next two months, enabling the findings to be reported to Council in early 2020.**
3. **That Council note that the planning proposal to introduce minimum lot size standards for ‘manor house’ and ‘multi dwelling housing’ in readiness for the pending Low Rise Medium Density Code commencement in July 2020, finalised public exhibition on 22 November and the submissions will be reported to Council for consideration in early 2020.**
4. **That Council support consideration of Residential Strategy new release investigation lands for inclusion under the SEPP 70 Affordable housing contribution scheme.**
5. **That Council note that staff are reviewing the public submissions received on the draft Residential Strategy and the submissions will be reported to Council for consideration in early 2020.**

Attachments:

- 25 1 Byron Bay Alternative Housing Model, E2019/87788 
- 2 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 

REPORT

The purpose of this report is to update Council on the following key projects:

- 5 • Lot 12 Bayshore Drive
 - Old Mullumbimby Hospital
 - Low Rise Medium Density Code planning proposal
 - Draft Residential Strategy.
- 10 The report is set out in the above order.

Lot 12 Bayshore Drive

15 Lot 12 on DP 1189646, highlighted in yellow on the figure below, is situated off Bayshore Drive in northern part of the Byron Arts and Industry Estate (BAIE). It is a key Council-owned land parcel, likely to become available for development in the next couple of years.



Figure 1: Lot 12

20 Leading on from an Enquiry by Design workshop for BAIE Council staff, working with a group of representative stakeholders from within the BAIE, have prepared a draft Byron Arts and Industry Estate Precinct Plan (Precinct Plan). The draft Precinct Plan was considered at the 19 September 2019 Council Planning Meeting where Council resolved (**Res. 19-452**) to endorse the Draft Precinct Plan for public exhibition. The Enquiry by Design and draft Precinct Plan identified Lot 12 as an opportunity for the development of a *sustainability and innovation hub*. Also at the 19 September meeting Council resolved (**19-452**) to accelerate the preparation of a Structure Plan for Lot 12 concurrent with the finalisation of the Draft Precinct Plan.

30 A request for quotation has been issued for a consultant to prepare urban design site options. The brief issued requested that 3 options be explored in the context of the land functioning as a sustainability and innovation hub by either:

- 35 • refining the broad concept in the draft Precinct Plan
- adding into the land use mix a TAFE and a Vanguard laundry (a not-for-profit organisation laundry with a social outcome purpose such as supporting people who have a lived experience of mental illness and struggle to secure employment)
- a blank canvas - open to ideas.

40 The findings of the urban design investigation for Lot 12 Bayshore Dr will be reported to Council in early 2020 with the intent to exhibit it concurrently with the draft Byron Arts and Industry Estate Precinct Plan.

Also refer to the separate report in this meetings agenda titled 'TAFE NSW and Lot 12 Bayshore Drive Byron Bay'.

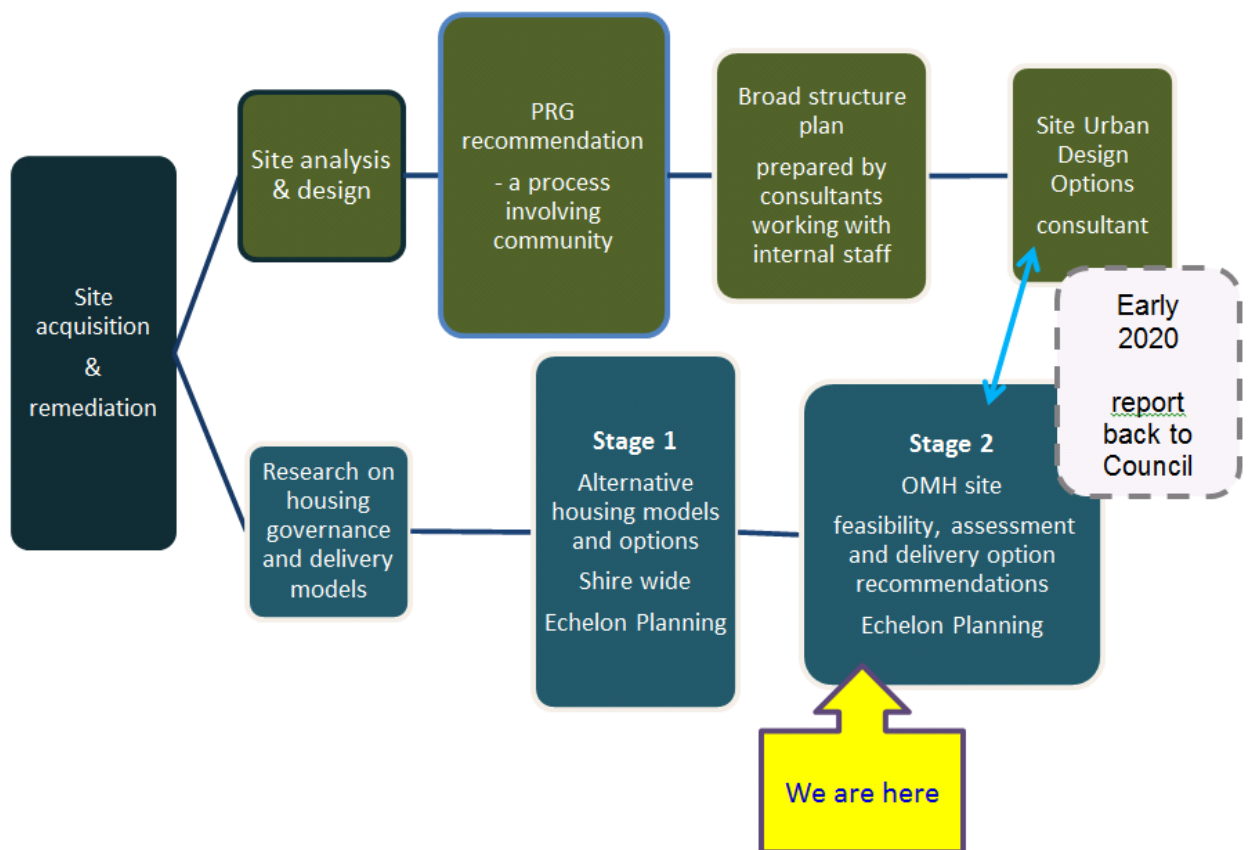
Old Mullumbimby Hospital

5 Facilitating redevelopment for the old Mullumbimby Hospital has involved two lines of investigation, site analysis and design and research on housing governance and delivery models as shown on Figure 2. Site analysis investigations have progressed to a broad structure plan reflecting the findings of the Mullumbimby Hospital Site Project Reference Group. The plan, prepared by consultants in association with internal staff, includes residential opportunities for live work spaces, intentional community and affordable, accessible and appropriate housing for older people and for households with a range of income levels.

10 A draft Alternative Housing Models Research Paper has been prepared by Echelon Planning and is attached for Council's information (Attachment 1).

15 The next step is to formulate site urban design concepts to be tested against housing governance and delivery models. This will occur over the next two months, enabling the findings to be reported to Council in early 2020.

20



PRG: Mullumbimby Hospital Site Project Reference Group

25 **Figure 2: Outline of process for old Mullumbimby Hospital (OMH)**

Low Rise Medium Density Code planning proposal

5 In actioning **Res 19-266** a planning proposal has been prepared to introduce a minimum lot size standards for 'manor house' (a residential flat building with 3 or 4 dwellings) and 'multi dwelling housing (terraces)'. The lot sizes proposed are:

- 1000m² - R2 Zone Low Density Residential
- 800m² - R3 Zone Medium Density Residential.

10 The purpose of the planning proposal is to set minimum lot size provisions for manor houses and terraces that are consistent with Council's current low rise medium density controls for the R2 and R3 residential zones in readiness for the pending Low Rise Medium Density Code commencement in July 2020.

15 The planning proposal was granted a gateway by the Department of Planning, Industry and Environment and has been exhibited for comment from 23 October – 22 November 2019. At the time of preparing this report 4 submissions on the planning proposal had been received, noting that the exhibition has just closed.

20 The planning proposal and submission summary will be reported to Council for consideration in early 2020. This will assist with progression of preparation of Development Control Plan Character Design Guidelines for Low Rise Medium Density Housing Code.

SEPP 70 Affordable Housing

25 In actioning **Res 19-152** a planning proposal is under preparation for an affordable housing contribution scheme under *State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes)*. Figure 3 following, outlines the process.

30 Contribution schemes apply to developments that are facilitated by up-zoning. As part of the preparation of the scheme it is necessary to identify areas for future rezoning. The draft Byron Shire Residential Strategy identifies new release residential areas with potential for future rezoning. A single contribution scheme may apply to multiple areas within a local government area, as long as the feasibility analysis supporting each area specifically addresses each one.

35 This report seeks Council support for consideration of all new release investigation lands identified in the Residential Strategy for inclusion under *SEPP 70*.

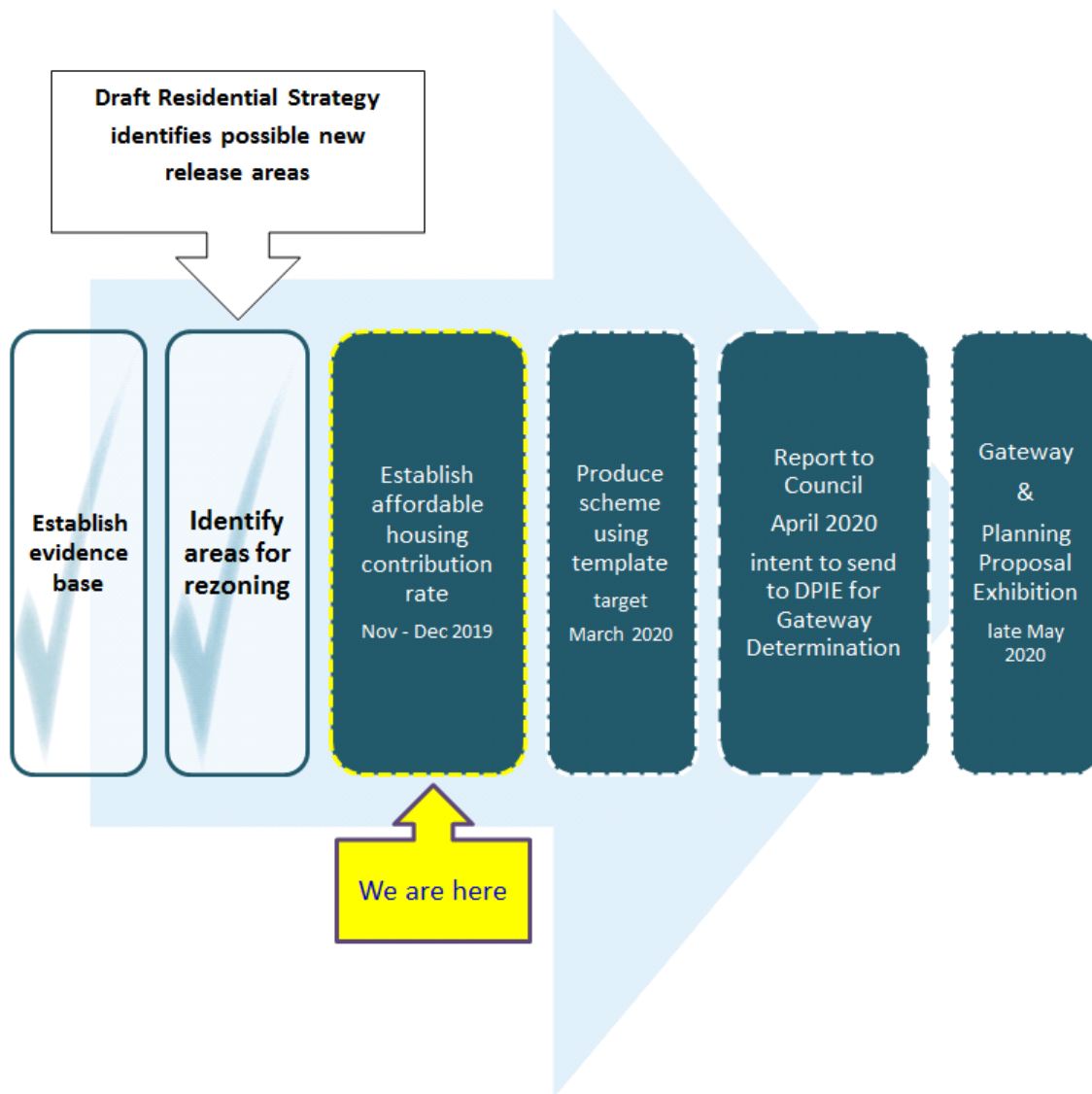


Figure 3: SEPP 70 Process

5 A set of objectives is required as part of the contribution scheme. For Council's information, the following working draft objectives have been formulated by staff to provide guidance on the planning proposal's preparation:

- increase the amount of affordable housing in the Shire
- provide a transparent framework for development to make equitable affordable housing contributions
- 10 • give effect to the 'Action 15' of the draft Residential Strategy (an action relating to the SEPP Scheme preparation)
- ensure affordable housing contribution rates do not impact on development viability
- increase certainty for landowners and developers seeking to develop land in the Shire
- 15 • align, streamline and simplify exiting affordable housing schemes that operate in the Shire.

At this stage it is planned to present a planning proposal to Council for consideration in the first half of 2020.

Draft Residential Strategy

5 Council at its December 2018 Ordinary Meeting considered a report on draft Residential Strategy and resolved (**Res 18-823**) to publicly exhibit the draft strategy and appendices for a minimum period of 6 weeks.

Consultation on the draft residential strategy has occurred in 2 stages:

- 10 • *Shaping our neighbourhoods*, open for discussion in May 2019
- full draft Residential Strategy exhibition, 28 August – 11 October 2019.

15 The feedback from *Shaping our Neighbourhoods* was encapsulated in the full strategy exhibition document. The 62 submissions received to the full document exhibition are currently being reviewed by staff.

Running parallel to the exhibition is a Mullumbimby Release area flood and stormwater assessment. This assessment relates to possible new residential areas identified in the exhibited draft Residential Strategy that are located along the southern fringe of the Mullumbimby. The findings of this assessment are important to inform the early implementation affordable housing initiative and the overall Residential Strategy.

25 At the time of preparing this report, the findings flood and stormwater assessment were not complete. As such, staff considered it prudent to hold off reporting to Council a final Residential Strategy until such time as this assessment is completed. It is anticipated that an updated draft flood study will be provided in mid December 2019, with the Residential Strategy to be reported to Council for consideration in early 2020.

STRATEGIC CONSIDERATIONS

30 ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.6	Develop the Byron Arts and Industry Estate Precinct Plan
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.7	Amend Local Environmental Plan and Development Control Plan in accordance with Mullumbimby Hospital Precinct Plan
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.11	Prepare DCP Character Design Guideline for Low Rise Medium Density Housing Code

Community Objective 4: We manage growth and change responsibly	4.2 Support housing diversity in appropriate locations across the Shire	4.2.1 Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.1 Finalise the Residential Strategy
---	---	--	---

Legal/Statutory/Policy Considerations

5 The projects identified in this report are informed by the relevant state, regional and/or local planning framework and best practice planning principles.

Financial Considerations

10 The cost of undertaking the projects identified in this report have been met by Council.

Consultation and Engagement

15 Ongoing consultation and engagement is anticipated to be required for all of the projects identified in this report encompassing:

- enabling the community to consider the findings of investigations
- input on planning proposals
- implementation of actions under the final Residential Strategy.

Report No. 13.21 **PLANNING - 24.2019.53.1 Habitat DCP Amendment; Chapter E5
Certain Locations in Byron Bay and Ewingsdale**
Directorate: Sustainable Environment and Economy
Report Author: Kristie Hughes, Planner
5 File No: I2019/1904

10 **Summary:**

15 Council has received an application from Planners North (the Applicant) on behalf of Bayshore Development Pty Ltd seeking to amend Chapter E5 of Byron Development Control Plan 2014 (DCP 2014). The application has been lodged concurrently with Development Application 10.2019.517.1, which proposes a Mixed Use Development, forming Stage 4 of Habitat.

The key amendments to the current DCP chapter are:

- Amend the Habitat Precinct Plan (Map E5.3) to split Precinct 1 into two precincts - 1A and 1B, with the proposed mixed use development being within Precinct 1B.
- 20 • Various wording changes relating to Precinct 1B to reflect the mixed use development proposed within Development Application 10.2019.517.1.

25 A 'marked up' copy of the draft DCP chapter showing the proposed changes is appended to this report as Attachment 1. The received application including the 'Statement of Environmental Effects and DCP Modification Request Habitat Stage 4' is appended as Attachment 2.

30 Development Application 10.2019.517.1 has recently been exhibited, with two submissions received. While assessment of that application is continuing, it is recommended that the draft DCP amendment proceed to exhibition, with the intention that the DCP amendment and the Development Application can then be determined concurrently.

NOTE TO COUNCILLORS:




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

40

RECOMMENDATION:

1. **That Council proceed to exhibit the draft DCP 2014 Chapter E5 amendment as shown in Attachment 1 (E2019/84596) for a period of 28 days.**
2. **That following exhibition, Council receive a further report detailing submissions made. Should there be no submissions as of the close of the exhibition period, that Council adopt the amended Chapter and give notice of its decision in accordance with the Environmental Planning and Assessment Regulation.**

Attachments:

- 1 24.2019.53.1 - Draft Byron Shire DCP 2014 Chapter E5 Certain Locations in Byron Bay and Ewingsdale, E2019/84596 
- 45 2 Planners North - 24.2019.53.1 & 10.2019.517.1 - SEE HABITAT STAGE 4, E2019/74577 
- 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

REPORT

Council has received an application from Planners North (the Applicant) on behalf of Bayshore Development Pty Ltd seeking to amend Chapter E5 of Byron Development Control Plan 2014 (DCP 2014), relating to the Development Application 10.2019.517.1 – Mixed Use Development (Stage 4 Habitat). Details of this request are presented below.

Subject Site

The subject site is described as Lot 1 & Lot 10 DP 271119 and known as Habitat. It is located immediately northwest of the Byron Arts and Industry Estate.

Chapter E5 of Byron DCP 2014 contains a range of controls and guidelines relating to the development of the site. The controls are precinct-based, with the existing Habitat Precinct Plan shown below in Figure 1.

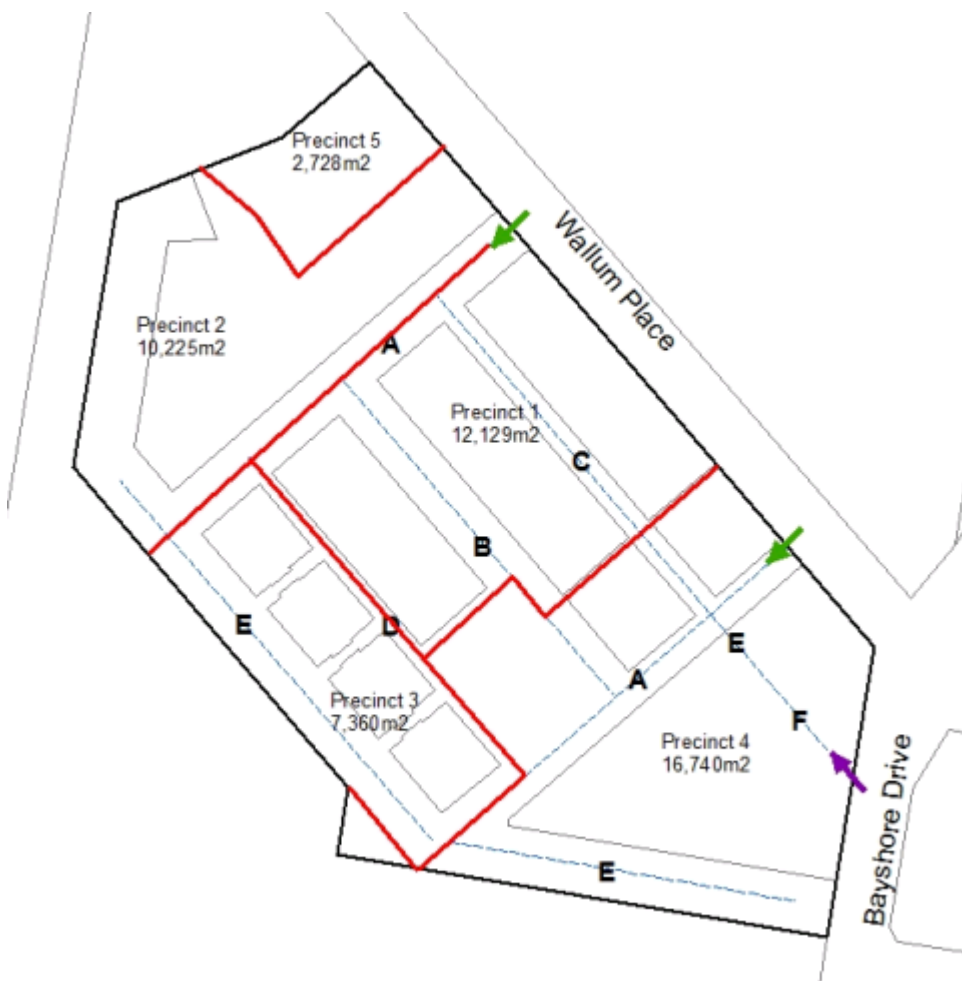


FIGURE 1 Map E5.3 Habitat Precinct Plan

Background

The site originally received development approval in 2008 (DA 10.2008.360) for a mixed use development comprising residential dwellings, commercial, retail and creative industrial units. Chapter E5 was originally drafted at that time to facilitate the anticipated development.

Development has been approved and constructed within Precincts 2, 3 and 4 as shown above. A current development application – 10.2019.517.1 – proposes further mixed use development within the south-western portion of Precinct 1.

5 Due to the development being implemented in stages, changes have been made to the original site plan and design concept as Habitat has evolved into a successful mixed use development supporting residential, commercial and industrial purposes. Therefore, several amendments to the DCP have been made across these stages of development.

10 Stage 1: DA 10.2015.353.1 provided for the mixed-use development comprising residential dwellings, commercial and retail units, recreational facilities, associated infrastructure and subdivision – located within Precinct 4.

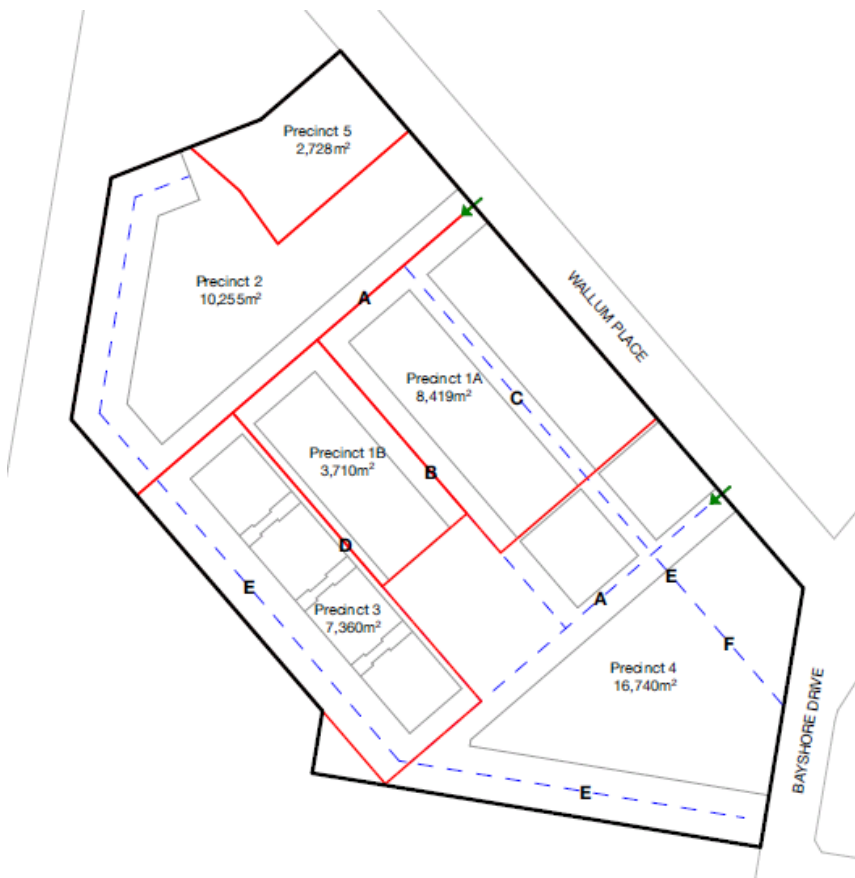
15 Stage 2: involved the building of a residential flat building associated with associated light industry, approved pursuant to DA 10.2017.4.1. This development application provided for two additional live /work buildings extending on the two buildings approved at stage 1 – located within Precinct 3.

20 Stage 3: DA 10.2017.628 60 ‘pocket living’ apartments; currently under construction within Precinct 2.

Summary of Proposed Changes

25 The proposal relates to the proposed stage 4, as outlined in Development Application 10.2019.517.1. The application to amend Chapter E5 of the DCP has been made concurrently with that DA.

Under the proposed amendments, Precinct 1, originally covering an area of approximately 12,100m² would be divided into Precincts 1A (8,419m²) and 1B (3,710m²), as shown in Figure 2.



30 FIGURE 2 Proposed Amendment to Map E5.3 Habitat Precinct Plan

The development proposed within the current development application – DA 10.2019.517.1 – will be located within Precinct 1B, with a future application proposed within Precinct 1A.

5 In addition to the Precinct Map amendment, the proposed amendments to Section E5.5 reflect the land uses proposed in the current application and the proposal for buildings within this precinct to be three storeys in height. The following DCP amendments are proposed:

- Update to the Council strategy and policy documents outlined in point 2 of the Objectives (Section E5.5.2);
- Update references to the Habitat Precinct Map and description of precincts (Section E5.5.3.4);
- 10 • Update land use descriptions within Table E5.1 to reflect precinct change and current development proposal;
- Update Table E5.2 to provide for zero setback to internal roads within Precinct 1B;
- Update to Table E5.3 to set out the appropriate parking requirements for Precincts 1A & 1B;
- 15 • Changes to description of the ‘Byron Vernacular’ as outlined in Section E5.5.4.3, to reflect the contemporary design proposed in the current development application, together with updates to the Performance Criteria in this section to provide for three storey buildings;
- Amendment to the prescriptive measures within Section E5.5.4.3 to allow for masonry and concrete construction materials; and
- Amendment to prescriptive measures in Section E5.5.4.6 to allow for three storey buildings.

20 In accordance with the Environmental Planning and Assessment Regulation 2000, the proposed DCP amendment should be advertised for public comment.

25 Development Application 10.2019.517.1 has recently been exhibited, with two submissions received. While assessment of that application is continuing, it is recommended that the draft DCP amendment proceed to exhibition, with the intention that the DCP amendment and the Development Application can then be determined concurrently.

30 **STRATEGIC CONSIDERATIONS**

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

35 ***Legal/Statutory/Policy Considerations***

This proposal seeks to amend the DCP 2014. All relevant policy implications have been discussed above. The proposed amendment will be exhibited as per the statutory requirements.

40 ***Financial Considerations***

This is an Applicant funded DCP amendment, all costs will be borne by the applicant.

Consultation and Engagement

It is recommended that the DCP will be exhibited for a minimum of 28 days as per legislative requirements.

Report No. 13.22 **Report of Planning Review Committee held on 14 November 2019**
Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
File No: I2019/1909

5

Summary:

10 This report provides the outcome of the Planning Review Committee meeting held on 14 November 2019.

NOTE TO COUNCILLORS:

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

20

RECOMMENDATION:

That Council adopt the report of the Planning Review Committee meeting held on 14 November 2019.

25

BYRON SHIRE COUNCIL

REPORT

The meeting commenced at 3:30pm and concluded at 4:10pm.

- 5 Present: Crs Cameron, Lyon, Hunter, Hackett
 Staff: Chris Larkin (Manager Sustainable Development)
 Apologies: Crs Coorey, Ndiaye

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

10

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2019.437.1	Mr C Worling	90 Risleys Hill Road FEDERAL	Alterations and Additions to Existing Dwelling House	Level 0	Staff Delegation
10.2019.502.1	Town Planning Studio Pty Ltd	20 Newells Road MAIN ARM	Relocated Dwelling to Create Dual Occupancy (Detached)	Level 1 5 submissions	Staff Delegation

Council determined the following original development applications. The Section 4.55 applications to modify the development consent is referred to the Planning Review Committee to decide if the modification application can be determined under delegated authority.

15

DA No.	Applicant	Property Address	Proposal	Exhibition Submission/s	Reason/s Outcome
10.2015.196.3	Frank Stewart Architect	40 Mullumbimbi Street MULLUMBIMBY	4.55 to stage development and modify internal layout	Level 1 31/7/19 to 13/8/19 3 submissions	Staff Delegation
10.2018.466.2	Byron Bay Planning & Property Consultants	61 Kingsley Street BYRON BAY	S4.55 to Modify Description of Development, Modify Condition 1 in Relation to Amended Plans and Delete Condition 6 Regarding Building Height	Level 1 24/10/19 to 6/11/19 2 submissions	The perceived public significance of the application Council
10.2014.753.4	Newton Denny Chapelle	30 Tanner Lane TYAGARAH	S4.55 Modification to Increase capacity of Large Events from 25,000 to 30,000 patron capacity and increase ability to provide amplified music for Small Events from 10 days to the prescribed 100 days	Level 2 24/10/19 to 13/11/19 13 submissions	Staff Delegation Note: Application amended removing the proposed increase in amplified music to 100 days for small events

Report No. 13.23 **PLANNING - 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: I2019/1913

Summary:

This report presents an update on the:

- Status of the staged E zone implementation program; and
- Additional 2019/20 budget requirements to complete remaining work for Stages 2 & 3.

The E zone planning proposals (PP) are progressing well with Stage 1 awaiting gazettal and exhibition of the Stage 2 planning proposal recently completed. Both stages represent agreed outcomes reached on over 650 properties on the application of both environmental and non-environmental zones, with over 2,300 ha proposed for environmental zonings. Stage 3, which will include a similar number of properties as PP2 (> 600), is substantially advanced and should be finalised for reporting to Council in early 2020. PP3 is expected to include the largest area of proposed E zones relative to PP1 and PP2 at 3,500+ha, making it the most significant stage of the implementation program.

Stage 4 is a new stage in the implementation program specifically created to address all public land affected by the E zone review, including land owned by Council, the Crown or other government agencies

The engagement process undertaken to date continues to be constructive and well received by those affected, generating a tremendous amount of goodwill for Council. At the same time the robust nature of the engagement process remains resource-intensive and at the current rate of expenditure, the remaining 2019/20 E zone budget will be exhausted by the end of December 2019. As a result, an additional \$17,000 is needed for the period 1 January to 30 June 2020 to ensure the timely completion of Council's E zone implementation program (Stages 2 & 3) as well as to continue building on the high level of community goodwill already generated.


NOTE TO COUNCILLORS:

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

RECOMMENDATION:

- 1. That Council re-allocate \$17,000 in order to finalise Stages 2 and 3 of E zone implementation program, build on the already high level of community goodwill generated through the engagement process to date and resolve outstanding deferred matters in a timely manner.**
- 2. That the \$17,000 be re-allocated from the Community Participation Plan project (#2605.112) which is now complete.**

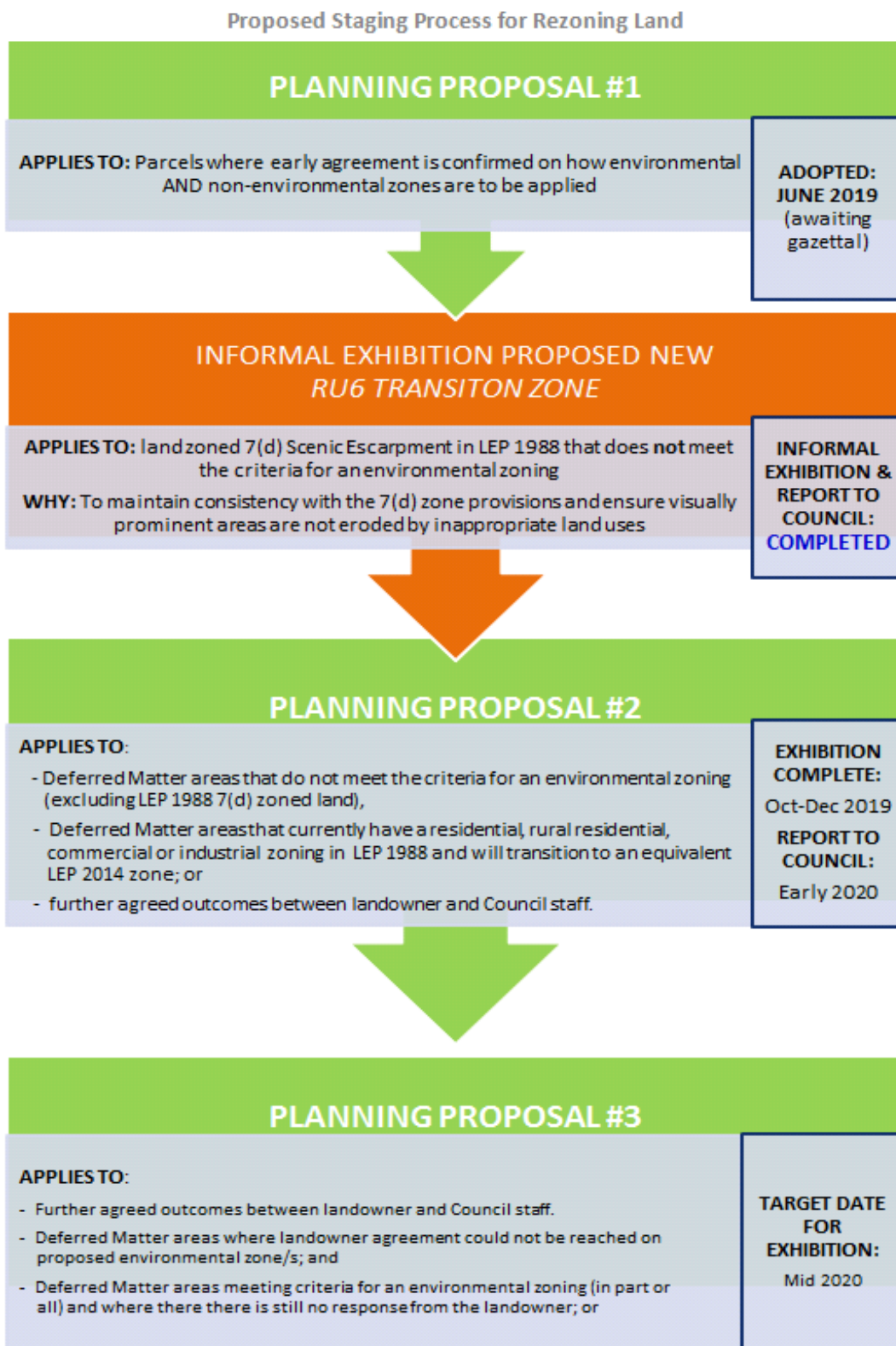
Attachments:

- 1 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

5

REPORT

5 **Background** 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 latest staged implementation program is shown below.



Staging program update

Staff continue to make good progress with the E zone implementation program, with the following outcomes to date:

- Feedback received from nearly 1300 affected landowners in the Shire.
- 5 • **Planning Proposal #1** (PP1) – currently with Department of Planning, Industry & Environment awaiting gazettal.
- **Planning Proposal #2** (PP2) – recently finished public exhibition (6 December) and submissions review currently underway.
- PP1 and PP2 have collectively resulted in approximately 2,300ha being proposed for an environmental zoning, as follows:

- 10 - *E2 Environmental Conservation*: 1,815 ha
- *E3 Environmental Management*: 465 ha

For comparison, the total area of environmental zones in the 1988 LEP (7A, 7B, 7C, 7K and 7J) is approximately 4,100ha.

- 15 • **Planning Proposal #3** (PP3), which will include a similar number of properties as PP2 (> 600), is substantially advanced and should be finalised for reporting to Council in early 2020.

As per the 'staged implementation' diagram above, Planning Proposal #3 will include:

- 20 (i) further agreements reached between landowner and Council staff on how environmental zones are to be applied; 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; and
- 25 (iii) Deferred Matter areas that do not meet the criteria for an environmental zoning and instead will have a suitable rural zone applied (excluding LEP 1988 7(d) zoned land).

PP3 is expected to include the largest area (ha) of proposed E zones relative to PP1 & PP2 (3,500+ha), making it the most significant stage of the implementation program.

- 30 • **Planning Proposal #4** (PP4) is a new stage in the implementation program specifically created to address all public land affected by the E zone review, including land owned by Council, the Crown or other government agencies.

Web link:

- 35 <https://www.byron.nsw.gov.au/Services/Building-development/Planning-in-progress/Environmental-Zones-E-Zones>

Budget requirements to complete remaining stages

- 40 The process of reviewing landowner feedback and achieving agreed outcomes remains very constructive and well received by those affected and the wider community. Indeed feedback received to date confirms that the E zone engagement process has generated a tremendous amount of goodwill as a result of staff commitment to achieving agreed landowner outcomes wherever possible. It is important to continue building on this goodwill by ensuring the timely completion of Council's E zone implementation program.
- 45

- 50 The robust nature of the E zone engagement process remains essential to the program's success, but also continues to be resource-intensive and at the current rate of expenditure, the remaining 2019/20 E zone budget will be exhausted by the end of December 2019. As a result, an additional \$17,000 is needed for the period 1 January to 30 June 2020 to ensure the timely progression of

Stages 2 & 3 of Council’s E zone implementation program. Work to be undertaken during this period will include:

- 5 ➤ PP2 – submissions review and reporting to Council for adoption; technical (GIS) mapping updates to enable final submission to State government.
- PP3 – select ground-truthing of vegetation; finalising review of landowner feedback, agreed outcomes and associated mapping; reporting to Council for Gateway submission and exhibition.

10 A review of the E zone implementation program has also determined that the timetable will extend beyond the 2019/20 financial year, with further budget allocation of \$60,000 required the 2020/21 period to complete following work:

- 15 ➤ finalising review of feedback, agreed outcomes and associated mapping (PP4);
- planning proposal exhibition and enquiries (PP3 & PP4);
- select ground-truthing of vegetation (PP3 & PP4); and
- submissions review and reporting to Council (post-exhibition).

20 A separate budget bid of \$60,000 will be included for consideration in the 2020/21 financial year budget process.

Financial Implications

25 The 2019/20 budget for the E zone Implementation program will be exhausted by the end of December 2019. The timeframe for this project extends beyond the financial 2019-20 financial year and an additional \$17,000 budget allocation is required for the period 1 January to 30 June 2020.

 It is proposed that the \$17,000 be re-allocated from the Community Participation Plan project (#2605.112) which is now complete

30 Funds required to finalise PP3 & PP4 in the 2019/20 financial year will be included in a separate budget bid.

STRATEGIC CONSIDERATIONS

35 ***Community Strategic Plan and Operational Plan***

CSP Objective	CSP Strategy	DP Action	OP Activity
<i>Objective 3: We Protect And Enhance Our Natural Environment</i>	3.1 Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1 Protect and enhance our natural environment and biodiversity	3.1.1.4 Continue the E zone review (Action No.9 from <i>Rural Land Use Strategy</i>)

Statutory and Policy Compliance Implications

40 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 Recommendations*.

Report No. 13.24 **PLANNING - 26.2019.1.1 - Planning Proposal for an amendment to Byron LEP 2014 to permit Community Title subdivision and dwellings at Lot 38 DP 1059938, Alidenes Road, Wilsons Creek**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Alex Caras, Land Use Planning Coordinator

File No: I2019/1914

- 10 **Summary:**
- Council received a planning proposal earlier this year to amend Byron LEP 2014. The planning proposal requested that all of Lot 38 DP 1059938 Alidenes Road (12.27 ha) be included in an R5 Large Lot Residential zone with a Minimum Lot Size of 0.3 ha and a prospective lot yield of 30.
- 15 However, nearly 50% of the lot is affected by the 1% AEP flood event (2100 yr) and a 30m riparian buffer which is more than previously considered in the Byron Rural Land Use Strategy. Based on Council's developable land assessment and allowance for utilities and wastewater disposal the site has a carrying capacity of 15 dwellings (upper limit). Major traffic upgrades would be required to public roads if yields exceed 19 dwellings.
- 20 Yankee Creek traverses the site and needs to be managed and rehabilitated as a single unit. The best way to achieve a sustainable dwelling yield, good environmental outcomes and an efficient use of infrastructure is to list the subject land in Schedule 1 of BLEP 2014 to permit the Community Title subdivision of the land to create up to 15 small lots, with the balance in a single community lot. Each small lot can be used for a dwelling subject to development consent. The community lot
- 25 will include the Yankee Creek waterway and suitable riparian buffers and be subject to a coordinated management regime. An amended planning proposal enabling this outcome is contained in Attachment 1.
- The amended planning proposal is consistent with the Byron Rural land Use Strategy 2017 and the North Coast Regional Plan.
- 30 It is recommended that Council proceed with the amended planning proposal and forward it to the Department of Planning and Environment for a Gateway Determination.



NOTE TO COUNCILLORS:

- 35 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.
- 40

RECOMMENDATION:

- 1. That Council proceed with the amended planning proposal contained in Attachment 1 (E2019/85691) and forward it to the NSW Department of Planning, Industry and Environment for a Gateway determination.**
- 2. That Council pending a positive Gateway determination, undertake public exhibition of the planning proposal in accordance with the determination requirements.**
- 3. That Council consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

Attachments:

- 1 26.2019.1.1 Planning Proposal Alidenes Rd (amended version for Gateway submission), E2019/85691 
- 5 2 26.2019.1.1 - Original Planning Proposal lodged Feb2019 - Request to rezone 31 Alidenes Road - Ardill Payne & Partners (excl appendices), E2019/85641 

REPORT

Subject Land

5 The subject land is described as Lot 38 DP 1059938, Alidenes Road, Wilsons Creek. It is an area of 12.27 hectares with approximately 550 metres frontage to Alidenes Road and approximately 170 metres frontage to Wilsons Creek Road. The site is burdened by a 10-metre wide Right of Carriageway that provides access to Lot 1 DP 701525 (southwest of subject land) from Alidenes Road. It is also burdened by two 10-metre wide easements for pipelines that stem from the old Mullumbimby power station and run along the Wilsons Creek Road boundary. The land previously contained two dwellings and one of these was recently demolished.

10



Figure 1 - Subject site showing old Mullumbimby power station at southern boundary

The Planning Proposal

- 15 An amended planning proposal has been prepared (Attachment 1) to permit:
- A subdivision using a neighbourhood community title scheme enabling up to 15 neighbourhood lots. Each lot can be privately owned. It will also include one lot comprising the residue of the land that will be in shared ownership and will contain the main Yankee Creek waterway that runs through the land.
- 20
- Each privately owned lot will be limited to only one dwelling.

Planning Framework and Options

Byron Rural Lands Strategy

- 25 In July 2018 the then NSW Department of Planning and Environment endorsed the Byron Rural Lands Strategy 2017 (RLUS). The RLUS has identified the subject land as part of an area that is a “priority site for future rural lifestyle living opportunities”. The subject land, together with parts of the surrounding lots), is identified for a “Potential Dwelling Yield of 15 -30”.
- 30 Listed among the relevant policy directions on pages 13 and 14 of the RLUS are:

- Future rural development will not be supported on sites, or areas within a site [that is mapped as being affected by the] 1:100 year flood risk and climate change lands
- Future rural lifestyle living opportunities will serve to repair and enhance the land’s natural values in a manner which more than offsets the full impact of the site’s population and pressures on the environment; and
- Future rural lifestyle living opportunities will preserve scenic amenity, minimise environmental impacts and better manage natural or man-made hazard risks.

5

10

This strategy was endorsed by the NSW Department of Planning, Industry and Environment (DPIE) in July 2018.

15

Although the RLUS identified a potential yield of 15-30 dwellings for this site, this range was indicative only and subject to more detailed assessment at the planning proposal and DA stage. In this case the extent of flood prone land determined in the planning proposal has reduced the developable area considerably. Riparian buffers, internal roads and onsite waste water disposal will also limit the yield of this site.

North Coast Regional Plan

20

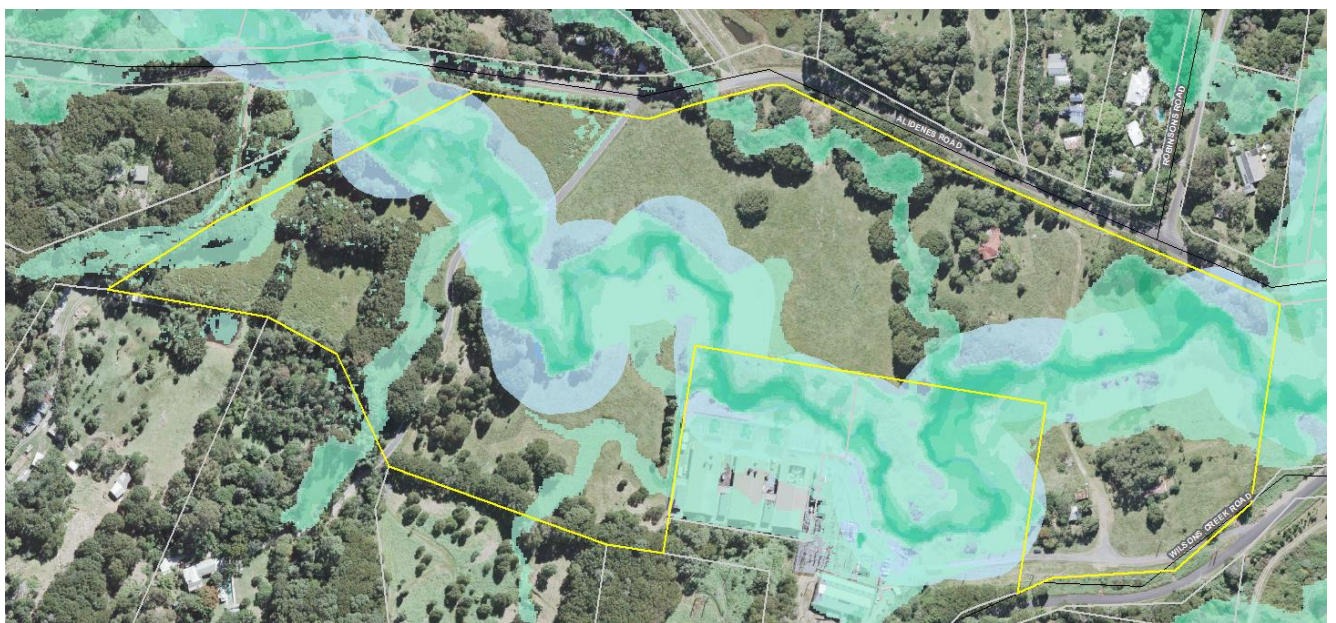
As the subject land is in the RLUS, it is consistent with the North Coast Regional Plan 2036 which states in Action 24.1: “Identify new rural residential areas in a local growth management strategy or rural residential land release strategy endorsed by the Department”

Option 1: Include all of the land in the R5 Large Lot Residential Zone?

25

The subject land is currently zoned RU2 Rural Landscape under Byron LEP 2014 (BLEP14). The original planning proposal submitted to Council (Attachment 2) requested that all of Lot 38 DP 1059938 Alidenes Road (12.27 ha) be included in an R5 Large Lot Residential zone, with a Minimum Lot Size of 0.3 ha and a prospective lot yield of 30. This was based on assumed filling of some flood prone land and use of levees to protect other areas. The applicant is no longer proposing such measures as part of this rezoning. Detailed flood modelling reveals that approximately 45% of the site is affected by flooding in the 1% ‘2100 yr’ Climate Change flood event (see flood map below).

30



35

Figure 2 – Map showing 1% ‘2100 yr’ Climate Change flood extent on the subject site (green shaded areas) AND 30m Riparian Buffer to Yankee Creek (blue shaded areas)

The flood affected land runs through most of the site along the Yankee Creek waterway. Yankee Creek is also mapped as 'Key Fish Habitat' and a 30m minimum riparian buffer has been applied. Council generally does not support rezoning of flood prone land for large lot residential purposes, or filling of flood prone land to enable low density large lot residential development. Given the extent of riparian and flood-related constraints, the option of rezoning all of the subject land to R5 Large Lot Residential is **not supported**.

Option 2: Include only flood-free and non-riparian land in the R5 zone?

The option of applying an R5 zone only on the "flood free" and non-riparian land would leave an RU2 zone residue in one irregular shaped lot (as shown in Figure 2), which in turn would need to be owned and managed by a single private landowner as it cannot be further subdivided (ie. under Clause 4.1D of Byron LEP 2014). As future access to the site must be via Alidenes Road, those parts of the R5 zoned land that do not have direct access to Alidenes Road would require access across RU2 land that is separately owned and managed. Any bridges located on the RU2 residue also would not be owned by those that benefit from them, creating ambiguity over their long term maintenance. This is not an acceptable scenario and therefore the option of rezoning the "flood free" part of the land to R5 with an RU2 zoned residue is **not supported**.

Option 3: Schedule 1 listing in LEP 2014 enabling Community Title Subdivision

Council has over many decades preferred that rural settlement offset its impacts by an environmental repair framework. This policy position is still reflected in the current RLUS, the cost and responsibility of which should be borne by all of the residents of this new estate. Given the complex drainage of the subject land and the biodiversity value of Yankee Creek (as key fish habitat), this outcome is best achieved by a Community Title development and a Schedule 1 listing in LEP 2014, rather than application of the R5 zone with an arbitrary minimum lot size. A Community Title development also has the advantages of shared internal access roads and waterway crossings, the potential for collective onsite wastewater management systems and disposal areas, suitable buffers to Yankee Creek and greater flexibility for 'private' lot sizes. For these reasons this option is **recommended**.

Option 4: Identify land in LEP 2014 Multiple Occupancy and Community Title Map and make subject to Clause 4.2B of BLEP14?

The subject land could also be identified on the LEP 2014 *Multiple Occupancy and Community Title Map* pursuant to *Clause 4.2B (Maximum number of dwelling houses or dual occupancies on multiple occupancy or rural landsharing community developments)* as a future Community Title development area with a specified number of dwellings. The main drawback with this option is that this clause also permits dual occupancy. Under this scenario if the maximum number of lots is created at the subdivision DA stage (say 15 lots based on developable area) and any subsequent dwelling applications also include a dual occupancy, these additional dwellings would result in some lots having no dwelling permissibility and hence becoming sterilised. It is therefore important that the number of dwellings be limited to the same number as prospective lots to avoid problems with wastewater disposal in proximity to Yankee Creek and limit the traffic generation to less than 19 dwellings, as any more than 19 dwellings would require a complete redesign of the Alidenes/Wilsons Creek Road intersection via a Voluntary Planning Agreement (which the applicant does not favour).

In conclusion, a *Schedule 1 – Additional Permitted Uses* listing (Option 3) can clearly identify the maximum number of lots permissible and limit each lot to only one dwelling. It can also require Community Title subdivision to ensure the coordinated management of Yankee Creek and other shared infrastructure by future residents of this estate.

Developable land and dwelling yield

5 The site has minimal vegetation of ecological value with most trees being camphor laurel. Two threatened plants (Red Boppel Nut and Rough-shelled Bush Nut) were found and they are both located adjacent to Yankee Creek on flood prone land. The Yankee Creek waterway is potential habitat for native fish and could be readily rehabilitated to improve water quality, create fish habitat and encourage native birds and mammals to use the area. It is mapped in the NSW Biodiversity Values map. If the waterway and its curtilage are community owned and managed as a community neighbourhood lot by future residents, then the potential for adverse environmental outcomes can be minimised.

15 The site contains a greater portion flood prone land than originally anticipated when it was identified in the RLUS. Approximately 6.5 ha of the 12.27 ha site (53%) is above the 1% '2100 yr' Climate Change flood event and outside the 30m minimum riparian buffer (Figure 2). This is the area that is potentially suitable for dwellings and onsite wastewater disposal. The rationale is that these areas will not be used for large lot residential dwellings or on site waste management systems, and that filling of flood prone land or constructing levees will not be acceptable on this site.

20 Table 10 from the RLUS provides a guide to determining the dwelling yield of the subject land and can be applied as follows:

- *20% of unconstrained/assessable land area required for infrastructure (eg. internal roads);*

25 **Comment:** In this case internal roads will be mainly in the form of "shared driveways" so **10%** should be sufficient.

- *Only 50% of assessable land can be developed;*

30 **Comment:** In this case we have assessed land that is flood free and outside the 30m riparian buffer at **6.5 ha**, approximately 53%.

- *Lot sizes on land suitable for development ranging from 0.5ha (low end) to 1ha (high end), rounded to nearest multiple of '5' (except where potential dwelling yield < 5).*

35 **Comment:** we have used **0.4 ha** (slightly below the low end lot size in the RLUS) because the applicant has expressed a preference for smaller lots and pending more detailed investigations at the DA stage, it can maximise the yield from the developable land.

40 An allowance of 10 % of developable land for infrastructure and utilities (such as roads and power) reduces the developable area to approximately 5.85 ha. Assuming an average minimum lot size of 0.4 ha the site has a carrying capacity of 14.6 dwellings. If this is rounded up to the nearest multiple of five then the maximum yield of the site is 15 dwellings. Rounding up is consistent with the RLUS methodology and provides a site yield that is more likely to justify communal on site wastewater management. However, this is a maximum number and achieving this with acceptable environmental impacts would need to be demonstrated at the DA stage. It does provide the basis for the dwelling yield in the schedule listing.

50 Other planning issues

Onsite Waste water Disposal

55 The site is traversed by Yankee Creek together with a series of intermittent watercourses, dry gullies and drainage channels. Given the number of intersecting gullies and drainage channels plus Yankee Creek, the drainage buffers across the subject site are extensive. Clearly there is a limited area (outside of the typical 40m buffer) which is suitable at a planning proposal level for the

dispersal of treated effluent. As the Onsite Sewage Capability Assessment supplied by the applicant has not considered the typical buffer or assessed land that is free of the buffer, there is a need to balance dwelling yield and lot size with the ability of this site to accept wastewater over the long term.

5 Lots of 0.5 ha are generally at the low end of lot size capable of dealing with wastewater from modern dwellings and 1 ha would be more conservative. If lot sizes less than 0.5 ha are proposed for dwellings then a communal wastewater treatment and disposal system is likely to be required. Under this scenario a Community Title scheme would be the most appropriate development
10 approach for the subject site from a wastewater perspective. This would allow for a certain number of lots to connect into a collectively owned and managed onsite treatment system (ie. as part of a commonly-owned lot), if desired.

Traffic and roads

15 Public roads will be used to access the site but Council will not be accepting dedication of any internal roads or bridges needed to access proposed dwelling locations. In a Community Title development shared internal roads will remain the responsibility of future residents. The traffic assessment undertaken by the applicant indicates that some of the proposed dwellings would have access from Wilsons Creek Road, with the bulk of dwellings gaining access from Alidenes Road.
20 The applicant has been advised that Council staff do not support any direct access from Wilsons Creek Road due to safety issues/risk with the access point.

If 20 or more dwellings were proposed in this planning proposal, with all dwellings requiring access to the site from Alidenes Road, then the applicant would need to upgrade Alidenes Road from
25 Wilsons Creek Road through to Robinsons Road as well as redesign the Alidenes/Wilsons Creek Road intersection. This would be very expensive and require a Voluntary Planning Agreement to fund, which is not supported by the applicant. Limiting the maximum dwelling yield to 15 dwellings overcomes this requirement, noting that signage, line marking and improvements to sight distances may still be required at the DA stage.

S. 9.1 Directions and SEPPs

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

- has not yet been referred to RFS for bushfire consideration
- introduces site specific provisions
- restricts the potential development of resources on the site

These justifiable inconsistencies are all discussed in more detail in the planning proposal (Attachment 1).

40 The planning proposal is consistent with the relevant SEPPs including SEPP 55 (Remediation of Land). These are discussed in more detail in the planning proposal (Attachment 1).

Options to Move Forward

There are a range of options for Council to consider on this matter, as summarised below:

- 45 1. Proceed with the planning proposal based on a *Schedule 1 Additional Permitted Uses* listing in LEP 2014 that would permit a community title subdivision of up to 15 neighbourhood lots/dwellings, with the common 'residue' lot to include the Yankee Creek waterway and suitable riparian buffers. Request DPIE issue a Gateway determination for the planning proposal as attached to this report (**Recommended option**)
- 50 2. Proceed with the planning proposal based applying an R5 zone on the "flood free" and non-riparian land (only), while retaining the existing RU2 zone on the common 'residue' lot incorporating the Yankee Creek waterway and suitable riparian buffers (as shown in Figure

- 2). Request DPIE issue a Gateway determination for a revised planning proposal reflecting this outcome. (Not Recommended)
3. Proceed with the planning proposal based on including all of the land in the R5 Large Lot Residential zone with a Minimum Lot Size of 0.3 ha, as submitted by the proponent. Request DPIE issue a Gateway determination for a revised planning proposal reflecting this outcome. (Not recommended).
4. Proceed with the planning proposal based on including the subject land on the LEP 2014 *Multiple Occupancy and Community Title Map* pursuant to *Clause 4.2B – Maximum number of dwelling houses or dual occupancies on multiple occupancy or rural landsharing community developments*. Request DPIE issue a Gateway determination for a revised planning proposal reflecting this outcome. (Not recommended).

Conclusion

Council has anticipated this planning proposal as a response to including the subject land in the Byron Rural Land Use Strategy. There is sufficient information to support the planning proposal in its amended form and proceed to a Gateway submission.

In accordance with recommended option ‘1.’ above, Council should request DPIE issue a Gateway determination for the planning proposal as attached to this report (Annexure 1).

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	OP Activity
<i>Objective 4: We manage growth and change responsibly</i>	4.1 Support the visions and aspirations of local communities through place-based planning and management	4.1.3 Manage development through a transparent and efficient assessment process	4.1.3.10 Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

Financial Implications

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.

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.

BYRON SHIRE COUNCIL

Report No. 13.25 **PLANNING - DA10.2018.466.2 - 61 Kingsley Street Byron Bay - S4.55 modification to change the Condition of Consent (approved by Council Meeting) in relation to the Height and FFL of the proposed building, change to pool dimensions and tree removal.**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Nancy Tarlao, Planner
File No: I2019/1918

10

Proposal:

Section 4.55 Application No:	10.2018.466.2			
Proposed modification:	S4.55 to Modify Description of Development, Modify Condition 1 in Relation to Amended Plans and Delete Condition 6 Regarding Building Height, change to pool dimensions and tree removal.			
Type of modification sought:				
Property description:	LOT: 11 SEC: 45 DP: 758207			
	61 Kingsley Street BYRON BAY			
Parcel No/s:	38660			
Applicant:	Byron Bay Planning & Property Consultants			
Owner:	Mrs N E & Mr C J Cowan			
Zoning:	R2 Low Density Residential			
S96 Date received:	9 October 2019			
Original DA determination date:	20/06/2019			
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Exhibition period: 24/10/19 to 6/11/19 - Submissions received: One 			
Delegation to determination:	Council			
Issues:	<ul style="list-style-type: none"> • Breach of Building Height Plane 			

Summary:

15 The subject site is located within Kingsley Street Conservation Area in Byron Bay. The approved DA10.2018.466.1 proposed demolition of the existing dwelling house and construction of a new 2 storey dwelling with basement storage and a back garden pool.

20 The modification application as received and exhibited included the following changes to the consent DA10.2018.466.1:

1. Modification of the description of development to allow relocation of the existing dwelling instead of demolition.
2. Change the backyard pool dimensions from 10 x 3 m to 10 x 4.5m.
- 25 3. Tree removal and relocation.

4. Modification of condition 1 to reflect new plans and deletion of Condition 6 to alter floor, ceiling and building heights as approved. The original changes proposed inter alia created a noticeable 400 mm increase in the wall height of the ground level resulting in an increased BHP encroachment on the side elevations.

5

One submission objecting to the modification application was received.

In response to the issues raised in the submission, the applicant has amended the plans further - the increase in the wall height from that originally approved is limited to 200mm only. It is considered the increased impact on neighbouring properties is negligible in terms of overshadowing and overlooking.

10

The applicant is also planning to remove 2 bottle brush trees, a mango and two bleeding heart trees, and relocate a Lilli-Pilli and 5 Bangalow Palms to facilitate the relocation of the existing dwelling house and construction works, and an amendment to the approved swimming pools dimensions. These amendments raise no issues as discussed within the body of the report.

15

The objector was advised about the receipt of amended plans, and given the opportunity to comment on same. The objector advised that matters relating to overshadowing and privacy remain unresolved and that their objection stands.

20

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

25

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.

30

RECOMMENDATION:

That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2018.466.2, for Relocation of the Existing Dwelling House and Construction of a New Dwelling House and Swimming Pool, be approved as follows:

1. Amend the Description of the development to read:

Removal of Existing Dwelling (relocation) and Construction of a New Dwelling House and Swimming Pool.

2. Amended Condition No.1 to read

1. Development is to be in accordance with approved plans

The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
WD10.	Cover Sheet	Iphorm	Nov 2019
WD2.0	Site Plan	Iphorm	Nov 2019
WD3.1	Ground Floor Plan	Iphorm	Nov 2019
WD3.2	Upper Floor Plan	Iphorm	Nov 2019

WD3.5	Roof Plan	Iphorm	Nov 2019
WD4.0	Elevations	Iphorm	Nov 2019
WD4.2	Elevations	Iphorm	Nov 2019
WD4.3	Elevations	Iphorm	Nov 2019
WD5.0	Sections	Iphorm	Nov 2019

The development is also to be in accordance with the changes shown in red ink on the approved plans or conditions of consent.

The updated approved plans (as per the Construction Certificate) and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times - while work is being undertaken.

3. Delete and replace to Condition No. 6 to read:

6. Plans to be submitted with the Construction Certificate

The Plans to be submitted with the Construction Certificate to accurately reflect the approved plans and as per the following requirements:

- *The floor to ceiling height on the ground floor be set at a maximum of 2.9 m in height;*
- *Set the ground floor of the dwelling at 9.6 m AHD*
- *Set the floor to ceiling height in the undercroft basement storage (adjacent to the pool) at a maximum of 2 m by lowering the basement floor level to 7.3m AHD*
- *The maximum height of the roof to be no greater than 8.5 m above natural ground level.*
- *Landscaping plan showing the location of trees to be replanted and the privacy hedge comprising as a minimum 10 native plants with a maturity height of 3 metres along the western boundary with 59 Kingsley Street where the pool and back verandah are located. The relocated bangalow palms not to be located on this boundary. The landscape plan to be prepared by a suitably qualified landscape designer in accordance with Chapter B9 of DCP 2014.*




The plans are to be submitted with the Construction Certificate for approval to the Principal Certifying Authority.

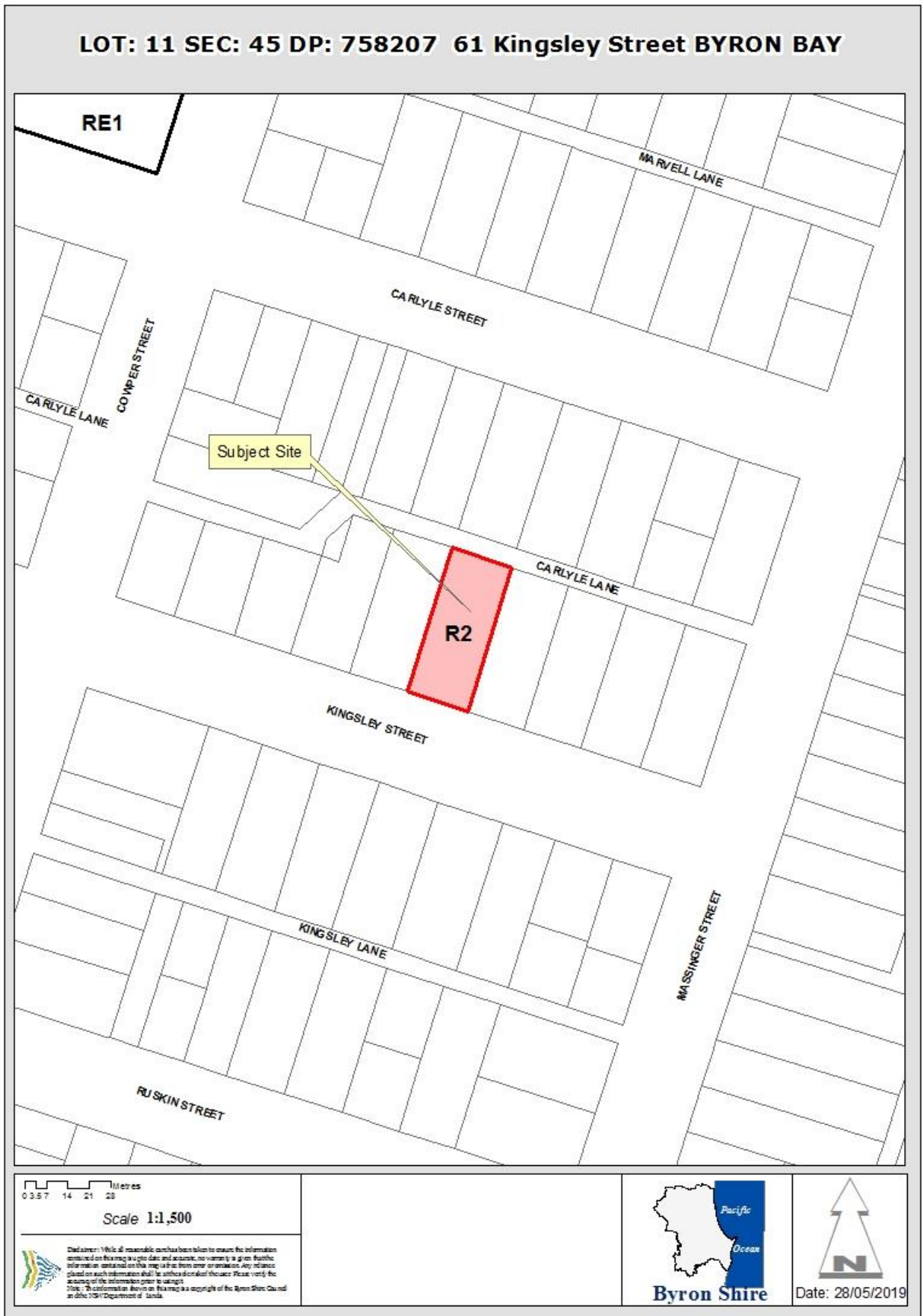
4. Delete and replace Condition No. 37 to read

37. Landscaping

All landscaping as required under this development consent to be completed prior to the occupation of the dwelling house or issue of Occupation Certificate and in accordance with the approved landscape plan including the hedge plantings on the boundary with 59 Kingsley Street.

Attachments:

- 1 Proposed Plans - DA10.2018.466.2, E2019/87783 
- 5 2 Submission received - DA10.2018.466.2, E2019/85374 
- 3 Submission received on amended plans - DA10.2018.466.2, E2019/88147 



REPORT

1. INTRODUCTION

5 1.1. History/Background

DA 10.2018.466.1 Demolition of Existing Dwelling and Construction of a two storey dwelling house and pool - Approved 20/06/2019 (via Council Meeting)

10 1.2. Description of the proposed development

This application seeks approval for a S4.55 to Modify Description of Development, Modify Condition 1 in Relation to Amended Plans and Delete Condition 6 Regarding Building Height, AHD level and floor to ceiling heights.

15 The existing description works under DA 10.2018.466.1 stated that the existing dwelling was to be demolished, this has been revised to be 'relocated' in the description of works for the S4.55 modification DA.

20 This modification seeks to delete Condition 6 of 10.2018.466.1 which stipulates the following conditions of consent:

- Reduce the floor to ceiling height on the ground floor from 3.0 m to be 2.7 m in height;
- Reduce the floor to ceiling height in the undercroft basement storage (adjacent to pool) from 2 m to 1.8 m in height;
- 25 • Set the ground floor of the dwelling at 9.6 m AHD
- The maximum height of the roof to be no greater than 8.5 m above natural ground level

30 The plan below has been prepared as per Condition 6 from the Development Consent 10.2018.466.1. It is noted the eaves and gutters of the ground floor are approximately set at the same level as the neighbours to the west.



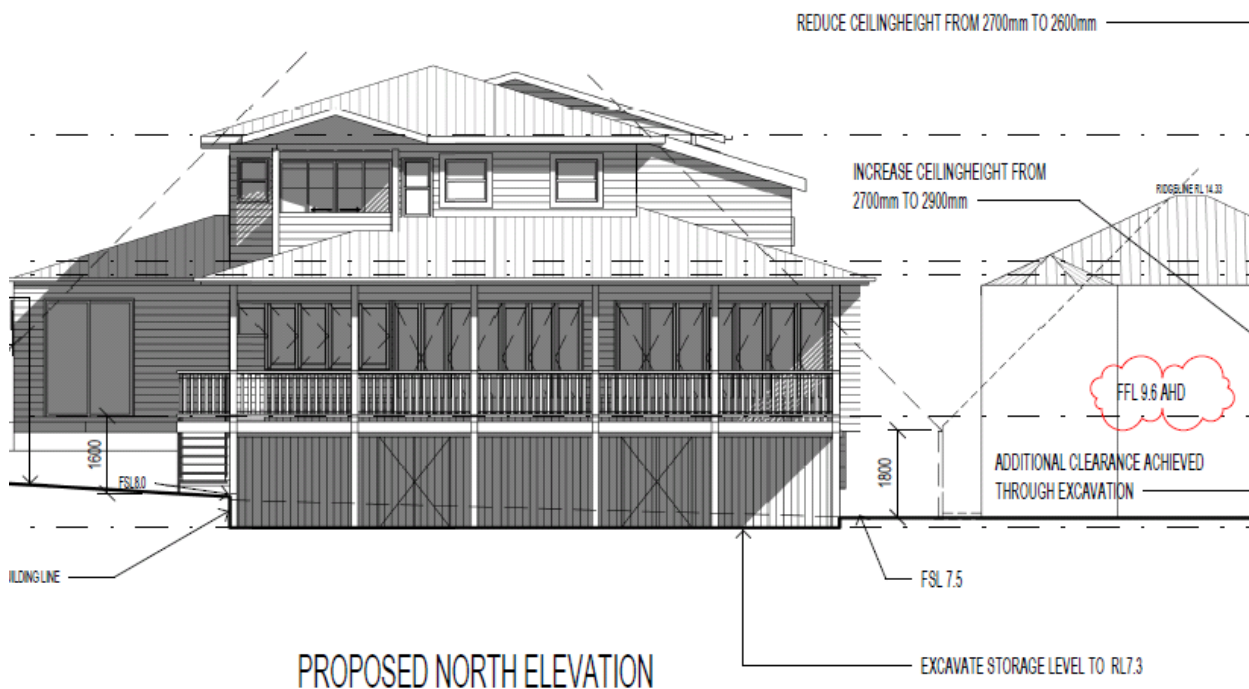
PROPOSED NORTH ELEVATION
AS PER DEVELOPMENT CONSENT

Figure 1: Northern Elevation as per the **Condition 6 of DA10.2018.466.1**

35

The applicant originally proposed to increase the ground floor to 9.8 metres and raise the floor to ceiling height of the ground floor from 2.7 to 2.9 metres. This resulted in an increase in height of the side elevations of approximately 400 mm. The plans have since been amended and the applicant has now proposed the following:

- 5
1. Retain the Floor level of 9.6 metres and excavate the ground level basement by 200 mm to provide additional headroom for storage purposes
 2. Raise the floor to ceiling height from 2.7m to 2.9 m for the ground floor
 3. Reduce the floor to ceiling height for the upper level from the 2.7m to 2.6 m; and
- 10
4. Set the maximum roof height at 8.5 m as per the conditions of consent.



15 **Figure 2. Proposed Northern Elevation as amended It is noted the eaves and gutters are set just above the neighbours to the west.**

The other modifications are as follows:

- 20
- Modification of the description of development to allow relocation of the existing dwelling instead of demolition.
 - Change the backyard pool dimensions from 10 x 3 m to 10 x 4.5m.
 - Tree removal of a mango, two bottlebrushes and a two bleeding heart trees
 - Relocation of a Lilli-Pilli and 5 Bangalow Palms

25 The applicant has provided the following reasons for the changes

As a summary, our goals in submitting the DA modification were to:

- 30
1. *Achieve usability of the basement space;*
 2. *Raise the ceiling height of the living area by 200mm for aesthetic purposes, the style of the home and in line with the ceiling heights on the existing dwelling on our property;*
 3. *Seek approval to remove the trees at the rear of the property for purposes of recycling the existing dwelling to a property elsewhere; and*
 4. *Adjust the size of the pool.*

1.3. Description of the site

5 The site is known as LOT: 11 SEC: 45 DP: 758207, 61 Kingsley Street Byron Bay and is zoned R2 under Byron LEP 2014. It contains a single storey timber clad dwelling in an urban subdivision area of Byron town area. The property has an area of 1012 m² and falls away to the rear towards the rear lane on a north-south axis. The subject property is within the Kingsley Street Heritage Conservation Area under Byron Shire LEP 2014.



10 **Figure 3: Shows the GIS mapping and the location of the subject site**

2. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

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

Section 4.55 of the EPA Act 1979

20 It is considered the proposed development is considered to be substantially the same development as approved and satisfies the provisions as contained within Section 4.55 of the EPA Act 1979.

25 In terms of the amendments to the description, there is no planning objection to replacing the wording of demolition to relocation of the existing dwelling house and this represents a sustainable outcome in repurposing the existing dwelling. Nor is there any issue with the pool changes or tree removal relocation matters as proposed.

30 The changes to the building design in terms of the Building height plane are the main areas of contention and are discussed below.

2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2000

35 Proposed amendments raise no issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2000

2.2. Byron Local Environmental Plan 2014

The Proposed amendments raise no issues under the LEP

2.3. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

No draft EPIs affect the proposal.

2.4. Development Control Plans

Chapter D1 Residential Accommodation in Urban, Village & Special Purpose Zones

D1.2.1 Building Height Plane:

The proposed development breaches the prescribed building height plane which is defined under Byron DCP 2014 as:

Building Height Plane means the plane projected at an angle of 450 over the land to be built upon, measured from a vertical distance of 1.8 metres above ground level (existing) at the site boundary.

The development as approved permitted some encroachment into the Building height plane with the consent being conditioned to reflect that level of encroachment as follows:

6. Amended Plans to be submitted with the Construction Certificate

To lower the Dwelling by 500 mm amended Plans to be submitted to Council for approval prior to the issue of the Construction Certificate to accurately reflect the approved plans as marked in red and as per the following requirements:

- *Reduce the floor to ceiling height on the ground floor from 3.0 m to be 2.7 m in height;*
- *Reduce the floor to ceiling height in the undercroft basement storage (adjacent to the pool) from 2 m to 1.8 m in height.*
- *Set the ground floor of the dwelling at 9.6 m AHD*
- *The maximum height of the roof to be no greater than 8.5 m above natural ground level.*

The amended plans as approved are to be submitted with the Construction Certificate for approval to the Principal Certifying Authority.

In arriving at that condition, the report to Council on the 20 June 2019 had regards to privacy, overshadowing, streetscape and neighbouring dwellings with similar breaches but noted the following:

“To bring the building into better compliance with the prescriptive measures, conditions of consent are recommended to lower the dwelling by 500 mm. In this regard the ground floor of the dwelling to be set 200 mm lower at 9.6 m AHD, whilst the 3 metre ceilings on this level are also to be lowered by 300 mm to 2.7 m AHD.”

The original amendments as submitted had the effect of increasing the height overall by 400 mm on the first floor, and in particular exacerbates the breach on the western boundary that the consent condition was clearly aimed at addressing. The plans have since been amended and the additional breach in the building height plane has now been reduced to only 200 mm. The proposal has been considered against the objectives and performance criteria underpinning this design element in the DCP the following comments are provided:

Objectives

- 1. To ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing buildings.*
- 2. To ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.*

Performance Criteria

1. Developments must be set back progressively from the site boundaries as height increases so that they do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.
2. Developments must be designed so that they will promote energy efficiency and so that residents may enjoy optimum use of winter sunlight and summer shade.
3. Development applications must demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc.) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9.00am to 3.00pm on any day.

Comment:

The design of the development gradually steps back from the side boundaries as it rises in height minimise impacts in relation to solar access. It is also considered that the increased height of the floor to ceiling level on the first floor does not exacerbate privacy impacts which have not been previously considered with the ground floor remaining at the height already approved and privacy screens proposed on the side elevations to the verandahs and decks.

The orientation of the lots on a general north south axis will ensure good solar access through the middle of the day to the subject dwelling and also to the neighbouring dwellings. The changes to the plans do not obstruct views with the development located on a residential street dominated by dwellings aligned on this same north south axis. In terms of shadow impacts the level of any increase is considered to be negligible, and any specific shadow cast onto the neighbouring dwelling is gone by 11 am in midwinter. (For details see the attached plans to this report)

As previously discussed in the earlier Council report of 20/6/19, such shadow impacts fall upon three bedrooms of the neighbours house to the west, not there main living areas which are located on the northern and western elevations (see figure 4 for floor plans. It is noted the dwelling at 59 Kingsley Street also overshadows the subject property and as indicated in the Building Height Plane controls would be considered non compliant with the prescriptive controls if proposed now. It is also noted the dwelling on the opposite side at 63 Kingsley Street also breaches the Building Height Plane. Hence it could be argued that the subject building height plane controls have in part been abandoned in this street.

Conclusion

Having regard to the building height plane breaches that are evident at both the adjoining properties at 59 and 63 Kingsley Street, the level of encroachment resulting from the modification is considered acceptable.

The applicant has requested Condition 6 be deleted and the application relies upon the amended plans in terms of construction certificates and other approvals going forward. However it is considered prudent that Condition 6 be reworded to reflect the amended plans as follows to ensure the construction certificate plans reflect the actual approved plans. The condition also includes further wording in relation to a landscape plan to be approved as part of the Construction Certificate.

6. Plans to be submitted with the Construction Certificate

The Plans to be submitted with the Construction Certificate to accurately reflect the approved plans and as per the following requirements:

- The floor to ceiling height on the ground floor be set at a maximum of 2.9 m in height;
- Set the ground floor of the dwelling at 9.6 m AHD
- Set the floor to ceiling height in the undercroft basement storage (adjacent to the pool) at a maximum of 2 m by lowering the basement floor level to 7.3m AHD

- The maximum height of the roof to be no greater than 8.5 m above natural ground level.
 - Landscaping plan showing the location of trees to be replanted and the privacy hedge comprising as a minimum 10 native plants with a maturity height of 3 metres along the western boundary with 59 Kingsley Street where the pool and back verandah are located. The relocated bangalow palms not to be located on this boundary. The landscape plan to be prepared by a suitably qualified landscape designer in accordance with Chapter B9 of DCP 2014.
- 5
- 10 The plans are to be submitted with the Construction Certificate for approval to the Principal Certifying Authority.

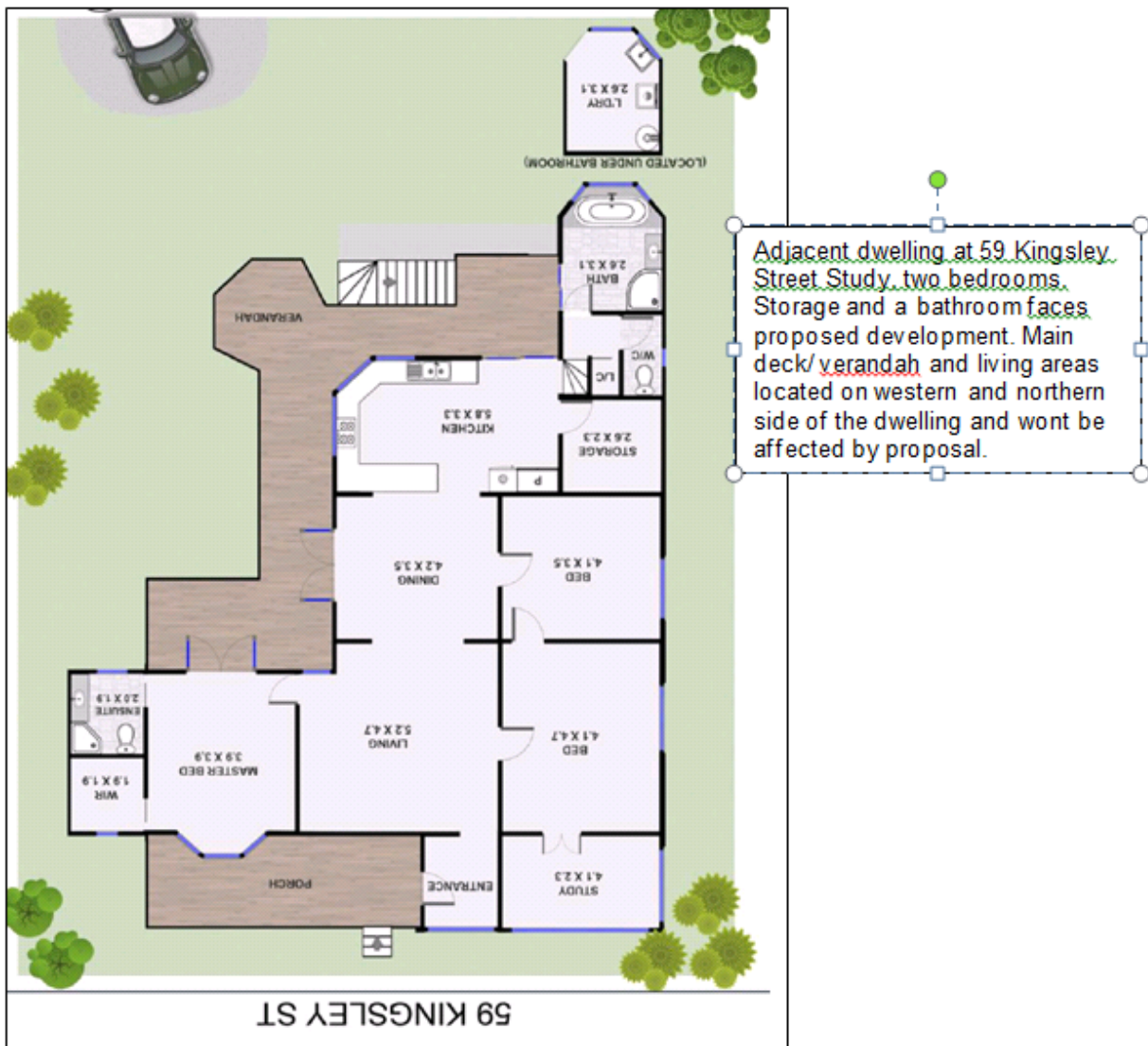


Figure 4 – Floor plans of dwelling at 59 Kingsley Street

15 It is considered the proposal raises no other issues against the DCP chapters within DCP 2014.

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

Tree removal

The applicant is proposing to remove a mango tree, two bleeding heart trees and two bottlebrushes and relocate a Lilli Pilli and 5 Bangalow Palms. In this regard this is required to assist with the construction of the dwelling and its relocation. It is considered the vegetation is lost not significant, however it is recommended as discussed above a landscape plan be submitted with the construction certificate showing the location of plants to be relocated and other plants to be planted increasing the number of trees to be planted on the boundary with 59 Kingsley Street. It is also recommended that Condition 37 be amend to read:

37. Landscaping

All landscaping as required under this development consent to be completed prior to the occupation of the dwelling house or issue of Occupation Certificate and in accordance with the approved landscape plan including the hedge plantings on the boundary with 59 Kingsley Street.

Relocation of the existing dwelling

The change to the description of the development is supported and it is considered the relocation of the dwelling as opposed to its demolition is a more sustainable outcomes for the building and is recommended for approval.

2.6. The suitability of the site for the development

The site remains suitable for residential purposes.

2.7 Submissions made in accordance with this Act or the regulations

One submission objecting to the modification application was received.

Objection and staff comments to the modification application as notified are below.

In response to the issues raised in the submission, the applicant has amended the plans further - the increase in the wall height from that originally approved is limited to 200mm only. It is considered the increased impact on neighbouring properties is negligible in terms of overshadowing and overlooking.

The applicant is also planning to remove 2 bottle brush trees, a mango and two bleeding heart trees, and relocate a Lilli-Pilli and 5 Bangalow Palms to facilitate the relocation of the existing dwelling house and construction works, and an amendment to the approved swimming pools dimensions. These amendments raise no issues as discussed within the body of the report.

The objector was advised about the receipt of amended plans and given the opportunity to comment on same. The objector advised that matters relating to overshadowing and privacy remain unresolved and that their objection stands

Issues	Comment
Council approved the dwelling at a certain height (9.6 AHD verse 9.8 AHD) and any alterations to this should not be supported due to non-compliance with the DCP (Building Height Plane) and	Amended plans have been submitted and the increased in floor to ceiling height is considered acceptable as discussed above. The ground level remains set at 9.6m whilst the overall height is compliant with the 8.5 m height conditions.

Issues	Comment
due to privacy concerns.	
Use of bangalow palms as a privacy hedge will exacerbate overshadowing on neighbours to the east	Landscape Hedge to remain and has been increased to 10 trees. Bangalow palms and including the existing Lilli Pill to be sited elsewhere on the property and a landscape plans required as per conditions of consent.
reduction in height of the privacy screens,	Privacy screens are set at 1.8 metres
Heritage – Plans appear to conflict with Condition No.5 in terms of heritage colours and materials	Condition No. 5 is to remain as approved.

2.8 Public interest

The proposed amendments do not prejudice or compromise the public interest.

5

3. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy contributions.

10

4. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No
Provide Disclosure Statement register details here:	Not applicable

5. CONCLUSION

15 The proposed modification is supported for the reasons outlined in the above report. The increase in the floor to ceiling height on the ground floor is considered reasonable and issues of privacy and amenity impacts acceptable. The application is recommended for approval subject to amended conditions of consent.

20

STATEMENT OF REASONS

Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.

Statement of Reasons

S.4.55	The proposed modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.
--------	--

25

How community views were addressed

1	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.
---	---

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.25

	To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.
--	---

Report No. 13.26 **Byron Shire Council Agricultural Action Plan Update**
Directorate: Sustainable Environment and Economy
Report Author: Andrew Cameron, Farm Liaison Officer
File No: I2019/1919

5

Background:

10 The *Investigation into Agriculture in Byron Shire and Action Plan - Farming Industry Consultation Summary Report* (Attachment 1) identified that in the period from 2010/11 to 2015/16 Byron Shire's agricultural industry has:

- 15 1. Had annual turnover reduced from \$112.7M to \$103.1M
2. Lost 50 jobs in agriculture in that same period.

20 Agriculture and its sustainability is vital to the local and regional economy. In order to address the issues of decline, Council employed a temporary Farm Liaison Officer (FLO) funded to June 2020. The FLO commenced extensive industry consultation and developed an Agriculture Action Plan aimed at implementing ways in which Council can assist the industry remain sustainable and prosper.

25 Council appointed the FLO with the objectives to elevate our farming community's profile, promote sustainable farming in Byron Shire, be the main point of contact for farming enquiries and to develop plans and systems to support sustainable farming and our farming community.



30 To achieve these objectives, the FLO undertook a review of past and current agricultural reports (relevant to the Shire), and consulted with key stakeholders and management. Then together with the Agricultural Cluster Group (representing key primary industries) developed an Agricultural Action Plan. This plan guides and directs the activities of the FLO in order to achieve the objectives of the role.

35 The aim of this report is to gain endorsement of the Agricultural Action Plan and to provide an update to Council on it's progress and achievements to date, current projects and future projects.

RECOMMENDATION:

1. **That Council note the update provided in this report on completed, current and future projects and activities supporting agriculture, agri-business and farmers in Byron Shire.**
2. **That Council acknowledge the significant value the implementation of the Agricultural Action Plan and its contribution to achieving the objectives, strategies and actions of Council's *Community Strategic Plan and Operational Plan*.**
3. **That Council endorse the Byron Shire Council Agriculture Action Plan in Attachment 2 (E2019/84462).**
4. **That Council consider funding options for the Farm Liaison Officer position as a permanent full-time position when preparing the 2020/21 budget..**

Attachments:

- 5 1 Investigation into Agriculture in Byron Shire and Action Plan - Farming Industry Consultation Summary Report, E2018/72133 
- 2 Byron Shire Council Agriculture Action Plan - post ACG meeting 12 June 19, E2019/84462 

REPORT

The following provides a summary of completed, current and future planned projects and activities of the Agriculture Action Plan, in order to support agriculture, agri-business and farmers in Byron Shire.

Activities Completed

- Establishment of the FLO position as the primary contact for all farming and rural land related enquiries within Council.
- Rural Land Issues database that has been populated with issues related to farming and rural land holder enquiries.
- A documented history of agricultural production in Byron Shire from it's beginnings in 1860 through to present day and projected future production trends.
- Engagement with over 50 rural land holders, agribusinesses and external agencies to highlight and promote the objectives of the FLO role to the community.
- Representation of Council by the FLO in an advisory position on the Leadership Council of Young Farmers Connect with the objective of supporting and building the capacity of farmers aged under 40 in the Byron Shire.
- Involvement by the FLO in advocacy work with the Northern Rivers - Regenerative Agriculture Investment Network "RAIN". RAIN is made up of land owners, farmers, and people with strong connections to sustainable/regenerative agriculture - who share a passion for using land as a source of nourishment for people and planet. To date the discussions have focussed on incentivising landowners to adopt regenerative land management practices that increase productivity whilst adapting to climate change and improving ecosystem services.
- Undertook a review of the 2004 Sustainable Agricultural Strategy. Relevant issues, outcomes and activities were incorporated into Council's Agriculture Action Plan
- Establishment of the Agricultural Cluster Group (ACG) The ACG acts as a conduit between Council and the Shire's agricultural industry. The ACG is made up of a broad cross-section of primary producers within Byron Shire aimed guiding decision making processes within Council with regard to agricultural issues. The ACG also acts as a sounding board for information to be communicated from Council back into the industry.
- The ACG's Terms of Reference (TOR) were developed and endorsed at the combined Strategic Business Panel/ACG meeting held on 30 May 2019 (**Resolution 19-081**).
- Since endorsement of the TOR, the ACG has met on three occasions and achieved the following outcomes:
 - Developed the Byron Shire Agriculture Action Plan. The Action Plan was developed from a number of resources and targeted consultation with primary producers. The plan is made up of objectives, actions and deliverables to be achieved over the short, medium and long term that aim to deliver the following three outcomes:
 1. Ensure agriculture remains a major economic contributor to Byron Shire's Gross Regional Product
 2. Continually improve sustainable land-use practices on all rural land within the Shire

3. Improve communication, engagement and trust with rural landholders and rural life-stylers

- 5 ○ Information seminar for farmers on carbon credits under the Federal Government Climate Solution Fund. Carbon credits can be earned by land managers through registering projects that utilise innovative farming systems such as those associated with regenerative agricultural practices.
- 10 ○ A tour of Council’s composting facility at the Resource Recovery Centre in Myocum. The tour was extremely well received by the farmers and dispelled many myths about Council’s composting operations, including the products organic specifications and it’s competitiveness in price. Recent FLO industry engagement regarding Council’s composting operations led to a 100m³ sale to a SoilCare representative who previously would not buy Council compost.
- 15 • Successfully applied for \$50,000 grant funding under the National Landcare’s Smart Farms program, to develop the project “Managing Land in the Micro Climate of Byron Shire – Capacity Building for New and Lifestyle Land Managers”. Council will collaborate with a consortium of organisations to develop a Rural Land Know How Package for our new and existing lifestyle landholders. The project will be completed by 30 September 2021. Aims include:
 - 20 ○ Engage the Shires rural landowners to build their capacity and capability by increasing their awareness, knowledge and skills of land management best practice and how to mitigate risks associated with climate change.
 - 25 ○ Deliver agricultural productivity gains in conjunction with net benefits to soil, water, vegetation and biodiversity within the region through a best practice land management guide and mentoring.
 - 30 • Formalisation of internal procedures that allow graziers to gain authorization from Council to apply to North Coast Local Land Services for a permit to conduct roadside grazing (21/08/2019 Executive Team Meeting).

35 **Activities in progress**

- Creation of version 2 of “Farmers Farm... and Cows DO Moo”. This publication will be launched in early 2020.
- 40 • Supporting and exploration of options for farmers to value-add or diversify through food and agritourism on farm, working closely with internal departments to assist rural landholders navigate LEP and DCP requirements.
- Developing a business case for delivering a Byron Shire agricultural industry forum.
- 45 • Liaising with, and acting as a conduit to Council for landholders who are seeking to make amendments to our LEP, to help empower new farming entrants and reduce their barriers to entry. Such projects would investigate affordable leasing arrangements for small scale farmers as well as providing on-farm living arrangements (e.g. Lighthouse Organics/Conscious Grounds and 96 Bangalow).
- 50 • Undertaking mapping of RU1 and RU2 zoned land within Byron Shire with the aim of identifying what current agricultural production trends are being undertaken in order to investigate the feasibility of Council supporting an RU4 pilot program - to support small lot farming initiatives. The “Small Lot Regen Farming Initiative” pilot project aims to be launched
- 55

as part of National Regenerative Agriculture Day February 2020, in order to support and celebrate the united national movement of raising awareness around Regenerative Agriculture and the benefits to helping heal the land and our communities.

- 5 • Ongoing management and delivery of the Smart-farms project.

Future projects:

- 10 • Expand ACG membership in order to obtain greater cross-sectoral representation of Byron Shires agricultural industry
- Engage with Council Utilities department to assist in optimizing Sewerage Treatment Plant water re-use projects for the benefit of agriculture and biodiversity

STRATEGIC CONSIDERATIONS

15

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.4	Support and secure our farming future	3.4.1	Develop and implement strategies to support agriculture, agri-business and farmers	3.4.1.1	Finalise and Implement Agriculture and Agribusiness Action Plan

Legal/Statutory/Policy Considerations

20 Nil

Financial Considerations

25 Nil

Consultation and Engagement

30 Byron Shire Agricultural Cluster Group
 Byron Shire rural land holders
 Project Officer – Environmental and Agriculture Projects
 Manager - Environmental and Economic Planning
 Director – Sustainable Environment and Economy
 General Manager

Report No. 13.27 **PLANNING - Draft Planning Controls for Short Term Rental Accommodation in response to Ministerial Direction 3.7 Reduction in non-hosted rental accommodation period**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Ben Grant, Planner

File No: I2019/1925

10 **Summary:**

15 The recent rise of online booking platforms has led to significant and sustained growth in the short term rental accommodation sector in Australia and in particular the Byron Shire. As tourism has spread into residential areas there have been increased reports of conflict over noise and anti-social behaviour, coupled with broader social and economic concerns over housing supply, worsening affordability and an increasing sense of dislocation from community.

20 In 2015, Council sought to regulate holiday letting through an amendment to Byron Local Environmental Plan 2014 that would define the use and establish the circumstances in which development consent would be required. The planning proposal went through a number of iterations over a two year process and was eventually submitted to the Department of Planning and Environment for completion April 2017.

25 As this process was unfolding, a Parliamentary Enquiry into the adequacy of the regulation of short-term holiday letting in NSW was underway. The Enquiries' final report to Government concluded that short-term rental accommodation should be defined and enabled through the planning system as exempt or complying development, supported by a compliance system and a code of conduct. As a consequence of this recommendation, the Department chose to defer making a decision on Council's planning proposal until the release of an options paper outlining the intended regulatory approach. The impasse resulted in Council resolving to withdraw the planning proposal in September 2017.

35 Since then, the number of properties offering short term rental accommodation in the Shire has continued to grow. By September this year approximately 18% of all dwellings were listed on Airbnb, with numbers in Byron Bay exceeding 40%. Preliminary research shows that nearly half of these listings are highly available properties that are most likely offered as de-facto tourist and visitor accommodation.

40 This report explains a set of draft planning controls that seek to define and regulate short term rental accommodation through an amendment to Byron LEP 2014. The aim is to achieve appropriate balance of regulation that allows for new tourism opportunities while still preserving the supply of residential housing and managing adverse impacts on neighbourhood amenity.

45 It is recommended that a draft planning proposal be prepared, based on the planning controls in Attachment 1, which will proceed to an initial round of public exhibition in early 2020. Following exhibition, the planning proposal will be revised where necessary and reported back to Council.

NOTE TO COUNCILLORS:



50 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.

55

RECOMMENDATION:

- 1. That Council request staff to prepare a planning proposal to amend Byron Local Environmental Plan 2014 in accordance with the draft planning controls in Attachment 1 (E2019/85833).**
- 2. That Council request staff to undertake an online community engagement activity of the draft planning proposal controls during December and January to canvass community opinion on the controls.**
- 3. That Council receive a report on the community engagement activity with a finalised planning proposal, for endorsement to submit to the Department of Industry and Environment for Gateway Determination in February 2020.**

Attachments:

- 1 Attachment 1 Draft Planning Controls for Short Term Rental Accommodation, E2019/85833 
- 5 2 Attachment 2 Ministerial Direction 3.7 Reduction in non-hosted rental accommodation period, E2019/85835 

REPORT

Background

5 The recent rise of online booking platforms has led to significant and sustained growth in the short term rental accommodation sector in Australia and in particular the Byron Shire.

10 As tourism has spread into residential areas there have been increased reports of conflict over noise and anti-social behaviour, coupled with broader social and economic concerns over housing supply, worsening affordability and an increasing sense of dislocation from community.

Web links:

15 <https://www.byron.nsw.gov.au/Services/Building-development/Planning-in-progress/Short-term-rental-accommodation>

<https://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/Short-term-holiday-letting>

20 Previous attempts to regulate

Council has attempted to regulate holiday letting in the past with a holiday letting forum in 2005 and a precinct based approach in 2008. More recent efforts resulted in the preparation of a Short Term Rental Accommodation Action Plan in 2014. A key recommendation of the 2014 Action Plan was an amendment to Byron Local Environmental Plan 2014 (LEP 2014) to introduce a set of planning controls to define and regulate holiday letting. This led to the development of a planning proposal that was submitted to the Department of Planning and Environment in July 2015.

30 Following the issue of a gateway determination on 31 August 2015, the planning proposal went through a number of iterations over a two year process to address issues raised by the Department and Parliamentary Counsels Office. It was eventually submitted for completion following a final round of amendments in April 2017.

35 As this process was unfolding, a Parliamentary Enquiry into the adequacy of the regulation of short-term holiday letting in NSW was underway. The Enquiries' final report to Government concluded that short-term rental accommodation should be defined and enabled through the planning system as exempt or complying development, supported by a compliance system and a code of conduct. The Government offered qualified support for most of the recommendations, indicating that an options paper would be prepared to implement a whole of government framework in the near future.

40 As a consequence of this announcement, the Department chose to defer making a decision on the planning proposal until after the Governments options paper had been released. The impasse resulted in Council resolving to withdraw the planning proposal as it did not make sense to continue until it was known how it would interact with the Governments finalised approach.

Draft NSW regulatory framework released

50 In August 2019, the Department announced a draft regulatory framework for short term rental accommodation in NSW, including a state-wide planning framework, fire safety standards and a mandatory Code of Conduct. None of the new rules have come into force yet.

The draft framework is a package of legislation comprising the following key elements:

State Environmental Planning Policy (Short Term Rental Accommodation) 2019

5 The proposed *State Environmental Planning Policy (Short Term Rental Accommodation) 2019* is a new SEPP created to provide State-wide land use planning controls for short term rental accommodation. The SEPP will introduce a standardised definition for short term rental accommodation, along with definitions for hosted and non-hosted short-term rental accommodation.

10 Hosted accommodation is similar to a bed and breakfast facility and requires a “host”, being the owner or permanent tenant, to be present during the period of accommodation. Non-hosted accommodation is similar to a serviced apartment and does not require the owner or host to be present during the period of accommodation.

15 Hosted and non-hosted accommodation will be permissible as either exempt or complying development, subject to a number of requirements for zoning, dwelling type, occupancy, and fire safety. Non-hosted accommodation on bushfire prone land or flood prone land will be permissible only as complying development.

20 Non-hosted accommodation is limited to a maximum of 180 days per year in the Greater Sydney Region and for any other Council that elects to opt-in. Ballina, City of Lake Macquarie, Clarence Valley and Muswellbrook were identified in the draft SEPP. Other areas will not be subject to time limitations.

Code of Conduct

Supporting the new planning rules will be a mandatory Code of Conduct, given effect through amendments to the *Fair Trading Act 1987* and *Fair Trading Regulation 2016* that were passed by the NSW Parliament on 14 August 2018.

30 The Code is a complaint based regulatory system that will be managed by NSW Fair Trading. It applies to booking platforms, letting agents, hosts, and guests and covers matters such as reporting, insurance, neighbour notification, anti-social behaviour and damage to common property.

35 If the code is breached, Fair Trading has the option of listing the industry participant or the premises on an ‘exclusion register’, which prevents the person or premises from carrying out short-term rental accommodation. Non-compliant behaviour can result in a ‘strike’ being recorded (two ‘strikes’ in a two year period may result in exclusion). A breach of the Criminal laws, planning laws
40 or strata by-laws may also result in an industry participant being listed on the register.

Fire Safety Standards

45 An amendment to the Environmental Planning and Assessment Regulation 2000 has been proposed that will require a dwelling being used for short-term rental accommodation to comply with the requirements of the *Short-term Rental Accommodation Fire Safety Standard*.

50 The Fire Safety Standard introduces new requirements for class 1(a), class 2 and class 4 buildings being used for short-term rental accommodation. It introduces additional requirements for smoke and heat alarms, evacuation lighting, fire blankets, fire extinguishers, egress doors and evacuation diagrams.

Strata by-laws

5 The Department has clarified that Strata schemes can adopt a by-law that prohibits short term rental accommodation where a lot is not a host's principal place of residence. Any such by-law will need to be adopted by special resolution, with 75% of votes supporting the proposal at a general meeting.

Ministerial Directive

10 On 5 February 2019, a Ministerial Planning Direction was issued to address the high concentration and unique impacts of short term rental accommodation in the Byron Shire. The Direction allows Council to reduce non-hosted short-term rental accommodation to a minimum of 90 days per calendar year, as long as there is a sound base of evidence to support the proposed changes. A full copy of the Ministerial Direction is provided in Attachment 2.

15 The Ministerial Direction gives Council the opportunity to implement local planning rules for short term rental accommodation, rather than being subject to the planning rules in the SEPP.

20 The following principles need to be addressed:

- *non-hosted short term rental accommodation periods must not be reduced to be less than 90 days*
- *the reasons for changing the non-hosted short-term rental accommodation period should be clearly articulated*
- *there should be a sound evidence base for the proposed change, including evidence of the availability of short-term rental accommodation in the area (or parts of the area) in the 12 months preceding the proposal, relative to the amount of housing in the area, and trend-data on the availability of short-term rental accommodation over the past 5 years.*
- *the impact of reducing the non-hosted short-term rental accommodation period should be analysed and explained, including social and economic impacts for the community in general, and impacted property owners specifically.*

Preliminary research

40 Preliminary research into Airbnb, the dominant online booking platform, indicates a significant concentration of online listings in the Byron Shire with evidence of a strong and sustained growth trend over the past few years.

45 Using data from insideairbnb.com (published by activist Murray Cox), the total number of listings for the Byron Shire was estimated to be 3,305 in September 2019. Whole houses or apartments comprised 78% of offerings. This compares to Tweed Shire with 1,232 listings, followed by Ballina with 610. Regionally, Byron Shire accounts for more Airbnb listings than all other Northern Rivers Local Government Areas combined.

50 Approximately 18% of all dwellings in Byron Shire were listed on Airbnb in September 2019, with most of the activity being concentrated in Byron Bay. This finding reflects previous research on Airbnb from Australia and overseas that shows listings tend to concentrate in areas where demand for tourist and visitor accommodation is high.

Slightly less than half the listings were identified as 'frequently available', meaning they were available for more than 90 days in the previous 12 months. Listings of this type are generally considered to be commercial rentals that are predominantly used for tourist and visitor accommodation. The majority of frequently available listings were also concentrated in Byron Bay, comprising up to 25% of the total dwelling supply. The actual number may be higher, as the preliminary research only looked at data from Airbnb and did not consider other platforms such as HomeAway (Stayz) or Booking.com. Research is ongoing.

Council has also been assisted by researchers from Southern Cross University (SCU) who recently completed a survey of Byron Shire residents on the impacts of Airbnb. The majority of survey respondents felt that while Airbnb offers a greater variety for guests and additional income for hosts, it was having an adverse impact on neighbourhood amenity and the availability of housing.

A second SCU research project is currently underway to understand how Airbnb has impacted approved accommodation providers. We expect the result will form part of a supporting body of research on the social and economic effects of short-term rental accommodation to support a future planning proposal.

What is clear from the preliminary research is that Byron Shire is a hotspot of activity for short term rental accommodation in NSW and the sector is continuing to expand. Regulation through the planning system is needed to manage the impacts on residential amenity and to prevent further erosion of housing supply.

Explanation of the draft controls

The intended outcomes are to be achieved by an amendment to LEP 2014 as follows:

- (1) Insert a new definition of short-term rental accommodation into the LEP 2014 dictionary as follows:

short-term rental accommodation means an existing dwelling—

(a) *that is lawfully used by the owner, tenant or permanent resident of the dwelling (the host) to provide accommodation on a commercial basis for a temporary or short-term period, with or without the host residing on the premises during that period, and*

(b) *that, if it were used predominantly as a place of residence, would be one of the following types of residential accommodation—*

- (i) *an attached dwelling,*
- (ii) *a dual occupancy,*
- (iii) *a dwelling house,*
- (iv) *multi dwelling housing,*
- (v) *a residential flat building,*
- (vi) *a rural workers' dwelling,*
- (vii) *a secondary dwelling,*
- (viii) *a semi-detached dwelling,*
- (ix) *shop top housing*

non-hosted short-term rental accommodation means short-term rental accommodation provided where the host does not reside on the premises during the provision of the accommodation.

hosted short-term rental accommodation means short-term rental accommodation provided where the host resides on the premises during the provision of the accommodation.

5 The definition is adopted from the draft SEPP for the sake of consistency with the Government's regulatory framework. This is intended to ensure compatibility with the Code of Conduct, Fire Safety Standard and any future Environmental Planning Instruments.

10 (2) Insert a new mapping overlay, known as the Short Term Rental Accommodation Map, that will identify the maximum number of days for short term rental accommodation in different locations.

The map will identify:

- 15
- *Zero (0) days for Council owned and/or managed lands and 'urban release area land' identified in a State Government and or Council strategy or planning instrument;*
 - *365 days per year in certain areas identified as suitable for tourism;*
 - *90 days per calendar year in the remaining parts of the Shire.*

20 A precinct map offers the option to identify areas that may be more or less suitable for short term rental accommodation, and to set clear standards for the acceptable number of days that a property can be used for short term rental accommodation in each area. Tourism precincts at Wategos, Belongil and Shirley Street are currently under consideration; however, the final boundaries adopted for the planning proposal will be determined after considering feedback from the initial round of public exhibition and further research.

25 (3) Insert an enabling clause into Part 4 of LEP 2014 that will make the Short Term Rental Accommodation Map a development standard. Maximum occupancy levels will also be specified.

30 The purpose of the clause is to give effect to the Short Term Rental Accommodation Map as a development standard, and to specify the maximum occupancy levels for a dwelling house being used for short term rental accommodation. It is intended to limit short term rental accommodation to a maximum of two persons per bedroom, up to a maximum of 12 persons, whichever is the lesser. For example, a three bedroom house would be limited to a maximum of 6 persons, while a
35 10 bedroom house would be limited to a maximum of 12 persons. The figure is inclusive if guests, hosts and any other permanent residents.

40 (4) A new local clause under Part 6 of the LEP to set out the aims and objectives and matters to be considered when assessing a development application for short-term rental accommodation.

45 The objectives of this clause are to provide a set of environmental, social and economic considerations for the assessment of short term rental accommodation. This will include consideration of impacts on affordable housing, housing supply, environmental constraints and the suitability of the dwelling having regard issues such as neighbourhood amenity, parking and waste disposal.

50 (5) Insert a new clause into Schedule 2 of Byron LEP 2014 that will allow hosted and non-hosted short term rental accommodation as exempt development in the following circumstances:

- Hosted accommodation allowed 365 days per year;
- Non-hosted accommodation limited to 90 days per year;

- Non-hosted accommodation not permitted on bush fire prone land or flood prone land;
- The dwelling must not be (or be part of), a group home, a hostel, seniors housing, an eco tourist facility, tourist and visitor accommodation, a camping ground, caravan park or a moveable dwelling.
- 5 ○ The dwelling must not be approved under the Affordable Rental Housing State Environmental Planning Policy 2009.
- Occupancy limited to 2 persons per bedroom, up to a maximum of 12 persons in total, whichever is the lesser;
- 10 ○ Requires property to be included on a Council register of short term rental accommodation
- Requires compliance with fire safety standards under the BCA and EP&A regulations.
- Requires an A3 sign to be placed at the front of the property advising the public of the landowners or property manager’s details to enable complaints to be made and wording to advise that the property is registered with Byron Shire Council.
- 15 ○ Minimum requirement for car parking of 1 space for a two bedroom dwelling and two carparks for a dwelling with three bedrooms or more.
- Dwellings not connected to reticulated sewer must be serviced by an approved on-site waste water management system with a current approval to operate.

20 The exempt provisions will allow for certain low impact uses to occur without Council approval, subject to minimum standards. For example, letting a single room to visitors, or renting a whole house for a few weeks while the occupants are travelling will be covered by these provisions in most cases. Owners who do not meet the exempt provisions, or who wish to exceed the 90 day threshold in an approved precinct, will have the option of lodging a development application.

25 It is also proposed to create a Short Term Rental Accommodation Register on Council’s web site. The register will be interactive and enable landowners to register online and provide information such as the number of bedrooms, period that the property will be available for short term rental accommodation and contact phone numbers of the landowner or manager. Staff are investigating options for this at present.

30 The ‘zero (0) day cap’ on Council managed land and new release areas identified in a strategy is not strictly in accordance with the Ministerial Direction, but is considered to be necessary for Council to achieve strategic planning objectives for residential dwelling targets and to meet the needs for permanent housing stock for our resident community and key workers. The final planning proposal will argue that this inconsistency is of minor significance.

Interaction with the State Government’s Regulatory Framework

40 Council has asked the Department to exclude Byron Shire from *State Environmental Planning Policy (Short-term Rental Accommodation) 2019*. This is critical for Council to be able to pursue local planning controls as envisaged by the Ministerial Direction.

45 Other elements of the Government’s draft regulatory framework including the Code of Conduct, Fire Safety Standards and Strata laws will apply in the Byron Shire. The draft planning controls are not expected to come into conflict with or duplicate these elements of the framework

Regulation under LEP 1988

50 The new planning controls will only apply to parts of the Shire regulated by LEP 2014, which covers the majority of urban land. In areas regulated by *Byron Local Environmental Plan 1988* (i.e. any land identified as a “deferred matter”), short-term rental accommodation will continue to be

regulated under the current planning controls and will generally either be prohibited or require development consent, depending on the zoning and definition that applies to the land.

5 It is anticipated that this situation will gradually change over time as the remaining deferred matter lands are transitioned to into LEP 2014.

Recommendation

- 10 • It is recommended that a draft planning proposal be prepared, based on the LEP amendments listed in Attachment 1.
- That staff undertake an online public engagement activity during December and January to canvass the views of the community on the draft controls.
- 15 • Following the online engagement activity, the planning proposal should be revised where necessary and reported back to Council in February 2020 for endorsement to submit to the Department of Industry and Environment for Gateway determination.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	OP Activity
<i>Objective 4: We manage growth and change responsibly</i>	4.1 Support the visions and aspirations of local communities through place-based planning and management	4.1.3 Manage development through a transparent and efficient assessment process	4.1.3.10 Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

20

Financial Considerations

25 The development of a short term rental accommodation register may require additional funding. If required, this will be reported to Council following further analysis to determine the register design and how it can be incorporated into Council’s IT systems.

30 Council’s development assessment services may be placed under increasing pressure as landowners seek to regularise their activities. Council should consider the implications for staffing resources in the planning services team to accommodate a rise in the number of development applications.

Given the high number of holiday let’s currently operating in the Shire, it is likely that additional compliance resources may be required to implement the new framework. Council will need to consider resource implication of the new controls and the compliance team work priorities.

BYRON SHIRE COUNCIL

Report No. 13.28 **PLANNING - S4.55 for Modification of development consent DA 10.2017.402.3 to dedicate Lot 130 to Council as a Public Reserve, and amend stormwater design, bushfire asset protection zones and provide habitat connectivity between Management Zones 7b and 9.**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Ivan Holland, Planner
File No: I2019/1934

10

Proposal:
Section 96 10.2017.402.4
Application No:
Proposed modification: S4.55 for Modification of development consent to dedicate Lot 130 to Council as a Public reserve, and amend the stormwater design, bush fire asset protection zones and provide habitat connectivity between Management Zones 7b and 9.

Original Development: Subdivision to create eighteen (18) residential Lots, a public reserve, a drainage reserve, a residual lot and associated roads, earthworks, landscape and infrastructure works (Stage 6 of Tallowood Ridge Estate)

Type of modification sought:
Property description: LOT: 162 DP: 1251169
77 Tuckerroo Avenue MULLUMBIMBY, Lorrikeet Lane, MULLUMBIMBY
Parcel No/s: 269619
Applicant: Bayview Land Development Pty Ltd
Owner: Gainsplay Pty Ltd
Zoning: R2 Low Density Residential / Part RU1 Primary Production / PART RU2 Rural Landscape / PART 1(a) General Rural Zone (LEP 1988)

S4.55 Date received: 21 August 2019
Original DA determination date: 26 July 2017
Integrated Development: Yes – NSW Rural Fire Service
Delegation to determination: Council
Issues: • Dedication of Lot 130 to Council

Summary:

15 Council has received a S4.55 application to modify development consent DA 10.2017.402.3 by dedicating Lot 130 to Council as a Public Reserve and to amend the plans in relation to stormwater drainage, bush fire asset protection zones and management zones for habitat connectivity.

20 Council has previously resolved to accept Lot 130 as a Public Reserve due to the presence of a large tallowood tree on the site, having regards to the concerns from the community that the tree maybe lost if the site was on-sold as a residential lot. The applicant is also seeking to locate a stormwater main adjacent to an existing approved water main that extends from Stage 7 into Stage 6, whilst providing a new Environmental Management Zone 11 providing further habitat connectivity from Management Zones 7b and 9. The applicant has also sought to amend the asset

protection zones for one of the approved lots and the RFS have issued new General Terms of approval in that regard.

5 The proposed application raises no issues and the dedication of Lot 130 to Council will provide an additional pocket park for residents in the Tallowood Estate. As a consequence any Open Space Contributions from this development into the future will need to off set the value of Lot 130.

10 The application addresses relevant planning matters and is recommended for approval subject to the recommended modified conditions.





NOTE TO COUNCILLORS:

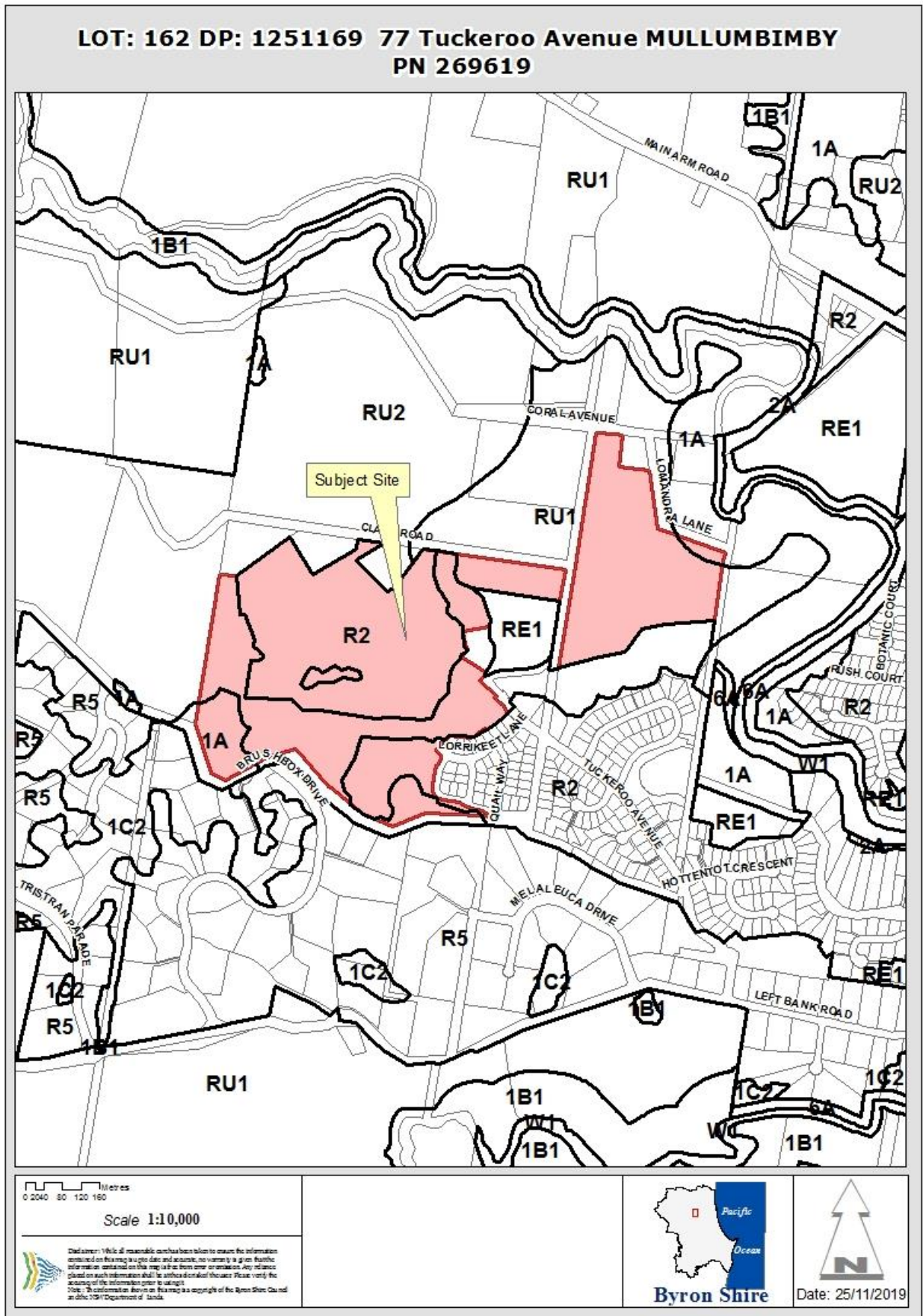
15 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

20 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Application No. 10.2017.402.4, under S4.55 for Modification of development consent to dedicate Lot 130 to Council as a Public Reserve, and to amend the stormwater design, bush fire asset protection zones and provide habitat connectivity between Management Zones 7b and 9, be approved by modifying Development Consent number 10.2017.402.3 in accordance with the recommended modified conditions in Attachment 6 (#E2019/86061).**

Attachments:

- 1 Subdivision Layout Plan 10.2017.402.4, E2019/86588 
- 2 Modified stormwater drainage plans: 1002-MO11 and 1002-MO12 10.2017.402.4, E2019/86592 
- 25 3 Updated rehabilitation areas plan 10.2017.402.4, E2019/86593 
- 4 Recommended modifications to conditions of approval 10.2017.402.4, E2019/86061 



Assessment:

1. INTRODUCTION

1.1. History/Background

5 **DA 10.2017.402.1** for Subdivision to create eighteen (18) residential Lots, a public reserve, a drainage reserve, a residual lot and associated roads, earthworks, landscape and infrastructure works (Stage 6 of Tallwood Ridge Estate) was approved on 22/2/2018 and modified to include a temporary creek crossing on 21/12/2018.

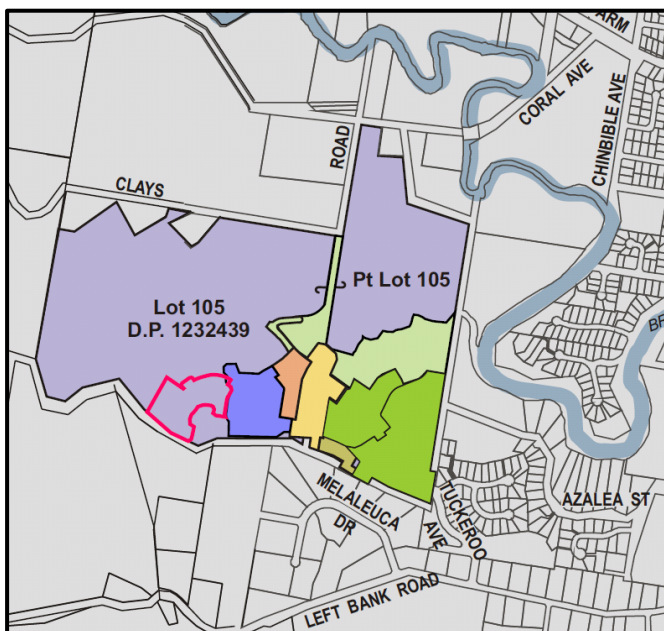
1.2. Description of the proposed development

15 This application seeks approval for a S4.55 for Essential Services Ancillary to Subdivision. In particular:

1. Dedication of Lot 130 as a public reserve;
2. Relocation of a stormwater main to take stormwater from Stage 7 into Stage 6 adjacent to an approved water main;
- 20 3. Amendments to the Bushfire Asset Protection Zones for proposed Lot 145 from 10 metres to 6 metres; and
4. Provide additional habitat connectivity between Management Zones 7b and 9 in terms of the overarching Biodiversity Conservation Management Plan,

1.3. Description of the site

25 *Land is legally described as* LOT: 105 DP: 1232439
Property address is 77 Tuckeroo Avenue MULLUMBIMBY
Land is zoned: Part R2 Low Density Residential / Part RU1 Primary Production / Part RU2 Rural Landscape / Part 1(a) General Rural Zone
Land area is: 44.9 hectares
Property is constrained by: Flood Liable Land, Bush fire prone land, High Conservation Value, High Environmental Value Land



30 **Figure 1** – Location of proposed Stage 6 residential lots (outlined in pink)

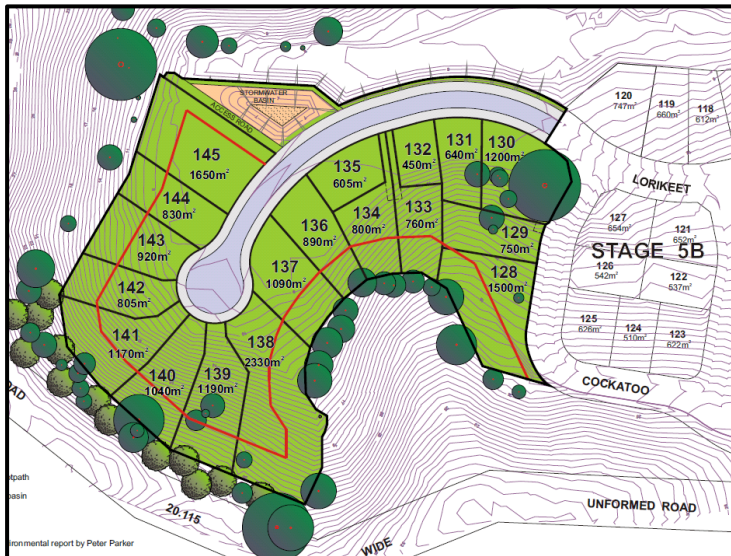


Figure 2 – Diagram of proposed residential lots Stage 6 (red line is extent of bush fire APZ to rear of lots)

5



Photo 1 – Proposed path of stormwater pipe (water pipe inspection port in left foreground of photo)

Photo 2 - Proposed path of stormwater pipe (alignment marked by timber stakes)

2. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

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

2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2000

15 Proposed amendments raise no issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2000

Section 100B of the Rural Fires Act 1997

20 The application was referred to the RFS to review and they have issued amended general terms of approval in relation to the development and the APZ's for Proposed Lot 145.

2.2. Byron Local Environmental Plan 2014

The proposed modification does not raise any new issues under the LEP that were not considered under the original DA.

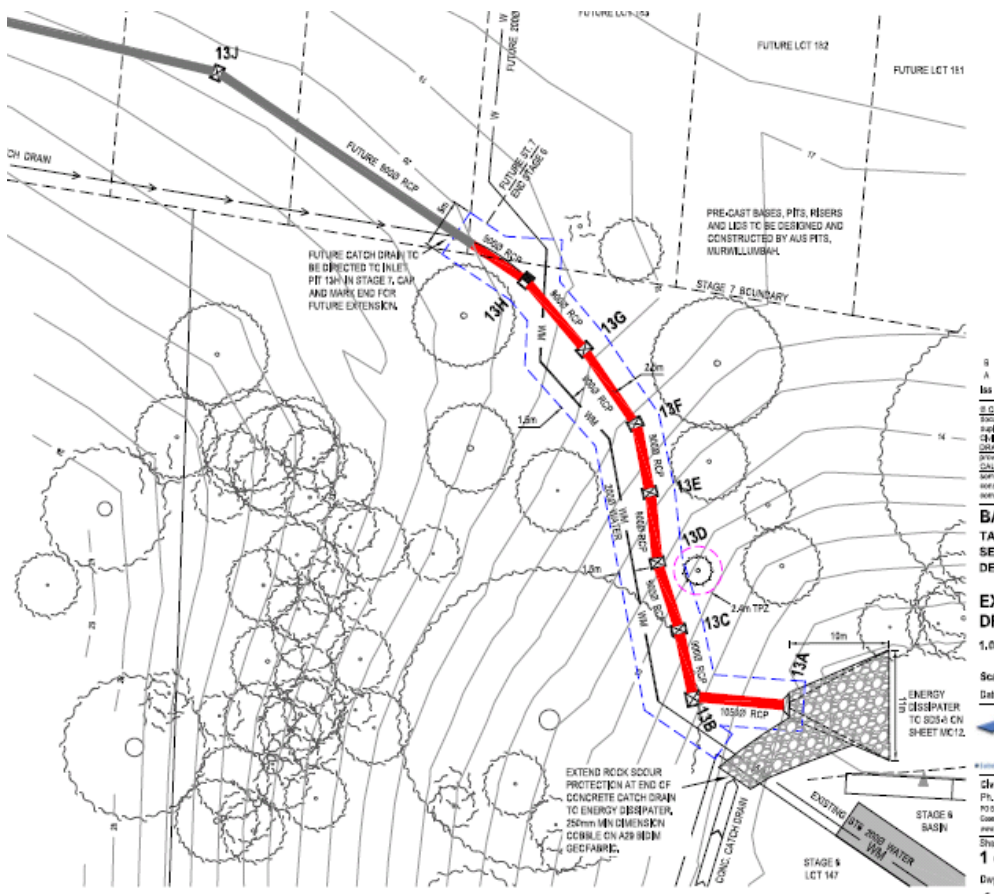
2.3. Draft EPI (Environmental Planning Instruments) that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

5 No draft EPIs affect the proposed development.

2.4. Development Control Plans

Chapter B3 Services

10 The provision of the stormwater main as proposed is consistent with the relevant provisions contained within Chapter B3. The pipe will be stepped and include a series of manholes traversing the slope to gain access to the watercourse in stage 6. Stormwater collected in the main will come from a contributory channel upslope of the Tallwood Estate residential footprint and will not contain road or urban stormwater runoff. As such it does not need to be treated or detained within the stormwater detention pond in stage 6. The pipe will be laid adjacent to an existing approved water main and no tree clearing is required for its installation.



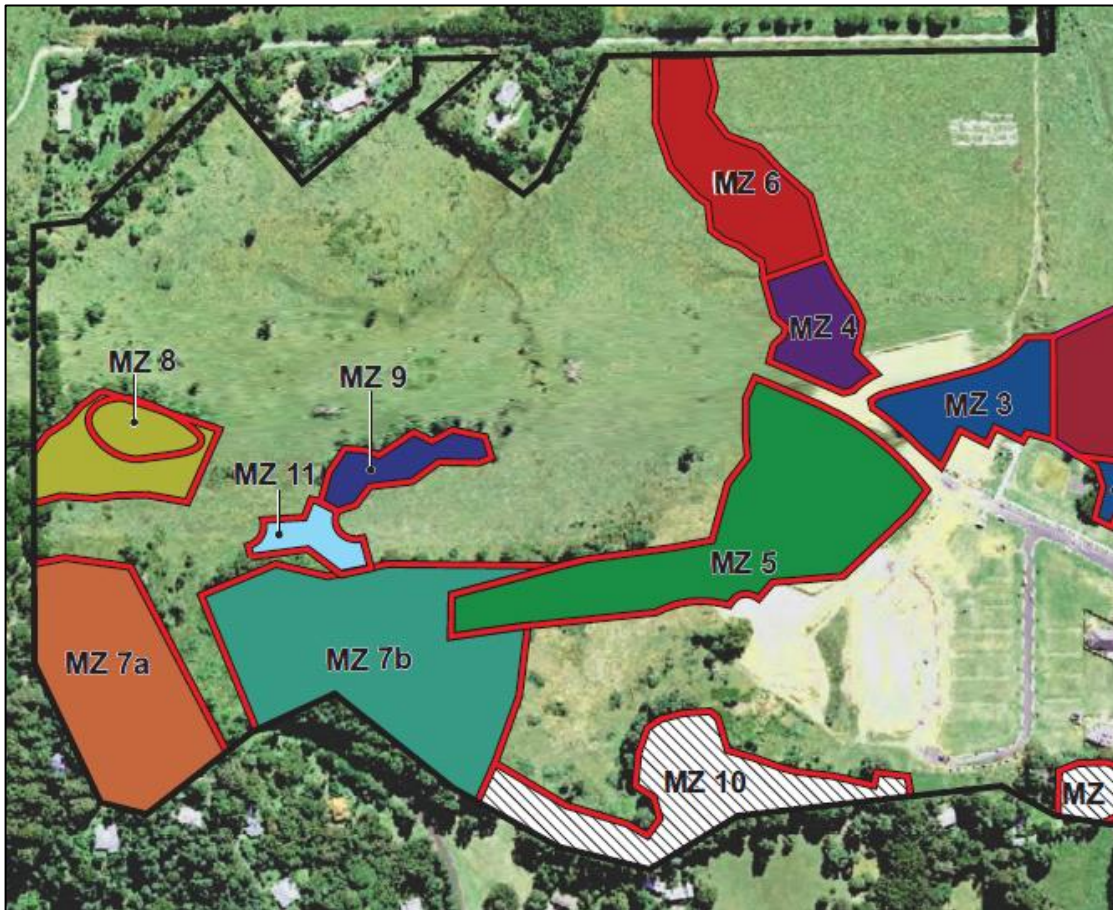
20 **Chapter D6 Subdivision**

25 The location and proposed embellishment of Lot 130 is generally consistent with the relevant listed criteria (D6.2.1 (9)) under Chapter D6. Conditions of consent are proposed in relation to its dedication to Council and embellishment.

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

The proposed stormwater main sits within Management Zone 5 (MZ5). The exact area required for the stormwater main and easement through MZ5 is estimated to be 300m². As an offset and to address issues raised in a previous application that remain unresolved, the applicant has proposed an additional rehabilitation area known as Management Zone 11 (MZ11) with an area of approximately 2500m². This will provide connectivity between the larger ecological areas along the southern boundary of the Tallowood Estate known as Management Zone 7b and Management Zone 9 which is currently an isolated pocket of bushland. This will take some 2500 m² of residential zoned land out of the larger Tallowood Estate.

5
10
15
20
25
30
35



The above is considered a reasonable and positive ecological outcome. In the circumstances an alternate design could have resulted in the street network and residential development permanently isolating the Management Zone 9.

Conditions of consent are proposed requiring the Biodiversity Management Plan for the Estate be updated to reflect the new management zone.

2.6. The suitability of the site for the development

The proposed amendments do not affect the sites suitability for development. The inclusion of Lot 130 as a public reserve will provide for additional shady open space under the large Tallowood tree in the form a pocket park and will be a good outcome for the residents within the estate and the broader community.

3.6 Submissions made in accordance with this Act or the regulations

No submissions were received; however there has been strong community interest from residents waiting for the dedication of Lot 130 as open space.

55

3.7 Public interest

The proposed amendments are unlikely to prejudice or compromise the public interest.

4. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

5

Headworks charges have been updated to reflect the reduction in the number of lots.

It is noted that “*Dedication and embellishment of land used for open space may be offset against the S94 contributions for open space*” (D6.2.1, sub. 9 – DCP).

10

Council resolved to “...*authorise the General Manager to invite the developer to submit a modification application to development consent 10.2017.402.3 to dedicate Lot 130 as a public reserve and offset the value of the land against future development contributions.*” (Resolution 19-278).

15

The contributions assessment for the development application will need to be updated following final agreement between Council and the development on the value of Lot 130 and agreed embellishments. Conditions to apply in terms of Lot 130 being dedicated to Council.

20

5. 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

6. CONCLUSION

25

The application satisfies the provisions contained under S4.55 of the EPA Act 1979 and is considered to be substantially the same development as approved.

30

The proposal raises no issues, with two matters of interest to the community addressed with this modification: the dedication of Lot 130 to Council; and the provision of the new management zone linking an isolated area of vegetation with the larger vegetated areas along the southern boundary. The application otherwise addresses the relevant planning matters and is recommended for approval subject to conditions.

35

STATEMENT OF REASONS

Note: From July 1 2018, Council’s are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.

Statement of Reasons

S.96	The proposed modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.
DA	The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
DA	The proposed development complies with relevant State Environmental Planning Policies
DA	The proposed development complies with relevant provisions of Development Control

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.28

	Plan 2014
DA	The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
DA	The proposed development is considered suitable for the proposed site.

How community views were addressed

1	The DA did not require advertising or notification as per Development Control Plan 2014.
---	--

STAFF REPORTS - INFRASTRUCTURE SERVICES**Report No. 13.29 Building Asset Management Plan****Directorate:** Infrastructure Services5 **Report Author:** Craig Purdy, Asset Engineer**File No:** I2019/170510 **Summary:**

Council has completed a full audit and condition assessment of all council buildings.

15

From this data a draft Buildings Asset Management Plan (BAMP) has been created for General Fund buildings.

20

The draft BAMP was reported to the Transport and Infrastructure Advisory Committee (TIAC) on the 10 October 2019. There was not a quorum for the meeting, however, the BAMP was discussed and favourably accepted by those present. There was a suggestion to review the blank sections on page 26 'to be determined'.

Staff have reviewed this and the information remains unavailable at this point but the Improvement Plan includes this action. Edits to page 34 have been complete.




25

A review of the BAMP Improvement Plan, Section 13 will be undertaken in 2020/21 and it has been added to the draft Operational Plan.

RECOMMENDATION:

That the draft Buildings Asset Management Plan be adopted by Council.

30 **Attachments:**

- 35
- 1 Draft Buildings Asset Management Plan 2019 to 2029 General Fund (excluding Caravan Parks), E2019/37319 
 - 2 Buildings Asset Management Plan Community Levels of Service Report 2019, E2019/39855 
 - 3 Buildings Asset Management Plan Customer Levels of Service Infographic, E2019/39854 

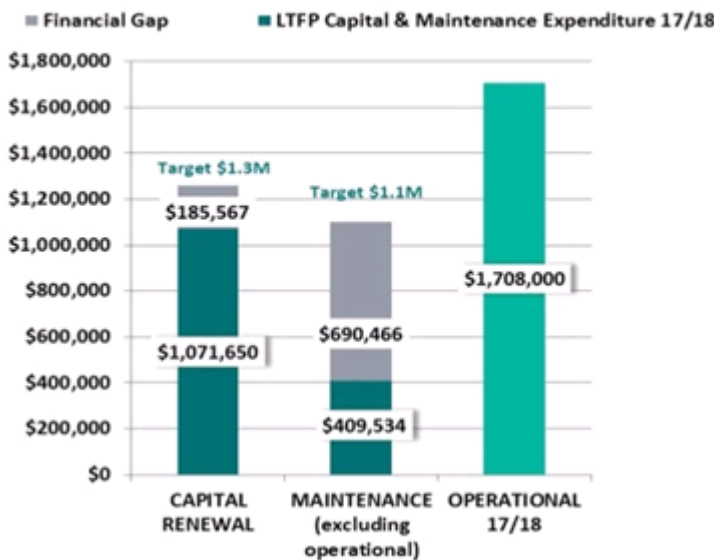
REPORT

The Buildings Asset Management Plan (E2019/37319) includes **166** buildings from the General Fund assets class (this excludes Caravan Parks where funds are restricted and 3 State owned toilets at Brunswick Heads [only the cleaning costs are included in this plan for the 3 state owned Brunswick Heads toilets). The buildings included are: public toilets, libraries, community halls, community / recreation leases, swimming pool, recreation, Bangalow showgrounds, Tyagarah airfield, commercial leases, emergency services and Council operation buildings.

A condition and defect audit was conducted in 2018/19 where 1,600 defects were identified to prepare a Maintenance Plan and over 12,000 components were condition assessed and modelled to develop an optimised Capital Works Plan.

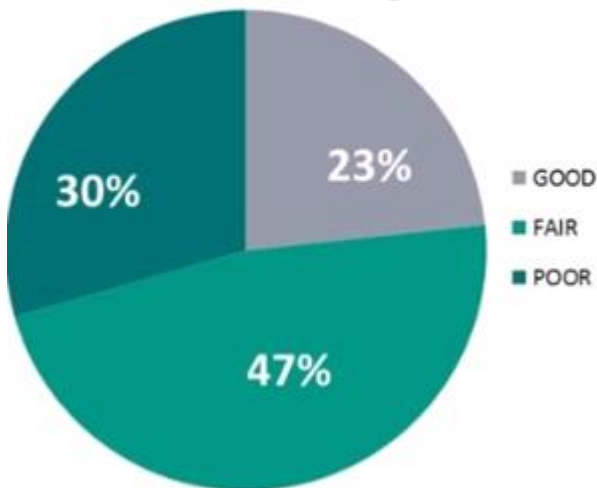
Our present funding levels are insufficient to continue to provide existing services at current levels in the medium term. This conclusion is made from predictive modelling the current Long Term Financial Plan. Asset modelling has established an annual capital renewal gap of **\$185,567** and annual maintenance target of **\$1.1M**. There is a once off defect maintenance gap of \$1.9M.

Building Assets Financial Gaps



The community were engaged and rated the 'quality' of the public toilets at 3.6 and community buildings at 2.2 (1 excellent – 5 very poor). The average 'technical condition' of the public toilets is 3.0 and the community buildings 3.3. There are 30% of the buildings in a poor to very poor condition.

Condition of Buildings 2019

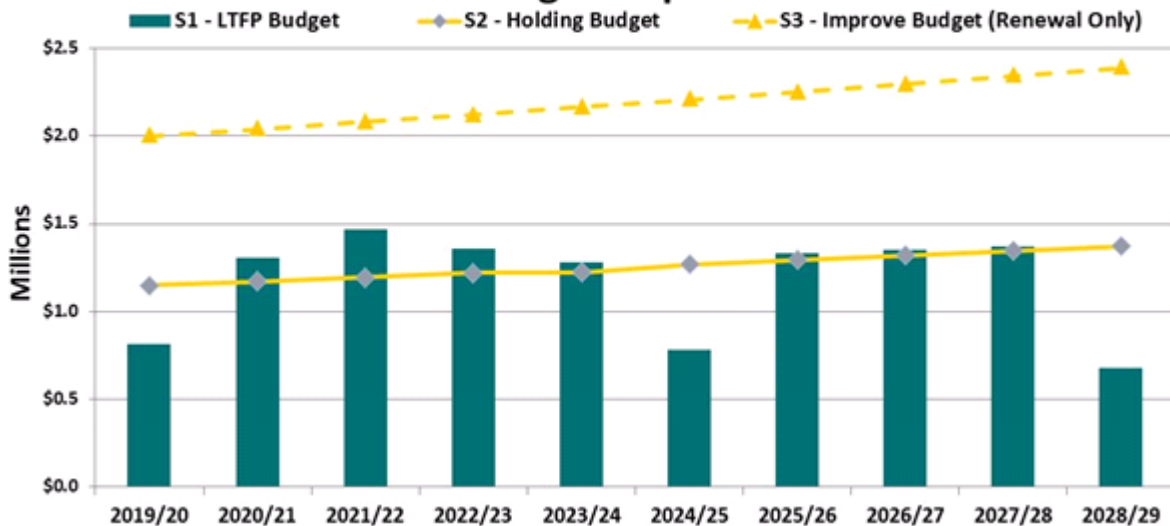


Three funding scenarios were modelled:

- 5 Scenario 1 – “Deteriorate” current Long Term Financial Plan
- Scenario 2 – “Holding” budget
- Scenario 3 – “Improve” budget

10 The identified financial gaps indicate building condition and associated service levels are already falling. This is evident with 30% of buildings in a poor condition. For example, 1 statutory, 57 safety/ environmental/security defects and 94 structural defects identified. The funding gaps, whilst challenging, are comparatively small relative to the gap in roads funding. The funding gaps will be considered in the preparation of the 2020/2021 Operations Plan and associated budget.

Buildings Capital Long Term Financial Plan vs Holding & Improve Scenarios



15

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.2	Develop infrastructure asset renewal and upgrade program in line with Community Solutions Panel values (SP)	1.2.2.1	Prepare a Buildings Asset Management Plan

5

Consultation and Engagement

10 The community have been engaged to measure the performance and importance of the public toilets and community buildings via an online survey from 8 March to 12 April 2019. The Community Buildings Customer Levels of Service Survey results are annexures to this report (E2019/39855 and E2019/39854).

Report No. 13.30 **Reducing Streetlight Use - Update**
Directorate: Infrastructure Services
Report Author: Evan Elford, Manager Works
 Kim Mallee, Sustainability Officer
5 Julia Curry, Sustainability and Emissions Reduction Officer
File No: I2019/1759

10 **Summary:**

At the 22 August 2019 Council meeting, Council resolved (**19-406**):

15 *That Council receives a report on the implications and intricacies of turning off residential street lights and that the report considers:*

- a) *The possible use of some streets to use as trial sites and engagement with those residing on these streets*
- b) *The financial and emission savings*
- c) *The human and environmental benefits*
- 20 d) *Any safety issues*
- e) *Any regulatory issues.*

This report provides an update on actions to date in respect of the above Council resolution.

25

RECOMMENDATION:

1. **That Council not move to turn off streetlights as an energy saving measure at this time as the existing infrastructure does not have the ability to be isolated and managed for this purpose.**
2. **That Council request a cost benefit analysis from Essential Energy regarding the bulk roll out of LED street lighting to the remaining applicable street lights in the Byron Shire.**

30

REPORT

Council's Sustainability Team approached Essential Energy (EE) to gain feedback on the potential feasibility of turning off streetlights.

5

Essential Energy advised that the existing infrastructure does not have the ability to be isolated and managed for this purpose. They also advised that they were unsure if it would be permissible under current energy regulations, even if it was technically possible in the future.

Essential Energy also reported that this could cause issues around fault reporting, community safety and their service level agreement with Council to provide the street lighting service. The trouble with turning off streetlights on roads that have been classified to need them (hence why they are already installed) is that Council would then have made a conscious decision to not meet the Australian Standard for lighting and may become liable should any incident occur in the vicinity.

15

Essential Energy did advise that all new lights (including the new LED lights) would be "Smart Enabled" and that with additional controllers could be made to be independently controlled if all other regulatory and safety issues were overcome. This however would not be possible until late 2020 at the earliest.

20

As a consequence of the feedback obtained from Essential Energy, it is not possible to advance a trial at this time and any investigation in respect of financial and emissions savings from a trial would appear to have little relevance to what might actually be achievable from technology yet to become available and at a currently unknown cost. Accordingly, Council staff have not progressed these investigations further.

25

Next steps

Essential Energy are looking to complete a small trial LED lighting program which involved LED upgrades to 260 streetlights in Ocean Shores. Council chose to defer any full roll out of LED until the findings from the trial were known. Unfortunately, this trial is behind schedule due to problems of procurement and performance of LED lights in respect to meeting Essential Energy specifications and requirements. The trial is unlikely to commence until December 2019 at the earliest.

35

Notwithstanding the delays in running this trial and being able to confidently analyse and quantify cost benefit outcomes, staff believe the greatest energy saving action Council could take would be to roll out LED's which meet Australian Standard for public lighting across the shire.

If greater energy saving was an expected outcome from trialling turning off streetlights, efforts could be made to complete the entire roll out of LED's. It is now possible for LED lighting to be installed across both category P and V roads (previously only available for category P roads). It is recommended that Council request a cost benefit analysis from Essential Energy for the bulk roll out of LED streetlights for the remaining applicable lights in the Byron Shire. This action will assist Council in meeting targets outlined in the Zero Emissions Strategy for council Operations 2025.

45

Mr Wade Elliot, Streetlight and Joint Use Manager for Essential Energy, made an offer to discuss plans and energy saving opportunities with the NRJO General Managers at an upcoming meeting, pending confirmation from NRJO and this may afford an opportunity for Council to advance a streetlight replacement program shire wide earlier than possibly anticipated.

50

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.1	Implement Net Zero Emissions Strategy for Council Operations 2025

5 ***Legal/Statutory/Policy Considerations***

Nil at this stage

Financial Considerations

10

Nil at this stage

Consultation and Engagement

15

Brooke Lyn, Essential Energy
Wade Elliot, Essential Energy

Report No. 13.31 Part Road Reserve Closure and Sale to adjoining Lot 5 DP 714077 255
Repentance Creek Goonengerry
Directorate: Infrastructure Services
Report Author: Deanna Savage, Roads and Property Officer
5 File No: I2019/1861

10 **Summary:**

This report is being presented to Council to endorse the closure of Council road reserve surrounded by Lot 5 DP 714077 highlighted in red Image 1.



15 As per Crown Land determination (*Attachment 1 E2019/84334*) the road/land will vest in Council upon closure and it is proposed to sell the land to the adjoining land owner Lot 5 DP 714077.

Land size is approximately 9,127m².

RECOMMENDATION:

1. That Council endorse the closure of part road reserve surrounded by Lot 5 DP 714077, as per Image 1 of this report.
2. That Council ascertain market value by retaining a suitably qualified Valuer and delegate to the General Manager the authority to enter into a contract for sale of the closed part of the road with the owner of adjoining Lot 5 DP 714077 at a value no less than the value placed on the part closed road by the independent Valuer.
3. That the applicant pay all costs associated with the part road closure, including but not limited to:
 - a) Council application fees
 - b) Council's surveyor's fees and survey, valuation and legal costs
 - c) All registration fees
 - d) Legal costs
4. The allotment created by the part road closure to be consolidated into the existing Parcel No 76290 Lot 5 DP 714077.
5. That Council authorise the execution of all documents necessary to affect the road closure, sale, transfer and consolidation of the part closed road.

20 **Attachments:**

- 1 All submissions for part road reserve closure and purchase 255 Repentance Creek Road Goonengerry Lot 5 DP 714077, E2019/84334 
- 25 2 Email requesting road closure application from owners 255 Repentance Creek Road Lot 5 DP 714077, E2019/84340 

REPORT

Information/Background:

- 5 The closure of Council Road Reserve as per **Image 1** highlighted in red has been instigated by the owner of Lot 5 DP 714077, which surrounds the road reserve.



Image 1

- 10 The owner contacted Council requesting information regarding encroachments on Council road reserve which as can be seen in **Image 2**, runs through their property. The owner wants to place their property on the market for sale and in doing so wants to rectify the encroachments by applying to close and purchase the road reserve. **Image 2** gives an indication of the encroachments the owner is referring to.



Image 2

15

As this road reserve does not adjoin any Council infrastructure and isn't utilised by the public it would be a financial gain to Council to have the road reserve closed and sold to the adjoining land owner.

5 Road Closure Application

An application was received from the owner of Lot 5 DP 714077 (*Attachment 2 – E2019/84340*), in August 2019, requesting the closure and purchase of part of Council road reserve, highlighted in red, **Image 1** above.

10 Staff accepted the application as per the New Process for Road Closures and the *Roads Act 1993* Part 4 Closing of public roads, Division 3 Closing of council public roads by councils 38A, when council may close council public road.

15 The closure was advertised in the Byron Echo on 19 September 2019. Letters were sent out to all adjoining land owners, Crown Lands and all Notifiable Authorities as per the *Roads Act 1993*. A 28 day submission period was given with no submissions of objection by authorities, adjoining land owners or members of the public received. *Attachment 1 E2019/84334* shows all submissions received.

20 *Attachment 2 E2019/84334* also includes Crown Lands response vesting the land to Council upon closure.

STRATEGIC CONSIDERATIONS

25 ***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.1	Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.1	Deliver road and drainage maintenance services in line with Community Solutions Panel values (SP)	1.1.1.2	Implement ongoing road planned maintenance programs

Legal/Statutory/Policy Considerations

30 ***Roads Act 1993***
Part 4 Closing of public roads
Division 3 Closing of council public roads by councils
38A When council may close council public road

A council may propose the closure of a council public road for which it is the roads authority if:

- 35 (a) *the road is not reasonably required as a road for public use (whether for present or future needs), and*
 (b) *the road is not required to provide continuity for an existing road network, and*
 (c) *if the road provides a means of vehicular access to particular land, another public road provide lawful and reasonably practicable vehicular access to that land.*

40 ***38B Notification of proposal to close council public road***

(1) A council that is proposing to close a council public road must cause notice of the proposal:

- (a) to be published in a local newspaper, and
- (b) to be given to:
 - (i) all owners of land adjoining the road, and
 - (ii) all notifiable authorities, and
 - (iii) any other person (or class of person) prescribed by the regulations.

(2) The notice:

- (a) must identify the road that is proposed to be closed, and
- (b) must state that any person is entitled to make submissions to the council with respect to the closing of the road, and
- (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

38C Public submissions and formal objections

- (1) Any person may make submissions to the council with respect to the closing of the road in the manner and within the period specified in the notice published under section 38B.
- (2) Without limiting subsection (1), a notifiable authority in relation to the road may include a statement in the authority's submission to the effect that the authority formally objects to the closing of the road. The authority may withdraw the objection any time by written notice given to the council.

Note.

If a formal objection is made, section 38D (2) provides that the road may not be closed until the objection is withdrawn by the authority or set aside by the Land and Environment Court under this section.

- (3) The council may appeal to the Land and Environment Court against a formal objection made by a notifiable authority against the closing of the road.
- (4) On any such appeal, the Land and Environment Court may:
 - (a) affirm the objection, or
 - (b) set aside the objection.
- (5) In deciding whether to affirm or set aside the objection, the Land and Environment Court must have regard to the public interest.

38D Decision of proposal

- (1) After considering any submissions that have been duly made with respect to the proposal, the council may, by notice published in the Gazette, close the public road concerned.
- (2) However, a council public road may not be closed:
 - (a) in the case of a classified road—unless RMS consents to the closure of the road, or
 - (b) in the case where a notifiable authority has formally objected under section 38C to the closing of the road—until the objection is withdrawn by the authority or set aside by the Land and Environment Court under that section.

38E Effect of notice of closure

- (1) On publication of the notice closing the council public road concerned:
 - (a) the road ceases to be a public road, and
 - (b) the rights of passage and access that previously existed in relation to the road are extinguished.
- (2) The land comprising a former road:
 - (a) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place)—remains vested in the council, and

(b) in any other case—becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

38F Appeals to Land and Environment Court against closure decision

5 *(1) A person referred to in section 38B (1) (b) may appeal to the Land and Environment Court against the closure of a council public road by a council.*

(2) On any such appeal, the Land and Environment Court may:

(a) affirm the closure, or

(b) set aside the closure.

10 *(3) Section 38E is taken never to have applied to a closure that is set aside.*

(4) To avoid doubt, an appeal under section 38C does not prevent an appeal under this section.

SECT 43 Disposal of land comprising former public road owned by council

15 *(1) This section applies to land vested in a council and forming part of a former public road.*

(2) Land to which this section applies is operational land for the purposes of the Local Government Act 1993 unless, before the land becomes vested in the council, the council resolves that it is to be community land, in which case the land is community land.

(3) If the land is disposed of by sale, the proceeds of sale (less the costs of the sale) are to be paid to the council.

20 *(4) Money received by a council from the proceeds of sale of the land is not to be used by the council except for acquiring land for public roads or for carrying out road work on public roads.*

Financial Considerations

25 All costs associated with the road closure are borne by the applicant.

As per *Roads Act 1993* legislation above the money received by council from the proceeds of sale of this land is not to be used by the council except for acquiring land for public roads or for carrying out road work on public roads.

30

Consultation and Engagement

As per the *Roads Act 1993* requirements, the necessary notices and submissions period was undertaken and no objections were received.

Report No. 13.32 **Part Road Closure and purchase Robert Street Bangalow adjoining 5 Deacon Street Lot 7 Section 10 DP 4974 and Lot 1 DP 122670**

Directorate: Infrastructure Services

Report Author: Deanna Savage, Roads and Property Officer

5 **File No:** I2019/1864

Summary:

10


This report is being presented to Council to endorse the closure of Part Council road reserve adjoining 5 Deacon Street (Lot 7 Section 10 DP 4974 and Lot 1 DP 122670) highlighted in blue Image 1.

15 The road will vest in Council upon closure and it is proposed to sell the land to the adjoining land owner of Lot 7 Section 10 DP 4974 and Lot 1 DP 122670

RECOMMENDATION:

1. **That Council endorse the closure of part road reserve adjoining 5 Deacon Street (Lot 7 Section 10 DP 4974 and Lot 1 DP 122670) as per Image 1 highlighted in blue.**
2. **That Council ascertain market value by retaining a suitably qualified Valuer and delegate to the General Manager the authority to enter into a contract for sale of the closed part of the road with the owner of adjoining Lot 7 Section 10 DP 4974 and Lot 1 DP 122670 at a value no less than the value placed on the part closed road by the independent Valuer.**
3. **That the applicant pay all remaining costs associated with the part road closure, including but not limited to:**
 - a) **Council application fees**
 - b) **Council's surveyor's fees and survey, valuation and legal costs**
 - c) **All registration fees**
 - d) **Legal costs**
4. **The allotment created by the part road closure to be consolidated into the existing Parcel No's 19260 Lot 7 Section 10 DP 4974 and 148090 Lot 1 DP 122670.**
5. **That Council authorise the execution of all documents necessary to affect the road closure, sale, transfer and consolidation of the part closed road.**

20 **Attachments:**

- 1 Submissions for part road reserve closure and sale 5 Deacon street Bangalow Lot 7 Sec 10 DP 4974 and Lot 1 DP 122670, E2019/84682 

25

REPORT

Following the identification of an encroachment of a carport a request was by the owner of Lot 7 Section 10 DP 4974 to either lease the road reserve the encroachment was on or potentially close this part and purchase the land to deal with an encroachment of a carport .

At the time staff determined that the carport encroachment needed to be removed, (which has now been fully removed) and an order was issued by compliance for the demolition of the bathroom encroachment.

Following the above the owner of Lot 7 Section 10 DP 4974 made contact with Councillor Hunter and a Notice of Motion was lodged at the 18 April 2019 Council meeting. The outcome of this meeting was resolution 19-174.

Resolution Number 19-174

Resolved that Council agree to a boundary adjustment of 1.5 meters for the southern boundary of Lot 7 section 10 DP 4974 at 5 Deacon Street, Bangalow to regularise a building encroachment in a heritage area of Bangalow.

The motion was put to the vote and declared carried.

Road closure application

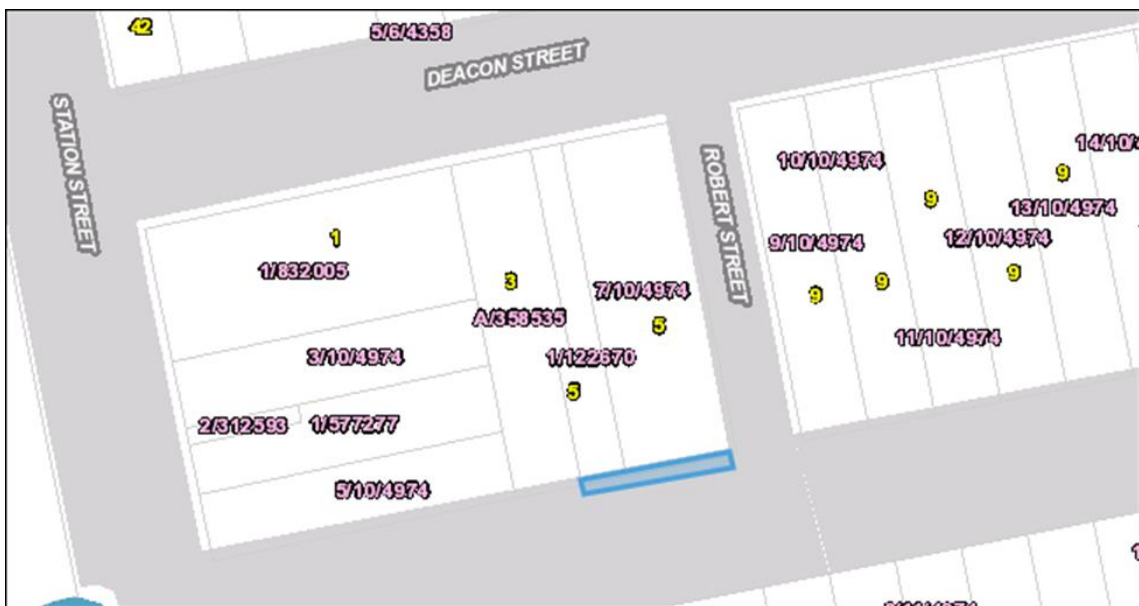


Image 1

In accordance with Council Resolution 19-174 part road closure (section of closure highlighted in blue Image 1) was commenced as per the New Process for Road Closures and the Roads Act 1993 Part 4 Closing of public roads, Division 3 Closing of council public roads by councils 38A, when council may close council public road.

The closure was advertised in the Byron Echo on 19 September 2019. Letters were sent out to all adjoining land owners, Crown Lands and all Notifiable Authorities as per the Roads Act 1993. A 28 day submission period was given with no submissions of objection by authorities, adjoining land owners or members of the public received. Attachment 1 E2019/84682 shows all submissions received.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.1	Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.1	Deliver road and drainage maintenance services in line with Community Solutions Panel values (SP)	1.1.1.2	Implement ongoing road planned maintenance programs

5

Legal/Statutory/Policy Considerations

Roads Act 1993

Part 4 Closing of public roads

10 *Division 3 Closing of council public roads by councils*

38A When council may close council public road

A council may propose the closure of a council public road for which it is the roads authority if:

- 15 *(a) the road is not reasonably required as a road for public use (whether for present or future needs), and*
- (b) the road is not required to provide continuity for an existing road network, and*
- (c) if the road provides a means of vehicular access to particular land, another public road provide lawful and reasonably practicable vehicular access to that land.*

38B Notification of proposal to close council public road

20 *(1) A council that is proposing to close a council public road must cause notice of the proposal:*

- (a) to be published in a local newspaper, and*
- (b) to be given to:*
 - 25 *(i) all owners of land adjoining the road, and*
 - (ii) all notifiable authorities, and*
 - (iii) any other person (or class of person) prescribed by the regulations.*

(2) The notice:

- 30 *(a) must identify the road that is proposed to be closed, and*
- (b) must state that any person is entitled to make submissions to the council with respect to the closing of the road, and*
- (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.*

38C Public submissions and formal objections

- 35 *(1) Any person may make submissions to the council with respect to the closing of the road in the manner and within the period specified in the notice published under section 38B.*
- (2) Without limiting subsection (1), a notifiable authority in relation to the road may include a statement in the authority's submission to the effect that the authority formally objects to the closing of the road. The authority may withdraw the objection any time by written notice given to the council.*

40 ***Note.***

If a formal objection is made, section 38D (2) provides that the road may not be closed until the

objection is withdrawn by the authority or set aside by the Land and Environment Court under this section.

(3) The council may appeal to the Land and Environment Court against a formal objection made by a notifiable authority against the closing of the road.

5 (4) On any such appeal, the Land and Environment Court may:

(a) affirm the objection, or

(b) set aside the objection.

(5) In deciding whether to affirm or set aside the objection, the Land and Environment Court must have regard to the public interest.

10 **38D Decision of proposal**

(1) After considering any submissions that have been duly made with respect to the proposal, the

council may, by notice published in the Gazette, close the public road concerned.

(2) However, a council public road may not be closed:

15 (a) in the case of a classified road—unless RMS consents to the closure of the road, or

(b) in the case where a notifiable authority has formally objected under section 38C to the closing of the road—until the objection is withdrawn by the authority or set aside by the Land and Environment Court under that section.

20 **38E Effect of notice of closure**

(1) On publication of the notice closing the council public road concerned:

(a) the road ceases to be a public road, and

(b) the rights of passage and access that previously existed in relation to the road are extinguished.

(2) The land comprising a former road:

25 (a) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place)—remains vested in the council, and

(b) in any other case—becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

30 **38F Appeals to Land and Environment Court against closure decision**

(1) A person referred to in section 38B (1) (b) may appeal to the Land and Environment Court against the closure of a council public road by a council.

(2) On any such appeal, the Land and Environment Court may:

(a) affirm the closure, or

35 (b) set aside the closure.

(3) Section 38E is taken never to have applied to a closure that is set aside.

(4) To avoid doubt, an appeal under section 38C does not prevent an appeal under this section.

40 **SECT 43 Disposal of land comprising former public road owned by council**

(1) This section applies to land vested in a council and forming part of a former public road.

(2) Land to which this section applies is operational land for the purposes of the Local Government Act 1993 unless, before the land becomes vested in the council, the council resolves that it is to be community land, in which case the land is community land.

45 (3) If the land is disposed of by sale, the proceeds of sale (less the costs of the sale) are to be paid to the council.

(4) Money received by a council from the proceeds of sale of the land is not to be used by the council except for acquiring land for public roads or for carrying out road work on public roads.

Financial Considerations

5 The 2019/2020 Budget has provision for \$4,000 (GL account 4680.008) for this road closure that was carried over from the 2018/2019 financial year representing the unexpended portion of the budget originally allocated by Council via a Notice of Motion in April 2019.

All further costs associated with the road closure are borne by the applicant.

10 As per *Roads Act 1993* legislation above the money received by council from the proceeds of sale of this land is not to be used by the council except for acquiring land for public roads or for carrying out road work on public roads.

Consultation and Engagement

15 As per the *Roads Act 1993* requirements, the necessary notices and submissions period was undertaken and no objections were received.

Report No. 13.33 Road Reserve Closure and Purchase 149 Federal Drive Eureka Lot 22 DP 1014053

Directorate: Infrastructure Services

Report Author: Deanna Savage, Roads and Property Officer

5 **File No:** I2019/1893

Summary:



10 This report is being presented to Council to endorse the closure of Council road reserve, namely Whian Creek Road surrounded by 149 Federal Drive Eureka(Lot 22 DP 1014053) highlighted in red Image 1.

15 Crown Lands determined the road/land will vest in Council upon closure. It is proposed to sell the land to the adjoining land owner of Lot 22 DP 1014053. Land size is approximately 14,570m².

RECOMMENDATION:

1. **That Council endorse the closure of part road reserve surrounded by Lot 22 DP 1014053, as per Image 1 of this report.**
2. **That Council ascertain market value by retaining a suitably qualified Valuer and delegate to the General Manager the authority to enter into a contract for sale of the closed part of the road with the owner of adjoining Lot 22 DP 1014053 at a value no less than the value placed on the part closed road by the independent Valuer.**
3. **That the applicant pay all costs associated with the part road closure, including but not limited to:**
 - a) **Council application fees**
 - b) **Council's surveyor's fees and survey, valuation and legal costs**
 - c) **All registration fees**
 - d) **Legal costs**
4. **The allotment created by the part road closure to be consolidated into the existing Parcel No 231770 Lot 22 DP 1014053.**
5. **That Council authorise the execution of all documents necessary to affect the road closure, sale, transfer and consolidation of the part closed road.**

20 **Attachments:**

- 1 Emails and application fee for road closure application 149 Federal Drive Eureka Lot 22 DP 1014053, E2019/84490 
 - 2 Submissions for road closure Whian Creek Road 149 Federal Drive Eureka Lot 22 DP 1014053, E2019/84467 
- 25

REPORT

This closure has been instigated by Rob Doolan Balanced Systems Planning Consultants on behalf of his client owners of Lot 22 DP 1014053. As part of DA 10.2018.137.1 approved Consent Conditions, condition 7 states:

Road closure application

A permanent road closure application under the provisions of the Roads Act 1993 for the existing paper road identified as Whian Creek Road must be submitted to the relevant road authority.

Section to be closed viewed on **Image 1** highlighted in red.



Image 1

Road closure application

An application was received from Balanced Systems Planning Consultants Rob Doolan (*Attachment 1 – E2019/84490*), on behalf of the owner of Lot 22 DP 1014053 in August 2019, requesting the closure and purchase of part of Council road reserve, highlighted in red, **Image 1** above as part of conditions of consent DA 10.2018.137.1.

Staff accepted the application as per the New Process for Road Closures and the *Roads Act 1993* Part 4 Closing of public roads, Division 3 Closing of council public roads by councils 38A, when council may close council public road.

The closure was advertised in the Byron Echo on 19 September 2019. Letters were sent out to all adjoining land owners, Crown Lands and all Notifiable Authorities as per the *Roads Act 1993*. A 28 day submission period was given with no submissions of objection by authorities, adjoining land owners or members of the public received. *Attachment 2 E2019/84467* shows all submissions received.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.1	Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.1	Deliver road and drainage maintenance services in line with Community Solutions Panel values (SP)	1.1.1.2	Implement ongoing road planned maintenance programs

5

Legal/Statutory/Policy Considerations

Roads Act 1993

Part 4 Closing of public roads

10 ***Division 3 Closing of council public roads by councils***

38A When council may close council public road

A council may propose the closure of a council public road for which it is the roads authority if:

- 15 *(a) the road is not reasonably required as a road for public use (whether for present or future needs), and*
- (b) the road is not required to provide continuity for an existing road network, and*
- (c) if the road provides a means of vehicular access to particular land, another public road provide lawful and reasonably practicable vehicular access to that land.*

38B Notification of proposal to close council public road

20 *(1) A council that is proposing to close a council public road must cause notice of the proposal:*

- (a) to be published in a local newspaper, and*
- (b) to be given to:*
 - 25 *(i) all owners of land adjoining the road, and*
 - (ii) all notifiable authorities, and*
 - (iii) any other person (or class of person) prescribed by the regulations.*

(2) The notice:

- 30 *(a) must identify the road that is proposed to be closed, and*
- (b) must state that any person is entitled to make submissions to the council with respect to the closing of the road, and*
- (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.*

38C Public submissions and formal objections

- 35 *(1) Any person may make submissions to the council with respect to the closing of the road in the manner and within the period specified in the notice published under section 38B.*
- (2) Without limiting subsection (1), a notifiable authority in relation to the road may include a statement in the authority's submission to the effect that the authority formally objects to the closing of the road. The authority may withdraw the objection any time by written notice given to the council.*

Note.

40 *If a formal objection is made, section 38D (2) provides that the road may not be closed until the*

objection is withdrawn by the authority or set aside by the Land and Environment Court under this section.

(3) The council may appeal to the Land and Environment Court against a formal objection made by a notifiable authority against the closing of the road.

5 (4) On any such appeal, the Land and Environment Court may:

(a) affirm the objection, or

(b) set aside the objection.

(5) In deciding whether to affirm or set aside the objection, the Land and Environment Court must have regard to the public interest.

10 **38D Decision of proposal**

(1) After considering any submissions that have been duly made with respect to the proposal, the

council may, by notice published in the Gazette, close the public road concerned.

(2) However, a council public road may not be closed:

15 (a) in the case of a classified road—unless RMS consents to the closure of the road, or

(b) in the case where a notifiable authority has formally objected under section 38C to the closing of the road—until the objection is withdrawn by the authority or set aside by the Land and Environment Court under that section.

20 **38E Effect of notice of closure**

(1) On publication of the notice closing the council public road concerned:

(a) the road ceases to be a public road, and

(b) the rights of passage and access that previously existed in relation to the road are extinguished.

(2) The land comprising a former road:

25 (a) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place)—remains vested in the council, and

(b) in any other case—becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

30 **38F Appeals to Land and Environment Court against closure decision**

(1) A person referred to in section 38B (1) (b) may appeal to the Land and Environment Court against the closure of a council public road by a council.

(2) On any such appeal, the Land and Environment Court may:

35 (a) affirm the closure, or

(b) set aside the closure.

(3) Section 38E is taken never to have applied to a closure that is set aside.

(4) To avoid doubt, an appeal under section 38C does not prevent an appeal under this section.

40 **SECT 43 Disposal of land comprising former public road owned by council**

(1) This section applies to land vested in a council and forming part of a former public road.

(2) Land to which this section applies is operational land for the purposes of the Local Government Act 1993 unless, before the land becomes vested in the council, the council resolves that it is to be community land, in which case the land is community land.

45 (3) If the land is disposed of by sale, the proceeds of sale (less the costs of the sale) are to be paid to the council.

(4) Money received by a council from the proceeds of sale of the land is not to be used by the council except for acquiring land for public roads or for carrying out road work on public roads.

Financial Considerations

All costs associated with the road closure are borne by the applicant.

- 5 As per *Roads Act 1993* legislation above the money received by council from the proceeds of sale of this land is not to be used by the council except for acquiring land for public roads or for carrying out road work on public roads.

10 ***Consultation and Engagement***

As per the *Roads Act 1993* requirements, the necessary notices and submissions period was undertaken and no objections were received.

Report No. 13.34 **1 Broken Head Road Project**
Directorate: Infrastructure Services
Report Author: Phil Warner, Manager Assets and Major Projects
File No: I2019/1923

5

Summary:

10 In August 2019 Council considered a report on a Request for Tender (RFT) for the 1 Broken Head Road Redevelopment. Council resolved:

Resolved 19-417:

- 15 1. *That Council defer a decision on whether to accept any of the tenders submitted for RFT 2019-0015 – 1 Broken Head Road Redevelopment.*
- 20 2. *That a Councillor workshop be convened to consider the tenders submitted for RFT 2019-0015 – 1 Broken Head Road Redevelopment.*

20

In accordance with point 2, Council considered the matter at a Strategic Planning Workshop on 18 November 2019.

25

The purpose of this report is to again present to Council the matter for decision.

RECOMMENDATION:

- 1. That Council decline to accept any of the tenders submitted for RFT 2019-0015 – 1 Broken Head Road Redevelopment.**
- 2. That Council, in accordance with s178 part 3(a) under Local Government Regulation 2005, cancel the proposal for the contract.**

Attachments:

- 30 1 Confidential - Redevelopment Tender Evaluation Report CONFIDENTIAL FINAL DRAFT, E2019/57134

Report

In August 2019 Council considered a report on a Request for Tender (RFT) for the 1 Broken Head Road Redevelopment. Council resolved:

5

Resolved 19-417:

3. *That Council defer a decision on whether to accept any of the tenders submitted for RFT 2019-0015 – 1 Broken Head Road Redevelopment.*

10

4. *That a Councillor workshop be convened to consider the tenders submitted for RFT 2019-0015 – 1 Broken Head Road Redevelopment.*

In accordance with point 2, Council considered the matter at a Strategic Planning Workshop on 18 November 2019.

15

The purpose of this report is to again present to Council the matter for decision.

In March 2018, Council undertook an Expression of Interest (EOI) process inviting submissions from capable and experienced organisations regarding the future use of the former South Byron STP site (1 Broken Head Road). The EOI process allowed Council to gauge the level of preliminary interest in the development of the site and to develop a short-list of tenderers for a further selective procurement process. The following organisations were shortlisted:

20

- The Village Retirement Group
- Archiblox and Byron Bay Eco Lodges
- The Living School
- National Affordable Housing Consortium.

25

Byron Shire Council issued a Request for Tender (RFT) for the 1 Broken Head Road Redevelopment opening 8 March 2019 and closing on 17 May 2019. The RFT was issued to the above four shortlisted organisations.

30

An Evaluation Panel comprising of five Council staff members was formed.

35

Tenders were received from the following proponents:

- Archiblox and Byron Bay Eco Lodges
- The Living School
- National Affordable Housing Consortium.

40

The Village Retirement Group officially withdrew from the procurement process on 15 May 2019.

An initial compliance check was conducted by the Evaluation Panel to identify submissions that did not comply with the requirements of the RFT.

45

The Compliance Criteria are:

- Tender lodged on time, in accordance with the Conditions of Tender
- Respondent has a valid Australian Business Number
- Respondent substantially complies with the stated requirements
- Respondent substantially complies with the draft lease
- Commitment to ethical business practice principles
- Tenderer confirms no ties to Adani.

50

During the initial compliance check, the evaluation panel identified that all respondents **did not** comply with the compliance criteria. This outcome was checked with the probity advisor O'Connor Marsden.

- 5 The Evaluation Panel chose to continue and the tenders were evaluated in accordance with the following evaluation criteria:

Criteria	Description	Weighting
Financial Return	<p>Financial viability of the Tender and financial benefit to Council. Elements which will be considered include:</p> <ul style="list-style-type: none"> • Financial return to Council; and • Structure of financial return. 	30%
Vision, concept design, delivery approach and operation	<p>Tender alignment with Council's Community Strategic Plan and vision for the Site, including:</p> <ul style="list-style-type: none"> • Concept design; • Delivery approach; • Development staging and program; and • Management and long term operation. 	25%
Economic and social benefits	<p>Tender performance in the delivery of economic and social benefits for the immediate and broader Byron Shire Community.</p> <p>Elements which will be considered include:</p> <ul style="list-style-type: none"> • Social benefits • Environmental benefits • Economic benefits. 	20%
Financial capacity	<p>Demonstrated financial capacity (including financial resources) indicating clear ability to fund, to manage and deliver a development of the size, character and complexity of the Project.</p> <p>Elements which will be considered include:</p> <ul style="list-style-type: none"> • Financial status of the Tenderer; and • Structure of financial arrangements including the source and adequacy of the Tenderer's funding. 	10%
Experience and capability	<p>Demonstrated capability to plan, deliver and operate a development of the size, character and complexity of the Project.</p> <p>Elements which will be considered include:</p> <ul style="list-style-type: none"> • Demonstrated understanding of the applicable planning approval pathway; • Proposed community engagement through all phase of the Project: 	10%

	<ul style="list-style-type: none"> • Team composition; • Experience in successfully delivering and operating similar projects; and • Capability and resources. 	
Risk Management	Degree of demonstration of the Tenderer’s understanding of the proposed risk allocation and the Tenderer’s approach to managing and mitigating the risks the Tenderer proposes to accept.	5%

Each of the criteria was scored out of ten according to the following rating scale:

Score	Rating
10	Outstanding - Requirements are exceeded in most key areas & addressed to a very high standard in others. All claims are fully substantiated. The solution is sound and represents very low risk.
8	Very Good - Requirements have been exceeded in some key areas. Most claims are fully substantiated. The solution is sound and represents low risk.
6	Acceptable - Requirements have been met to a satisfactory standard.
4	Passable - Requirements have been met but to a very low standard. The solution is passable but some major shortcomings or deficiencies could make the solution unworkable. The solution is of high to medium risk.
2	Marginal - Requirements have not been fully met or have been inadequately dealt with in most or all areas. The business solution is unclear. Clarification may rectify the understanding of the solution. The solution is of high risk.
0	Non-Compliant - The offer completely failed to respond to the criteria

5 The results of the evaluation are detailed in the attached confidential tender evaluation report.

In summary, all tenders resulted in comparatively low scores.

10 As reflected in the low scores, **none** of the responses significantly meet Council’s strategic objectives for the redevelopment of the site. Economic and social benefits are at most marginal and targeted at small segments of the broader Byron community. Financial return over 25 year could not be consistently assessed. This was an important criteria for Council as a financial return to the Sewer Fund could variously repay loans, lower service pricing or potentially support environmental outcomes aligned with sewer operations.

15 **Key issues**

Site Remediation

20 A detailed update of the progress of remediation was provided to Councillors at the 18 November Strategic Planning Workshop.

25 In summary, a tender will be issued in early 2020 for the works associated with relocating and capping the remaining contaminated material on site by creating an L-shaped berm along the western and southern edges of the property.

The project team has consulted with key stakeholders extensively throughout the project history. Their feedback in conjunction with the results of contamination investigations has informed the outcome of the remediation option. It should be noted that early in the project key stakeholders

Arakwal Corporation, the NPWS and DPI had positive feedback to the remediation project. More recently, both the Arakwal and NPWS in particular expressed a desire to:

- Have the site complement or integrate with the adjacent Arakwal National Park;
- 5 - Have all contaminated material removed from site. They viewed the berm solution as an interim or incomplete solution. The Arakwal did concede that the berm solution would be acceptable to them only if Council committed to revisiting the removal of all contaminated material at the end of the proposed 25 year property lease; and
- Have more consultation with Council particularly with regards to the redevelopment of the
- 10 site as stated in the MOU with Council.

Due to the procurement and probity requirements of the site redevelopment EOI/Tender process, no stakeholder was able to be consulted with in detail. However, if redevelopment proceeds it will be a requirement for Council and the proponent to consult thoroughly with key stakeholders particularly the Arakwal Corporation.

15

Existing sewage treatment ponds

The redevelopment tender proponents have all expressed the desire for Council to maintain control of the two sewage treatment ponds. At the conclusion of remediation works the ponds will remain in-situ and unmodified. As the ponds are currently used, and are valued by the community as an environmental area with no human contact (primary or secondary), they are currently deemed suitable for that purpose provided they are not disturbed. The selected remediation option allows both sewage treatment ponds to remain 'as is' for environmental purposes however this comes with access and sediment contact risks:

25

- Access: The ponds are designed as sewage infrastructure and have steep embankments around the perimeter. Should a member of the public access or fall into the water exiting the ponds could prove difficult. To mitigate this risk, Council could fully fence the ponds which will come at a cost to amenity (e.g. proximity for bird watching), aesthetics and operational
- 30 finances. Council could alternatively reshape the ponds which would require disturbance of sediments and possible remediation;
- Sediment Contact: Whilst the water contained within the ponds is not contaminated (it is effectively stormwater), heavy metals and other persistent contaminants associated with STP operations may be present in the sediments of the ponds. The sediments do not pose a hazard in their current undisturbed state within the ponds and the environmental consultant has confirmed that should sediments remain in-situ contaminants will not migrate. Contact with such sediments should be avoided by people for both human health and the need to
- 35 avoid sediment disturbance. Council could choose to remediate the ponds and this would require contaminant investigations, a remediation action plan, validation activities and works on the ponds. Such works would likely require dewatering and possible removal of sediments (if reshaping the ponds) or, at minimum, capping of sediments. Secondary
- 40 contact activities (kayaking etc) in the ponds in the current state are not advisable due to the need to monitor and police such activities to prevent primary contact and access to
- 45 sediments.

As considered at the 18 November 2019 SPW, the accessibility and safety of the sewage ponds should be a factor in all deliberations pertaining to the future use of the site.

50

Next steps

The recommendation of the Evaluation Panel is to decline to accept any of the tenders.

It is possible that the elected council, having declined to accept any of the tenders, may wish to amongst a range of options:

- 5 1) continue to work with one of the tenders in developing their proposal for the site. In such circumstances the staff recommendation could be changed to specify a Tenderer to move forward with the next phase of community engagement to test support for the proposal. This process would shape the details of the proposal with a view to reaching an agreement with council.
- 10 2) commence a new master planning process. In such circumstances the staff recommendation could be changed to direct a new planning process and specify key issues for consideration.
- 3) pause action on the future use of the site whilst the remediation of the site is completed.

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.5	Provide continuous urban water and sewerage services within the Shire	1.5.2	Ensure Wastewater Treatment Plants are maintained in accordance with operating licences	1.5.2.7	South Byron Sewerage Treatment Plant future use options

15

Financial Implications

The 2019/20 Sewer Fund capital program includes funding to progress the future use of the remediated South Byron STP site.

20

Statutory and Policy Compliance Implications

The tendering process has been undertaken in accordance with Council’s Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2005. The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.

25

Local Government (General) Regulation 2005 - Reg 178

30

Acceptance of tenders

178 Acceptance of tenders

35

- (1) *After considering the tenders submitted for a proposed contract, the council must either:*
 - (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
 - (b) *decline to accept any of the tenders.*

40

- (2) *A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*

45

- (3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*
 - (a) *postpone or cancel the proposal for the contract,*

- (b) *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
- (c) *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
- 5 (d) *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
- (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
- (f) *carry out the requirements of the proposed contract itself.*
- 10 (4) *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*
 - (a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*
 - (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*
- 15

Council's endorsement of the recommendation to not award the tender, as recommended in the attached Evaluation Report, is sought.

Report No. 13.35 **Bangalow Christmas Eve Carnival**
Directorate: Infrastructure Services
Report Author: Andrew Pearce, Traffic Engineer
File No: I2019/1968

5

Summary:

10 The purpose of this report is to gain Council's support for the Bangalow Christmas Eve Carnival, subject to Local Traffic Committee recommendations.

RECOMMENDATION:

1. **That Council support the Bangalow Christmas Eve Carnival 2019 to be held Tuesday 24 December 2019, that includes the temporary road closure of Byron Street, Bangalow between Ashton Street and Granuaille, between 3:30pm and 10:00pm.**
2. **That the approval provided in Part 1 is subject to any Local Traffic Committee recommendations.**

15

REPORT

The following information is cut and paste from the relevant LTC report used to obtain LTC recommendations.

5

The Bangalow Christmas Eve Carnival is an annual community event with performers, food vendors and carnival rides. It is anticipated that there will be approximately 2,000 attendees.

10

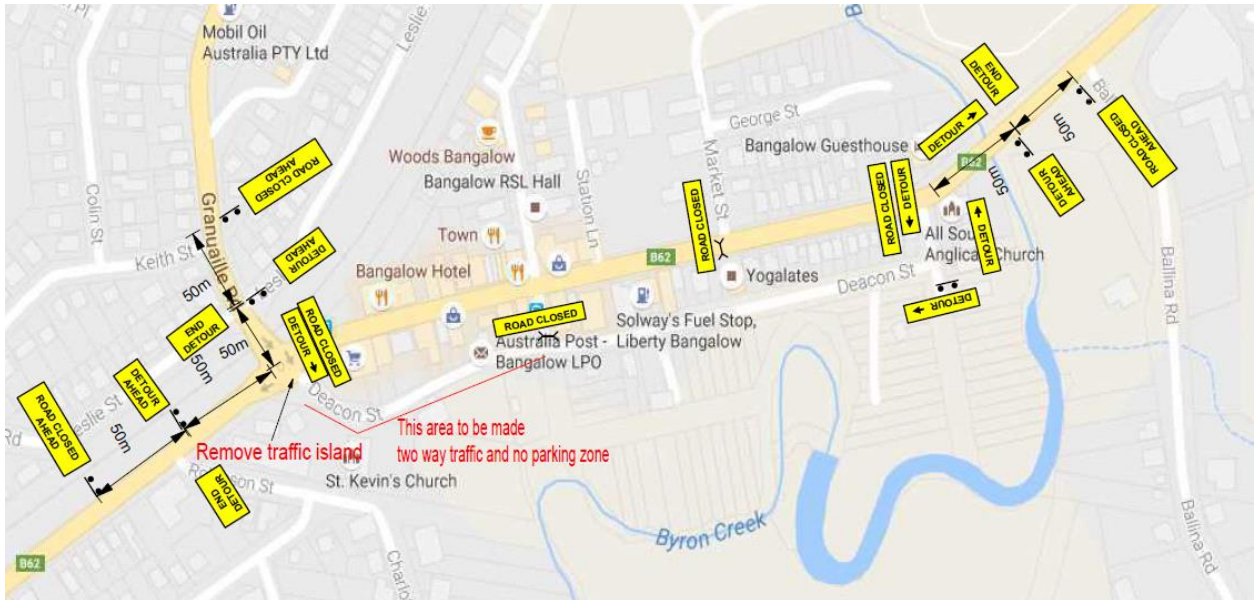
It is proposed that Byron Street will be closed between 3:30pm and 10:00pm on Tuesday 24 December 2019. There will be detours in place to allow traffic to continue to flow. Traffic will be directed through Deacon Street, which will facilitate two-way traffic flow. These measures are identical to traffic control measures adopted in 2018.

15

Parking will be available at the Bangalow Showgrounds, which will allow pedestrians to have access to the carnival without the need to cross a trafficable road.

20

It is requested that Council endorse the event, subject to Local Traffic Committee recommendations. It is noted the following recommendations were stated in the 2018 LTC report and are again recommended within the 2019 LTC report.



General LTC recommendations:

25

a) separate approvals by NSW Police and RMS being obtained, noting that the traffic control plan is partially located on a state road;

30

b) implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation;

35

c) that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;

d) the event be notified on Council’s webpage;

e) the event organiser:

i) undertake consultation with community and affected businesses including adequate response/action to any raised concerns;

ii) undertake consultation with emergency services and address any identified issues;

iii) holding \$20m public liability insurance cover which is valid for the event;

iv) paying Council’s Road Event Application Fee prior to the event.

Key issues

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.6	Manage traffic and parking in an efficient manner	1.6.4	Improve effectiveness of Local Traffic Committee	1.6.4.1	Continued reporting of traffic matters through the Local Traffic Committee

Consultation and Engagement

A condition of the endorsement of this event is that appropriate consultation is undertaken, including:

- Advertising the impact of the event in the local newspaper and on the Council website.
- Informing community and business that are directly impacted.
- Liaising with bus and taxi operators.
- Consulting with emergency services.

Report No. 13.36 **Minor changes to car parking signage in vicinity of Byron Youth Activity Centre Sandhills Reserve**

Directorate: Infrastructure Services
Report Author: Andrew Pearce, Traffic Engineer
File No: I2019/1969

5

Summary:

10

The purpose of this report is to gain Council's support for minor changes to the regulation of car parking in the vicinity of the Byron Youth Activity Centre at the Sandhills Reserve, subject to Local Traffic Committee (LTC) recommendations.

15

RECOMMENDATION:

That Council support minor changes to car parking signage in the vicinity of Byron Youth Activity Centre, Sandhills Estate, as per recommendations from the Local Traffic Committee meeting on 6 December 2019, and the approval from Crown Lands.

20

REPORT

5 Council has been working with the Byron Youth Activity Centre (YAC), Department of Planning Industry and Environment – Crown Lands and local Police in response to a number of public safety concerns arising from the parking of vehicles inside the Sandhills Reserve.

10 The area shown below in Figure 1 is now persistently being used for illegal ‘vanpacking’ and attracting a variety of anti-social behaviours in close proximity to the YAC and the young people who use that centre. Recently, the YAC has experienced a number of incidents of vandalism and damage to their facility.

15 Visits by Council staff and compliance teams have confirm the southern part of Gilmore Crescent, in particular, feels unsafe due to the number cars and people and type of people parked in the vicinity immediately adjacent to the YAC and is a risk factor for the youth attending the YAC.

20 As a result, Council staff would like to modify the existing parking scheme within Gilmore Crescent as a step towards improving the culture and safety of the area through enabling safer and easier parking management. Additional works are expected to be required, such as installing bollards in key locations. However, this is considered a second step and not a regulatory matter to be included in this report.

Existing Parking Scheme

25 Figure 2 and 3 below shows the existing parking scheme that was supported by LTC in 2016 (refer I2016/278) and adopted by Council. A Restricted Parking Area was adopted over the car park area immediately to the south of the Child Centre. The RPA incorporates the area covered by the Blue Line and Green Line.

30 This Restricted Parking Area is anecdotally working well with people generally obeying the signage. Sealed, line marked and angled parking existing along the western side of Gilmore Crescent. No Parking and No Parking between 1am-6am signs are installed along the eastern edge of Gilmore Crescent and there is very sandy informal angled parking located at the south eastern end of Gilmore Crescent.

Proposed Parking Scheme

35 Figure 4 below shows the proposed modifications to the parking scheme in the vicinity of the YAC. These modifications will need to be done with the concurrence of Crown Lands.

In summary, it is proposed to do the following:

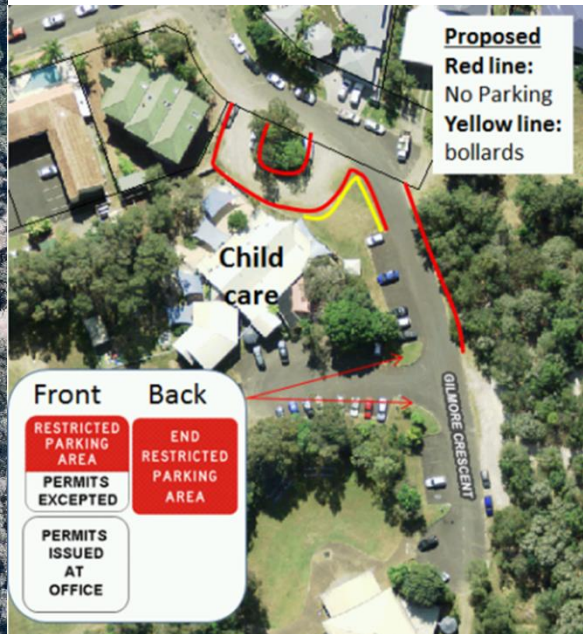
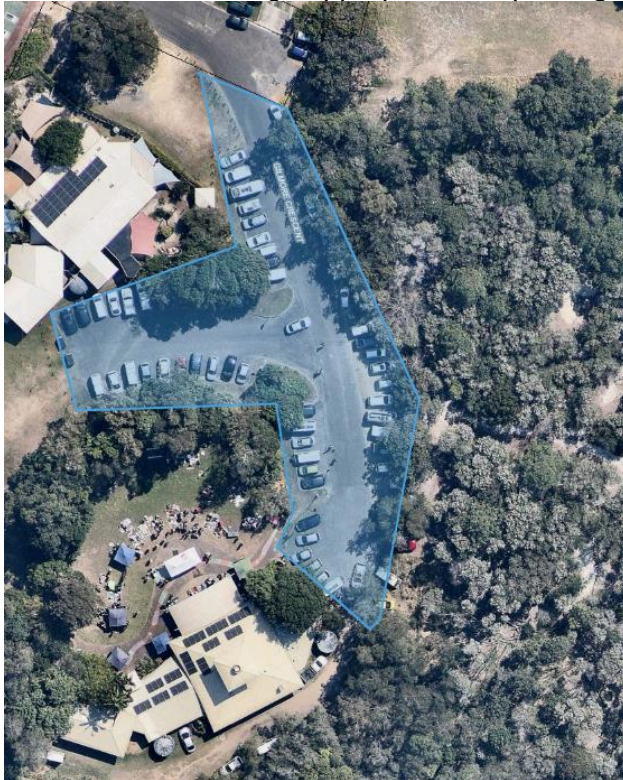
- 40 • Expand the Restricted Parking Area to include the car parking area adjacent to the YAC,
- Introduce a No Parking Area 7pm-7am over the Restricted Parking Area,
- Introduce Yellow No Stopping lines in key locations to prevent parking along the eastern side of the road and the dead end,
- 45 • Introduce Bollards at a future stage along the eastern edge to physically prevent parking subject to funding and detail design. This part of the modifications is not a regulatory matter and does not need to go through LTC. These works are just shown to provide the whole project context.

Compliance

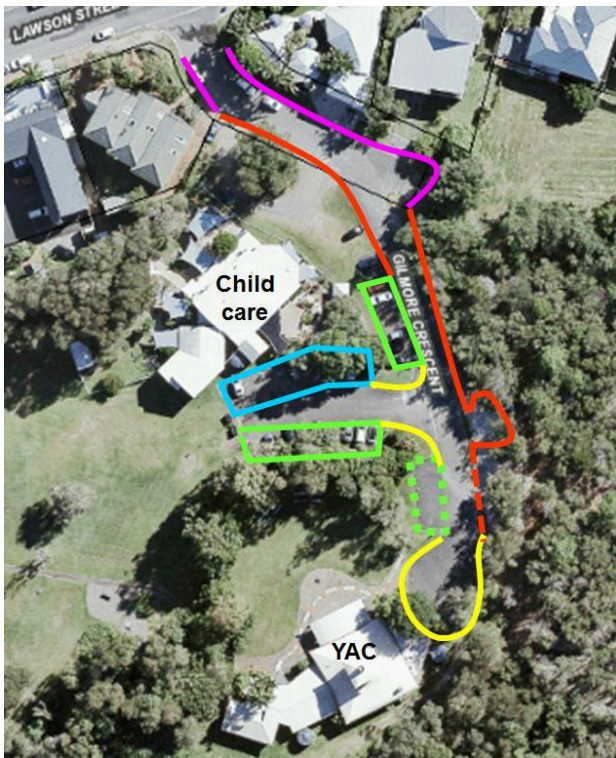
50 It is recognised the above proposed modifications can only be effective subject to their enforcement. However, these changes are regarded as a necessary first step towards improving the safety and culture of the area and enabling Council officers and Police to regulate the area effectively.

55 It is anticipated that after the above changes are implemented (excluding the bollards) Council Staff with Police may undertake a short term blitz of the area for a couple weeks to remove the existing problem and begin a new safer culture for the area.

Feedback provided to Council is that the parking regulation that applies in the Sandhills Carpark is sufficient to encourage appropriate car parking and discourage anti-social behaviours.



5 **Figure 1 – Parking area Gilmore Crescent under consideration**



Pink line

Pay parking Mon-Sun 9am-6pm, at other times no changes to existing signage/regulation

Red solid line

No Parking (applies at all times)

Red dashed line

No Parking 1am – 6am

Yellow line

No Stopping to apply at all times unless currently signed otherwise, e.g. permissive parking

Blue line

Existing Loading Zone removed; and except mobility permit park (which remains unchanged), 15-minute time limit apply Monday to Friday 8am-10am and 3pm-6pm and no time limit outside these times except No Parking 1am-6am

Green solid line

No Parking - Mon-Fri 6am-6pm Permit Holders Excepted and No Parking 1am-6am

Green dashed line

No Parking - 6am-6pm Permit Holders Excepted and No Parking 1am-6am

Figure 2 – Existing parking scheme approved in 2016 (I2016/278)

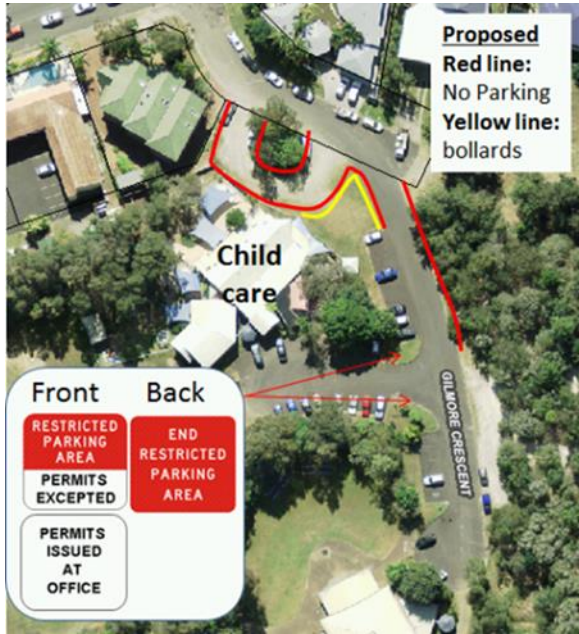


Figure 3 – Approved Restricted Parking Area.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.6	Manage traffic and parking in an efficient manner	1.6.4	Improve effectiveness of Local Traffic Committee	1.6.4.1	Continued reporting of traffic matters through the Local Traffic Committee

5

Financial Considerations

There will be usual costs associated with installation of additional signage along the extension to Gilmore Crescent that will be accommodated within existing budgets.

10

Consultation and Engagement

So far consultation has occurred with Byron Youth Service and Crown Lands. Police will be consulted through the LTC process.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 **Report of the Audit, Risk and Improvement Committee Meeting held on 14 November 2019**

5 **Directorate:** Corporate and Community Services
Report Author: Heather Sills, Corporate Governance Officer
File No: I2019/1907

10 **Summary:**

This report provides the minutes of the Audit, Risk and Improvement Committee Meeting held on 14 November 2019 for adoption by Council.

RECOMMENDATION:

15 1. **That Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 14 November 2019.**

2. **That Council adopts the following Committee Recommendation(s):**

Report No. 4.1 **A New Risk Management and Internal Audit Framework - Discussion Paper**

File No: I2019/1636

Committee Recommendation 4.1.1

That the Audit Risk and Improvement Committee:

1. **Considers the discussion paper, "A New Risk Management and Internal Audit Framework for Local Councils in NSW"**
2. **Makes a submission to the Office of Local Government during the submission period covering the considerations outlined in this report**
3. **Receives a draft submission for comment prior to the submission being made to the Office of Local Government.**

3. **That Council adopts the following Committee Recommendation(s):**

Report No. 4.2 **2018/2019 Financial Statements**

File No: I2019/1843

Committee Recommendation 4.2.1

That the Audit, Risk and Improvement Committee notes the report on the 2018/2019 Financial Statements and the 2019 Audit Engagement Closing Report received from the NSW Audit Office.

4. **That Council adopts the following Committee Recommendation(s):**

Report No. 5.1 **Update on IT Actions**

File No: I2019/1691

Committee Recommendation 5.1.1

That the Audit, Risk and Improvement Committee notes the update provided in the

report.

5. That Council adopts the following Committee Recommendation(s):

Report No. 5.2 Audit Progress Report - November 2019
File No: I2019/1841

Committee Recommendation 5.2.1

- 1. That the Audit, Risk and Improvement Committee notes the Internal Audit Activity Report – November 2019 (E2019/81972).**
- 2. That the Audit, Risk and Improvement Committee endorses the recommendation from the Executive Team to close off 12 outstanding recommendations in Appendix C of the attached report (E2019/81972) due to these actions being confirmed as complete.**

6. That Council adopts the following Committee Recommendation(s):

Report No. 5.3 Business Continuity and Risk Management - Update
File No: I2019/1853

Committee Recommendation 5.3.1

- 1. That the Audit, Risk and Improvement Committee notes this Business Continuity and Risk management update.**
- 2. That the Audit, Risk and Improvement Committee receives ongoing progress reports on the status of the Business Continuity and Risk Management blueprint**

7. That Council adopts the following Committee Recommendation(s):

Report No. 5.4 Pay Parking Audit Review
File No: I2019/1857

Committee Recommendation 5.4.1

- 1. That the Audit, Risk and Improvement Committee notes the Pay Parking internal audit review report.**
- 2. That the Audit, Risk and Improvement Committee requests management to implement the recommendations made in the report identified as Confidential Attachment 1 (E2019/81748).**
- 3. That the report and Confidential Attachment 1 of the closed part of the meeting remain confidential.**

8. That Council adopts the following Committee Recommendation(s):

Report No. 5.5 Grants Management Audit Review
File No: I2019/1858

Committee Recommendation 5.5.1


- 1. That the Audit, Risk and Improvement Committee notes the Grant Management**

internal audit review report.

- 2. That the Audit, Risk and Improvement Committee requests management to implement the recommendations made in the report identified as Confidential Attachment 1 (E2019/81617).**
- 3. That the report and Confidential Attachment 1 of the closed part of the meeting remain confidential.**

Attachments:

5

- 1 Minutes 14/11/2019 Audit, Risk and Improvement Committee, I2019/1900 

Report

The attachment to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 14 November 2019 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2019/11/ARIC_14112019_AGN_1097_AT.PDF

Report No. 4.1 A New Risk Management and Internal Audit Framework - Discussion Paper

The *Local Government Act 1993* was amended in August 2016 to require each council and joint organisation in NSW to appoint an audit, risk and improvement committee (ARIC).

The Office of Local Government (OLG) has now developed a draft internal audit and risk management framework to support and inform the operations of ARICs. It has issued a discussion paper, "*A New Risk Management and Internal Audit Framework for Local Councils in NSW*" which sets out the proposed framework in detail and a "snapshot" guide that summarises its key elements. The OLG is seeking submissions on the framework by 31 December 2019.

This report recommends that Council makes a submission to the OLG outlining some of the considerations and implications for Council should the OLG proceed with the proposed framework. The draft submission to the OLG following feedback from ARIC is the subject of a separate report in this agenda for Council's endorsement.

Report No. 4.2 2018/2019 Financial Statements

This report is on the external audit for the financial year ended 30 June 2019. It covers the financial results for Council for the 2018/2019 financial year and the 2019 Audit Engagement Closing Report in respect of the audit provided by the NSW Audit Office.

Report No. 5.1 CONFIDENTIAL - Update on IT Actions

This report provides a summary of all open actions with their current status and expected due dates for IT Actions.

Report No. 5.2 CONFIDENTIAL - Audit Progress Report - November 2019

This report presents the Internal Audit Outstanding Actions Report – November 2019 prepared by Council and the Internal Auditor, O'Connor Marsden and Associates (OCM).

The activity report contains the remaining outstanding recommendations from each audit review conducted by Council's previous internal audit provider as well as recommendations from recently completed audit reviews conducted by OCM.

Report No. 5.3 CONFIDENTIAL - Business Continuity and Risk Management – Update

The purpose of this report is to provide an update on the Business Continuity and Risk Management frameworks.

Report No. 5.4 CONFIDENTIAL - Pay Parking Audit Review

Council's Internal Auditors, O'Connor Marsden and Associates (OCM), conducted an internal audit review of Pay Parking during October 2019. This audit received a review rating of 'weak' and it identified one high and three medium risks. Management has agreed actions and a timeframe to address these issues.

Report No. 5.5 CONFIDENTIAL - Grants Management Audit Review

5 Council's Internal Auditors, O'Connor Marsden and Associates (OCM), conducted an internal audit review of Grant Management during October 2019. This audit received a review rating of 'satisfactory' and it identified two medium risks. Management has agreed actions and a timeframe to address these issues.

Financial Implications

10 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 14 November 2019.

Statutory and Policy Compliance Implications

15 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 14 November 2019.

Report No. 14.2 **Report of the Finance Advisory Committee Meeting held on 14 November 2019**

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2019/1911

Summary:

10 This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 14 November 2019 for determination by Council.

RECOMMENDATION:

15 1. **That Council notes the minutes of the Finance Advisory Committee Meeting held on 14 November 2019.**

2. **That Council adopts the following Committee Recommendation(s):**

Report No. 4.1 Unrestricted Cash and Reserves at 30 June 2019

File No: I2019/1767

Committee Recommendation 4.1.1

1. **That the Reserve Balances as outlined in Attachment 1 (#E2019/80264) at 30 June 2019 be noted by the Finance Advisory Committee.**

2. **That the Unrestricted Cash Balance of \$1,000,000 as at 30 June 2019 be noted by the Finance Advisory Committee.**

3. **That Council adopts the following Committee Recommendation(s):**

Report No. 4.2 Quarterly Update - Implementation of Special Rate Variation

File No: I2019/1834

Committee Recommendation 4.2.1

That the Finance Advisory Committee notes the quarterly update on the Special Rate Variation Implementation as at 30 September 2019.

4. **That Council adopts the following Committee Recommendation(s):**

Report No. 4.3 Budget Review - 1 July 2019 to 30 September 2019

File No: I2019/1856

Committee Recommendation 4.3.1

That the Finance Advisory Committee recommends to Council:

1. **That Council notes that the itemised budget variations as shown in Attachment 2 (#E2019/81261) which includes the following results in the 30 September 2019 Quarterly Review of the 2019/2020 Budget:**

a) **General Fund – \$132,400 increase to the Estimated Unrestricted Cash**

Result

- b) General Fund - \$2,564,600 decrease in reserves**
- c) Water Fund - \$222,500 increase in reserves**
- d) Sewerage Fund - \$638,200 decrease in reserves**

were adopted by Council at its Ordinary Meeting held on 28 November 2019.

- 2. That Council adopts the revised General Fund Estimated Unrestricted Cash Result of \$1,000,000 for the 2019/2020 financial year as at 30 September 2019.**

Attachments:

5

- 1 Minutes 14/11/2019 Finance Advisory Committee, I2019/1869 

Report

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 14 November 2019 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2019/11/FAC_14112019_AGN_1013_AT.PDF

The Committee considered the following items:

Report 4.1 – Unrestricted Cash and Reserves at 30 June 2019

The Committee considered a report that outlined the detailed schedule of all Council reserves held at 30 June 2019. Whilst the schedule of reserves was adopted by Council as part of completing the 2018/2019 financial statements, the details of these reserves are summarised in Note 6 to the financial statements. The report also indicated to the Committee the positive short term financial strength of Council in terms of the Unrestricted Current Ratio and Cash Expense Cover Ratio. The report also identified that Council was able to maintain an unrestricted cash balance of \$1,000,000 as at 30 June 2019.

Report 4.2 – Quarterly Update – Implementation of the Special Rate Variation

The Committee considered a report that outlined expenditure in relation to the 2017/2018 Special Rate Variation. The report included a schedule of works with total funding of \$7,539,200 (this includes the \$3,508,600 derived from the third year of the 4 year Special Rate Variation that commenced on 1 July 2017 and the residual amount unexpended at 30 June 2019 (\$33,300). As at the end of September 2019, Council had expended 15.94% of the overall program.

Report 4.3 – Budget Review – 1 July 2019 to 30 September 2019

The Committee discussed the 30 September 2019 Quarter Budget Review, noting the proposed amendments to the 2019-2020 Budget and recommended their adoption to Council (this occurred at the 28 November 2019 Ordinary Meeting).

Of note in the report were the following major items:

1. Recovery of the 2019-2020 budget deficit in the General Fund of \$132,400 to a balanced projected budget result.
2. Expected maintenance of the unrestricted cash balance of \$1,000,000 the Council's adopted benchmark.
3. Funding additional items as a result of additional Financial Assistance Grant revenue not originally budgeted.

The Committee Recommendations are supported by management and are provided at Attachment 1 to this report. The recommendation for Report 4.3 has been amended to reflect the consideration and adoption of this report separately at the 28 November 2019 Ordinary Council Meeting.

Financial Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 14 November 2019.

Statutory and Policy Compliance Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 14 November 2019.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES**Report No. 14.3 Report of the Local Traffic Committee Meeting held on 19 November 2019**

5 **Directorate:** Infrastructure Services
Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services
File No: I2019/1941

10 Summary:

This report contains the recommendations of the Local Traffic Committee meeting held on 19 November 2019.

15 Council's action on the LTC advice will be:

- 20 a) If Council is in agreement with the LTC unanimous support then the proposal may be approved. In these cases there is no conflict between Council and the advice of the LTC, consequently there is no need for Council to inform the RMS or the NSW Police representatives of the decision.
- b) If Council is in agreement with the LTC unanimous support, but no longer wants to proceed, the proposal may still be rejected.
- 25 c) If Council is in agreement with the LTC unanimous decline then the proposal may be rejected. Again there is no conflict between Council and the advice of the LTC. Consequently there is no need for Council to inform the RMS or the NSW Police representatives of the decision.
- 30 d) If Council decides to proceed with a proposal where the advice of the LTC is not unanimous support, then the Council must first advise the RMS and the NSW Police representatives in writing of their intention to approve the proposal. The RMS or the NSW Police may then lodge an appeal to the Regional Traffic Committee (RTC).
- 35 e) If Council decides to proceed with a proposal where the advice of the LTC is a unanimous decline, then the Council must first advise the RMS and NSW Police representatives in writing of their intention to approve the proposal. The RMS or the NSW Police may then lodge an appeal to the RTC.

40 Due to the fact that the RMS and the NSW Police have the power to appeal certain decisions of the Council, the LTC cannot provide its advice to Council until both the RMS and the NSW Police have provided their vote on the issue.

RECOMMENDATION:

- 45 1. **That Council note the minutes of the Local Traffic Committee Meeting held on 19 November 2019.**
2. **That Council adopt the following Committee Recommendation(s):**

Report No. 6.1 Event Road Closure - New Year's Eve and New Year's Day, Byron Bay 2019/2020

File No: I2019/930

Committee Recommendation 6.1.1

1. That the Local Traffic Committee supports:
 - a) Council's temporary traffic management initiatives for the Soul Street New Year's Eve event to be held in Byron Bay and approves the temporary road closure of Jonson Street, between Lawson Street through to the car park entry at Railway Park (north of Marvell Street), from 6am on Monday 31 December 2019 and its removal by no later than 7am on the Tuesday 1 January 2020.
 - b) Council's temporary traffic management initiatives for the First Sun New Year's Day event to be held in Byron Bay and approves the temporary road closure of Lighthouse Road from Brooke Road (The Pass), from 3am to 8am on Tuesday 1 January 2020.
2. That the approval provided in Part 1 remain subject to Council endorsement of the event prior to implementation and is subject to the following requirements:
 - a) traffic control plans are designed and implemented by those with the appropriate NSW (RMS) accreditation;
 - b) advertising is undertaken in accordance with the Roads Act, including the publication of a map and explanatory notes in a local newspaper and on Council's website;
 - c) the letterbox drop of properties adjacent to and prior of the Jonson Street closure and Bay Street, Marvell Street and Byron Street parking changes; and
 - d) all parties involved in Council's NYE events hold, or least covered by, appropriate and relevant levels of insurance and public liability cover as required by Council.
3. That Council adopt the following Committee Recommendation(s):

Report No. 6.2 Byron Bay Paid Parking Time Changes - Jonson St

File No: I2019/1256

Committee Recommendation 6.2.1

That Council support a minor modification of the Byron Bay Pay Parking scheme, as outlined below:

1. That 12 car spaces, extending from in front of 120 Jonson St and north to the bus stop in front of Mercato, be modified to 2P time limit.
2. The associated street signage be updated to reflect the above changes with additional signs added as required.
3. The modification is to be communicated to all relevant stakeholders, such as:
 - a) Council's compliance team;
 - b) Council's communication team for advertising on Council's website and updating parking maps;
 - c) Companies managing Council pay parking scheme in order to update relevant databases.
4. That Council adopt the following Committee Recommendation(s):

Report No. 6.3 Restricted Parking Area - Broken Head Reserve Rd & Seven Mile Beach Road

File No: I2019/1473

Committee Recommendation 6.3.1

1. That Council approve the introduction of a Restricted Parking Area (RPA) to Broken Head Reserve Road and Seven Mile Beach road. The RPA is to be in accordance with RMS guidelines.
 2. That Council consider upgrading existing car parking facilities and areas in the Broken Head Reserve Road village precinct and on Seven Mile Beach Road, as required, to comply with RMS Restricted Parking Area requirements subject to approved funding.
5. That Council adopt the following Committee Recommendation(s):

Report No. 6.4 Bay Lane - Traffic Management

File No: I2019/1514

Committee Recommendation 6.4.1

That Council supports:

1. The people focused activation of Bay Lane through regulating access of vehicles into Bay Lane, subject to the following:
 - a) Vehicle access within Bay Lane, between chainages CH 0-75m (approx.), be prohibited generally between 5pm to 5am;
 - b) Vehicle access between chainages CH 0-75m be permitted generally between 5am to 5pm;
 - c) Detail design to be generally in accordance with attached drawing E2019/79917 and must include appropriate regulatory signage and relevant time plates;
 2. The following modifications to traffic flow in Bay Lane:
 - a) Maintaining one way traffic flow between chainages 0-75m (approx.);
 - b) Change traffic flow to two way between chainages 75-150m;
 - c) Detail design to be generally in accordance with attached drawing E2019/79917 and must include appropriate regulatory signage and relevant time plates
6. That Council adopt the following Committee Recommendation(s):

Report No. 6.5 No Parking Area - Seven Mile Beach Road

File No: I2019/1515

Committee Recommendation 6.5.1

That Council support the establishment of a No Parking Area 1am to 5am, with relevant signage in accordance with RMS requirements, for the full length of Seven Mile Beach Road.

7. That Council adopt the following Committee Recommendation(s):

Report No. 6.6 Byron Bay CBD - Loading Zones
File No: I2019/1516

Committee Recommendation 6.6.1

That Council supports:

- 1. The removal of the Bay Lane Loading Zone.**
- 2. The establishment of approximately 6 new Loading Zone generally located as shown in this report and generally operating during the time limits as shown in this report (I2019/1516).**
- 3. The undertaking of consultation with local businesses and Chamber of Commerce prior to the installation of signage to confirm the most appropriate location and time limits.**

8. That Council adopt the following Committee Recommendation(s):

Report No. 6.7 Event - Summer Holiday Traffic Management in Byron Bay
File No: I2019/1833

Committee Recommendation 6.7.1

That Council endorse the provision of traffic management facilities and traffic controllers within Byron Bay, when deemed necessary, between 6 December 2019 to 31 January 2020 to provide increased safety for road users and pedestrians and to manage the efficient movement of vehicles on the road network during the Christmas school holiday period, subject to the development and implementation of Traffic Control Plans by those with relevant RMS accreditation.

9. That Council adopt the following Committee Recommendation(s):

**Report No. 7.1 Engineering Advice - Intersection of Rajah Rd & Yengarie Way
(Petition)**

File No: I2019/1531

Committee Recommendation 7.1.1

That Council:

- 1. Notes the recent works undertaken by staff to improve the visibility of the intersection and road alignment through improved line markings, cats eyes, CAMS and the installation of a traffic island.**
- 2. Does not support the installation of a guardrail due to the potential increased risk of a driver fatality.**
- 3. Consider the installation of frangible bollards, with reflectors, along the southern alignment of the Yengarie Way / Rajah Road intersection. This is to be subject to detail design to confirm:**

- a) **Extent and alignment of bollards**
- b) **Suitability of installing bollards adjacent to recently installed CAMS, and**
- c) **Feasibility of installing such devices in this part of the road reserve (i.e. check for underground services etc)**

10. That Council adopt the following Committee and Recommendation(s):

Report No. 8.1 Events - Byron Bay Bluesfest 2020

File No: I2019/1729

Committee Recommendation 8.1.1

- 1. That Council endorse the Byron Bay Bluesfest 2020 to be held on Thursday 9 April 2020 to Monday 13 April 2020, inclusive, subject to the following conditions:**
- 2. Separate approvals by NSW Police and RMS being obtained, noting that the event is on a state road or may impact the state road network;**
- 3. The development of a Traffic Management Plan and Traffic Control Plan(s) by those with relevant RMS accreditation. These plans are to be submitted to Byron Shire Council at least 2 months prior to the event for approval of traffic regulation on roads under Byron Shire control;**
- 4. The Traffic Management Plan and the Traffic Control Plan(s) to be implemented by those with relevant and current RMS accreditation;**
- 5. Traffic camera data recorders or similar be used to obtain an accurate record of traffic impacts at KPI queue locations;**
- 6. That the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;**
- 7. The event organiser:**
 - i) advertise the impact of the event via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;**
 - ii) provide a copy of the advert for Council's web page;**
 - iii) give consideration of any submissions received;**
 - iv) inform community and businesses that are directly impacted (e.g. adjacent to the event) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;**
 - v) arrange for private property access and egress affected by the event;**
 - vi) liaise with bus and taxi operators and ensuring arrangements are made for provision of services during conduct of the event;**
 - vii) consult with emergency services and any identified issues be addressed;**
 - viii) holding \$20m public liability insurance cover which is valid for the event.**
 - ix) paying of Council's Road Event Application Fee prior to the event.**
- 8. The event be notified on Council's webpage.**

9. The event organiser is to:

- i) undertake consultation with community and affected businesses including adequate response/action to any raised concerns;**
- ii) undertake consultation with emergency services and any identified issues addressed;**
- iii) hold \$20m public liability insurance cover which is valid for the event;**
- iv) pay Council's Road Event Application Fee prior to the event.**

5 Attachments:

- 1 Minutes 19/11/2019 Local Traffic Committee, I2019/1890 

10

Report

5 The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 19 November 2019 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2019/11/LTC_19112019_AGN_1106_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 Local Traffic Committee Meeting of 19 November 2019.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Local Traffic Committee Meeting of 19 November 2019.

Report No. 14.4 **Report of the Byron Shire Floodplain Risk Management Committee Meeting held on 26 November 2019**

Directorate: Infrastructure Services

Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services

5 **File No:** I2019/1967

Summary:

10 The attachment to this report provides the minutes of the Byron Shire Floodplain Risk Management Committee Meeting of 26 November 2019 for determination by Council.

RECOMMENDATION:

15 1. **That Council note the minutes of the Byron Shire Floodplain Risk Management Committee Meeting held on 26 November 2019.**

2. **That Council adopt the following Committee Recommendation(s):**




Report No. 4.1 **North Byron Floodplain Risk Management Study Draft Document**
File No: I2019/1832

RECOMMENDATION:

1. **That Council support the public exhibition of the Draft North Byron Floodplain Risk Management Study Attachment 1 and 2 (E2019/83311 and E2019/83313) from 20 January to 21 February 2020.**

2. **That Council delegate staff the authority to make minor amendments to the Draft North Byron Floodplain Risk Management Study documents, in consultation with support from the Floodplain Management Committee, prior to it going on public exhibition in January 2020.**

Attachments:

- 20
- 1 Minutes 26/11/2019 Byron Shire Floodplain Risk Management Committee, I2019/1928 
 - 2 North Byron FRMS&P - Floodplain Risks Management Study - Draft Report, E2019/83311 
 - 3 North Byron FRMS&P - Floodplain Risks Management Study - Figure Pack High res, E2019/83313 

25

Report

5 The attachment to this report provides the minutes of the Byron Shire Floodplain Risk Management Committee Meeting of 26 November 2019 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2019/11/BSFRM_26112019_AGN_1099_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 Byron Shire Floodplain Risk Management Committee Meeting of 26 November 2019.

Statutory and Policy Compliance Implications

20

As per the Reports listed within the Byron Shire Floodplain Risk Management Committee Meeting of 26 November 2019.