



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 17 December 2020

**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

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3. REQUESTS FOR LEAVE OF ABSENCE

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Sustainable Environment and Economy

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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

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BYRON SHIRE COUNCIL

ORDINARY MEETING

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

NOTICES OF MOTION

Notice of Motion No. 9.1 Road Access and Safety Principles
File No: I2020/1934

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I move that Council:

- 1. Adopts the following Road Access and Safety Principles for the Byron Shire road network.**
 - a) All users and modes of transport have an equal right of safe access to and movement on the road network.**
 - b) Road safety audits must consider the access and safety of all road users, modes of transport and services delivered within the road reserve such as bus stops and waste collection.**
 - c) Road renewals, upgrades and maintenance must meet the needs of all road users, modes of transport and services delivered in the road reserve and ensure equitable funding for all users and modes.**
 - d) New road projects must include safe access infrastructure for cyclists, pedestrians and services delivered in the road reserve and ensure equitable funding for all users and modes.**
- 2. Embeds the Road Access and Safety Principles into the Operational/Delivery Plan at the next quarterly review and include actions as follows.**
 - a) Adapt Asset Management policy, capital works and maintenance planning procedures so that the Principles are applied to all new road related projects from July 2021.**
 - b) Update road related infrastructure, movement, access and safety policies to apply the Principles by June 2021.**
 - c) Identify and update relevant DCP chapters by December 2021.**
- 3. Receives a report at the April Ordinary Meeting 2021 to report on progress and identify a pathway and timetable to complete implementation of all necessary actions.**
- 4. Notes the Councillor Background Notes attached to the report.**

10

Signed: Cr Basil Cameron

Councillor's supporting information:

- 15 Issues of road safety and access are regularly raised by our community and there is an increasing desire to see a better balance between movement and place as demonstrated by the movement hierarchies prioritising active transport adopted within the various town and village masterplans.

20 Away from town centres, safety and access is vital as the road network provides the only movement pathways for all users and modes of transport.

In both town and hinterland, increasing traffic growth is making safe access for active road users more difficult. On many hinterland roads safe access for cyclists and pedestrians is not possible.

Coolamon Scenic Drive 'road safety' upgrade.

According to advice from Council staff in an email to Councilors dated 20/8/20, \$2.4 million funded under the TfNSW 'Safer Roads' program has recently been used to 'address vehicle related safety issues' on Coolamon Scenic Drive. The 'intent of this grant funding program is directed towards vehicle safety rather than a pedestrian or cyclist focus'. The audit conducted prior to the rollout of line marking, crash bar railing, CAMS and other signs, identified a safety risk to cyclists, however 'many of the possible treatment options identified to manage risk were unfortunately outside the scope of the grant scheme'.

To be clear, none of the \$2.4 million was spent on safety of active road users. This could only be addressed under 'Safe System' grants that 'Council is believed to not be eligible for'. We may be eligible for funding if we 'meet the funding requirements'. That is if there is a serious crash involving a fatal or serious injury to a cyclist or pedestrian.

As the rollout began, Council received a number of complaints that this new infrastructure was interfering with resident access to their properties and impeding rubbish trucks as the audit had not considered the services delivered in the road reserve such as bus stops and waste collection. The crash bar railing and signage also significantly reduced or eliminated road shoulders that pedestrians and cyclists rely on for safe access.

When a 'safety' upgrade on a road focused entirely on one road user group makes the road environment less safe and accessible for other road users, then we have a problem. It is a concern that the rollout went ahead despite a known risk to cyclists that was not addressed.

Road Access and Safety Principles

The Road Access and Safety Principles aim to redress this imbalance. The Principles provide for assessment, design and equitable funding to ensure safe access for all road users when safety audits are conducted and roads are built, renewed and maintained.

A right of equal access is essential to a freedom of movement that is guaranteed in the *International Bill of Rights*. This fundamental right is included in *A Charter of Human Rights and Responsibilities BYRON SHIRE* as adopted by Resolution 19-133 for implementation by Council. Without safe access to our roads, the right is restricted, particularly on hinterland roads where there are no alternative movement pathways.

It will be necessary to review and update road related policies to ensure action on the Principles. This to be achieved by embedding the Principles and policy review actions in the Operational/Delivery Plan with a progress report to be provided in April 2021.

Implementing the Principles

Part two of the motion sets out a pathway and timetable for implementation.

The initial phase over six months involves

1. Embedding the Principles in the Operational/Delivery Plan with the policy review objectives stated at 2(a)-(c) at the next quarterly review due early in 2021.
2. Identify and update policies referred to in 2 (b) that require a consequential amendment to either include or apply the Principles. It is anticipated that this will involve minimal word changes or additions in any cases.

3. Provide a report to April Ordinary meeting on progress and to provide a timetable for implementation of all necessary actions. This report is the opportunity to provide an advice on any resource implications for more substantial tasks, should there be any.

5 Six to twelve months

4. Update relevant chapters of the DCP to ensure that future development has the Principles applied. A longer timeframe is considered appropriate as this may involve more substantial redrafting.

10

5. Apply the Principles to all new road related projects from July 2021.

Recommended priority relative to other Delivery Plan tasks:

- 15 This is considered a part of the ongoing policy review process. Actions in the first six months are not anticipated to require an additional budget allocation. The April report provides an opportunity to advise on any resource implications in the first half of FY21/22.

Definition of the project/task:

20

Embed Principles into Operational/Delivery Plan with policy review actions.
Update policies requiring consequential amendment to apply the Principles.
Provide report to April 2021 Ordinary Meeting.
Update relevant chapters of DCP to apply Principles by December 2021.

25

Apply Principles to all new infrastructure projects from July 2021.

Staff comments by Andrew Pearce, Traffic Engineer, Infrastructure Services:

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

- 30 In considering safe and accessible movement across the Shire for all community demographics and for all transport modes, it is suggested the discussion be reframed. In particular, it is considered more appropriate to emphasise a need to deliver a safe, integrated and accessible Transport Network rather than emphasising a need to deliver an improved road network with safer infrastructure for all active transport users.

35

In light of this, while the intent of the NoM is supported, the Notice of Motion itself is not for the following reasons:

- 40 • While the intent of the NoM is supported it commits millions of dollars to meet the needs of a smaller cross section of community. It does not meet the transport needs of the more vulnerable community members, such as the aged and mobility disadvantaged.
- It could be considered inappropriate to expect these more vulnerable community members to rely on active transport within the road reserve, especially during hot and/or wet conditions.
- 45 • This approach does not take into account traffic volumes, speeds or road gradients. Even with improved safety designs, travelling from Mullumbimby to Federal with an e-bike will still require significant physical effort, especially in hot and/or wet conditions.
- The approach does not align with the TfNSW transition towards Movement and Place as the NoM requires every road, whether a motor way, highway or distributor road to be designed as a place.
- 50 • This approach does not acknowledge the need for many community members to travel very large distances beyond just the Shire to attend things such as Doctors appointments or the need to undertake shopping and transport goods back home within a timely manner.

- This approach relies on a slow, non integrated roll out as disparate segments of the road network which are generally upgraded over decades, primarily through grants and private development.
- 5 • To implement the recommendations outlined in the NoM across all road projects within the Shire is anticipated to cost many millions of dollars. A specific case is Coolamon Scenic Drive. To reconstruct this road as per the NoM would require significant excavation, rock cutting and structural retaining walls over several kilometres costing many millions of dollars. Applying the NoM to other roads such as, Seven Mile Beach Road would require significant clearing of vegetation within a highly sensitive ecological area.
- 10 • This NoM stands in competition to existing resolutions and existing transport policies and strategies developed by TIAC. Considering in particular the Bike Plan (developed by TIAC), a strategy to support safe active transport across the shire has already been developed.
This plan shows which projects provide the greatest strategic benefit to the Shire. Rolling out Priority A projects alone will take many years and cost millions.of dollars
- 15 As a result, the proposed NoM stands in contradiction to the strategic vision of the Bike Plan developed over a significant period of time with significant community consultation.
- If the NoM is supported and a resolution is passed the current Bike Plan and PAMP would then need to be rescinded to remove ongoing project confusion and contradictory outcomes.
- 20 In contrast, reframing the discussion to emphasise a need to deliver a safe, integrated and accessible TRANSPORT NETWORK still supports the intent of the Notice of Motion and reflects the following advantages:
 - Supports and acknowledges Council's goal of expanding our transport corridors to include the rail corridor and reduce a reliance on vehicle corridors.
 - 25 • The TfNSW transition towards a Movement and Place framework acknowledges some roads have a primarily "movement" purpose (i.e. motorways) and other roads a place making purpose (i.e. shared zones). This framework helps develop a more efficient and safer transport network as opposed to pushing cars and people into the same corridor regardless of traffic volumes and speeds.
 - 30 • Addresses the need to provide the community with a range of alternate transport options which better meets their specific needs. This in turn would reduce the need for more vulnerable community members (such as, aged and mobility disadvantaged) having to rely on walking or riding within a road reserve that has varying levels of maintenance.
 - 35 • An ability to provide cost effective, targeted and diverse transport solutions that gives people transport options even in wet and / or hot weather. The physical effort to travel between townships (even on an e-bike) during very hot or wet weather is considered a significant barrier to increasing active transport, especially for more vulnerable community members.
 - An ability to expand our transport network in a way that aligns well with existing transport related strategies. These strategies include:
 - 40 o Pedestrian Access and Movement Plan
 - o Bike Plan
 - o Multi Use Rail Corridor
 - o Intergrated Transport Strategy (Moving Byron)
 - o Ride Sharing policies (i.e. pop car)
 - 45 • It acknowledges the preliminary steps that have already been taken promote a better active transport network, such as the current investigation into a Mullumbimby / Brunswick Head cycle way and the Suffolk Park to Byron cycle way.

- It supports the goals of this Notice of Motion which aims to have the safety of all active transport users consciously factored into all “Safer Roads” programs while at the same time provides better transport options for disadvantage / vulnerable community members during wet and/or hot weather.

5

Financial/Resource/Legal Implications:

The financial implications of the proposed NoM are unknown. However, it is expected it could cost tens of millions of dollars to implement over many years.

10

There is no identified budget source to commence work related to this NoM and there has been insufficient investigation in relation to the financial impacts or the budget and other staff resources required to undertake the works envisaged over the next 12 months.

15

The extent of impacts on existing maintenance budgets and delivery programs is expected to be significant as all road related programs will require scope of works and budget allowance review.

Road network maintenance works programs for both the short and long term developed to date will require reconsideration and additional staff resources will be required to undertake this task or works programs delayed until such time as the review is completed to ensure the works comply with the requirements of the NoM if adopted.

20

While it might be possible to obtain some funds via grants this is not guaranteed nor expected to be sufficient to cover the work needed to review and make changes to policies and procedures and will be difficult if not impossible to implement for some grant and/or maintenance programs.

25

Is the proposal consistent with any Delivery Program tasks?

No, a recommendation within the NoM is to embed “*the Principles in the Operational/Delivery Plan with the policy review objectives stated at 2(a)-(c) at the next quarterly review due early in 2021.*”

30

Notice of Motion No. 9.2 **Tallowood Ridge Reserve**
File No: I2020/1938

I move that Council:

1. **Enter negotiations with the relevant landowners and/or developer to seek the gifting of the land outlined in the map below for the management of council in conjunction with the community in perpetuity.**
2. **That these negotiations stipulate that this is not instead of any other previous environmental agreement.**

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Signed: Cr Sarah Ndiaye

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Councillor's supporting information:

Background

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Currently a 5 acre parcel of land is scheduled to be allocated to seven landholders that do not adjoin the land, for ongoing care and management. This expectation is unrealistic and would exclude the community from being able to access this land or care for it. The ridge line and areas adjacent have significant old growth tree populations, are part of a koala corridor and also house some endangered flora.

20

Some of the reasons why this area is significant are outlined below. I and many others believe it will be best protected by having the broader community supporting Council as custodians of this area. Otherwise in private ownership and so far away from the dwellings of the Community Title we fear it will become overrun with weeds as what has occurred in neighbouring properties around Brushbox Drive.

25

The Tallowood Ridge Landcare group is a registered locality group of Brunswick Valley Landcare. It has had an official launch and meets monthly with around 30 volunteers registered on their mailing list. They currently are maintaining the area of the 'Gathering Tree Park'. The group has the capacity and skills to support Council to manage the remaining bushland that is the residual lot of the Tallowood ridge Development. As the forest is mature, once the developer has undertaken the weed control and maintenance as per the estate's Biodiversity Conservation Management Plan the area will not require large amounts of resources. Furthermore, Brunswick Valley Landcare has a grant along the road reserve in this area through the Environmental Trust which is for another 2 years.

30

35

The community have recently started an online petition which has a little bit more information:
<https://bit.ly/KoalaReserve>

40

The Tallowood Ridge Development has been advertising this area as both a Nature Reserve and a Conservation Area in the advertising to sell blocks (see pics x 2). Mr Freeman has told Friends of Mooibal Spur he will gift the land with no strings attached and is quoted in the Echo saying it is only Council who is stopping this land becoming a reserve. (July 15th Echo Net daily from memory)

45

Biodiversity Values of the area

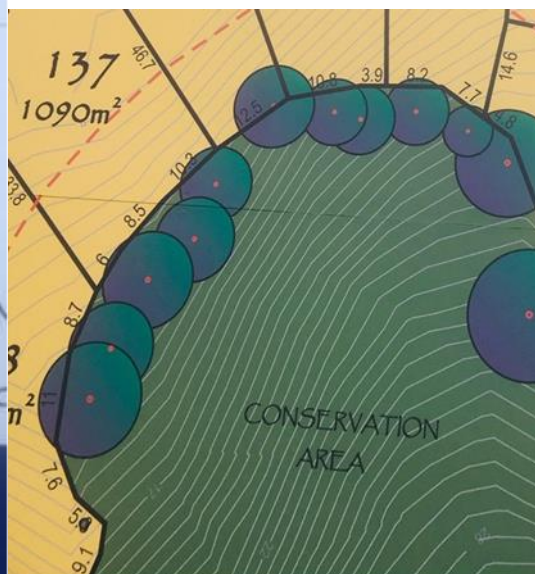
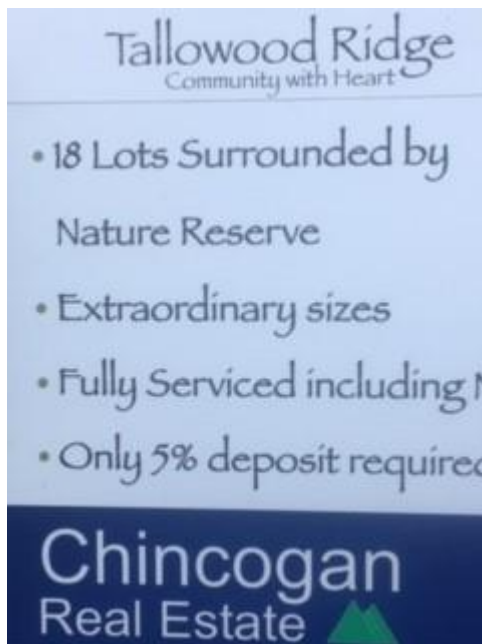
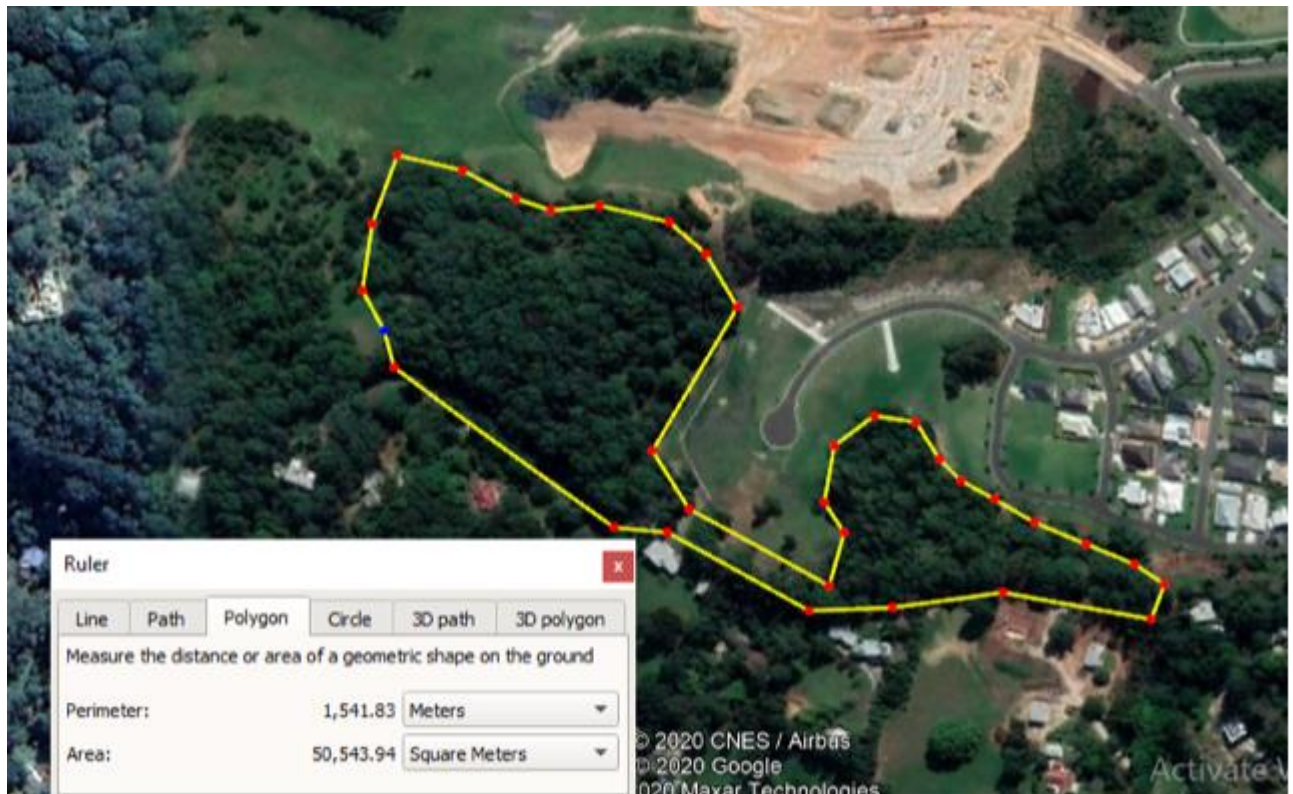
- Byron Shire council has it mapped as an area of HEV (High Ecological Value)

- The Byron Coastal Koala Plan of Management, recognises this exact area along the ridge as an important koala precinct.
- 5 - The State Environmental Planning Policy for Koala Habitat Protection (SEPP 44) which commenced on 1 March 2020 has also recognised the area as important koala habitat. The area has old growth Tallowood trees which are a primary koala feed tree. Koalas are predicted to go extinct before 2050 unless we actively manage land for their conservation. See SEPP 44 Map of the area
- 10 - Other threatened fauna have been located in the ridgeline including a range of bats and the glossy black cockatoos (these are not the big yellow tails but a small rare cockatoo).
- 15 - Threatened plant species in the proposed ridgeline E2 area include the Native Guava which is recognised under State legislation as Critically Endangered.

Indigenous Values of the area

- 20 The Indigenous values of the area were recognised by Yvonne Stewart in the estates original DA. It was stated the area is a pathway to the Koonyum Range. Indigenous cultural fire practioners from Fire Sticks Alliance have also recognised the significance of the area.

Putting this land into community ownership is such an amazing opportunity to undertake best practice Caring for Country and a much valued community asset for generations to come.

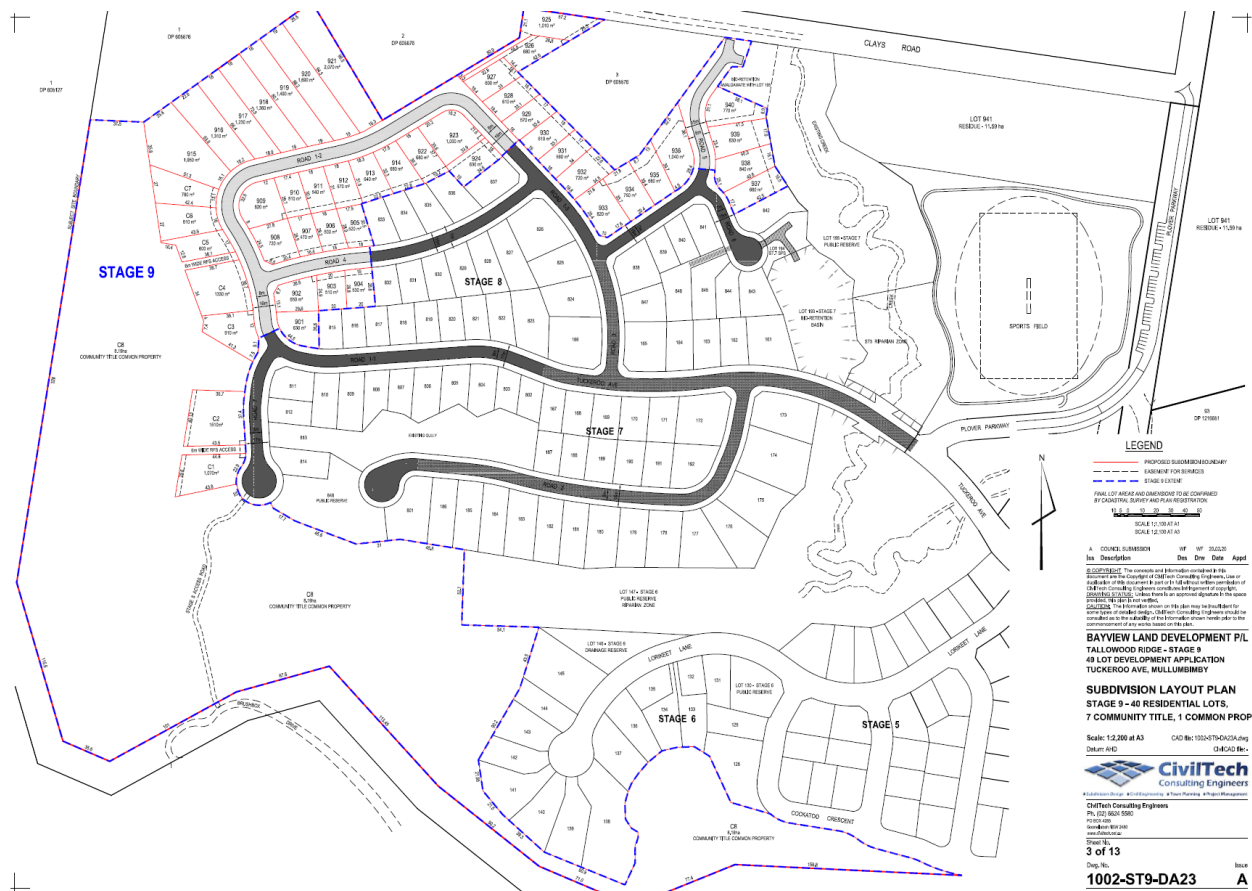


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Staff comments by Christopher Soulsby, Development Planning Officer, Infrastructure Services:

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

- 10 Council is currently assessing DA 10.2020.109.109.1 for stage 9 of the Tallowood Estate. This stage will consist of an 8 lot community title subdivision and 40 lot Torrens title subdivision. Lot C8 is the community lot within the community title subdivision. This lot is 8.19ha (20.23 acres) in area with an irregular shape that abuts both the internal road network of Tallowood and the vegetated road reserve that separates Tallowood from the Brushbox Drive rural residential area. The lot is
- 15 show in the lot arrangement plan as set out below.



- 5 The site is proposed to be managed by the community association in the long term. Such an arrangement ensures the protection and management of the vegetation without the financial burden of bringing the land into public ownership. To date Council has resisted effort by developers to dedicate land that has no development potential. This has occurred at the West Byron development and here at Tallowood.
- 10 The land is currently zoned RU2 Rural Landscape. The site was previously zoned 1A General Rural under the 1988 LEP.

15 Part of the site has been mapped as High Environmental Value with a vegetation type Brush Box-Pink Bloodwood-Tallowood association. This is shown in the following image.



Mapped HEV

5 The site has not been identified for acquisition in the LEP or in the contributions plan. The acquisition and long term management of this land by Council is not identified in any current strategic plans.

10 Continued acquisitions of land without a long term financial plan to maintain the land will place pressure on the open spaces budget.

15 The determination of the future classification, use, and works required prior to bringing this land into public ownership are processes that need to be undertaken as part of the assessment of the development application for stage 9. The future ownership of the vegetated gully can also be considered as part of this development application. It would be appropriate to report the outcomes of the discussions with the developer at the time the development application is reported to Council.

Financial/Resource/Legal Implications:

20 If the land is gifted to Council, Council will need to establish a Plan of Management and manage the land in accordance with this plan. In the long term Council ad hoc acquisitions of land may adversely impact upon Council's ability to manage all of the open space land to levels that meet community expectations / desirable levels of service in its portfolio.

25 ***Is the proposal consistent with any Delivery Program tasks?***

The acquisition of this land is not specifically identified in the CSP or DP / OP. The support of the land care group mentioned in the NOM is identified as an OP activity.

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	3.2.2	Support community environmental and sustainability projects	3.2.2.5	Support Brunswick Valley Landcare to deliver the Land for Wildlife Program and biodiversity enquiries

suburbs to the north such as Brunswick Heads, Ocean Shores and New Brighton. The shire has long needed a year round place to swim laps for their physical and mental health and more appropriate rehabilitation facilities for people recovering from injury or just maintaining health aging practices.

The Open Space and Recreation Needs Study 2018 identified that 'our community wants recreation, sports and aquatic facilities to meet the Shire's needs' and while there may be some funding challenges to overcome, this pool has a long history of being able to garner community support to make things happen. The first Chincogan Charge in 1960 was a fundraiser to build the swimming pool and the second race happened in 1967 to celebrate its opening. Since then the community have also raised money for some of the upgrades and other refurbishments. Both the State and Federal Governments have also had a variety of rounds of funding that a project such as this could meet the criteria. It is important we get the feasibility study underway to see if it is a viable option and to apply for these funding grants.

The Mullumbimby Residents Association has long been interested in helping to make this vision a reality for our community and has recently been collecting signatures in support of the project and garner community interest. They have also had preliminary concept drawings prepared. So far the response has been very enthusiastic with hundred already signing the petition. I have attached the information received so far and there will be more up to date information at the meeting of council in February.

While discussions have gone on around the possibility of redeveloping the pool at Main Beach or building an aquatic centre at the Cavanbah Centre, there have been multiple challenges at both of these sites. Byron Bay is getting a huge investment in both the bike track from Suffolk Park to Byron as well as the multi-million dollar skate park that has been earmarked for the area behind the YAC and the Byron Library. This project would help service the needs of the broader community and add value to the experience of living in the hinterland and the northern parts of the Shire.

For a long time the main objection has been the cost, however the Ballina Shire have shown that this does not have to be the case. Having completed a full overhaul of their facility at a cost of \$14million, the new facility was expected to continue running at a deficit, however it is now running at a profit. The popularity of a facility like this could see it breaking even or increasing revenue for council and providing a host of benefits for the community.

Staff comments by James Brickley, Manager Finance, Corporate and Community Services:
(Management Comments must not include formatted recommendations – resolution 11-979)

Staff comments are provided in the Finance/Resource/Legal Implications section of this Notice of Motion below:

Financial/Resource/Legal Implications:

Council adopted the 30 September 2020 Quarterly Budget Review of the 2020/2021 Budget at the 26 November 2020 Ordinary Meeting. Whilst this budget review showed a financial improvement of \$60,700, Council has a projected budget deficit of \$296,100 for the 2020/2021 financial year. Council's unrestricted cash balance projected at 30 June 2021 is \$428,200 and the Council endorsed unrestricted cash balance target is \$1,000,000. It is understood it is Council's intention is to restore the unrestricted cash balance to \$1,000,000 by 30 June 2021.

Whilst it is a decision for Council, in the absence of any other funding source or Council reallocating funds from an existing budget, Council could proceed to fund the feasibility study by utilising the unrestricted cash balance, which will increase the current projected 2020/2021 budget deficit

Alternatively and as a preferred option, it is suggested that Council reconsider a funding allocation in the 31 December 2020 Quarter Budget Review that will be reported to Council in February 2021, amongst the review of the entire Council budget at that time. In addition to this Notice of Motion, Council also has resolution **20-518** to undertake further work on the Rail with Trail on the corridor between Mullumbimby and Byron Bay for which funding is yet to be identified that will also need to be considered for the 31 December 2020 Quarterly Budget Review.

Is the proposal consistent with any Delivery Program tasks?

Yes. At the Ordinary Meeting held on 26 November 2020 Council resolved (**20-674**) to include an activity in the 2020/21 Operational Plan to seek funding for a feasibility study for the Petria Thomas Swimming Pool. This has subsequently been included in the Operational Plan as activity 1.2.5.7:

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 (SP)	1.2.5.7	Seek funding to conduct a feasibility study into converting the Petria Thomas Swimming Pool in Mullumbimby into a year round, solar heated facility, including a disability access ramp to the existing 50 metre pool, a splash children's pool and a rehabilitation / hydrotherapy pool, and consider various water treatment options.

Notice of Motion No. 9.4 Opportunity for activation and increased passive surveillance at the Mullumbimby Skate Bowl
File No: I2020/1944

5

I move:

That Council:

- 1. Supports the concept of activating the sports field adjacent to the Mullumbimby skate bowl with a dog park with the aim of creating increased passive surveillance and stopping people being able to drive on the field and damage it.**
- 2. Requests the Sustainable Environment and Economy Directorate staff to arrange for the preparation of a detailed design for a dog park for consultation with the community, and a report of the outcomes of the consultation to Council for final design endorsement.**
- 3. Requests the Sustainable Environment and Economy Directorate staff to ensure that the dog park design is integrated with the wider planning work, which is looking at the future use and development on adjacent lands including Lot 22 vacant land community gardens, private lands, sports fields and the skate bowl.**
- 4. Approves a budget allocation of \$20,000 from the Mullumbimby Open Space Reserve to undertake the necessary design work on the dog park to enable the community consultation process, and following, refinement of a final design to enable project delivery.**

10 **Signed: Cr Sarah Ndiaye**

Councillor's supporting information:

15 Byron Shire has a significant number of dog owners but very few off leash areas that are not beaches. This increases the risks to sensitive shorebirds and other marine life and also limits opportunities for people who have limitations on their movement due to age or disability.

20 At the same time, it seems further activation of the Mullumbimby Recreation Grounds would be very beneficial to all park user groups. The introduction of lighting at the skate bowl along with the upgrading of the surfaces has lead to an increase of use of this valuable community asset. The diversity of ages and increased number of women and young girls participating has been heartening.

25 Unfortunately, the increased access via the road and availability of parking has also increased some unwanted behaviour including camping, rubbish, and some amplified music on occasions. When the gates were closed this lead to people finding their own route into the park and damaging the sports fields.

30 After meeting with senior police, staff and some community members, and going over the risk assessment and the Byron Shire Open Space and Recreation Needs Assessment and Action Plan, options were discussed to increase passive surveillance, recreational use and activation of the area. One that stood out that could address both the protection of the grounds, increase the

passive surveillance and support our local biodiversity was the introduction of a fenced, off leash area for dogs.

5 Council has a resolution **(18-588)** that proposes to floodlight the skate bowl at night thereby increasing its visibility to the public to deter anti social behaviour, camping and hooning on there.

10 However, due to concerns raised by nearby residents about the impact that an increase in floodlights on the skate bowl could have on their amenity, the upgrade to the lighting has been placed on hold pending a further report on a more holistic plan for the future use of the skate bowl and adjacent sports field land.

In the meantime, the NSW Police have offered support for a dog park on the sport field as part of a CPTED review.

15 As such it makes sense for Council to explore the possibility of creating a dog park on the sports field adjacent to the skate park with the aim of creating increased passive surveillance and stopping people being able to drive on the field and damage it.

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

25 The Byron Shire Open Space and Recreation Needs Assessment and Action Plan refers to the Mullumbimby Recreation Ground Sportsfields as one of two sports parks in the Mullumbimby planning area that, land wise, meet the needs of the user groups, now and into the future. It did identify that upgrades to the ancillary infrastructure are required and recommended that a master plan be developed for the Sportsfields that included a fenced dog off-leash park.

30 A dog park can be easily designed and can be constructed in a short time frame. It can be accommodated on the sports field adjacent to the skate bowl without impinging on the FIFA and Cricket oval dimensions which need to be preserved for future use, as well as the tennis courts, skate bowl and netball court areas.

35 A key consideration for the dog park design will be its integration with the wider planning work being undertaken at present, which is looking at the future use and development on adjacent lands including Lot 22 vacant land, community gardens, private lands, sports fields and the skate bowl.

40 Notwithstanding the above, the need to activate this land has been identified as necessary, and the design of, and community consultation on, a dog park could proceed in the short term in concert with other planning work underway without creating long term land use conflict.

45 In support of the above, Council is developing a Dogs in Public Spaces (DiPs) Strategy (Res **18-362**). The DiPss will look to provide a balanced policy approach to address the open space requirements of all users of Council's public spaces by taking a broad approach to the management and control of dogs in the public spaces. A report on the next stage of the DiPss Strategy will be presented early in 2021.

50 The results from a 2020 Companion Animals Survey, part of the DiPs work, revealed interest in and need for a variety of more and better on and off leash dog exercise areas throughout the Shire.

Dog parks can provide many benefits for dogs, their owners and the community.

- Dog parks provide safe opportunities where dogs can get physical and mental exercise.
 - Dog parks provide an alternate public space to exercise dogs instead of beaches, estuaries, and open space areas of high environmental, biodiversity and ecological value.
- 55

- Dog parks can provide a public space where dog owners can interact with each other and form community bonds.
- Dog parks can reduce the likelihood of dog owners letting their dog's off-leash in other recreational areas and infringing on the rights of other community residents and park users.

5

There are guidelines for dog park development including: *UNLEASHED A GUIDE TO SUCCESSFUL DOG PARKS – South Australia Government*, which can be used as a reference guide to inform the design and community consultation process.

10 **Financial/Resource/Legal Implications:**

The design of recreation precinct, including a dog park, should be done in an integrated manner and can be funded from developer contributions taken from the Mullumbimby Open Space reserve.

- 15 A budget of \$20,000 should be sufficient to undertake sufficient design work to commence the community consultation process and refine the final design to enable project delivery.

Is the proposal consistent with any Delivery Program tasks?

- 20 There currently isn't a specific OP activity for this project. It is however consistent with the following CSP strategies and DP actions.

CSP Objective	L2	CSP Strategy	L3	DP Action
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	1.2.4	Provide active and passive recreational Community space that is accessible and inclusive for all (SP)
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.3	Provide accessible, local community spaces and facilities	2.3.5	Maintain Public Open space in a safe and efficient way that provides for both active and passive recreation (SP)
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.4	Enhance community safety and amenity while respecting our shared values	2.4.3	Enhance public safety, health and liveability through the use of council's regulatory controls and services
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

SUBMISSIONS AND GRANTS**Report No. 11.1****Grants and Submissions December 2020****Directorate:**

Corporate and Community Services

Report Author:

Esmeralda Davis, A/Manager Corporate Services

File No:

I2020/1856

Summary:

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

RECOMMENDATION:

That Council notes the report and Attachment 1 (E2020/95181) for Byron Shire Council's Submissions and Grants as at 25 November 2020.

Attachments:

1 Attachment 1 - Grants and Submissions Table - December 2020, E2020/95181 

REPORT

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

5 Successful applications

10 In November 2020, Council was successful in obtaining a combined \$ 929,907 from the Australia Day Council of NSW for *Covid Safe Australia Day 2021*, and from Transport for NSW for *Balemo Drive* (Walking and Cycling Program) and *Brunswick Heads Primary School Bus Stop Signage and Markings Upgrade* (Country Passenger Transport Infrastructure Stream).

15 *Public Spaces Legacy Program* - Council has been approved to participate in the program and, subject to meeting our agreed targets, may be eligible for \$3M funding in 2021. The guidelines also indicate that Council will be invited to nominate projects in Feb 2021, if successful in progressing to this stage.

Unsuccessful applications

20 Council was not notified of any unsuccessful applications this month.

Applications submitted

Two grant applications were submitted in November 2020 to:

- 25
- Australia Day Council of NSW for *Covid Safe Australia Day 2021*
 - Department of Planning, Industry and Environment (Everyone Can Play Scheme) for *Gaggin Park accessibility modifications*

Upcoming grant opportunities

30 There are a number of upcoming grant opportunities for which Council may submit funding applications including:

- 35
- Bushfire Local Economic Recovery Fund 2020
 - Regional Tourism Recovery Fund 2020
 - Your High Street Fund 2020
 - Building Better Regions Fund 2020

STRATEGIC CONSIDERATIONS

40 ***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	5.6.12	Implement strategic grants management systems to deliver priority projects for Byron's community (SP)	5.6.12.4	Provide governance for grants management

Legal/Statutory/Policy Considerations

- 45 Under Section 409 3(c) of the *Local Government Act 1993* Council is required to ensure that 'money that has been received from the Government or from a public authority by way of a specific

purpose advance or grant, may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose'. This legislative requirement governs Council's administration of grants.

5 ***Financial Considerations***

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

The potential funding and allocation is noted below:

Requested funds from funding bodies	18,495,048
Council Contribution Cash	2,053,376
Council Contribution In-Kind	153,500
Other contributions	258,809
Funding applications submitted successful and awaiting notification (total project value)	20,960,733

15 ***Consultation and Engagement***

Cross-organisational consultation has occurred in relation to the submission of relevant grants, and the communication of proposed grant applications

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 **Variation of temporary market licences granted for Byron farmers and community markets**

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

File No: I2020/1564

Summary:

This Report requests authorisation from Council to vary market licences granted to the Byron Bay Community Association Inc and Byron Farmers' Market Inc to extend the market licence for an additional eight months.

RECOMMENDATION:

1. That Council authorises the continued suspension of the Community and Farmers market licences issued to the Byron Bay Community Association Inc and Byron Farmers' Market Inc for the Butler Street Reserve Byron Bay with ongoing abatement of rent to 31 October 2021.
2. That Council notes that no public submissions were received on the proposed variation to extend the licence term to 31 October 2021 to the Byron Farmers' Market Inc.
3. That Council delegates to the General Manager the authority to vary temporary market licences issued to:
 - a) Byron Farmers' Market Inc for farmers markets at the Cavanbah Centre to replace Schedule 1, Item 2 with the words '1 July 2019 to 31 October 2021'.
 - b) Byron Bay Community Association Inc for community markets at the beachside to replace Schedule 1, Item 2 with the words: '4 August 2019 to 31 October 2021'.
4. That Council notes that the Byron community market was relocated from the Butler Street Reserve to Denning Park to be held on the first Sunday of every month under licence to the Byron Bay Community Association Inc.
5. That Council notes that the Byron Winter Whales has requested the use of Denning Park on the first Sunday in May 2021 for the 30th anniversary of the classic swim event.
6. That Council delegates to the General Manager the authority to negotiate with Byron Bay Community Association Inc and Byron Winter Whales to:
 - a) Reduce their respective footprints in Denning Park so that the Byron Bay Community Association Inc right to hold a monthly community market in Denning Park under a licence agreement is not disadvantaged; and that
 - b) If no acceptable outcome can be reached then a further report will be brought to Council to determine the matter.

REPORT

Council resolved (**19-062**) at its 28 February 2019 meeting:

- 5 1. *That Butler Street Reserve be closed to the public after the 7 July Community Market for a period of 6 months while the section of the Byron Bay Bypass (including the Somerset Street Roundabout and its western and southern legs and the area of works within Butler Street north of the roundabout) is constructed.*
- 10 2. *That lockable steel gates be installed at the entry points to the Reserve to restrict vehicle access during the closure period and during the 'no parking' periods overnight.*
- 15 3. *That staffs provide market managers with any information available regarding viability of other potential relocation sites identified by the markets, including planning approvals required.*
- 20 4. *That staff ensure The Cav has all relevant approvals in place to host markets during the closure period, should that be required, and provide details to market managers regarding power and water access, amenities and traffic management plans for the site.*
- 25 5. *That the Butler Street Reserve be made available as a site compound for the Contractor for the duration of the closure and one (1) week after this section is constructed and open to traffic, to allow relocation of the site compound.*
- 30 6. *That staff continue to liaise with market managers to facilitate the return of markets to Butler Street Reserve once relocation of the site compound has occurred.*
- 35 Subsequent investigations resulted in the relocation of the Byron Farmers market to community land at the Cavanbah Centre by resolution (**19-175**). The monthly Community markets were relocated to the Byron Bay beachside by resolution (**19-235**). Temporary markets licences were executed with the Byron Farmers' Market Inc and Byron Bay Community Association Inc with licences commencing in July and August 2019 respectively.
- Unforeseen delays caused by protest action and a referral to the Department of Environment and Energy under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) resulted in stage one of the Bypass project not being completed as planned.
- 40 Council resolved (**19-555**) at its 24 October 2019 meeting:
 1. *That Council authorise the continued suspension of the community and farmers markets licences issued for the Butler Street Reserve with ongoing abatement of rent until both markets can be resumed at the Reserve.*
 2. *That Council, delegate to the General Manager, the authority to vary temporary relocation market licences issued to:*
 - a. *Byron Bay Community Association Inc for community markets at the beachside to:*
 - i) *Extend the term to 30 June 2020 with an additional option of six months; and*
 - ii) *The Licensor to pay the Licensee to its nominated bank account, within 30 days from the end of the term or any holding over, the amount of the bond held being an amount not exceeding \$1,000 (inclusive of GST).*
 - b. *Byron Farmers' Market Inc for farmers markets at the Cavanbah Centre to:*
 - i) *Extend the term to 30 June 2020 with an additional option of six months; and*

- ii) *The Licensee to submit to the Licensor within 30 days from the end of the term and any holding over, all receipts detailing expenditure of \$20,000 and return by cheque made payable to Byron Shire Council the balance of any unspent monies.*

3. *That Council authorise the full subsidisation of rent under the varied licence term at a cost of \$6,689 (inclusive of GST) funded from the Byron Bay Bypass project. That Council continue to fully subsidise rent under the further six month option at a rate set by Councils 2020-2021 fees and charges.*

4. *That Council authorise the public exhibition of the variation of the farmers market licence to the Byron Farmers Market Inc for 28 days and should any submissions be received that a new report be brought back to Council.*

Temporary markets licences granted to Byron Farmers' Market Inc and Byron Bay Community Association Inc were subsequently varied to extend the licence term to 31 December 2020.

Extending term of Temporary Market Licences:

During the period of closure of Butler Street Reserve, Council completed a detailed site contamination report in response to a formal Environmental Planning Authority ('EPA') investigation order. Subsequently, the EPA requested further testing with specific reference to polyfluoroalkyl substances ('PFAS').

Council engaged Cavanbah Consulting to undertake these investigation works and reported the results to the EPA in September 2020. At the time of writing this report, Council has not received formal advice from the EPA about the implications of these findings.

On 17 November 2020 staff met with the EPA case officer and stressed the strategic value of this site for the community and the importance of a clear way forward – both in terms of further investigations / monitoring, and planning for future use of the site.

As a result of the continued unavailability of the Butler Street Reserve to hold markets, the term of temporary market licences granted to the Byron Farmers' Market Inc and Byron Bay Community Association Inc must be further extended for eight months to expire on 31 October 2021. Neither licence may be extended beyond 31 October 2021, as new five year market licences will commence 1 November 2021, following a tender process.

Terms of varied Temporary Market Licences:

To ensure continuing use rights exist for markets historically held on the Butler Street Reserve, Council must authorise the continuing suspension of original market licences granted to Byron Farmers' Market Inc and Byron Bay Community Association Inc to 31 October 2021, and continue to abate rent payable under these licences.

Council must also vary temporary market licences granted to:

1. Byron Bay Farmers' Market Inc for weekly farmers markets at the Cavanbah Centre, Ewingsdale Road Byron Bay with the following terms:

a) licence term to end on 31 October 2021.

2. Byron Bay Community Association Inc for monthly Community Markets at the beachside Byron Bay with the following terms:

- a) licence term to end on 31 October 2021.

In accordance with resolution (19-555), Council must continue to provide fully subsidised rent for the further eight month term variation to include:

1. \$1,568 (inclusive of GST) to Byron Farmers' Market Inc; and
2. \$3,664 (Inclusive of GST) to Byron Bay Community Association Inc.

Total rent subsidy is \$5,232 (inclusive of GST).

Public submissions:

In accordance with the *Local Government Act 1993*, Council must call for public comment prior to granting a licence to occupy community land.

Council publically advertised its proposal to vary the temporary market licence granted to Byron Farmers' Market Inc for use of community land at the Cavanbah Centre. Public comment was not required to vary the licence granted to the Byron Bay Community Association Inc for use of Crown Land currently managed under the *Crown Land Management Act 2016*.

Public advertisement was conducted between 26 October and 23 November 2020 and Council received no submissions.

As a result, this report recommends that Council notes that no submissions were received and grants the proposed temporary market licence variation to Byron Farmers' Market Inc to extend the licence term to 31 October 2021.

Clash of events to be held in Denning Park on 2 May 2021

The Byron Bay Winter Whales has made an application to Council for use of an area of Denning Park Byron Bay for the 2 May 2021 swim classic. The monthly Byron community market is also scheduled to occur 2 May 2021.

The Byron Winter Whales has specifically requested 2 May 2021 for its classic swim event because:

- The event has always been held on the first Sunday in May and participants plan their attendance well in advance;
- The strong intention to hold the event on its usual weekend as the 2021 celebrates the 30th event held with over a million dollars raised;
- The following Monday 3 May 2021 is a public holiday in Queensland with many of the Winter Whales swim participants plan for a long weekend in the Byron Shire;
- The prior weekend 25 April is ANZAC day and not suitable; and
- The following weekend 13 -16 May 2021 is the Byron Comedy Festival held at the Surf Club and also not suitable.

The Winter Whales requests the below footprint shown in yellow (being an area equating approximately to 40 market stalls) be made available for the 2 May 2021 swim classic.



The Byron Bay Community Association Inc holds a licence to conduct monthly community markets in Denning Park following Councils resolution (19-062) to relocate the monthly community markets from Butler Street Reserve to Denning Park.

The Byron Bay Community Association Inc considers the loss of 40 markets stall spaces as unacceptable both in terms of lost market revenue and impact on market stall holders that rely on the Byron community market to sell their goods. The Byron Bay Community Association Inc requests that Council consider an alternative footprint that would permit both events to occur on the same day but with a significantly lesser impact on the markets and number of market stalls.

In 2020 Council staff negotiated a compromise that would have permitted the monthly community markets and the Byron Winter Whales classic swim event to occur on the same day in Denning Park. Unfortunately due to COVID-19 restrictions neither event was held. The below plan details a smaller footprint in Denning Park allocated to the Byron Winter Whales.



This report recommends that Council delegate authority to the General Manager to negotiate an acceptable outcome between the Byron Bay Community Association Inc and the Byron Winter Whales whereby both events can occur on 2 May 2021 in Denning Park. If no acceptable outcome can be reached then a further report will be brought to Council to determine the matter.

The Byron Bay Community Association Inc holds a licence to conduct its monthly community markets in Denning Park on the first Sunday of each month. That licence was granted by a Council resolution following the relocation of the Byron community markets from the Butler Street Reserve to Denning Park.

STRATEGIC CONSIDERATIONS

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	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.1	Develop and maintain collaborative relationships with government, sector and community	2.2.1.2	Participate in and inform community planning

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Legal/Statutory/Policy Considerations

Local Government Act 1993 (NSW)

s 47A Leases, licences and other estates in respect of community land—terms of 5 years or less

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

25

Financial Considerations

30 Council resolved 19-235 to fully subsidise rent under the temporary market licences granted to the Byron Farmers' Market Inc and Byron Bay Community Association Inc. Council must vary these licences for a further eight months to 31 October 2021.

Subsidised rent for the extended term totals \$5,232 (inclusive GST).

Consultation and Engagement

35

Twenty eight day public notice of the proposed licence variation to be granted to Byron Farmers' Market Inc for use of community land at the Cavanbah Centre, Ewingsdale Road Byron Bay was given between 26 October and 23 November 2020.

40

The managers of the Byron Farmers Market and Byron Community Market have been consulted throughout this process and understand the rationale behind the market extension.

Report No. 13.2 **Sub-licences to Zephyr Equine Pty Ltd and Cape Byron Seahorses Riding Centre for access through Crown Land.**

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

File No: I2020/1642

Summary:

Sub-licences held by Zephyr Equine Pty Ltd and Cape Byron Seahorses Riding Centre for access through Crown land for commercial equestrian activities will expire on 1 January 2020.

This report recommends that Council grant new twelve month sub-licences to both Zephyr Equine Pty Ltd and Cape Byron Seahorses Riding Centre in accordance with Council resolution **19-612**.

RECOMMENDATION:

1. That Council authorises the General Manager to grant a sub-licence to Zephyr Equine Pty Ltd for a term of 12 months for the purpose of access through Lot 407 DP 729057 being Crown Reserve R755695 on condition that:
 - a) Zephyr Equine Pty Ltd holds a current permit with Cape Byron Marine Park for the term of the sub-licence; and
 - b) Zephyr Equine Pty Ltd takes all steps necessary to ensure that all horse droppings are removed from the sub-licenced area during and at the end of each access session.
2. That Council authorises the General Manager to grant a sub-licence to Cape Byron Seahorses Riding Centre for a term of 12 months for the purpose of access through Lot 428 DP 729272 being Crown Reserve R81780 on condition that:
 - a) Cape Byron Seahorses Riding Centre holds a current permit with Cape Byron Marine Park for the term of the sub-licence; and
 - b) Cape Byron Seahorses Riding Centre takes all steps necessary to ensure that all horse droppings are removed from the sub-licenced area during and at the end of each access session.
3. That sub-licence fee is set in accordance with Councils current Fees and Charges.

REPORT

Council resolved (**19-612**) at its 28 November 2019 meeting:

- 5 1. *That Council authorise the General Manager to grant a sub-licence to Zephyr Horses for a term of 12 months for the purpose of access through Lot 407 DP 729057 being Crown Reserve R755695 on condition that:*
 - 10 a) *Zephyr Horses holds a current permit with Cape Byron Marine Park for the term of the sub-licence; and*
 - b) *Zephyr Horses takes all steps necessary to ensure that all horse droppings are removed from the sub-licenced area during and at the end of each access session.*
- 15 2. *That Council authorise the General Manager to grant a sub-licence to Cape Byron Seahorses Riding Centre for a term of 12 months for the purpose of access through Lot 428 DP 729272 being Crown Reserve R81780 on condition that:*
 - 20 a) *Cape Byron Seahorses Riding Centre holds a current permit with Cape Byron Marine Park for the term of the sub-licence; and*
 - b) *Cape Byron Seahorses Riding Centre takes all steps necessary to ensure that all horse droppings are removed from the sub-licenced area during and at the end of each access session.*
- 25 3. *That the fee for each sub-licence for the 12 month term be set at half the annual Sub-licence Beach Access Commercial Horse Riding fee as set in Council's current Fees and Charges.*

30 Council has received requests from both Zephyr Equine Pty Ltd (formally Zephyr Horses) and Cape Byron Seahorses Riding Centre for new annual licences in accordance with resolution (19-612) following the expiry of current licence on 1 January 2021.

Authority to sub-licence

35 In accordance with Crown licence RI 564194, Council may grant sub-licences for access through Lot 407 DP729057 and Lot 428 DP 729272 for low impact recreational business purposes. All Native Title implications were considered by the Crown prior to the grant of licence RI 564194 to Council.

40 Council's Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves further requires a Council resolution to grant proposed sub-licences.

Sub-licence terms and conditions

45 Terms of the proposed sub-licences to Zephyr Equine Pty Ltd and Cape Byron Seahorses Riding Centre requires that both hold valid Cape Byron Marine Park Permits during the six month sub-licence term.

Zephyr Equine Pty Ltd must also:

- 50 a) collect all horse dropping during and at the end of each access through Lot 407 DP 729057.

Cape Byron Seahorses Riding Centre must also:

- a) collect all horse dropping during and at the end of each access through South Beach Road and Lot 428 DP 729272; and

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- b) park its horse truck/float legally on South Beach Road and handle all horses in public areas in a safe manner.

5 Rent will be set in accordance with Council's 2020-2021 fees and charges for Sub-licence Beach Access Commercial Horse Riding.

10 While equestrian commercial activities are prohibited in zone 7(f1) (Coastal Zone) under the Byron 1988 LEP, clause 48(1) of the LEP permits temporary use of the land for development not being designated development, for a maximum period of 7 days on any one occasion up to a maximum of 60 days in any calendar year because the land is vested in the Crown and the activity does not involve the erection of any permanent structures.

Planned works to South Beach Road Brunswick Heads:

15 In response to decisions made at a Council workshop, Council is proposing to formalise current parking arrangements on South Beach Road Brunswick Heads with works to commence mid to late 2021. The proposed works will not impact the proposed sub-licence to Cape Byron Seahorses Riding Centre for the term of the sub-licence.

20 **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	1.2.4	Provide active and passive recreational Community space that is accessible and inclusive for all (SP)	1.2.4.1	Deliver adopted projects from the beach accessibility program

Legal/Statutory/Policy Considerations

25

Zone No 7 (f1) (Coastal Land Zone)

1 Objectives of zone

The objectives of the zone are:

- 30 (a) *to identify and protect environmentally sensitive coastal land,*
 (b) *to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality,*
 (c) *to prevent development which would adversely affect, or be adversely affected by, coastal processes, and*
 35 (d) *to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.*

2 Without development consent

Nil.

3 Only with development consent

40 *Agriculture (other than animal establishments); beach and coastal restoration works; building of levees, drains or clearing of land; bushfire hazard reduction; clearing of land; community buildings; drainage; environmental facilities; forestry; home industries; markets; roads; primitive camping grounds; surf lifesaving facilities; utility installations.*

48 Temporary use of certain land

- 45 (1) *Despite any provision of this plan, a person may, without the consent of the Council, carry out development on land for any purpose (not being designated development)*

within Zone No 6 (a) or 7 (f1) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if:

- (a) such land is vested in the Crown, a Minister of the Crown or the Council, and*
- (b) the development does not involve the erection of permanent structures ancillary to the use of that land.*

- 5
- (2) *Despite any other provision of this plan, a person may, but only with the consent of the Council, carry out development on the following land for any purpose (not being designated development) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if the development does not involve the*
- 10 *erection of permanent structures ancillary to the use of that land:*
Lot 1, DP 201626 and Lot 2, DP 542178, Ewingsdale Road, Ewingsdale
Lot 358, DP 704247, Bangalow Road, Byron Bay.

Financial Considerations

- 15 Rent under the Sub-licence is established by Council's fees and charges.

Rental income for the term of the Sub-licences is \$3,318 inclusive of GST.

Consultation and Engagement

- 20 Nil.

Report No. 13.3 **Implementation of Res 20-664/2 Lease - Council and TAFE NSW - part lot 12 Bayshore Drive Byron Bay**
Directorate: General Manager
Report Author: Matt Meir, Solicitor
File No: I2020/1824

Summary:

This report is about the proposed lease between Council and TAFE NSW for part of lot 12, Bayshore Drive Byron Bay, in the context of Lot 12's redevelopment.



The report responds to Part 2 of Council Resolution **20-664** of 26 November 2020.

RECOMMENDATION:

That Council:

- 1) **Notes that Council and TAFE's relationship is focused on promoting outcomes that:**
 - **Support delivery of high quality educational and vocational training in the Byron Shire.**
 - **Create a vocational training precinct to share infrastructure, integrate training services with local industry and leverage existing programs across broad industries, including for example tourism, hospitality, retail, business, community services and creative industries.**
 - **Support training of job ready individuals for the benefit of the local community and local, regional and national industry and growth.**
- 2) **Authorises the General Manager to continue negotiations, and then enter an agreement for lease and lease, with TAFE NSW regarding part of Lot 12 Bayshore Drive, subject to:**
 - a) **The final version of each agreement being substantively similar to the attached agreement for lease and lease; and**
 - b) **The final version of each agreement being consistent with Council resolution 20-664.**
- 3) **Quarantines any rental revenue derived from a future lease with TAFE through establishing a new reserve titled "Property Development Reserve – Lot 12 Bayshore Drive"**

Attachments:

- 1 Agreement for lease - Council and TAFE NSW - part Lot 12 Bayshore Drive - for Council meeting 17 December, E2020/96663 
- 2 Draft Lease from Council to TAFE NSW for part lot 12 Bayshore Drive - for 17 December Council meeting, E2020/45229 

REPORT

This report is about the proposed lease between Council and TAFE NSW on that part of the redeveloped Lot 12 Bayshore Drive that is earmarked for TAFE's connected learning centre under the Creative Capital masterplan for the site.

Context

On 13 December 2019 Council resolved (**19-624**) as follows:

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.*

Since this time, there have been a series of Council resolutions regarding both the wider redevelopment of Lot 12 and TAFE occupying Council land within that redevelopment. All resolutions have sought to advance Council and TAFE's relationship. That relationship is focused on promoting outcomes that:

- Support delivery of high quality educational and vocational training in the Byron Shire.
- Create a vocational training precinct to share infrastructure, integrate training services with local industry and leverage existing programs across broad industries, including for example tourism, hospitality, retail, business, community services and creative industries.
- Support training of job ready individuals for the benefit of the local community and local, regional and national industry and growth.

The most recent Council resolution regarding TAFE's occupation of part Lot 12 was resolution 20-664/2 of 26 November 2020. It states:

That a report be brought to the December meeting of Council outlining the process for delivery of the TAFE NSW Connected Learning Centre in the location proposed within the Creative Capital EOI, including the details of the proposed lease arrangements for approval.

Relationship between Lot 12 redevelopment and TAFE lease

Council's decision to pursue the Creative Capital redevelopment proposal for Lot 12 means that any Council-TAFE lease for part of Lot 12 needs to be consistent with Creative Capital's master plan.

The level of detail still to be worked through regarding the Creative Capital proposal means that Council and TAFE cannot presently enter a lease for part of the site. Presently, there is nothing for TAFE to lease.

Council and TAFE can enter a binding agreement once details including the following are known:

- Key development dates under the master plan (which will depend on the relevant consent authority for various works, and when TAFE and Creative Capital receive development consent to carry out their respective works on the site);

- The precise size of TAFE's leased lot; and
- The site's annual rent (which depends on the final lot size).

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Notwithstanding the details that still need to be resolved, Council staff and TAFE's expectation is that the executed agreement for lease and lease between the parties will be on similar terms to those previously considered by Council (both attached to this report).

10 Timetable for proposed lease

As noted above, key details about the Council -TAFE lease cannot be known at this stage. However, the following table shows the estimated new timetable for TAFE's construction and occupation of its Lot 12 campus, based on Creative Capital's delivery programme:

15

Event	Creative Capital timetable
Council-TAFE enter agreement for lease	Sometime prior to March 2021 (subject to Council-Creative Capital development services agreement making provision for TAFE access to site)
TAFE works start (subject to receiving development consent; possibly from Joint Regional Planning Panel)	Sometime after December 2021 (approximate start date for Creative Capital stage one works)
Council works complete	July-August 2022 (being done by Creative Capital)
TAFE works complete	March 2023
Council-TAFE lease starts	Later of Creative Capital works relevant to TAFE or TAFE works finishing (assume March 2023)
Sunset date (allowing either Council or TAFE to terminate agreement)	September 2023
Lease subdivision registered by Council	By September 2023

Creative Capital's delivery programme has the TAFE development as the second stage of its overall plan; right after the necessary civil works are completed on the site (stage one).

20 Regarding the above timetable, Council staff note:

- The timetable is subject to change. For instance, Creative Capital's delivery programme notes that proposed stage one will be carried out in a way that enables the TAFE campus construction to start as early as possible.
- The TAFE development will generally need to proceed parallel with the broader masterplan redevelopment to ensure a cohesive redevelopment of the whole site (e.g., consistent civil works, services connections and easements).
- The proposed model from Creative Capital regarding Lot 12's redevelopment is likely to be regarded as a public-private partnership under the *Local Government Act 1993*. Further, based on recent discussions with the Office of Local Government regarding the old Byron Bay hospital site, it is possible, although unlikely that Council's proposed arrangement with TAFE could also trigger the public-private partnership provisions. Council cannot enter a public-private partnership without complying with the *Local Government Act's* reporting requirements. The proposed Statement of Outcomes contained in recommendation 1 is relevant to a public-private partnership reporting requirement. Council's resolution is sought

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now so as to avoid delay later on in the process should the relationship be assessed as a public-private partnership, which is currently being further investigated.

5 TAFE site location and rent return

The Creative Capital proposal:

- Relocates the TAFE campus fronting Bayshore Drive to further back on the site; and
- Reduces the campus from about 5,260 square metres to about 3,532 square metres.

The above changes, based on the latest Valuation Report commissioned by Council, will reduce TAFE's rent from \$382,000 (ex-GST) per annum to \$187,677 (ex-GST) per annum.

TAFE has advised Council that the proposed lot size for its development will need to be increased. This will require a revaluation of the land and the rent flowing from it. Council staff do not expect this revaluation to significantly increased the current proposed rent.

Next steps

Because the lease of any Council land within the overall masterplan is subsidiary to the masterplan redevelopment (there is nothing to lease until the masterplan is finalised), Council cannot reasonably enter a lease with TAFE at this time.

However, as can be seen above, Council sees the TAFE campus construction as unfolding in an orderly way within the masterplan redevelopment. In this context, Council should authorise the general manager to enter a legally binding agreement with TAFE as soon as practicable after its final form can be determined.

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	1.2.6	Optimise Council's property portfolio (SP)	1.2.6.1	Progress Lot 12 Bayshore Drive Byron Bay future use
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	4.1.1.5	Implement Our Mullumbimby Masterplan, Bangalow Village Plan and Byron Arts and Industry Estate Plan

Legal/Statutory/Policy Considerations

Under the *Local Government Act 1993*, Council is free to lease operational land to who it wishes. However, certain arrangements for public infrastructure that are provided through private sector financing, ownership or control are subject to the *Local Government Act's* public-private partnership provisions.

Financial Considerations

- 10 When Council considered this matter at the 16 April 2020 Planning Meeting, it was considered that any rental revenue provided by TAFE be reserved to assist with funding the required immediate civil works associated with the TAFE establishment and the broader future development cost of lot 12 Bayshore Drive.
- 15 It was suggested that Council establish a specific reserve titled 'Property Development Reserve – Lot 12 Bayshore Drive and this was included at recommendation 5 to that Report. Upon consideration of the Report, Council adopted an alternative resolution **20-161** that did not prescribe how any rental revenue via a lease with TAFE would be treated.
- 20 Given Council resolution **20-644** from the 26 November 2020 Ordinary Meeting where Council may now not be required to contribute to any cost to redevelop lot 12 Bayshore Drive, it is for Council to determine what to do with any rental revenue that may arise from a lease agreement with TAFE.
- 25 Along the lines promoted in the 16 April 2020 Planning Meeting Report, it is suggested that Council quarantine the rental revenue and allocate it to a newly created reserve titled 'Property Development Reserve – Lot 12 Bayshore Drive'. If at a future point Council wishes to reallocate any revenue generated and contained in this reserve for another purpose, it will be free to do so by resolution.

Consultation and Engagement

Further discussions between Council, TAFE and Creative Capital are necessary to ensure each group's interests are met prior to the general manager entering a lease with TAFE on Council's behalf.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.4 Report of the Public Art Panel meeting held on 29 October 2020**Directorate:** Corporate and Community Services**Report Author:** Joanne McMurtry, Community Project Officer

Isabelle Hawton, Planner

File No: I2020/1769**Theme:** Corporate Management

Community Development

Summary:

A Public Art Panel meeting was held on 29 October 2020 to consider the art components of the Mullumbimby Talking Street Trial and Public Art Conservation and Maintenance.

Recommendations are provided for Council's consideration. Staff have suggested alternate recommendations regarding the Talking Street Trial, based on updated considerations outlined in the report.

RECOMMENDATION:

1. **Regarding the Mullumbimby Talking Street Trial, that Council does not adopt the Recommendation proposed by the Public Art Panel, but instead adopts the following:**
 - a) **Notes the feedback provided by the Public Art Panel and supports the recommendation to provide more time for planning and delivery of the art components for the Talking Street Trial;**
 - b) **Undertakes a staged approach to place-making/activation elements in the Trial, including art components, as the budget allows, once the final costings of the traffic-calming elements are finalised.**
 - c) **Where possible, seeks art components that may be utilised in a more permanent way after the trial is complete.**
2. **That Council adopts the following Panel recommendations:**
 - a) **Notes the current list of Public Artworks in Council's Asset Management System.**
 - b) **Notes that the recently adopted Open Spaces Asset Management Plan includes public art assets and identifies that the current budget allocation for assets outlined in the plan is insufficient to sustain assets at the desired standard.**
 - c) **Establishes a Public Art Maintenance Reserve in the Open Spaces and Recreation budget of \$10,000 per annum, commencing in the 2021/22 financial year, to cover the cost of annual inspections, conservation and maintenance.**
 - d) **Notes that the Public Art Maintenance budget is to be spent only on works that are not scheduled for replacement or maintenance under a separate Council budget or project.**
3. **That regarding a request for financial assistance for the Brunswick Nature Sculpture Walk event in 2021, Council supports the request with \$5,000 towards the 2021 event and encourages the organisers to apply for further funds if needed when the Public**

Art Small Grants funding becomes available.

Attachments:

- 1 Minutes 29/10/2020 Public Art Panel, I2020/1656 

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REPORT

A Public Art Panel meeting was held on 29 October 2020 to consider the art components of the Mullumbimby Talking Street Trial and issues of Public Art Conservation and Maintenance.

The minutes of the meeting are attached. Alternative recommendations regarding the Mullumbimby Talking Street Trial are proposed. Recommendations 2 and 3 are as proposed by the Panel.

Mullumbimby Talking Street Trial

The Mullumbimby 'Talking Street' is an activation of Mullumbimby's main street and the number one priority in the *Our Mullumbimby Masterplan*. Council was successful in receiving grant funding of \$250,000 through the NSW government 'Streets as Shared Spaces' program and there may be several opportunities to incorporate art/place-making components into the trial.

The Public Art Panel received an overview of this place-making project and its artistic components, and was asked to provide feedback on a draft curatorial brief. The brief, as put to the Panel, suggested the engagement of an arts curator to coordinate the delivery of nominated arts components, within a budget of \$20,000.

The Panel was concerned that the budget was significantly deficient and that the proposed arts components were too small in scope.

The Panel, therefore, made the following recommendations:

Committee Recommendation:

That the Public Art Panel:

1. Notes the project information provided;
2. Provides the following feedback:
 - a. The Panel supports a delay in the project's art components due to time and budgetary pressures and requests that the art coordinator role be delivered by the incoming Arts and Cultural Officer who will work with the project team to deliver the art components of the project.
 - b. That the Arts and Culture officer propose some delivery options for the art components within the Talking Street.
3. Notes that existing Public Art Panel members also participate in the Place Planning Collective and could assist as a conduit between the two to support a more integrated approach to delivering shared public art and place-making outcomes.

Management Comments

Discussion with the Talking Street project team, subsequent to the Panel meeting, further highlighted budgetary and time challenges for the project. It also clarified the intention of this project to be a trial of various interventions (as required by the Streets as Shared Spaces grant).

The fundamental focus of the trial is to slow traffic in Burringbar Street and provide areas within the street where pedestrian spaces can be extended into the road for use by people.

As design of the project is being progressed, it is becoming clear that the overall budget of \$250,000 is limiting opportunities, requiring the bulk of the funding to be used for works on the road.

- 5 The project team is not yet at the point of being able to confirm the budget that could be available to implement any art components.

10 The first part of the Panel's recommendation is therefore supported – to delay the art components of the project and look to deliver art outcomes in a staged way across the trial period based on the best possible outcome from budget available.

15 In terms of project budget, the Local Traffic Committee meeting on 8th December will determine the final design and costing for the proposed road interventions and traffic calming treatments. The project team will then be able to finalise all project costs, which will shape the budget allocation for art components.

At that stage, the project team will be able to liaise with the newly appointed Arts and Culture Officer to scope the most efficient program for the delivery of art opportunities throughout the trial.

20 The inaugural Arts and Culture Officer commenced at Council on 16 November 2020. Pre-existing major priorities span strategic and operational deliverables and include, but are not limited to, commencing work on an Arts and Culture Strategy as per resolution **20-263** and co-developing and implementing a COVID appropriate operating model for the Lone Goat Gallery (currently unable to re-open).

25 Rather than directly delivering the Art Coordinator role in the Talking Street trial, the Arts and Culture Officer is best-placed to provide advice and expertise to internal and community groups, individuals and stakeholders.

30 For the above reasons it is not feasible for the Arts and Culture Officer to directly deliver the Art Coordinator role in the Talking Street trial, as this additional operational responsibility would prohibit completion of pre-existing priority deliverables and detract from valuable opportunities for strategic organisational process improvement.

35 During the trial, there will be ample opportunities to consult with the community about the elements that are favoured and other elements that aren't working so well. The trial will be a living activation that enables the community to provide feedback and create changes throughout the process.

40 Further consultation will be undertaken with the Arts & Culture Officer should further budget be established for artistic/place-making elements.

An alternative recommendation is therefore proposed as follows:

Staff Recommendation

45 That Council:

1. Notes the feedback provided by the Public Art Panel and supports the recommendation to provide more time for planning and the delivery of the art components for the Talking Street Trial;
2. Undertakes a staged approach to place-making/activation elements in the Trial, including art components as the budget allows, once the final costings of the traffic-calming elements are finalised.

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3. Where possible, seeks art components that may be utilised in a more permanent way after the trial is complete.

STRATEGIC CONSIDERATIONS

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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
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	4.1.1.5	Implement Our Mullumbimby Masterplan, Bangalow Village Plan and Byron Arts and Industry Estate Plan

Legal / Statutory / Policy Considerations

- 10 The Mullumbimby Talking Street Trial Project is a place activation/place-making project. The art components of the project are temporary. Project approval has already been obtained from Council through the funding application approval process in which the project was firmly situated as a place-making, rather than public art, project. The Public Art Policy, Strategy and Guidelines have provided guidance around art activities.

15

Financial Considerations

- 20 Regarding the Mullumbimby Talking Street Trial, Council was successful in receiving grant funding of \$250,000 through the NSW government 'Streets as Shared Spaces' program to implement the trial project. The budget for delivering the project's artistic components was initially estimated at \$20,000, although this estimate was subsequently reconsidered.

- 25 Regarding Public Art Maintenance and Conservation, the recommendation is for Council to establish a Public Art Maintenance Reserve in the Open Spaces and Recreation budget of \$10,000 per annum, commencing in the 2021/22 financial year, to cover the cost of annual inspections, conservation and maintenance.

The recommendation also requests:

- 30 1. That Council notes that the recently adopted Open Spaces Asset Management Plan includes public art assets and identifies that the current budget allocation for assets outlined in the plan is insufficient to sustain assets at the desired standard.
- 35 2. That the Public Art Maintenance budget be spent only on works that are not scheduled for replacement or maintenance under a separate Council budget or project.

Regarding Brunswick Nature Sculpture Walk, the recommendation requests Council support the request for financial assistance with \$5,000 towards the 2021 event. The Public Art budget balance for the 2020/21 financial year is currently \$65,900.

Consultation and Engagement

5 The Mullumbimby Talking Street Project is a result of comprehensive community consultation and there is a high level of collaboration between key community organisations and Council in delivering the trial.

10 The project was identified by the Mullumbimby Masterplan Guidance Group during the development of *Our Mullumbimby Masterplan*.

In addition, the following community groups worked with Council to submit the Streets as Shared Spaces grant application:

- Creative Mullumbimby
- Mullumbimby Chamber of Commerce
- 15 • Mullumbimby Residents Association
- The Place Planning Collective

20 To implement the project, a Community Working Group has been established including community members from Creative Mullumbimby, Mullumbimby Chamber of Commerce and Mullumbimby Residents Association.

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

Report No. 13.5 Project Options for the Australian Government Local Roads and Community Infrastructure Program Extension

Directorate: Corporate and Community Services

Report Author: Esmeralda Davis, A/Manager Corporate Services

File No: Christopher Soulsby, Development Planning Officer S94 & S64
I2020/1857

Summary:

The purpose of this report is to present project options to Council for the allocation of \$1,408,882 of grant funding to be received from the Australian Government's Local Roads and Community Infrastructure Program (LRCIP).

RECOMMENDATION:

That Council adopts the projects listed in Option 1 to expend the Australian Government's Local Roads and Community Infrastructure Program grant.

REPORTBackground

5 In May 2020, the Deputy Prime Minister, announced the LRCIP and the funding allocation for Councils. Byron Shire Council's initial allocation under this program was \$730,070. In October 2020, an extension to this program was announced, and Council has been allocated a further \$1,408,882, available from 1 January 2021, with funds to be expended by 31 December 2021.

10 At the time of writing this report, the funding agreement had not yet been received and is expected by mid December 2020.

15 The Program Extension Guidelines are also not yet available, however the initial notification encourages Councils to identify projects *"to maximise the opportunity for a range of workers to be retained, redeployed and employed to deliver ready to roll-out projects that provide economic stimulus and benefits to communities"*.

20 Assuming the same eligibility criteria as for the initial allocation, funding will be available for local road and community infrastructure projects that involve the construction, maintenance of and/or improvements to council-owned assets (including natural assets) that are generally accessible to the public. Projects will need to deliver benefits to the community, such as improved accessibility, visual amenity, and safety benefits.

25 Eligible local road projects may include any of the following associated with a road:

- traffic signs;
- traffic control equipment;
- street lighting equipment;
- a bridge or tunnel;
- 30 • a facility off the road used by heavy vehicles in connection with travel on the road (for example, a rest area or weigh station);
- facilities off the road that support the visitor economy; and
- road and sidewalk maintenance, where additional to normal capital works schedules.

35 Eligible community infrastructure projects could include works involving:

- Closed Circuit TV (CCTV);
- bicycle and walking paths;
- painting or improvements to community facilities;
- 40 • repairing and replacing fencing;
- improved accessibility of community facilities and areas;
- landscaping improvements, such as tree planting and beautification of roundabouts;
- picnic shelters or barbecue facilities at community parks;
- playgrounds and skate parks (including all ability playgrounds);
- 45 • noise and vibration mitigation measures; and
- off-road car parks (such as those at sporting grounds or parks).

Key issues

50 Following internal consultation a number of potential project options have been identified, including those which may recently have been submitted as grant applications, as well as priority infrastructure renewal projects based on asset register classification, and Council strategic plans.

Byron Street Shared Path

The Bangalow Village Plan 2019 and the Byron Shire 10 Year Bike Plan 2020 (Bike Plan) identify a number of priority works. The Byron Street Shared Path BA001, BA010 and BA023 include the upgrade of the existing footpath on Byron Street between Station Street and Feros Care Residential Village. The project is currently undergoing detailed design with a shovel ready design expected by June 2021. Total project cost including contingency and the option for a pedestrian bridge over Byron Creek is \$1,200,000. The majority of this path is classified as “Priority A” with the link to Feros classified as “Priority C”, however, this link has been advocated for by the community.

This path will provide an accessible connection to the centre of Bangalow, in particular for Bangalow Public School, and is identified as the number 1 priority for access and movement in the Bangalow Village Plan.



Map 1 - Extract from the Bike Plan.

Lighthouse Road Drainage Project

The Lighthouse Road drainage project aims to improve Council’s stormwater drainage and reduce runoff adjacent to the Clarkes Beach Reflections Holiday Park. Stormwater will be redirected from Captain Cook Carpark, Lighthouse Road and the surrounding catchment into Council’s formal drainage network. This will mitigate erosion in the surrounding areas and improve the safety of pedestrians and vehicles in rainfall events.

The project consists of piped drainage, kerb and gutter, a grassed swale, a stormwater detention basin and improvements to parking on Lighthouse Road. The construction of the basin will help improve stormwater quality and will provide detention in rainfall events. Upgrades will be provided to the downstream network in Kipling Street to cater for the additional flow. Detailed Design has been completed for the project. The estimated total project cost including contingency is \$1,200,000.



Map 2 – Overall plan of drainage upgrades.

Marvel Hall:

- 5 This project significantly improves a community hall providing enduring benefit to the community by providing safe and suitable space for a variety of community activities. Works to remove all asbestos containing material from Marvel Hall are identified as a priority in the asset register and the installation of a ramp is an important element to improve accessibility for all users.
- 10 The proposed commercial kitchen would ensure more social and economic activities could be held at the hall, in line with Council's Community Strategic Plan objective 1.2.1 to ensure that building assets are managed to support the provision of services to the community. The Section 355 volunteer committee has undertaken consultation with existing and potential hirers to understand the ongoing revenue and use potential of the proposed commercial kitchen. The estimated total
- 15 project cost is \$400,000.

Station Street Upgrade, Mullumbimby:

- 20 The Mullumbimby Masterplan provides that Station Street could be seen as an alternate route to accommodate traffic movements as a result of the implementation of place activation spaces in Burringbar Street. Therefore it is considered necessary to upgrade this route in terms of drainage and road pavement to more safely accommodate increased vehicle traffic.

- 25 The scope of work for Station Street between Burringbar Street and Fern Street includes drainage design/upgrade, identification of pavement requiring reinstatement and detailing areas of pavement which need to tie in to the new drainage works, car parking, signage and line marking. The scope also includes the design of an on road separated cycleway to each side of Station Street (as per the bike plan).



Map 3 - Extract from the Bike Plan.

- 5 Consideration will need to be given to the timing of these works relative to other Works projects proposed to be undertaken in Mullumbimby over the next year or so, as there are a number of projects in Mullumbimby which are constrained by various funding agreements.

The estimated total project cost is \$780,507.

10 Mullumbimby Recreation Grounds and Skate Park:

- 15 The Byron Shire Open Space and Recreation Needs Assessment and Action Plan refers to this precinct as a youth and sporting hub and recommends consideration of a fenced dog off-leash park. Recent renewals and upgrades, including controlled lighting of the Skate Park have seen significant increased community usage of this facility. This increased usage has presented some actual and perceived passive surveillance and territorial re-enforcement and space/activity management challenges, partially as a result of the nearest carpark and public road access being some 200m from the skate park. In discussions with NSW Police regarding Crime Prevention through Environmental Design principles, activation through the provision of infrastructure such as parking is considered highly desirable, as it will allow greater parental supervision and more intergenerational use and activation of the area.

- 20 The project would include a 25 bay carpark including disabled parking spaces (\$150,000), a fenced dog off leash area (\$50,000) with landscaping and additional shade shelter (\$50,000).

- 25 The costs above are indicative only, and would be further refined prior to the Works Schedule being submitted to the Government.

Options

The selection criteria used to identify the recommended projects were:

- 5 1. meeting the Australian Government criteria;
2. being capable of being completed using this grant fund and/or additional developer contributions /grants;
3. informed by, or link to, an existing strategic plan;
4. value-adding to existing programmed works or asset renewals;
- 10 5. the outcome of existing community consultation with respect to the inclusion of these projects in strategic plans.

The following options are considered eligible and capable of being delivered within the timeframes of the grant:

15

Option 1	LRCIP	Developer Contributions	Other Council	Total Project Cost
Lighthouse Road Drainage project	\$1,200,000	\$0	\$0	\$1,200,000
Marvel Hall Kitchen Upgrade with asbestos removal and new access ramp	\$208,882	\$0	\$191,118 from SRV	\$400,000
Total	\$1,408,882			\$1,600,000

Option 2	LRCIP	Developer Contributions	Other Council	Total Project Cost
Byron Street Shared Path – Bangalow (including link to Feros Village)	\$1,200,000	\$0	\$0	\$1,200,000
Marvel Hall Kitchen Upgrade with asbestos removal and new access ramp	\$208,882	\$0	\$191,118 from SRV	\$400,000
Total	\$1,408,882			\$1,600,000

Option 3	LRCIP	Developer Contributions	Other Council	Total Project Cost
Station Street Upgrade - Mullumbimby	\$780,507	\$0	\$0	\$780,507
Marvel Hall Kitchen Upgrade with asbestos removal and new access ramp	\$400,000	\$0	\$0	\$400,000
Mullumbimby Recreation Grounds and Skate Park	\$228,375	\$21,625 from open space	\$0	\$250,000
Total	\$1,408,882			\$1,430,507

Next steps:

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As funding is expected to be received early in 2021, Council is asked to consider the above options and determine how it would like to apply the funding.

STRATEGIC CONSIDERATIONS***Community Strategic Plan and Operational Plan***

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have Infrastructure, Transport and Services which meet our expectations	5.5	Manage Council's finances	5.5.1	Enhance the financial capability and acumen of Council	5.5.1.2	Support the organisation in identifying financial implications of projects, proposals and plans

5 Any projects selected by Council to apply the LRCIP funding towards will be included in the next revision of Council's Operational Plan 2020-21.

Legal/Statutory/Policy Considerations

10 There are no statutory or legal implications with the funding of these projects.

Financial Considerations

15 There are no adverse impacts on Council's financial position as all of the projects are funded from grants, developer contributions or existing budget allocations.

Consultation and Engagement

20 The following Council staff were consulted in the preparation of identifying projects:

- Executive Team;
- Manager Open Spaces;
- Manager Works;
- 25 • Manager Social and Cultural Development;
- Infrastructure Planning Coordinator;

Report No. 13.6 **Council Investments - 1 November 2020 to 30 November 2020**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2020/1868

5

Summary:

10 This report includes a list of investments and identifies Council's overall cash position for the period 1 November 2020 to 30 November 2020 for information.

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

15

RECOMMENDATION:

That Council notes the report listing Council's investments and overall cash position as at 30 November 2020.

REPORT

Council has continued to maintain a diversified portfolio of investments. At 30 November 2020, the average 90 day bank bill rate (BBSW) for the month of November 2020 was 0.0548%. Council's performance to 30 November 2020 was 0.79%. 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 investment return may continue to decrease due to the lower rates available in the current market.

The table below identifies the investments held by Council as at 30 November 2020.

Schedule of Investments held as at 30 November 2020

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	N	B	3.25%	1,046,700.00
15/11/18	980,060	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	Y	B	3.00%	1,152,260.00
20/11/18	1,018,290	QLD Treasury Corp (Green Bond)	N	AA+	22/03/24	Y	B	3.00%	1,091,930.00
28/03/19	1,000,000	National Housing Finance & Investment Corporation	Y	AAA	28/03/31	Y	B	2.38%	1,126,670.00
21/11/19	1,000,250	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	Y	B	1.25%	1,028,020.00
27/11/19	500,000	National Housing Finance & Investment Social Bond	Y	AAA	27/05/30	Y	B	1.57%	522,906.50
31/03/17	1,000,000	CBA Climate Bond	Y	AA-	31/03/22	N	FRN	1.02%	1,010,430.00
16/11/17	750,000	Bank of Queensland	Y	BBB+	16/11/21	N	FRN	1.12%	753,337.50
30/08/18	500,000	Bank Australia Ltd (Sustainability Bond)	Y	BBB+	30/08/21	Y	FRN	1.39%	502,890.00
07/12/18	2,000,000	Credit Union Australia	Y	BBB	07/12/20	Y	TD	3.02%	2,000,000.00
06/01/20	1,000,000	Judo Bank	Y	NR	05/01/21	N	TD	2.10%	1,000,000.00
20/01/20	1,000,000	Westpac (Tailored)	Y	AA-	20/01/21	N	TD	1.41%	1,000,000.00
02/06/20	1,000,000	AMP Bank	Y	BBB	01/12/20	N	TD	1.60%	1,000,000.00
03/06/20	1,000,000	Auswide Bank	Y	NR	02/12/20	N	TD	1.15%	1,000,000.00
02/06/20	1,000,000	ME Bank	Y	BBB	01/12/20	N	TD	1.13%	1,000,000.00
24/07/20	2,000,000	Bank of Queensland	N	BBB+	19/07/21	N	TD	0.90%	2,000,000.00
28/07/20	1,000,000	ME Bank	N	BBB	29/01/21	Y	TD	0.63%	1,000,000.00
30/07/20	1,000,000	Judo Bank	N	NR	30/07/21	N	TD	1.25%	1,000,000.00
03/08/20	1,000,000	NAB	N	AA-	03/08/21	N	TD	0.85%	1,000,000.00
04/08/20	2,000,000	Suncorp	Y	A+	01/02/21	N	TD	0.70%	2,000,000.00
19/08/20	2,000,000	NAB	N	AA-	17/12/20	N	TD	0.70%	2,000,000.00
19/08/20	2,000,000	NAB	N	AA-	19/08/21	N	TD	0.80%	2,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.6

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Interest Rate Per Annum	Current Value
26/08/20	1,000,000	AMP Bank	N	BBB	26/08/21	N	TD	0.80%	1,000,000.00
02/09/20	1,000,000	Bank of Queensland	N	BBB+	01/09/21	N	TD	0.78%	1,000,000.00
02/09/20	1,000,000	NAB	N	AA-	02/09/21	N	TD	0.75%	1,000,000.00
07/09/20	2,000,000	NAB	N	AA-	05/01/21	N	TD	0.70%	2,000,000.00
24/09/20	2,000,000	NAB	N	AA-	24/09/21	N	TD	0.65%	2,000,000.00
30/09/20	1,000,000	Bank of Queensland	N	BBB+	30/09/21	N	TD	0.65%	1,000,000.00
30/09/20	2,000,000	CBA Green Deposit	N	AA-	30/09/21	N	TD	0.70%	2,000,000.00
06/10/20	1,000,000	Police Credit Union Ltd (SA)	Y	NR	06/01/21	N	TD	0.80%	1,000,000.00
07/10/20	2,000,000	MyState Bank Limited	Y	NR	07/10/21	Y	TD	0.70%	2,000,000.00
13/10/20	1,000,000	The Mutual Bank	Y	NR	13/04/21	N	TD	0.60%	1,000,000.00
27/10/20	1,000,000	The Capricornian	Y	NR	28/01/21	Y	TD	0.50%	1,000,000.00
28/10/20	1,000,000	The Mutual Bank	N	NR	27/01/21	N	TD	0.45%	1,000,000.00
04/11/20	1,000,001	AMP Bank	N	BBB	05/05/21	N	TD	0.55%	1,000,001.00
04/11/20	2,000,000	NAB	N	AA-	04/11/21	N	TD	0.55%	2,000,000.00
09/11/20	1,000,000	Community First Credit Union	Y	NR	09/11/21	Y	TD	0.65%	1,000,000.00
09/11/20	1,000,000	The Mutual Bank	N	NR	09/08/21	N	TD	0.65%	1,000,000.00
23/11/20	1,000,000	AMP Bank	N	BBB	23/11/21	N	TD	0.75%	1,000,000.00
24/11/20	1,000,000	Judo Bank	N	NR	24/11/21	Y	TD	0.84%	1,000,000.00
25/11/20	2,000,000	AMP Bank	N	BBB	26/05/21	Y	TD	0.70%	2,000,000.00
26/11/20	1,000,000	Community First Credit Union	N	NR	26/11/21	Y	TD	0.65%	1,000,000.00
26/11/20	1,000,000	Macquarie Bank	Y	A	22/10/21	N	TD	0.50%	1,000,000.00
N/A	12,759,011.16	CBA Business Saver	N	AA-	N/A	N	CALL	0.35%	12,759,011.16
N/A	4,279,767.89	CBA Business Saver – Tourism Infrastructure Grant	N	AA-	N/A	N	CALL	0.35%	4,279,767.89
N/A	6,108,282.80	NSW Treasury Corp	N	AAA	N/A	Y	CALL	0.05%	6,108,282.80
Total	75,895,662.85						AVG	0.79%	76,382,206.85

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

FRN	Floating Rate Note	via a fixed interest, payable usually each quarter. 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.

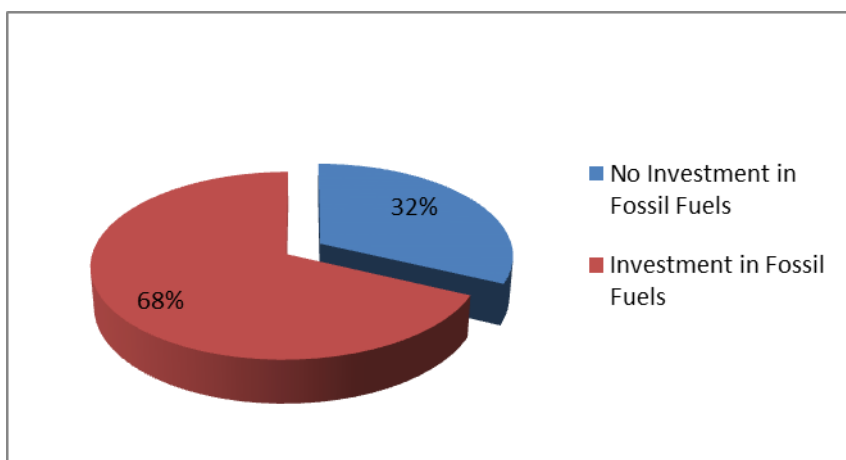
Environmental and Socially Responsible Investing (ESRI)

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 highlights the percentage of each classification across Council's total investment portfolio in respect of fossil fuels only.

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

Council has three 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.
2. \$1,000,000 investment with Commonwealth Bank maturing on 31 March 2022 known as a Climate Bond.
3. \$2,000,000 investment with Commonwealth Bank maturing on 30 September 2021 known as a Green Deposit.



Investment Policy Compliance

Investment policy compliance				
% per institution should not exceed the following			ACTUAL	Variance
AAA to AA	A1+	100%	61%	Meets policy
A+ to A-	A1	60%	1%	Meets policy
BBB to NR	A2,NR	40%	37%	Meets policy

- 5 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

- 15 Moving more of the investment portfolio into the 'ethical' space will lower the credit quality of the investment portfolio overall and 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.

- 20 The investment portfolio is outlined in the table below by investment type for the period 1 November 2020 to 30 November 2020:

Dissection of Council Investment Portfolio as at 30 November 2020

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
45,000,001.00	Term Deposits	45,000,001.00	0.00
2,250,000.00	Floating Rate Note	2,266,657.50	16,657.50
12,759,011.16	CBA Business Saver	12,759,011.16	0.00
4,279,767.89	CBA Business Saver – Tourism Infrastructure Grant	4,279,767.89	0.00
6,108,282.80	NSW Treasury Corp	6,108,282.80	0.00
5,498,600.00	Bonds	5,968,486.50	469,886.50
75,895,662.85		76,382,206.85	486,544.00

- 25 The current value of an investment compared to the principal value (face value or original purchase price) provides an indication of the performance of the investment without reference to the coupon (interest) rate. The current value represents the value received if an investment was sold or traded in the current market, in addition to the interest received.
- 30 The table below provides a reconciliation of investment purchases and maturities for the period of 1 November 2020 to 30 November 2020 on a current market value basis.

Movement in Investment Portfolio – 30 November 2020

Item	Current Market Value (at end of month) \$
Opening Balance at 1 October 2020	74,882,206.85
Add: New Investments Purchased	11,000,001.00
Add: Call Account Additions	2,000,000.00
Add: Tourism Call Account Additions	0.00
Add: T Corp Additions	0.00
Less: Call Account Redemption	4,500,000.00
Less: Investments Matured	7,000,001.00
Less: Tourism Call Account Redemption	0.00
Less: T Corp Redemption	0.00
Plus: Fair Value Movement for period	0.00
Closing Balance at 30 November 2020	76,382,206.85

Term Deposit Investments Maturities and Returns – 1 November to 30 November 2020

5

Principal Value (\$)	Description	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
1,000,000.00	Maitland Mutual Bank	09/11/2020	181	1.50%	7,438.36
1,000,001.00	AMP Bank	04/11/2020	182	1.65%	8,227.41
1,000,000.00	AMP Bank	23/11/2020	182	1.65%	8,227.40
1,000,000.00	Macquarie Bank	26/11/2020	365	1.80%	18,000.00
1,000,000.00	Judo Bank	24/11/2020	182	1.70%	8,476.71
2,000,000.00	AMP Bank	25/11/2020	182	1.65%	16,454.79
7,000,001.00					66,824.67

Council's overall 'cash position' is not only measured by funds invested but also by the funds retained in its consolidated fund or bank account for operational purposes. In this regard, for the month of November 2020 the table below identifies Council's overall cash position as follows:

10

Dissection of Council's Cash Position as at 30 November 2020

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	45,000,001.00	45,000,001.00	0.00
Floating Rate Note	2,250,000.00	2,266,657.50	16,657.50
CBA Business Saver	12,759,011.16	12,759,011.16	0.00
CBA Business Saver – Tourism Infrastructure Grant	4,279,767.89	4,279,767.89	0.00
NSW Treasury Corp	6,108,282.80	6,108,282.80	0.00
Bonds	5,498,600.00	5,968,486.50	469,886.50

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Total Investment Portfolio	75,895,662.85	76,382,206.85	486,544.00
Cash at Bank			
Consolidated Fund	5,083,503.22	5,083,503.22	
Total Cash at Bank	5,083,503.22	5,083,503.22	0.00
Total Cash Position	80,979,166.07	81,465,710.07	486,544.00

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	5.5	Manage Council's finances sustainably	5.5.2	Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.6	Identification of ethical investment opportunities with environmental and social inclusion outcomes

5

Legal/Statutory/Policy Considerations

10 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 it has invested under section 625 of the *Local Government Act 1993*.

15 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.

20 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 March 2011.

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

Financial Considerations

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

Report No. 13.7 **Presentation of 2019/2020 Financial Statements**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2020/1871

5

Summary:

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

15 The Financial Statements for the financial year ended 30 June 2020 were reported to the Ordinary Meeting held on 26 November 2020, where Council adopted the 2019/2020 Financial Statements through resolution **20-656**. This same resolution resolved to present the 2019/2020 Financial Statements and Auditor's Reports to the public at this Ordinary Meeting of Council.

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

25 A representative from the Audit Office of NSW or its contracted Audit Firm, Thomas Noble and Russell will make a presentation and answer any questions Councillors may have in respect of the 2019-2020 Financial Statements.

RECOMMENDATION:

That the Audited Financial Statements and Auditors Reports for the 2019/2020 financial year be presented to the public in accordance with Section 419(1) of the Local Government Act 1993.

30

REPORT

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

At the Ordinary Meeting of Council on 26 November 2020, Council resolved:

20-656:

1. *That Council adopt the Draft 2019/2020 Financial Statements incorporating the General Purpose Financial Statements(#E2020/94746) and Special Purpose Financial Statements (#E2020/94699).*
2. *That Council approve the signing of the "Statement by Councillors and Management" in accordance with Section 413(2)(c) of the Local Government Act 1993 and Clause 215 of the Local Government (General) Regulation 2005 in relation to the 2019/2020 Draft Financial Statements.*
3. *That the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 17 December 2020 in accordance with Section 418(1) of the Local Government Act 1993."*

In accordance with Council's resolution above, this report is provided to present the 2019-2020 Financial Statements and Auditor's Reports to the public.

A representative from the Audit Office of NSW or its contracted Audit Firm, Thomas Noble and Russell will make a presentation and answer any questions Councillors may have in respect of the 2019-2020 Financial Statements.

At the Ordinary Council Meeting held on 26 November 2020, Council received copies of the Financial Statements as outlined in Attachments 1 to 3 of Report 14.1 – Draft 2019-2020 Financial Statements to that Meeting.

Council's published 2019/2020 Financial Statements can be found at the following link:

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

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

The Financial Statements and Auditors Reports have been placed on public exhibition and advertised in accordance with Section 418(1) of the *Local Government Act 1993* with a closing date for submissions of 24 December 2020. Should any submissions be received they are required to be forwarded to Council's Auditor and will be advised to Councillors via memo.

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

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	5.5	Manage Council's finances sustainably	5.5.2	Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.2	Complete annual statutory financial reports

5 **Legal/Statutory/Policy Considerations**

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

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

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

Financial Considerations

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

30 **Consultation and Engagement**

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

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.8 Council's Annual Emissions Inventory and progress towards our net zero emissions target

Directorate: Sustainable Environment and Economy
Report Author: Hayley Briggs, Sustainability and Emissions Reduction Officer
 Julia Curry, Sustainability and Emissions Reduction Officer
 Rachel Thatcher, Sustainability and Emissions Reduction Officer
File No: I2020/1364

Summary:

This report outlines the annual emissions inventory for the 2019/20 financial year (Attachment 1 - #E2020/89501) for Byron Shire Council and provides an update showing that Council is on track for meeting the net zero emissions target.





This report also advises that the Councillor and staff carbon offsetting workshop that was scheduled for the 2020/21 financial year (**Res 19-634**) has been postponed due to COVID-19 restrictions and not being funded in the 2020/21 Budget.

The Sustainability Team will organise the workshop for the 2021/22 financial year instead.

RECOMMENDATION:**That Council notes:**

1. **The annual emissions inventory (Attachment 1 - #E2020/89501) and Council's progress toward meeting the net zero emissions target.**
2. **A Councillor and staff workshop will be organised in the 2021/22 financial year addressing the scope and implications associated with carbon offsetting.**
3. **A report will be compiled on the outcomes of the workshop (item 2 above) which will form the foundation for a carbon offsetting policy and procedure as identified in the *Net Zero Emissions Strategy for Council Operations 2025*.**

Attachments:

- 1 2019/20 Annual inventory of Council's emissions profile and progress update, E2020/89501 
- 2 2018/19 Council Annual Emissions Inventory and Achieving Net Zero Emissions Target, E2019/83875 
- 3 Net Zero Emissions Action Plan for Council Operations 2025, E2020/56957 
- 4 Net Zero Emissions Strategy for Council Operations 2025, E2019/37526 

REPORT

This report outlines Council's annual emissions inventory for the 2019/20 financial year and provides an update showing that Council is on track for meeting the net zero emissions target.

Emissions Reduction and Tracking

Byron Shire Council has experienced a 26% reduction in organisational carbon emissions compared to the previous year. This was predominantly due to the electricity contract with Powershop that fully offset electricity use (only half of the 2018/19 financial year was offset as the Powershop contract commenced in January 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 – 2019-20 Emissions tracking towards 2025 target

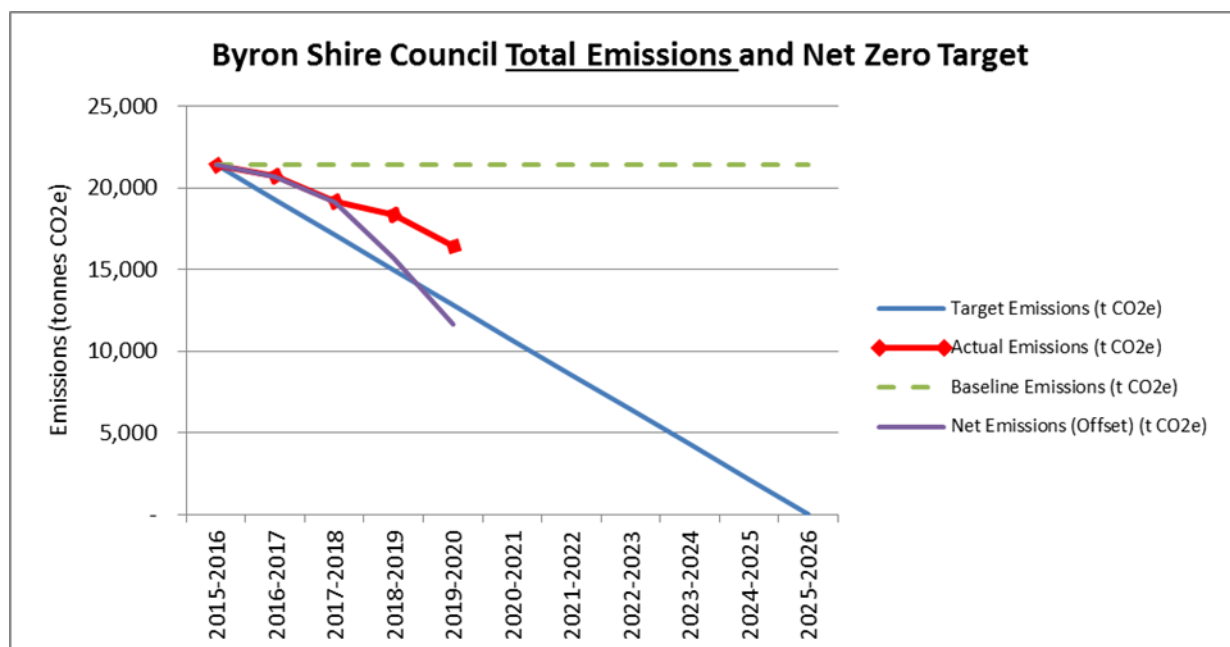


Table 1 – 2019-20 Actual and net emissions since baseline year 2015/16

Financial Year	Actual Emissions (tCO2e)	Net Emissions (Offset) (tCO2e)	Target (tCO2e)
2016	21,389	21,389	21,389
2017	20,701	20,701	19,250
2018	19,122	19,122	17,111
2019	18,325	15,700	14,972
2020	16,470	11,613	12,833

Table 2 – Summary of Emissions Sectors

Summary of Emissions Sectors		
	Highlights	Emissions Change (tCO2e)
Electricity	<ul style="list-style-type: none"> • Supplier Powershop provides 100% carbon offset electricity. • 7% reduction in electricity use and actual emissions, partly due to almost 400kW of solar PV being installed on various Council assets in late 2019. • 99.9% reduction in net (offset) emissions. • Annual cost \$1,244,220. 	-2,244
Streetlights	<ul style="list-style-type: none"> • Supplier Powershop provides 100% carbon offset electricity. • 100% reduction in net (offset) emissions. • 32 new streetlights were added throughout the Shire, however electricity use was reduced by 0.5% due to 260 streetlights being replaced with LEDs in Ocean Shores in December 2019. • A cost benefit analysis of a bulk roll out of LED's is being investigated as a matter of priority in consultation with Essential Energy. • Annual cost \$307,320. 	-314
Fleet	<ul style="list-style-type: none"> • 5% increase in fuel consumption. • Cost for 2019/20 actually fell by 3% compared to the previous year, as the price of petrol and diesel fell significantly in early 2020 due to the impact of COVID-19 and the oversupply of crude oil globally. • 47% of fuel used in light (passenger) vehicle fleet and 53% used in heavy plant and equipment. • Significant action is required to reduce fleet sector emissions. • Annual cost \$613,329. 	+59
Bottled Gas	<ul style="list-style-type: none"> • Negligible emissions footprint. • 25% reduction in consumption due to travel bans and child care centre shut downs from COVID-19. • No action required. • Annual cost \$10,235. 	-9
Waste	<ul style="list-style-type: none"> • 9% reduction due to natural decline of landfill. • Composting emissions have been included for the second year in a row. • Analysis of landfill methane gas flare and Australian Carbon Credit Unit generation in line with the net zero target will be completed this financial year. 	-1,532
Waste Water	<ul style="list-style-type: none"> • 4% decrease in waste water fugitive emissions, despite a 5% increase in flow (which was likely due to heavy rains post-drought) • Decrease in emissions is due to several compounding factors, including increases in recycled water use, a larger amount of land-applied biosolids tonnage and improved treatment at some plants. • Main area of action required is reducing waste water generation from the community and inflow and infiltration from storm water to the sewer system. 	-48
Total		-4,088

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

Carbon Offsetting

At the Ordinary Council Meeting of 12 December 2019, Council resolved to become certified carbon neutral under Climate Active (formerly the National Carbon Offset Standard, or NCOS) commencing in the 2025/26 financial year (**Res 19-634**). In order to become certified Council will need to purchase carbon offset units for its outstanding emissions.

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. For detailed background information on carbon offsets see p. 5 of 2018/19 Council Annual Emissions Inventory and Achieving Net Zero Emissions Target (Attachment 2).

Councillor Workshop - Carbon Offset Policy

At the 12 December 2019 Meeting, Council further resolved that a Councillor and staff workshop was to be organised in the 2020/21 financial year in order to fully understand the scope and implications associated with carbon offsetting and that the workshop report was to form the foundation for an offsetting policy and procedure as identified in the *Net Zero Emissions Strategy for Council Operations 2025*.

However, due to a number of reasons including COVID-19 restrictions and other work priorities in the Sustainability Team, the planned offsetting workshop will not proceed this financial year. The Sustainability Team will organise the workshop for the 2021/22 financial year instead.

Net Zero Emissions Action Plan for Council Operations 2025

At the Ordinary Council Meeting of 26 November 2020, Council adopted the final version of the *Net Zero Emissions Action Plan for Council Operations 2025* (the Action Plan) (Attachment 3) (**Res 20-628**).

The Action Plan maps a path for future activities that Council will undertake in order to reduce emissions from Council operations. The Action Plan is founded on the *Net Zero Emissions Strategy for Council Operations 2025* (the Strategy) (Attachment 4) and Council's commitments to being net zero emissions for Council operations by 2025, and to sourcing 100% of its electricity through renewable energy by 2027. Progress updates on the Action Plan will be provided to Council each year as part of the annual emissions inventory, with the first update to be provided in the 2020/21 inventory.

The Action Plan was designed to align with the Delivery Program and Operational Plan and allocates responsibility for specific actions to different Directorates. This will keep staff accountable and help track progress.

There are five objectives, based on Council's principal sources of emissions, which provide the Action Plan's basic structure:

- Objective A – Electricity;
- Objective B – Fuel;
- Objective C – Waste, Water, and Sewer;
- Objective D – Governance; and
- Objective E – Community Infrastructure.

Actions within the Action Plan are labelled based on the emissions objective (i.e. sector) they correlate to. For example, under Objective A – Electricity, Action A1 is "investigate 5MW solar farm at Dingo Lane, Myocum". Actions from the Action Plan that are relevant to reducing emissions

in a specific sector this financial year are referenced throughout the attached inventory. Councils annual Operational Plan (OP) Activities are linked where relevant.

STRATEGIC CONSIDERATIONS

5

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	Deliver the Net Zero Emissions Action Plan for Council Operations 2025
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	3.2.1.2	Prepare Annual Emissions Inventory to determine progress towards 2025 Net Zero Emission Target
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	3.2.1.4	Investigate Council's methane gas flare and Australian carbon credit unit generation in line with net zero emissions target

Legal/Statutory/Policy Considerations

N/A

10

Financial Considerations

N/A

Consultation and Engagement

15 This report was prepared in consultation with all Directorates and was endorsed by the Executive Team at the Meeting of 2 December 2020.

Report No. 13.9 Main Beach Shoreline Project - community consultation on the 7 options**Directorate:** Sustainable Environment and Economy**Report Author:** Chloe Dowsett, Coastal and Biodiversity Coordinator**File No:** I2020/1481**Summary:**

Launched in August 2019, the [Main Beach Shoreline Project](#) (MBSP) is focused on finding the solution for modification of the coastal protection works that will give the best possible outcomes for Main Beach, Byron Bay and adjacent areas. The design investigation being delivered by [Bluecoast Consulting Engineers](#) aims to understand how the current protection structures can be improved to best protect both the Byron Bay Town Centre from coastal erosion and climate change impacts into the future, and improve public safety, beach amenity and access.

An appraisal of generic options has been completed and is outlined in the Concept Design Development Report, November 2020 (Attachment 1). Following an appraisal of the generic design options a preliminary suite of the seven most suitable designs have been selected for further consideration.

Seven discrete design options have been developed that are considered appropriate for further consideration. The current seven discrete options considered appropriate for further consideration being:

- Option 1 – rock revetment and stepped concrete seawall
- Option 2 – berm rock revetment and pathway
- Option 3 – detached groyne
- Option 4 – artificial headland with sand bypassing
- Option 5 – protective structure moved landward by 10m
- Option 6 – protective structure moved landward by up to 30m
- Option 7 – existing structure upgraded to contemporary standards

At the 27 August 2020 Council meeting, Council resolved (**Res 20-436**):

1. *That Council endorses the top seven concept options outlined in Attachment 1 (E2020/40490) for key stakeholder and broader community engagement.*
2. *That Bluecoast undertake an assessment of a further alternative concept (Option 8) which:*
 - *better supports beach recovery and resilience after storm events*
 - *increases and improves social, cultural and recreational spaces at Main Beach*
 - *enhances the protection of current built infrastructure and the town centre*
 - *considers constructing the recreational areas above the original beach seaward of a buried seawall which is aligned with the natural beach.*
3. *And that is in accordance with the Project Objectives and provide feedback in the form of a Memo to Councillors, prior to community engagement, on the feasibility of Option 8.*
4. *Depending on the outcome of Item # 2 above (Option 8) it may be added to the top seven concept options to progress to the next stage.*

5. *That Council receives a report during the community engagement on the assessment of Option 8, detailing the submissions received and staff response to these submissions, and extend the exhibition period accordingly.*

- 5 In accordance with item #2 of the resolution Bluecoast and Principal Consultant, Angus Gordon of Coastal Zone Management completed an assessment of an alternative concept as resolved at the 27 August Council meeting. The assessment is provided in the form of a short report in Attachment 2 (#E2020/90352).
- 10 The outcome of the assessment and findings of this report conclude that the alternative Option 8 is not considered feasible for the modification of the coastal protection structure at Main Beach. As such, in accordance with Council resolution (**Res 20-436**) item # 3 Alternative Option 8 has not be added to the top seven (7) concept options for broader community engagement. However, this Option has been made public and provided on Council's website.
- 15 Broader community engagement is presently being undertaken along with key stakeholder consultation. Extensive project information, reports and material is provided for review at <https://www.byron.nsw.gov.au/Services/Environment/Coast-and-waterways/Coastal-projects/Main-Beach-Shoreline-Project>
- 20 An online survey commenced on Wednesday 11 November (until 23 December 2020). The aim of the community consultation is to gain an appreciation of what the community value most about Main Beach, their expectations and objectives as to how the foreshore is managed and to get feedback on the key design elements/features and the seven concept options.
- 25 The Your Say page will remain live with all project information available during the Christmas Break and into the New Year 2021. Submissions will be received up until Friday 15 January 2021 via email (with contact details provided on the Your Say project page).
- 30 Once community/stakeholder feedback is received, a report will be presented to Council early 2021 outlining the key outcomes and feedback received. Council will then select the three options for progression to the next phase of the project for further refinement and detailed technical assessment.

RECOMMENDATION:


That Council:

1. **Notes the community engagement activities for the Main Beach Shoreline Project presently being undertaken on the seven (7) concept design options (as outlined in Table 1 of this report).**
2. **Receives a report in early 2021 on the outcomes of community engagement activities and feedback received to inform the selection by Council of three (3) of the seven (7) discrete concept options to progress to the next stage of the project for further refinement and detailed technical assessment.**

35

Attachments:

- 1 Main Beach Shoreline Project - Concept Design Development Report (Bluecoast, November 2020), E2020/40490 

- 2 Main Beach Shoreline Project - Assessment of Alternative option 8 as resolved at the 27 August 2020 Council meeting (Bluecoast and CZM, November 2020), E2020/90352 

REPORT***Background***

- 5 Launched in August 2019, the [Main Beach Shoreline Project](#) (MBSP) is focussed on finding the solution for modification of the coastal protection works that will give the best possible outcomes for Main Beach, Byron Bay and adjacent areas. The design investigation being delivered by [Bluecoast Consulting Engineers](#) aims to understand how the current protection structures can be improved to best protect both the Byron Bay Town Centre from coastal erosion and climate change impacts into the future, and improve public safety, beach amenity and access.

15 The project is based on a 'multiple lines of evidence' approach which includes coastal modelling, geomorphological assessment of the shoreline, collection of wave data and expert observations. In addition, social, environmental and economic values will be explored and considered as part of the evidence based approach.

Options Assessment

- 20 An appraisal of generic options has been completed and is outlined in the Concept Design Development Report, November 2020 (Attachment 1). The report considers a wide range of generic coastal protection design options providing an overview of these options and commentary as to their suitability for the MBSP. Following an appraisal of the generic design options a preliminary suite of the seven most suitable designs have been selected for further consideration. Within each of these design options there may be several possible layout configurations, extents and materials that could be incorporated in the design (such as crest level, longshore extent). It should be noted that any option or design element that did not meet the mandatory project requirements was not considered further.

30 The project area is a high value beach and foreshore public space. When this is combined with the poor condition of the existing coastal protection structure, it is understood that non-works options such as 'do nothing' or complete removal of the structure are not acceptable to Council, DPIE or the local community. As such, these options have not been considered further.

35 Seven (7) discrete design options have been developed that are considered appropriate for further consideration. The current seven discrete options considered appropriate for further consideration being:

- Option 1 – rock revetment and stepped concrete seawall
- Option 2 – berm rock revetment and pathway
- Option 3 – detached groyne
- 40 • Option 4 – artificial headland with sand bypassing
- Option 5 – protective structure moved landward by 10m
- Option 6 – protective structure moved landward by up to 30m
- Option 7 – existing structure upgraded to contemporary standards

Council resolution (Res 40-436)

At the 27 August 2020 Council meeting, Council resolved (**Res 20-436**):

- 50 1. *That Council endorses the top seven concept options outlined in Attachment 1 (E2020/40490) for key stakeholder and broader community engagement.*

2. *That Bluecoast undertake an assessment of a further alternative concept (Option 8) which:*
 - *better supports beach recovery and resilience after storm events*
 - *increases and improves social, cultural and recreational spaces at Main Beach*
 - *enhances the protection of current built infrastructure and the town centre*
 - *considers constructing the recreational areas above the original beach seaward of a buried seawall which is aligned with the natural beach.*
3. *And that is in accordance with the Project Objectives and provide feedback in the form of a Memo to Councillors, prior to community engagement, on the feasibility of Option 8.*
4. *Depending on the outcome of Item # 2 above (Option 8) it may be added to the top seven concept options to progress to the next stage.*
5. *That Council receives a report during the community engagement on the assessment of Option 8, detailing the submissions received and staff response to these submissions, and extend the exhibition period accordingly.*

Assessment of Option 8

In accordance with item #2 of the resolution Bluecoast and Principal Consultant, Angus Gordon of Coastal Zone Management completed an assessment of an alternative concept as resolved at the 27 August Council meeting. The assessment is provided in the form of a short report in Attachment 2.

The outcome of the assessment and findings of this report conclude that the alternative Option 8 does not perform any greater than the seven (7) discrete options and is not considered appropriate or feasible for further consideration. For the reasons outlined in this report Bluecoast Consulting Engineers and Principal Consultant Angus Gordon (Coastal Zone Management) do not recommend that the alternative Option 8 is pursued any further by Council as a potential option for the Main Beach Shoreline Project.

As such, in accordance with Council resolution (**Res 20-436**) item # 3 Alternative Option 8 has not be added to the top seven (7) concept options for broader community engagement. However, this has been made public and provided on Council's website.

Community engagement

Council has been criticised for not consulting early enough in previous design investigations for coastal protection works. As such broader community engagement is being undertaken along with key stakeholder consultation. The aim of the community consultation is to gain an appreciation of what the community value most about Main Beach, their expectations and objectives as to how the foreshore is managed and to get feedback on the key design elements/features and the seven concept options.

The outcomes of the engagement will be used to update and confirm the project Key Performance Indicator's (KPIs) and associated assessment criteria. These KPIs form the 'backbone' of the design process. Once community/stakeholder feedback is received, a report will be presented to Council early 2021 outlining the key outcomes and feedback received. Council will then select the three options for progression to the next phase of the project for further refinement and detailed technical assessment.

An outline of engagement methods is provided in the Table 1 below.

Engagement Method	Engagement Objective (see IAP2 spectrum below for definition of underlined terms)
Online survey and web landing page <ul style="list-style-type: none"> Your Say landing page hosted on Council's website – https://www.yoursaybyronshire.com.au/mbsp Project background information, project timelines, context and purpose Provide information on each of the seven concept designs Provide information on the technical reports Replication of online engagement page on Council's website Invitation for those not online to ring for a hard copy survey, or come in and speak to our Customer Service team Link to Online Survey Survey is open from 11 November to 23 December 2020 (6 weeks). 	<u>Consult</u> with the community to obtain their perspectives of: <ul style="list-style-type: none"> Key values of the foreshore and surrounds Feedback on foreshore protection design features Feedback on the 7 foreshore protection concept designs
Email to key stakeholders: <ul style="list-style-type: none"> Project background and objectives Explain why the stakeholder is being contacted Provide a link to the 'Your Say' webpage, which will contain the Online Survey. Provide an opportunity for stakeholders to provide more detailed feedback on the project. 	<u>Inform</u> stakeholders of the project and increase engagement with the Online Survey (<u>Consult</u>): <ul style="list-style-type: none"> Provide opportunity to give more detailed feedback to the project team.
Phone calls: <ul style="list-style-type: none"> Follow up phone calls to stakeholders. 	<u>Inform</u> stakeholders of the project and increase engagement with the Online Survey (<u>Consult</u>): <ul style="list-style-type: none"> Provide opportunity to give more detailed feedback to the project team.
Web landing page and contact details for submissions <ul style="list-style-type: none"> All project information will continue to stay on the Your Say webpage after the Online Survey closes. Submissions will be received up until Friday 15 January 2021. 	<u>Consult</u> with the community to obtain their perspectives of: <ul style="list-style-type: none"> Feedback on the 7 foreshore protection concept designs

Broader community engagement commenced Wednesday 11 November with an Online Survey open for 6 weeks until 23 December 2020. Project information, reports and material for review is provided on the Council Your Say webpage at <https://www.yoursaybyronshire.com.au/mbsp>.

The below communications tasks have been completed to get maximum exposure:

- Advertisement in The Echo – *Wed 11 November 2020*
- Media Release – *Wed 11 November 2020*
- 5 • Social Media post on Council's Facebook Page – *Tues 10 November 2020*
 - Shared 11 times (voice of Byron, Community Board etc)
- Facebook Advertisement for 14 days – *Wed 18 November 2020 to Wed 2 December 2020.*
 - Reached 4962 people, with 2326 people watching the ad and 148 people clicking through to the Online Survey.
- 10 • ABC North Coast Radio Interview – Bruce Mackenzie – *Thursday 12 November 2020*
- Attendance of Project Manager to Council's Masterplan Guidance Group meeting – *Wednesday 25 November 2020*
- Emails to Key Stakeholders:
 - State Agencies
 - 15 ○ Land Managers
 - Community Associations (i.e. Byron Bay Board Riders Club; Byron Preservation Association)
 - Byron Bay Surf Life Saving Club
 - Council Panel and Committee members
 - 20 ○ Council's Citizen Lottery members
 - Key tourism stakeholders in Byron Bay (i.e. Destination Byron)
 - Key business stakeholders in Byron Bay
- Attendance at the Byron Bay Farmers Market – *Thursday 10 December 2020*
- 25 As of 23 of November 2020 188 responses to the survey had been received. The Facebook Advertisement on Wednesday 18 November 2020 November generated 90 responses in one day (22 November 2020).

30 The Online Survey closes on the 23 December, however all the project information will remain live during the Christmas Break and into the New Year 2021. Submissions will be received up until Friday 15 January 2021 via email (with contact details provided on the Your Say project page).

Next steps

- 35 • Continue follow up phone calls to key stakeholders
- Commence review of survey responses and submissions received.
- Prepare a submissions report to Council early 2021 on the outcomes of community engagement activities and feedback received.

40 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	3.3	Partner to protect and enhance the health of the Shire's coastlines, estuaries, waterways and catchments	3.3.1	Implement Coastal Management Program	3.3.1.2	Continue pre-construction phase of Main Beach Shoreline Project (Jonson Street protection works)

Legal/Statutory/Policy Considerations

The coastal management framework in NSW comprises the following elements:

- the *Coastal Management Act 2016*
- 5 • the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and
- the NSW Coastal Management Manual (OEH, 2018).

10 Council is presently preparing a Coastal Management Program (CMP) for the open coast between Cape Byron and the Shire's northern boundary near South Golden Beach. The purpose of the CMP will be to set the long-term strategy for the management of the coastal zone, addressing priority open coast management issues and actions to address the issues, with a focus on achieving the objectives of the CM Act.

15 The outcomes of the Main Beach Shoreline project will be incorporated into the CMP as they both develop in parallel. At this stage in the development of the CMP, the Main Beach Shoreline Project is an action in the Forward Plan of the Scoping Study for continuation in Stage 2 of the CMP process.

Financial Considerations

20 Council has budgeted \$150,000 for this project with \$150,000 of Grant Funding contribution. There is sufficient funding for community consultation in the current budget.

Consultation and Engagement

25 External: Community consultation is outlined in this report.

30 Internal: Close consultation has been completed with Council's Communication Team, Managers and the Executive Team in planning the engagement activities for the project.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.10

Report No. 13.10 **PLANNING - Development Application 10.2020.97.1 Stage 8 Tallowood Ridge Estate Subdivision to Create Forty-Seven (47) Residential Lots at 77 Tuckerroo Avenue Mullumbimby**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Luke Munro, Planner

Noreen Scott, EA Sustainable Environment and Economy

File No: I2020/1716

10

Proposal description: Stage 8 Tallowood Ridge Estate Subdivision to Create Forty-Seven (47) Residential Lots

Property description: LOT: 162 DP: 1251169
77 Tuckerroo Avenue 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

Date received: 26 February 2020

Integrated / Designated Development: ☒ Integrated ☐ Designated ☐ Not applicable

Concurrence required No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 12/3/20 to 8/4/20
- Submissions received: 11
- Submissions acknowledged: ☒ Yes ☐ No

Delegation to determine Council

Issues:

- Weed Management in residual land
- Future ownership of walking tracks through residual land

Summary:

- 15 It is proposed to create a Forty-Seven (47) Residential Lot Subdivision as Stage 8 Tallowood at 77 Tuckerroo Drive, Mullumbimby. The lots range in size from 460m² to 5700 m² plus public reserves and a residual lot of 24.79 ha. The residual lot contains remnant vegetation which is to be protected and enhanced, and an area of residential zoned land which is subject to a further application for subdivision (Stage 9).
- 20 Eleven submissions were received raising various issues including traffic speeds, street lighting, the need for a general store, a lawnmower for volunteers to mow Council reserves, sealing of Clays Road, pedestrian links and walking tracks along the southern ridgeline, and creation of a public reserve out of the residual vegetated land along this ridgeline.
- 25 Traffic speeds and street lighting for the development is as per the relevant specifications for urban streets. A general store is a land use that is permissible with consent, but is not subject to this development application or proposed by this applicant. In terms of the residual land along the southern ridgeline, it is noted that a walking/bicycle pathway will be provided from road 7 to link with Brushbox Drive.

It is noted that a Notice of Motion is to be considered by Council at the December Ordinary Meeting to investigate the dedication of this land to Council as a Public Reserve. Should an agreement be reached between the land owner and Council, the long term future and ownership of this portion of Tallowood Estate can be resolved with the Stage 9 DA, and as such does not need to form part of this application.

In terms of the proposal itself, in the main the residential lots are located on cleared farmland. The matter of weed management in the residual vegetated areas along the southern ridgeline has come to Council's attention. To ensure this matter is resolved conditions of consent are recommended in relation to these areas being weeded to facilitate the natural regeneration of the eucalypt forest that they support.

Conditions of consent are also recommended in relation to sealing some 500 metres of Plover Parkway and Coral Avenue to provide an alternate route back into Mullumbimby via Main Arm Road and to the areas to north and west of Mullumbimby.

In this regard the extended estate of Tallowood including 45 lots in Golden Penda Place and Hottentot Court will contains some 340 residential lots, and it is considered good planning practice to provide an alternate sealed access road to the estate.

The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions of consent.



NOTE TO COUNCILLORS:

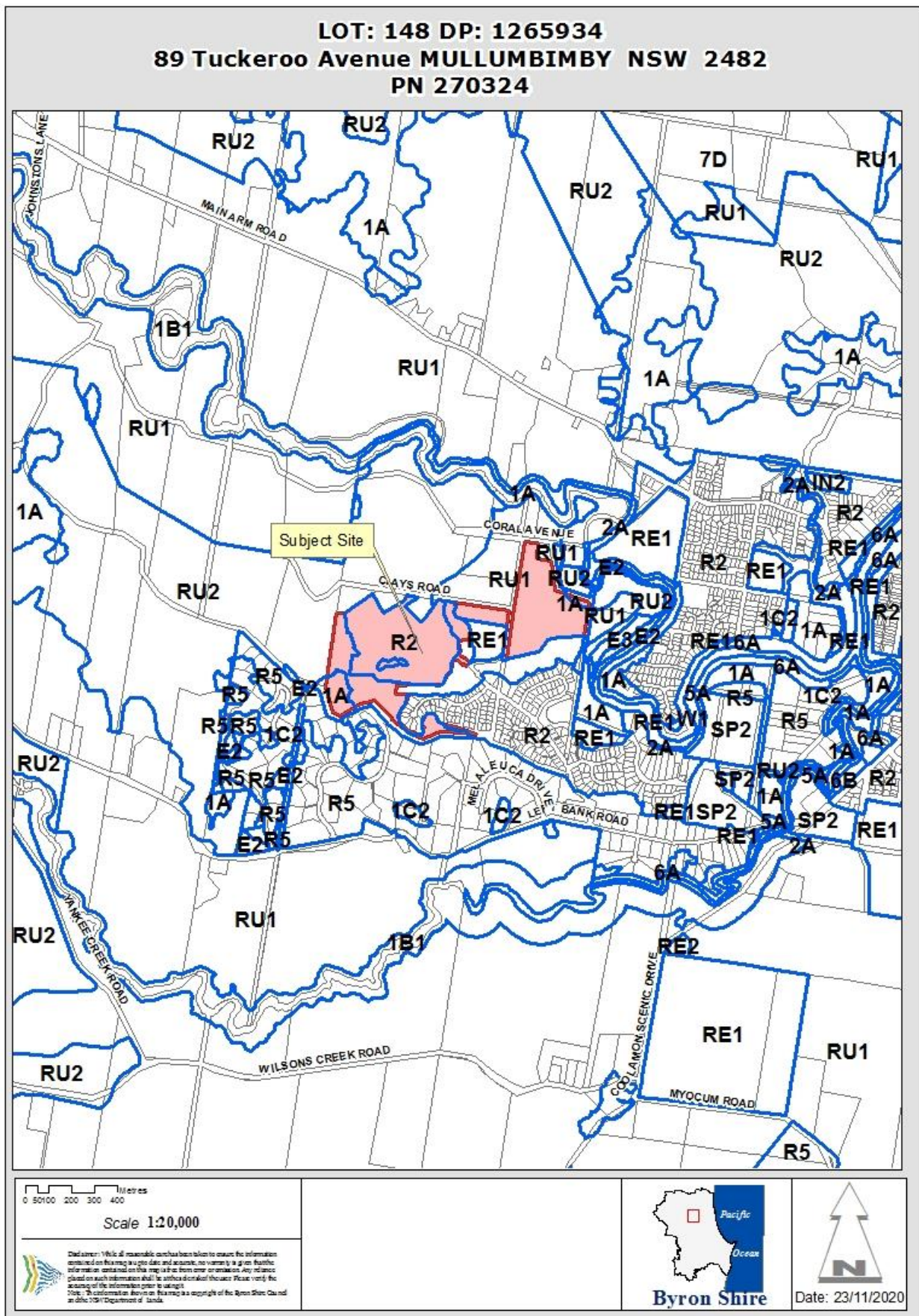
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.97.1 for Stage 8 Tallowood Ridge Estate subdivision to create forty-six (46) residential lots, be granted consent subject to the conditions listed in Attachment 2 (#E2020/97750).

Attachments:

- 1 10.2020.97.1 Stage 8 Plan of Subdivision, E2020/97727 
- 2 10.2020.97.1 Stage 8 Conditions, E2020/97750 
- 3 Confidential - 10.2020.97.1 Submissions, E2020/97441



Assessment:

1. INTRODUCTION

1.1. History/Background

Development Application No. 10.2009.314.1 (Tallowood Ridge) was approved by the NSW Land & Environment Court which included the 29 residential allotments as Stage 1 and a concept approval for a total of seven stages comprising approximately 240 residential lots, roads, open space, rehabilitation areas and associated infrastructure over seven stages.

Since that initial approval Stages 1 to 6 have been approved by Council; with bulk earthworks and civil works for Stage 7 currently under construction.

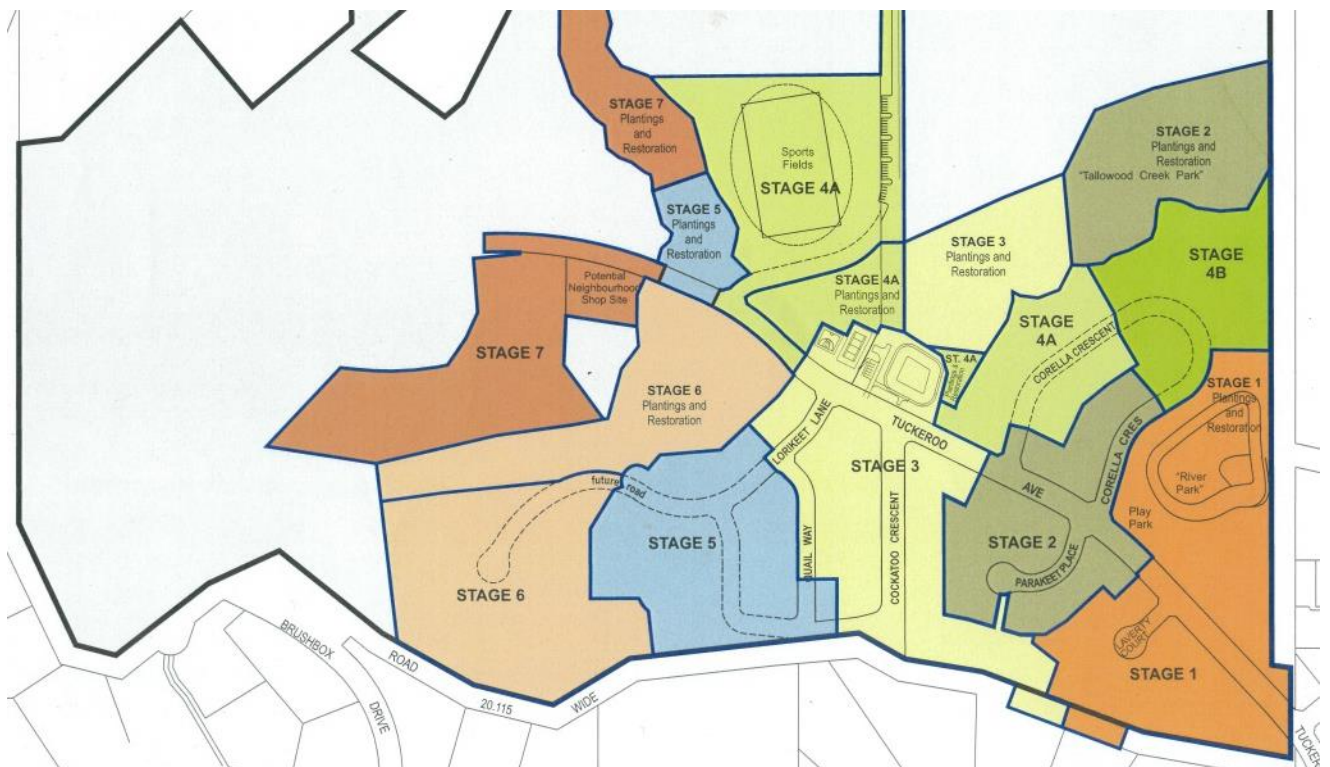


Figure 1: Staging plan for the Concept Approval as approved under DA10.2009.314.1.

The current application will subdivide the newly zoned residential land as part of Stage 8 which lays to the west of Stage 7.

1.2. Previous Development Applications Relating to the Site

Separate development applications for each stage have been approved and modified as follows:

Development Application 10.2009.314.1	Stage 1 Tallowood Ridge Estate including Future Stages Concept and 29 residential lots - Approved 14 September 2010 (Land Environment Court)
Development Application 10.2011.117.1	Stage 2 Tallowood Ridge Estate for urban subdivision comprising 28 residential allotments – Approved 4 April 2012.

Development Application 10.2013.549.1	Stage 3 Tallowood Ridge Estate for subdivision to create thirty-one (31) residential allotments - Approved 6 February 2014.
Development Application 10.2015.79.1	Stage 4A Tallowood Ridge Estate for subdivision to create thirteen (13) residential allotments – Approved 26 November 2015.
Development Application 10.2015.686.1	Stage 5 Tallowood Ridge Estate for Subdivision to create twenty-four (24) residential allotments - Approved 25 August 2016.
Development Application 10.2016.161.1	Stage 4B Tallowood Ridge Estate for Subdivision to create fifteen (15) residential lots - Approved 31 August 2017.
Development Application 10.2017.402.1	Stage 6 Tallowood Ridge Estate for subdivision to create eighteen (18) residential Lots – Approved 26 July 2017.
Development Application 10.2018.305.1	Stage 7 Tallowood Ridge Estate for subdivision to create thirty-two (32) residential lots – Approved 11 April 2019.

1.3. Tallowood Ridge Rezoning and Future Stages

On 22 September, 2017, an amendment to *Byron Local Environmental Plan 2014* was gazetted that rezoned an additional 12 hectares of rural land to the west of Tallowood Ridge to R2 Low Density Residential. It also back-zoned existing R2 land into the RU2 Rural Landscape zone to protect forested areas near the southern ridgeline and a riparian corridor that traverses the site. Other changes included rezoning the sports fields to RE1 Public Recreation zone and the introduction of a 400m² minimum subdivision lot size for the western part of the estate.

The current application will subdivide the newly zoned residential land as part of Stage 8. The current application and future stages are not bound by the original Concept Approval although the existing consent conditions for environmental restoration works associated with earlier stages and the Biodiversity Conservation Management Plan remain in force.

1.4. Site and surrounds

The site has an area of approximately 35.45 hectares (residual lot) and is located between Tuckeroo Avenue and Clays Road. The land is within the R2 Low Density Residential zone and RU2 Rural Landscape zone under LEP 2014. A portion of the south western corner of the existing residual lot is a deferred matter and fall within the 1(a) (General Rural Zone) under Byron LEP 1988, however this portion of the site falls outside the proposed development area for Stage 8. The southern ridgeline is forested but the majority of the site is cleared except for grass cover. The site contains bushfire prone land.

Surrounding land uses consist of rural-residential lots to the south and rural land to the north and west.

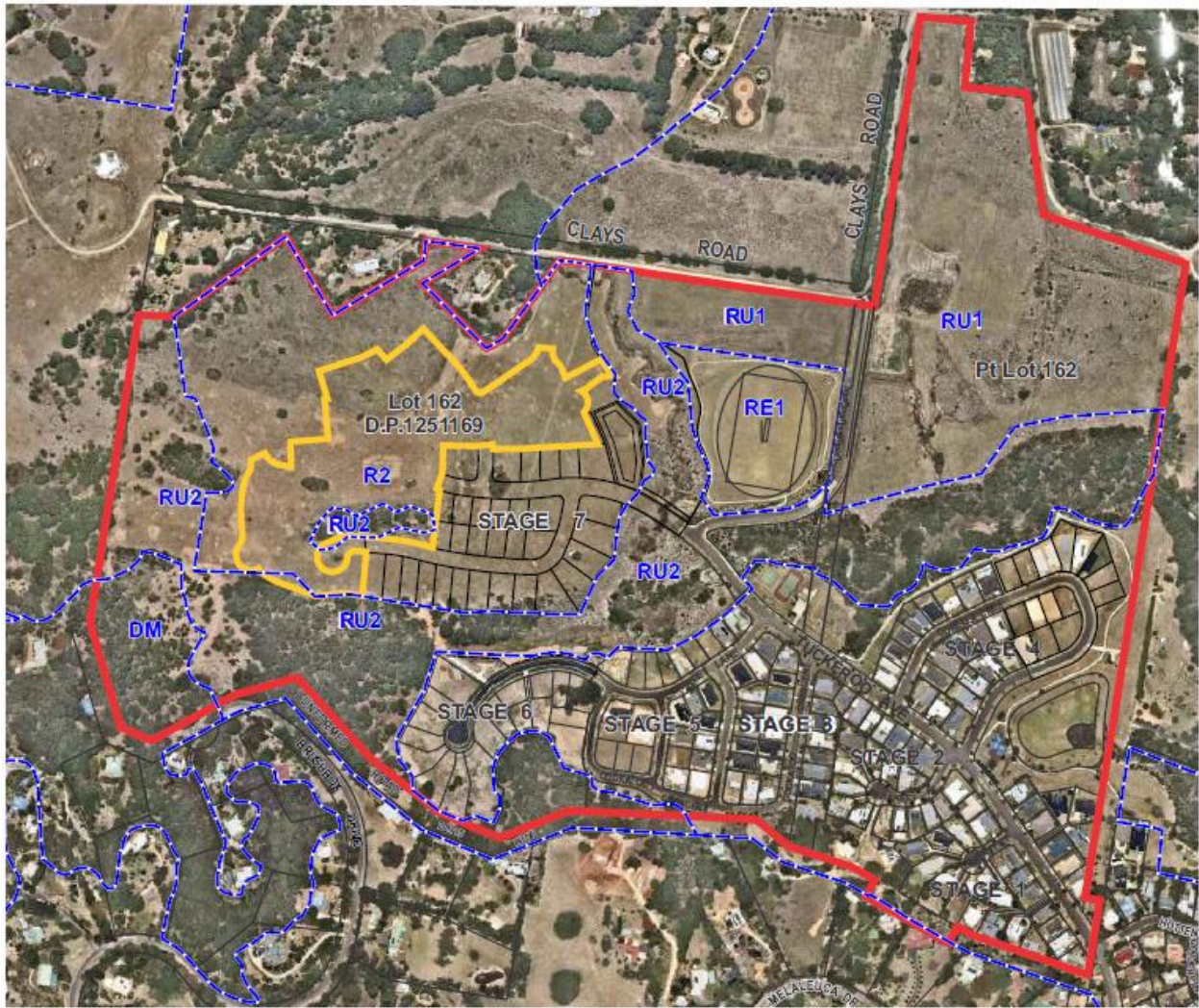


Figure 1: Site Plan (Stage 8 highlighted in Yellow)

Land is legally described	LOT: 162 DP: 1251169
Property address	77 Tuckeroo Avenue MULLUMBIMBY
Land is zoned:	R2 Low Density Residential / PART RU1 Primary Production / PART RU2 Rural Landscape and PART (1(a) (General Rural Zone))
Land area is:	40.29 ha
Property is partly constrained by:	Flood Liable Land Bushfire prone land High Conservation Value / High Environmental Value vegetation

5

1.5. Description of the proposed development

The proposed subdivision has the following key elements:

- 10
- Forty-seven (47) residential lots, ranging in size from 450m² to 5,070m².
 - Lot 848 with an area of 2,800m² which will provide a corridor linking a vegetated gully on proposed Lot 813 and the ridgeline vegetation to the south. The lot will be dedicated to Council as a public reserve as part of Stage 8.
- 15
- A residue lot of 24.79 hectares comprising the balance of remaining rural and residential zoned lands in the existing parcel.

Table 1: Lot size and shape for Stage 8

Proposed subdivision – Stage 8					
Lot	Area (m²)	Shape	Lot	Area (m²)	Shape
801	1160	Irregular	826	1230	Corner
802	460	Regular	827	870	Regular
803	460	Irregular	828	730	Regular
804	650	Irregular	829	640	Regular
805	580	Irregular	830	570	Regular
806	710	Irregular	831	540	Regular
807	530	Irregular	832	500	Regular
808	570	Irregular	833	550	Regular
809	720	Regular	834	580	Regular
810	680	Regular	835	610	Regular
811	630	Corner	836	700	Regular
812	520	Regular	837	720	Corner
813	5070	Irregular	838	840	Corner
814	700	Irregular	839	450	Regular
815	450	Regular	840	470	Regular
816	450	Regular	841	620	Corner
817	450	Regular	842	830	Irregular
818	530	Regular	843	760	Fan
819	480	Regular	844	570	Irregular
820	510	Regular	845	770	Irregular
821	530	Regular	846	860	Rear hatchet
822	610	Regular	847	690	Irregular
823	1030	Irregular	848*	2800	Public Reserve
824	940	Fan			
825	940	Fan	Residue	24.79ha	Irregular

* Lot for public reserve

5

The subdivision layout has been designed to allow future expansion of the estate and a separate DA has been lodged for Stage 9 for a further 47 residential lots under DA10.2020.109.1. The DA should be ready for determination and reporting to Council in 2021.



Figure 3: Proposed subdivision layout – Stage 8.



Figure 4: Proposed subdivision layout for Tallowood Ridge - Stage 9 – Separate DA yet to be determined.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions of consent.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions of consent and payment of Water and Sewer levies.
S94 / Contributions Officer	No objections subject to conditions. Developer contributions are payable.
Ecologist	No objections subject to conditions.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

5 The site is bush fire prone land. The application was referred to the NSW Rural Fire Service - see comments below.

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

10 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 Section 4.46 – Integrated DevelopmentRural Fires Act 1997

20 The site is identified as Bushfire Prone Land. The proposed residential subdivision requires a Bush Fire Safety Authority under s100B of the *Rural Fires Act 1997* and constitutes integrated development pursuant to s4.46 of the *Environmental Planning and assessment Act 1979* (the Act).

25 The application was referred to the NSW Rural Fire Service seeking General Terms of Approval (GTAs) for the integrated development application. GTAs and a Bush Fire Safety Authority have been issued and are included as part of the recommended conditions at the end of this report.

Water Management Act 2000

30 The access to the new residential area will require the construction of a culvert across a creek line to facilitate an extension of proposed Road 5 to be extended allowing alternative emergency access as required under the RFS GTS's to Clays Road. The proposed temporary road work connecting Road 5 to Clays Road requires a Controlled Activity Approval (CAA) to be obtained under section 91 of the Water Management Act 2000.

4.2 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The site is not identified as Core Koala Habitat and there will be no removal of vegetation as part of the development.</p> <p>Parts of the site are considered to represent potential koala habitat. Previous survey results indicate the site is unlikely to be regarded as core habitat, but is known to be used for movement and dispersal. No adverse impacts on local koala populations are expected as a result of Stage 8 given there is no clearing of vegetation and no works proposed within the within the shelter belt and the southern ridgeline, with the exception of a future access way between Road 7 and Brushbox Drive for pedestrians and cyclists.</p>		

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The land was historically used for agricultural purposes including cattle grazing. No potentially contaminating land uses known to have operated on or near the site in recent times. The land is not within the proximity of any cattle dip sites and is not listed on Council's Contaminated Lands Register.</p> <p>A preliminary site investigation of the Stage 8 area was undertaken for the original staged development application no.10.2009.314.1; analysis of soil samples found the site to be suitable for residential use. Based on all the available information the land is considered to be suitable for the proposed development in its current state and does not require remediation.</p> <p>Any unexpected contamination identified during subdivision works (buried tanks, building waste, asbestos etc.) is to be dealt with in accordance with an Unexpected Findings Protocol (UFP). The UFP is to be submitted to Council for approval prior to the issue of a construction certificate.</p>		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: All proposed works and residential lots within Stage 8 are located outside of the Coastal Environment Area. The SEPP does not apply to these elements of the proposed development.</p> <p>The lower part of the residue lot near to Plover Parkway and Clays Road is within the coastal environment mapped area and the SEPP applies to this land. Given there is no physical works occurring in this location, nor any change to the land use or boundary alignments, it is concluded that the development will not have an adverse impact on the coastal environment and is satisfactory having regard to the relevant matters for consideration under the SEPP.</p>		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The residue lot will retain a dwelling entitlement and the Primary Production and Rural Development SEPP is applicable to this element of the proposed subdivision. The preferred and predominant land uses in the surrounding area are residential and rural-residential uses and this is consistent with the future planning intent for the area. The remaining rural land in the residue lot within Lot 813 is unlikely to create a potential land use conflict between urban and rural land uses in the future</p>		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

- 5 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 Dictionary as Subdivision;
 - (b) The land is within the R2 Low Density Residential zone, RU1 Primary Production zone and RU2 Rural Landscape zone according to the Land Zoning Map. Three small portions of the site are identified as a deferred matter and these areas revert to the 1(a) (General Rural Zone) under LEP 1988.
 - (c) The proposed development is permitted with consent; and
 - (d) Regard is had for the Zone Objectives as follows:
- 10
- 15 **R2 Low Density Residential Zone**

- *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.*

5

The proposed subdivision will provide additional land for housing in the Mullumbimby area. Large lot sizes will provide opportunities for the development of a low density residential environment consistent with the zone objectives.

10 *RU2 Rural Landscape Zone*

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- 15 • *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.*
- 20 • *To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.*

The only physical works occurring in the RU2 land will be the future access way between Road 7 and Brushbox Drive. Residential development on other parts of the site is contained within the R2 zone. The proposed subdivision will not have a significant impact on the rural character of or the scenic qualities of the locality.

25

RU1 Primary Production Zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage consolidation of lots for the purposes of primary industry production.*
- 35 • *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.*

40

A portion of RU1 zoned land is contained within the residue lot near the intersection of Clays Road and Plover Parkway. No physical works or reconfiguration of the zone boundaries is proposed for this area. The proposed subdivision is adequately separated from this land by sports fields and a riparian corridor in the RU2 zone.

45

Clause 4.1 Minimum subdivision lot size

The minimum lot size in the R2 Low Density Residential zone on the subject land is 400m². The remainder of the site is zoned RU1 Primary Production, RU2 Rural Landscape and 1(a) (General Rural) zone. A 40 hectare minimum lot size applies to these areas.

50

As illustrated in the table below, the proposed lots in the R2 zone vary in size from 450m² to 5,070m² and comply with the minimum lot size standard. The residue lot and riparian lot do not comply with the minimum lot size, an issue which is discussed further below. Special provisions

are afforded to split zoned sites under clause 4.1D to facilitate the subdivision of the residue lot which is less than 40 hectares.

Table 2: Compliance with the Lot Size Map

Lot type	Zone	Min Lot Size	Proposed Lot Size	Compliance
47 Residential Lots	R2	400m ²	450m ² –5070m ²	Yes
1 Public Reserve Lot	R2 and RU2	400m ² - 40 hectares	2800m ²	Exempt
1 Residue Lot	RU1, RU2, 1(a)	40 hectares	24.79 hectares	No

Clause 4.1D Exceptions to minimum subdivision lot sizes for certain split zones

Clause 4.1D allows the subdivision of split zoned sites which do not meet the minimum lot size standards specified under clause 4.1. The purpose of this provision is to ensure that subdivision occurs in a manner that promotes suitable land use and development.

Clause 4.1D Exceptions to minimum subdivision lot sizes for certain split zones

(1) *This clause applies to each lot (an original lot) that contains:*

- (a) *land in a residential, business or industrial zone, and*
- (b) *land in Zone RU1 Primary Production, Zone RU2 Rural Landscape or Zone SP3 Tourist.*

(2) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:*

(a) *one of the resulting lots will contain:*

- (i) *land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the [Lot Size Map](#) in relation to that land, and*
- (ii) *all of the land in Zone RU1 Primary Production, Zone RU2 Rural Landscape or Zone SP3 Tourist that was in the original lot, and*

The proposal is considered to comply with the provisions of this clause because all of the rural zoned land will be contained within the residue lot, with the exception of Lot 813 which will have a lot size of 5,070m² and contains an isolated residual parcel of RU2 land. The excision of land to create public reserve is exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

A vegetated, eroded gully is located to the northern side of Road 2 within Stage 7 and is located within the RU2 zone. This isolated pocket of RU2 Zone will be contained within Lot 813 which provides an area of approximately 1,040m² R2 Zoned land which exceeds the minimum lot size for the R2 Zone of 400m².

Clause 5.10 Heritage Conservation

The site is known to contain an area of significance previously identified in a cultural heritage assessment undertaken by Everick consultants in 2009. The report identified the Mooibul Spur, part of which forms the southern boundary of the site, as being part of the cultural landscape. The Spur presents a likely access way used by Aboriginal people, between the Koonyum Ranges in the west and the Brunswick River to the east.

The report recommended that this natural feature be preserved by retaining as many trees as possible along the southern ridgeline. Any disturbance resulting from roads or sub-surface infrastructure is to be subject to a post clearance inspection to look for Aboriginal Objects that may have not been identified during past surveys.

Specific comments from the Tweed Byron Local Aboriginal Land Council and Arakwal Aboriginal Corporation were provided as part of the Stage 7 Development Application which noted that any disturbance near the ridgeline should be supervised during the subdivision works; approval for earthworks will be made by the applicant subject to favourable consideration of the current application.

The development is considered to be consistent with the recommendations of the Everick report and is unlikely to result in adverse impacts on the cultural landscape. Conditions for the monitoring of excavation works in accordance with the previous recommendations of the TBLALC and Arakwal are included in the recommendations of this report.

Clause 6.1 Acid sulfate soils

The site is not included on the Acid Sulfate Soils Map; however, acid sulfate soils have been identified during the construction of previous stages in the lower lying areas.

Although not a specific LEP requirement, Council's Environmental Health Officer has recommended a condition requiring an acid sulfate soils investigation and management plan (ASMP) to be prepared and submitted for approval with the construction certificate. Should any acid soils be discovered, the ASMP will include provisions for neutralising and managing the soils on site during the construction phase.

Clause 6.2 Earthworks

The development will require earthworks to provide adequate levels for residential allotments and roads. The applicant will seek approval for the earthworks as part of the subdivision works.

Erosion and sediment runoff is a concern given the amount of material to be disturbed and the proximity of the development to creeks which drain into the Brunswick River. A condition is recommended for a detailed sediment and erosion control plan to be prepared and submitted for approval as part of the construction certificate application.

Clause 6.3 Flood planning

Parts of the subject site are identified in the North Byron Flood Study as flood prone land. Lower lying land near the Brunswick River and along the creek lines is identified as being subject to inundation during a 1 in 100 year ARI flood event. The flood planning level for the site is 7.67m AHD.

A Flood Study was submitted for Stage 7 which also addressed this stage and stage 9 in terms of earthworks and identified negligible impacts on the floodplain. On the basis of the information supplied, the subdivision is considered to be compatible with the flood hazard of the land and satisfies the matters for consideration under this clause.

Clause 6.6 Essential services

The subdivision is capable of being serviced by reticulated sewage, water, electricity and telecommunications including NBN subject to conditions of consent. In relation to vehicular access, each lot is capable of being serviced with a driveway that connects to the public road network; a single access driveway will need to be constructed to service proposed rear hatchet Lot 846 as part of the subdivision works.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

The property contains three small areas of 1(a) rural Zoned Land in the residual allotment. These areas are not affected by the specific subdivision works in Stage 8. The proposed development will not have any adverse environmental impact on land in the 1(a) zone and the development as such does not raise any specific issues in terms of the Byron LEP 1988.

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

There are no proposed instruments that are of relevance to the subject application.

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

Part B14.2 Excavation and Fill in all zones

Prescriptive measure B14.2 (1) provides that excavation and filling must be limited to a depth of 1 metre. The proposed excavation and fill generally varies from 1m to 1.5m except for proposed lots 177-181 which involve excavation to a depth of 3m and for the construction of the stormwater basin. Notwithstanding this non-compliance, the proposed earthworks are considered to satisfy the objectives and performance criteria of Part B14.2.

Objectives

1. *To ensure that towns, villages, commercial, industrial, residential and rural areas maintain overall compatibility with the Shire's natural features and its historical built character.*
2. *To control the extent, character, bulk and scale of earthworks so that both individual and cumulative earthworks over time do not detract from the existing and desired future character of their immediate locality, and the surrounding area.*
3. *To promote the use of earthworks to create landscapes and streetscapes that make a positive contribution to the existing and desired future character of their immediate locality and the surrounding area.*

Performance Criteria

1. *Development proposals must demonstrate that proposed earthworks will be compatible with the low rise, low to medium density form, scale and desired future character of their locality and immediate surrounds. Proposals must demonstrate that excavation and fill will be limited to ensure that:*
 - a) *Adverse visual impacts, bulk and scale of both the proposed earthworks and the resultant overall development are minimised;*
 - b) *Overshadowing of adjoining private and public land is avoided;*
 - c) *The scale and character of the resultant landform and buildings will remain compatible with their surrounds and with the desired future character of the locality;*
 - d) *Resultant drainage characteristics and systems both on the site and in the locality will be consistent with Chapter B3 Services and with Water Sensitive Urban Design Principles.*
 - e) *The need for engineering and support works is minimised;*
 - f) *Risk of geotechnical instability and/ or landslip is minimised.*
2. *Where earthworks are designed to facilitate and/ or improve thermal sustainability and insulation in buildings and developments rather than as structural or landscape*

elements, development proposals must demonstrate the particular benefits to be gained from those earthworks.

3. *Earthworks must be designed to ensure that the community /pedestrian scale and character of commercial areas will be retained and reinforced.*
4. *Where filling is proposed to mitigate flooding and stormwater issues, details are to be submitted with the application demonstrating the fill will not have a significant adverse impact on the flow characteristics of flood waters or detrimentally increase the level of flooding or stormwater on other properties or development.*

Given the undulating terrain and steep topography near Lot 801 and 813, it is difficult to avoid earthworks exceeding 1m in depth. Stage 8 involves earthwork volumes of approximately 8,000 m³ of cut and 24,000 m³ of fill. 16,000 m³ of fill material used will be sourced from the stockpile of material surplus from construction of Stage 7.

Overall, the visual impact from the proposed earthworks is assessed as acceptable given the deeper areas of cut will be transitioned gradually to natural ground level to negate the need for retaining walls. Dwelling sites will sit below the tree line and will not detract from the scenic or environmental values of the southern ridgeline. The resulting land form and pattern of development will not be dissimilar to the earlier stages of the estate.

A flood study has been submitted as part of Stage 7 (which covered Stages 7-9) demonstrating that no adverse impacts on downstream properties will occur as a result of the earthworks. In relation to geotechnical stability and stormwater, the use of existing material from the site will ensure infiltration characteristics match the existing soil profile. A variation to the numerical requirements under the DCP is supported in this instance

D6 Subdivisions

The proposed development is considered to comply with the relevant objectives and performance criteria for each relevant chapter of Byron DCP 2014. Consideration of the requirements in Chapter D6 Subdivision and Chapter E3 Mullumbimby is detailed below.

D6.2 Subdivision Design Guidelines	Compliance	Comment
1. Site Design	Yes	Most of the proposed lots have a northerly aspect and will offer reasonable access to views and breezes for future dwellings.
2. Climate Control and Aspect	Yes	Stage 8 is situated on a north-facing slope; most of the allotments have a north-south orientation. The subdivision will facilitate good solar access and provide flexibility for the siting and design of future dwellings. Lots 812-814 have an east- west orientation; these parcels have been provided large lot sizes to allow the siting of a house that may not be parallel to the boundaries.
3. Hazards	Yes	The application has suitably addressed environmental hazards including flooding and bushfire. The application was referred to the RFS who have provided GTA's which identified relevant lots being

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13.10

		burdened with asset protection zones on the title of each affected lot to ensure adequate separation distances to vegetation on the ridgeline and creek.
4. Vegetation removal	Yes	No vegetation removal is proposed.
5. Riparian Buffers and land fronting watercourses	Yes	Significant bush regeneration works are being undertaken within the RU2 portion (Management Zone 9) of Lot 813 with weed control recommended in the southern spur areas adjoining Stage 8.
6. Landscaping	*Yes Condition	A condition is recommended for street trees to be provided
7. Roads	Yes	The subdivision will maintain the existing road hierarchy by extending Tuckeroo Avenue as the main thoroughfare throughout the estate. It is anticipated that the Stage 8 road network will interlink with future Stage 9 residential subdivision on the recently rezoned land to the north-west.
8. Street Lighting	*Yes Condition	Conditions are recommended for street lighting to be provided in accordance with the provisions of DCP 2014. New lighting is to match the existing infrastructure design throughout the estate.
9. Public open space and public reserves	Yes	A pedestrian pathway in Tuckeroo Avenue will connect Stage 8 back to playgrounds and sports fields approved in earlier stages.
10. Stormwater Management	Yes* Condition	Stormwater is able to be adequately managed. Conditions are recommended.
11. Utility Services	Yes	Electricity and telephone services, including NBN, can be supplied to each lot.
12. Provision of Potable Water Supply	Yes	Reticulated water and sewer services are able to be provided to each lot.
13. Sewer	Yes	
14. Geotechnical Report	Yes* Condition	Geotechnical report to be provided for the construction certificate application.

D6.3.3 Road Design and Construction	Compliance	Comment
15. The design of such works must comply with the Northern Rivers Development and Design Manual. Construction must be carried out in accordance with those requirements.	Yes	The road design complies with the Northern Rivers Development Design Manual.
16. Additional standards may apply	Yes	The Bush Fire Safety Authority requires a

in bushfire prone areas as per the requirements of the NSW Rural Fire Service.		<p>temporary turning circle with a 12m outer radius to be provided at the termination of road 4.</p> <p>A 4m wide trafficable path will connect between the cul-de-sac heads of Roads 2 and 7 for emergency access.</p> <p>A temporary alternative / emergency access is to be provided from the termination on Road 5 to Clays Road.</p> <p>Road design must comply with section 4.1.3(1) of 'Planning for Bush Fire Protection 2006', except that a perimeter road is not required.</p>
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D6.3.4 Sewage Management	Compliance	Comment
1. Where Council deems that reticulated sewer service is available and feasible, each allotment created must be connected to Council's sewerage reticulation system.	Yes	Reticulates sewer service is available to the proposed subdivision.

D6.4.1 Lot Size and shape	Compliance	Comment												
1. Lot sizes must not be less than the minimum area specified in Byron LEP 2014 on the lot size map.	Yes	All proposed allotments exceed the 400m ² minimum lot size.												
2. For lots that are not typical rectangular shaped lots, Table D6.1 indicates Council's preferred minimum lot sizes in urban subdivisions: Table D6.1 – Preferred Minimum Lots Sizes – Urban Subdivision <table><tr><th>Type of lot</th><th>Min. lot area</th></tr><tr><td>General lot</td><td>See lot size map</td></tr><tr><td>Corner lot</td><td>650m²</td></tr><tr><td>Hatchet-shaped lot</td><td>800m²</td></tr><tr><td>Hatchet shaped lot adjacent to public reserve</td><td>650m²</td></tr><tr><td>Fan-shaped lot (minimum frontage 7m)</td><td>650m²</td></tr></table>	Type of lot	Min. lot area	General lot	See lot size map	Corner lot	650m ²	Hatchet-shaped lot	800m ²	Hatchet shaped lot adjacent to public reserve	650m ²	Fan-shaped lot (minimum frontage 7m)	650m ²	Yes	The proposed lots are generally regular in shape (with the exception of the rear boundary for lots 802-808). There are three fan shaped parcels which all have large areas ranging from 760m ² to 940m ² . Larger lot sizes are provided to allow a dwelling to be sited that is not parallel to the boundaries.
Type of lot	Min. lot area													
General lot	See lot size map													
Corner lot	650m ²													
Hatchet-shaped lot	800m ²													
Hatchet shaped lot adjacent to public reserve	650m ²													
Fan-shaped lot (minimum frontage 7m)	650m ²													
4. Lots must provide an appropriate shape and area to accommodate an	Yes	All proposed allotments have unconstrained building envelopes with minimum dimensions of 12m by 15m.												

unconstrained building envelope with minimum dimensions of 12 metres by 15 metres.		
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D6.4.2 Access Design	Compliance	Comment
1. Applications must demonstrate that vehicle access can be provided to each lot created by the subdivision in accordance with Chapter B3 Services. In certain circumstances, due to topography and other constraints, the driveway will need to be designed and constructed at the subdivision stage.	Yes	Vehicular access is able to be appropriately provided for each individual lot.
2. Additional standards may apply in bushfire prone areas as per the requirements of the NSW Rural Fire Service.	Yes	NSW RFS did not specify any requirements for driveways or internal access.

E3.6 Urban Design in Precinct 5	Compliance	Comment
1. The shelterbelt will have a minimum width of 20 metres and shall be planted with species locally indigenous to Byron Shire (refer to the Native Species Planting Guide to Byron Shire) along the southern boundary of Precinct 5 (Mullumbimby Urban Area Map) within the adjacent road reserve (See Figure E3.1 for design details). Existing native vegetation within the road reserve and within Precinct 5 is to be integrated with planted species.	Yes	Stage 8 does not encroach into the shelter belt. Weed management required in the vegetated areas which rise up to the ridgeline.
2. No vehicle access or roads to be provided from or constructed within the shelterbelt other than a potential link connecting Brushbox Drive within Precinct 7 to the proposed distribution road, as indicated in the Mullumbimby Urban Area Map. A shared bike/ pedestrian pathway in the shelterbelt will be considered on merit.	Yes	A shared bikeway/ footpath between Tallwood Estate and Brushbox Drive is proposed as per the DCP. See image below – conditions to apply in relation to its construction and creation of an easement for public access.



Figure 5: Location of Bikeway/ Footpath from Brushbox Drive to Road 7.

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

DCP 2010 only applies to three small corners of the residue lot that fall within the 1(a) (General Rural Zone). No residential lots or subdivision works are proposed in these areas.

4.5 Any Planning Agreement or Draft Planning Agreement?

	Yes	No
Is there any applicable planning agreement or draft planning agreement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: There are no planning agreements associated with the stage seven subdivision application or with the original concept approval for the site.		

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

The proposal raises no issues under the Regulations.

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"/>

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

5 Natural environment

Under the present proposal, the treed gully known as Management Zone 9 is part of proposed Lot 813 (Numbered Lot 205 on the plans to be approved) . This would mean that the future owner of the lot would acquire the responsibility for the ongoing management and protection of MZ9 with an area of approximately half a hectare. No other Management Zone is presently incorporated into a private residential lot.

It is noted that a Notice of Motion is to be considered by Council at the December Ordinary Meeting to investigate how these vegetated residual areas of Tallwood Estate can be incorporated into a public reserve.

Should an agreement be reached between the land owner and Council, the long term future and ownership of this portion of Tallwood Estate can be resolved with the Stage 9 DA, and as such does not need to form part of this application.

It is recommended that Lot 813 not be approved as part of this subdivision and it be incorporated into the residual lot which includes the vegetated ridgelines to the south. The future of this parcel can be resolved as part of the DA for Stage 9.

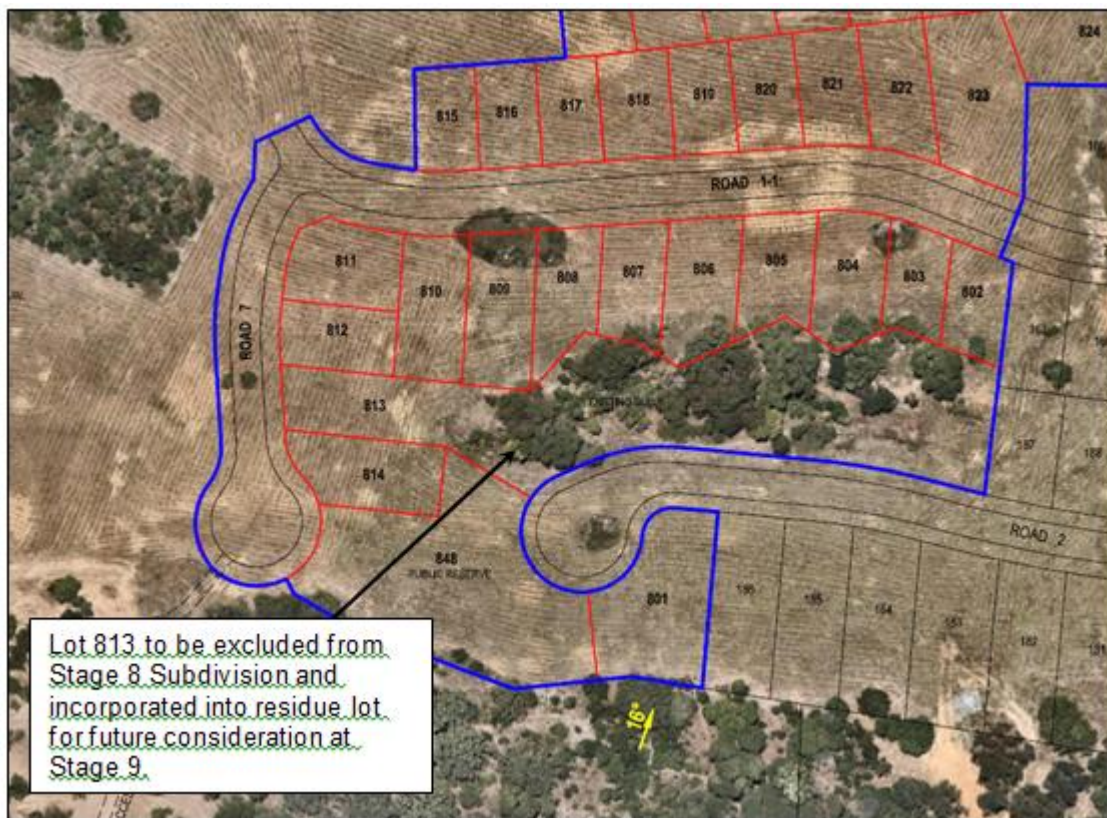


Figure 6: Lot 813 to be incorporated into residual lot.

In relation to the remainder of the development site, the proposed residential lots are sited on cleared farmland and the proposal will have negligible Impacts on native vegetation or flora and fauna.

5 Built environment

Urban Design and Landscaping

The landscaping and urban design for Stage 8 is intended to be similar to stages 1-7 of Tallowood Ridge. Submission of detailed landscaping plans will be required as part of the construction certificate application for street plantings. Conditions are also recommended for street lighting.

Access, Transport and Traffic

Tuckeroo Avenue will operate as the main collector road for Stage 8 and future Stage 9. A 2.5m concrete path is proposed within the Tuckeroo Avenue Road reserve to provide pedestrian and bicycle access to the rest of the estate including the sports fields and recreation areas.

The existing and proposed road network has sufficient capacity to handle the anticipated level of traffic generated by Stage 8. Roads 1-1, 1-3, 5, 6 and 7 will require a local street type construction with 7-9m wide carriageway within 15-17m wide road reserves.

Amenity

The majority of the proposed residential lots have a favourable north-south aspect, providing opportunities for views and breezes. It is anticipated that the subdivision is capable of providing a high level of amenity for future residents. In relation to the amenity of existing residents during the construction phase, suitable conditions are recommended to control hours of work, noise levels and construction traffic.

Stormwater drainage and downstream water quality

Stormwater treatment and detention has been implemented as part of Stage 7 works which include a bio-retention basin. The basin will also detain stormwater prior to it entering the local network of creeks which have been rehabilitated with riparian plantings prior to it entering the Main Arm of the Brunswick River. Significant work has already been undertaken in previous stages to embellish and repair existing riparian drainage lines throughout the estate with the plantings in Management Zones 1 through to 6. Council's Development Engineer concluded that the stormwater drainage and treatment system complies with Council's stormwater quality standards subject to conditions of consent.

Construction impacts

A condition is recommended for a Traffic Control Plan to be prepared and implemented during construction of the Stage 8. The Traffic Control Plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller and adhered to at all times.

Conditions are recommended to control the level of noise during construction and the hours of work. Comprehensive sediment and erosion controls are to be implemented during the bulk earthworks and maintained until such time as the site is stabilised with grass cover or other suitable vegetation

Social and economic impacts in the locality

Approval of the development application may result in short term benefits to the local economy through additional employment in the construction industry.

4.9 The suitability of the site for the development

The site has been zoned for residential use and is part of a staged development consent for the development of the Tallowood Ridge Estate. The sites attributes are conducive to the proposed

subdivision having regard to aspect, slope, drainage, bushfire, flooding and the availability of services. Certain environmental issues such as bushfire, drainage and environmental restoration are able to be managed through the imposition of conditions of consent.

- 5 The site is considered to be suitable for the proposed development.

4.10 Submissions made in accordance with this Act or the regulations

- 10 The development application was publicly exhibited and Council received eleven submissions raising the following issues.

Submission – Issue	Comment
<ul style="list-style-type: none"> There is no public access to bushland on the southern ridgeline. This was meant to occur in earlier stages. It does not need a formal track just an access point to the proposed reserve to avoid it being landlocked by houses. The ridgeline and remaining bushland should be protected by the highest environmental protection and have a community walkway with public access. Creation of a public reserve for remaining vegetated areas along the southern boundary of the Tallowood Estate 	<p>A public access point at the end of Road 7 will provide a pedestrian / bikeway link through to Left Bank road via Brushbox Drive.</p> <p>The ridgeline areas are to be rezoned to environmental protection under the E Zone reviews separate to this development Application.</p> <p>The long term ownership of the residual land which comprises habitat along the southern boundary of the Tallowood Estate is yet to be determined but it currently remains in private ownership. There is potential for this area to be dedicated to Council as part of Stage 9 subdivision proposal.</p>
<ul style="list-style-type: none"> Clays Rd should be sealed and should include a walk/bike path to Main Arm Rd. This would provide a safe, alternative route to the CBD and to St John's and Mullumbimby primary schools 	<p>Assuming this DA for Stage 8 and the subsequent Stage 9 DA is approved, from the entrance of Left Bank Road some 340 properties excluding (dual occupancies) are located in the total Tallowood Estate, This includes 45 properties in Hottentot Court and Golden Penda Place,</p> <p>Plover Parkway provides a partly sealed alternative route back into Mullumbimby via Coral Avenue and Main Arm Road. There is an unsealed section of rural road approximately 500 metres in length to the bridge over the Brunswick River on Coral Avenue. It is therefore recommended via conditions of consent for Plover Parkway and Coral Avenue to be sealed to a rural road standard being a min 6 metre wide seal plus 1 metre shoulders to provide a sealed access road through to Main Arm Rd and as an alternative route into Mullumbimby in the event of an emergency E.g. Bushfire or road accident on Left Bank Road.</p>

<ul style="list-style-type: none"> Left Bank/Tuckeroo intersection - poor lighting at night. With increased traffic created by an extra 47 lots, the left turning traffic at this intersection is bound to become more problematic 	The development has been assessed by Council's Development Engineer. No issues were raised in relation to the existing Left Bank Road and Tuckeroo Avenue intersection.
<ul style="list-style-type: none"> Could the developer make provision for a community hub or provide a general store within Tallowood for essential goods to prevent congestion on roads into town and provide a community hub within Tallowood 	Under the Byron LEP 2014 Neighbourhood Shops are a land use permitted with consent in the land use zones in the estate. The development of a neighbourhood shop however is a matter for a private commercial operator to consider and not council to require in the circumstances.
<ul style="list-style-type: none"> Return street lights to the original green ones that are along Tuckeroo Ave not the current silver ones. 	The current silver lighting is consistent with the relevant Australian Standards and has been assessed by Council's Development Engineer during the construction of the relevant subdivision stages.
<ul style="list-style-type: none"> Massive earthworks, the stripping of topsoil from the ridge to make tiny residential blocks is underway. A massive footprint of impervious structures (concrete, asphalt buildings and roads) upstream from the Brunswick River catchment is similarly underway. 	Earthworks levels and Flooding Impacts were addressed as part of Stage 7 which covered the flooding impacts of future Stages 8 & 9. Council's Development Engineer assessed the flooding impacts as part of Stage 7 and found there is no detrimental impact to downstream properties as a result of this proposal.
<ul style="list-style-type: none"> A reduction in the speed limit to 35kmh for traffic safety reasons, pedestrians, children etc. 	The maximum speed limit of 50km/h is consistent with residential street speed limits throughout the Shire. It is a matter for the RMS and Local Traffic Committee to deem otherwise subject to warrants.
<ul style="list-style-type: none"> Provide a ride-on lawnmower to allow for the creation of a volunteer mowing service so that council doesn't have to be responsible for it. 	The establishment of a volunteer mowing service is not a matter for this development application.

4.11 Public interest

The proposal is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

Section 7.11 Contributions will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
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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
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7. CONCLUSION

5 The proposed subdivision is satisfactory having regard to 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 residential subdivision as intended and reflected in the residential zoning under Byron LEP 2014.

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

Report No. 13.11 **Review of LEP Amendment Fee Schedule**
Directorate: Sustainable Environment and Economy
Report Author: Steve Daniels, Project Officer - Planning Reforms
File No: I2020/1792

5

Summary:

10 This report presents a proposed update to Council's 2020/21 Revenue Policy (Fees & Charges) for LEP amendments.

15 Staff have undertaken a review of Council's current LEP amendment fee structure as part of a wider review of our LEP amendment processes. With regard to the fee structure, the goals of the review are to:

- Simplify the existing fee structure
- Provide greater cost certainty to applicants
- Ensure that fees charged by Council are commensurate with fees charged by other Councils in the North Coast region

20 Council currently utilises a full-cost recovery fee structure that applies an hourly rate to staff time, and recovers external costs accrued by Council on a pro rata basis. The review found that Byron Shire Council is undercharging applicants for LEP amendments in comparison to all other Councils in the North Coast region.

25 This report recommends an amendment to the 2020/21 Revenue Policy in accordance with the fee structure proposed in Table 3 of this report, which includes:

- A fixed fee payable (upfront) for each of the 3 stages of the LEP amendment process.
- Differentiated fees depending on whether the amendment is classified as 'Minor' or 'Major'.
- 30 • Additional pro rata fees to recover costs associated with studies, peer reviews, referral to panels and other like matters. This includes staff time, consultant fees etc.
- A one-off fixed fee for minor amendments suitable for including in a 'housekeeping' planning proposal.

35 Council is required to public exhibit any proposed changes to the 2020/21 Revenue Policy for a period of 28 days.

RECOMMENDATION:**That Council:**

1. **Places the proposed 2020/21 Revenue Policy amendments (as described in Table 3 of this report) on exhibition for a period of 28 days.**
2. **Receives a further report if submissions are received during the exhibition period.**
3. **If no submissions are received, adopt the 2020/21 Revenue Policy amendments (as described in Table 3 of this report) for LEP amendments.**

REPORT

Staff are currently updating internal processes for planning proposals, including Council's fees and charges framework for LEP amendments (planning proposals).

This report presents a proposed update to Council's 2020/21 Revenue Policy (Fees & Charges) for LEP amendments.

Staff have undertaken a review of Council's current LEP amendment fee structure as part of a wider review of our LEP amendment processes. With regard to the fee structure, the goals of the review are to:

- Simplify the existing fee structure
- Provide greater cost certainty to applicants
- Ensure that fees charged by Council are commensurate with fees charged by other Councils in the North Coast region

Current LEP Amendment Fee Structure

Council processes applicant funded LEP amendments on a full-cost recovery basis, meaning that all staff time and external costs (such as consultant fees) are passed on to the applicant.

Applicants are required to enter into a 'Costs & Expenses Agreement' ahead of each key stage in the planning proposal process (pre Gateway, public exhibition and finalisation). Staff time is monitored and charged at the hourly rate specified in Councils Revenue Policy. A complete breakdown of current fees and charges is provided in Table 1.

Table 1: Revenue Policy - Current Fees & Charges for LEP amendments

Pre-lodgement meeting	\$486.00
<i>Per hour, min charge 1 hour, prepaid. Includes professional staff, minute taker and report.</i>	
LEP amendments (planning proposals) under EPA Act	Subject to cost and expenses agreement
Preparation of costs and expenses agreement	\$348.00
<i>Plus at cost for any review or amendment</i>	
Council staff hourly rate	\$180.00
Council appointed Consultant charges	Contract rate
Public hearing where required	POA

In reviewing fees charge under the current fee structure, staff tallied the income received for all applicant funded planning proposals since the commencement of Byron LEP 2014. It was found that during this period:

- Council has processed 25 applicant funded planning proposals
- The average fee income received by Council was \$7,600.

Issues with the existing fee structure

Although a full-cost recovery system based on an hourly rate makes sense in theory, in practice it can be difficult to implement and present significant cost uncertainty for applicants.

For Council, there is an administrative burden associated with recording time spent by staff who contribute to the processing of a planning proposal (this includes planners, specialist staff, project support officers etc.), and it is not guaranteed that all time spent is fully captured (hence not charged to proponent).

For applicants, there is no cost certainty ahead of each stage of the planning proposal process because all fees are based on actual hours worked or external costs accrued. Planning staff can provide applicants with an 'up front' fee estimate as part of the 'Costs & Expenses Agreement', however true costs may differ substantially during each stage of the process.

Review of LEP Amendment Fees Structures (North Coast Region)

In order to determine benchmarks and provide a point of comparison, staff reviewed typical fee structures and the average fees charged in a sample of 12 local government areas in the North Coast region.

Councils are not legally required to adhere to a standardised fee structure, resulting in a range of different approaches. The review found that the varying fee structures can be categorised into 4 types summarised below in Table 2.

Unlike Byron Shire Council, most councils include some form of fixed fee as part of their fee structure. The majority of Council's apply a hybrid fee structure that combines fixed fees and additional costs accrued by Council. These hybrid structures are described below in Table 2 as 'Type 3' and 'Type 4' fee structures.

For 'Type 4' fee structures, the general principal is that typical work undertaken by Council (such as preparing reports, exhibition costs, admin costs etc.) is covered by the fixed fee, while work that is less predictable (undertaking studies, peer reviews, referral to panels and other like matters) is charged at actual cost.

Type 4 fee structures recognise that LEP amendments can vary significantly in terms of complexity and workload, and therefore differentiate the fixed fees based on the complexity of the planning proposal. Most Council's using a 'Type 4' structure classify LEP amendments as 'Minor' or 'Major' depending on the number of lots involved and the need for specialist studies.

In regard to Table 2, please note:

- The figures provided are 'average' approximations only.
- Total average fees have been calculated based on fixed fees (excluding Byron Shire). Unknown additional costs have not been included.
- Where a Council differentiates between 'minor' and 'major' amendments, an average of the two categories has been used.
- Tweed Council has not been included in calculating averages. Tweed LGA includes high density metropolitan areas that skew towards significantly higher fees than other LGA's in the North Coast region and was treated as an outlier.

Table 2: Summary of typical LEP amendment fee structures – North Coast LGA's

Fee Structure	Description	Number of LGA's	Total Average of Fees charged
Type 1	Staff Hourly Rate <ul style="list-style-type: none"> Full cost recovery across all stages of the LEP amendment process 	1 (Byron)	\$7,600 Byron average fee since 2014

Fee Structure	Description	Number of LGA's	Total Average of Fees charged
Type 2	Fixed Fee <ul style="list-style-type: none"> Charged at commencement of each LEP amendment stage 	2	\$12,500 (Avg. fixed fee)
Type 3	Fixed Fee + Staff Hourly Rate <ul style="list-style-type: none"> Flat fee charged at commencement of each LEP amendment stage 	3	\$6,000 (Avg. fixed fee) + Staff hourly rate
Type 4	Variable Fixed Fee (based on complexity) + Additional Costs to Council <ul style="list-style-type: none"> Fees charged at commencement of each LEP amendment stage Different rates charged depending on complexity of the proposal (categorised as 'minor' or 'major') Additional fees are charged to recover costs associated with studies, peer reviews, referral to panels and other like matters. This includes staff time, consultant fees etc. 	6	\$16,000 (Avg. fixed fee) + additional costs accrued for work on supporting studies etc.

Recommendations

5 It is clear that Byron Shire Council is charging significantly lower fees on average than all other LGA's in the region. An amendment to the fee structure is recommended.

10 Of the 4 types of fee structures described in Table 2, 'Type 4' is considered to provide the most comprehensive and equitable approach. This includes fixed fees based on the complexity of a planning proposal combined with payment of additional pro rata fees for more unpredictable elements of a planning proposal, ensuring that Council is properly remunerated for any additional (less predictable) work.

15 The fixed fee component reduces the administrative burden of recording staff time and reduces the potential for slippage. It also provides greater certainty to applicants as they approach and move through the LEP amendment process.

A 'Type 4' fee structure is therefore recommended as an amendment to the 2020/21 Revenue Policy (Fees & Charges), as presented in Table 3 below.

20 In reading this table it is noted that:

- A one-off fixed fee has been included for minor housekeeping amendments. This is modelled off the approach taken by Ballina Council.
- The proposed fixed fees for 'Minor' and 'Major' amendments average \$15,500. This is comparable to the typical average for Type 4 fee structures and reflects a "middle of the road" approach in this regard.

•
Table 3: Proposed Fee Structure

Name:	Fee (2020/21) Including GST
Correction of errors & anomalies	No charge
Pre-lodgement meeting	\$486.00
Minor amendment considered suitable for annual housekeeping LEP amendment <i>50% of fee refundable pre-Gateway if not supported by Council. No refund post-Gateway</i>	\$6,000.00
Minor Amendment (single site and no supporting studies required)	Stage 1 - Pre Gateway – \$3,000.00 <ul style="list-style-type: none"> Planning Proposal assessment and report to Council Stage 2 – Post Gateway – \$4,000.00 <ul style="list-style-type: none"> Public exhibition and agency consultation Assessment of submissions and report to Council Stage 3 – Finalisation – \$2,000.00 <ul style="list-style-type: none"> Finalisation of the planning proposal following Council resolution
Major Amendment (Multiple sites and/or requiring independent specialist studies)	Stage 1 - Pre Gateway – \$7,000 <ul style="list-style-type: none"> Planning Proposal assessment and report to Council Stage 2 – Post Gateway – \$10,000.00 <ul style="list-style-type: none"> Public exhibition and agency consultation Assessment of submissions and report to Council Stage 3 – Finalisation – \$5,000.00 <ul style="list-style-type: none"> Finalisation of the planning proposal following Council resolution
Additional costs & expenses incurred by Council in undertaking studies, peer reviews, referral to panels and other like matters.	At cost
Staff hourly rate	\$180.00
Costs and Expenses Agreement	
The applicant is required to enter into a 'Costs & Expenses Agreement' with Council at the	

Name:	Fee (2020/21) Including GST
commencement of each stage of the planning proposal. Council will only commence work on the amendment after the agreement has been signed and corresponding fees have been paid.	

In summary, the fee structure proposed in Table 3 includes:

- A fixed fee payable (upfront) for each of the 3 stages of the LEP amendment process.
- Differentiated fees depending on whether the amendment is classified as 'Minor' or 'Major'.
- Additional pro rata fees to recover costs associated with studies, peer reviews, referral to panels and other like matters. This includes staff time, consultant fees etc.
- A one-off fixed fee for minor amendments suitable for including in a 'housekeeping' planning proposal.

Community consultation & next steps

If Council chooses to proceed with the amendment, a 28 day public exhibition is required. This would be followed by a further Council report to consider any submissions received.

If no submissions are received, it is recommended that the amendment be notified and adopted.

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	5.5	Manage Council's finances sustainably	5.5.2	Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.1	Maintain and improve internal financial controls

Legal/Statutory/Policy Considerations

Section 610F of the Local Government Act 1993 prescribes the methodology for Council to amend fees and charges throughout the financial year after adoption of the Revenue Policy requiring Council to publicly advertise any proposed fees and charges amendments for a period of 28 days inviting submissions from the public.

Financial Considerations

In addition to the financial considerations noted above, it is expected that the proposed fee structure would improve Council's funding position for work carried out on LEP amendments.

Consultation and Engagement

If Council chooses to proceed with the amendment, a 28 day public exhibition is required. This would be followed by a further Council report to consider any submissions received. If no submissions are received, it is recommended that the amendment be adopted and notified.

Report No. 13.12 Draft Plan of Management for Charlotte Street Park, Bangalow - Post-Exhibition Report

Directorate: Sustainable Environment and Economy

Report Author: Julia Curry, Sustainability and Emissions Reduction Officer

File No: I2020/1821

Summary:

A draft Plan of Management (PoM) for Charlotte Street Park, Bangalow has been prepared in accordance with requirements of the Local Government Act 1993 (Act) and associated regulations.

Council resolved in October 2020 to publicly exhibit the draft PoM (*Attachment 1*) and arrange an independently chaired Public Hearing prior to reporting back to Council (**Res 20-534**).

The draft POM was publicly exhibited for 28 days between 16 October and 27 November 2020 with a Public Hearing held on the 10 November 2020.

The statutory process is now complete.

This report provides the submissions received during the public exhibition period, and the Public Hearing Report from the independent Chair of the public hearing.

The Public Hearing Report provides a summary of the submissions made to the Public Hearing, and provides a response to the issues raised in the submissions (*Attachment 2*).

There were four formal verbal submissions made to the Public Hearing.

1 written submission was received during the exhibition period (*Attachment 3*).




Based on the assessment of submissions, and the conclusions from the independent report of the Public Hearing, it is recommended that Council adopt the draft PoM as exhibited.

Once the PoM is adopted, Council staff will proceed with an expression of interest for a small community garden at 33 Charlotte Street, Bangalow, in accordance with Council's Community Gardens Policy.

RECOMMENDATION:

That Council adopts the Draft Plan of Management for Charlotte Street Park, Bangalow, as exhibited (*Attachment 1* - #E2020/72966).

Attachments:

- 1 Charlotte Street Park Bangalow Plan of Management (Exhibition Version), E2020/72966 
- 2 Public Hearing Report - Charlotte Street Park Bangalow Plan of Management, E2020/94612 
- 3 Submission Plan of Management - 33 Charlotte Street, Bangalow, E2020/95413 

REPORT***Background***

5 A draft Plan of Management (PoM) for Charlotte Street Park, Bangalow has been prepared in accordance with requirements of the Local Government Act 1993 (Act) and associated regulations.

Council resolved in October 2020 to publicly exhibit the draft PoM (*Attachment 1*) and arrange an independently chaired Public Hearing prior to reporting back to Council (**Res 20-534**).

10 The draft POM was publicly exhibited for 28 days between 16 October and 27 November 2020 with a Public Hearing held on the 10 November 2020.

The statutory process is now complete.

Submissions received

20 The Public Hearing Report provides a summary of the submissions made to the Public Hearing, a summary of the written submissions made during public exhibition process and provides a response to the issues raised in both the verbal and written submissions (*Attachment 2*). The report concludes that Council proceed with the draft POM as exhibited.

A total of four people attended the hearing, all local residents within walking distance of the park. These four attendees all made formal verbal submissions to the Public Hearing.

25 1 written submission was received during the exhibition period (*Attachment 3*) The submission was from a local resident and expressed the importance of preserving open space in the local neighbourhood. The submission also stated that if other uses of the Park were established there would be a potential for:

- 30
- increased traffic to the area,
 - safety concerns for children at the park, and
 - limiting the amount of people that could access the area if the predominant use of the space was changed, e.g. if a community garden was established on site.

35 Other concerns raised were primarily in relation to the establishment of a community garden on site.

These issues have been noted and will be referenced should a license or lease for use of the open space at 33 Charlotte Street be reported to Council in the future.

40 Based on the assessment of submissions, and the conclusions and recommendations of the independent report into the Public Hearing, it is recommended that Council adopt the Plan of Management as exhibited.

Next steps

45 Once the PoM is adopted, Council staff will proceed with an expression of interest for a small community garden at 33 Charlotte Street, Bangalow, in accordance with Council's Community Gardens Policy.

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	3.2.1.13	Prepare a Plan of Management for 33 Charlotte, Street Bangalow to enable the express authorisation of a community garden.
Community Objective 3: We protect and enhance our natural environment	3.2	Strive to become a sustainable community	3.2.2	Support community environmental and sustainability projects	3.2.2.3	Support community gardens in accordance with the Policy and Guidelines

Legal/Statutory/Policy Considerations

The Local Government Act and Regulations prescribe the process, and minimum content, for preparing POMs. Relevant sections have been discussed, as required, in the report. Council's Legal Counsel provided advice that the revised template satisfied the statutory requirements for content.

The prescribed process governing development of and consultation on a POM, including the requirement to hold a public hearing for a change in categorisation, must continue to be followed by Council.

Financial Considerations

There are no financial implications from the development and adoption of the Plan of Management. Proposed actions consistent with an adopted plan of management may generate income and expenditure that Council will have to consider when they are presented.

Consultation and Engagement

Submissions closed 27/11/20.

Draft POM – advertised and in public notices on Byron Shire Council Website from 16/10/20 – 27/11/20. The draft POM was on exhibition for the minimum required 28 days, allowing the minimum 42 days for submissions.

Public Hearing was held on site on 10/11/20.

This report provides the submissions received during the public exhibition period, and the Public Hearing Report from the independent Chair of the public hearing.

The Public Hearing Report provides a summary of the submissions made to the Public Hearing, and provides a response to the issues raised in the submissions (*Attachment 2*).

There were 4 formal verbal submissions made to the Public Hearing.

1 written submission was received during the exhibition period (*Attachment 3*).

Based on the assessment of submissions, and the conclusions from the independent report of the Public Hearing, it is recommended that Council adopt the draft PoM as exhibited.

Report No. 13.13 **PLANNING - Resolution 20-095 Review of Council's Signage Policy**
Directorate: Sustainable Environment and Economy
Report Author: Dylan Johnstone, Development Investigations Lead
File No: I2020/1823

5

Summary:

- 10 The purpose of this report is to seek Council endorsement for exhibition of proposed amendments to Council's signage policy including amendments to Chapter B10 of DCP 2014; and to propose a trial site with the view of establishing an advertising structure on Council land that various community groups can attach temporary event signs to.

RECOMMENDATION:**That Council:**

1. **Endorses the proposed amendments to Chapter B10 of Development Control Plan 2014 for public exhibition.**
2. **Notes that staff will directly engage with the business community about the amendments during the public exhibition period as per Resolution 20-095.**
3. **Receives a further report if submissions are received during the exhibition period.**
4. **If no submissions are received, adopts the amendments to Chapter B10 of Development Control Plan 2014 and notify as required by the Act.**
5. **Endorses the location on the corner of Gulgan Road and Mullumbimby Road, identified in Figure 1 of this report, as a trial site for the installation of an advertising structure for the various community groups to attach temporary event signs to.**
6. **Requests staff to prepare a procedure for the installation of community event signage on the nominated trial site.**

15

Attachments:

- 1 Proposed amendments to Chapter B10 of DCP 2014, E2020/94010 

20

REPORT

At the Ordinary (Planning) Meeting on 19 March 2020 a report was tabled to Council on a review of Council's Signage Policy, where Council resolved as follows:

20-095 Resolved that Council note the report on the review of Council's current signage policy and that engagement with the business community and amendments to the current Signage Policy as discussed in the report will now follow.

As per Resolution **20-095** Council staff have undertaken proposed amendments to Chapter B10 of DCP 2014. These proposed amendments include the following:

- Requirement for signage to be compatible with the applicable "Residential Character Narrative" (contained within the Byron Shire Draft Residential Strategy) in residential and village zones.
- Limiting the number of signs for commercial and industrial premises
- Requirements for illuminated signage
- Requirements for signage adjacent to classified roads
- Requirements for wording and content of signage
- Amend wording of "undesirable signage" to "inappropriate signage", expansion on the types of signage that are inappropriate and inclusion of stronger wording to make it clear that such signage will not be supported by Council.

Upon resolution of this report staff will place the proposed amendments to Chapter B10 of DCP 2014 on public exhibition and will engage with the business community during the exhibition period.

As discussed in the report to the 19 March 2020 meeting, a potential solution for Council to ensure the orderly coordination of temporary community event signage is for Council to install advertising structures on sites approaching towns and villages on which individuals could attach temporary community event signage that complies with the requirements of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Advertising structures are currently prohibited on rural and residential land under LEP 2014 and are not permitted as exempt or complying development in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. State Environmental Planning Policy No. 64 – Advertising and Signage only permits advertisements on rural and non-urban land if permitted under an environmental planning instrument (i.e. LEP 2014) and only if the display of the advertisement is consistent with a development control plan (DCP 2014). Therefore LEP 2014 and DCP 2014 must be amended to permit advertising structures on rural and residential land.

It is proposed that the site on the corner of Gulgan Road and Mullumbimby Road (near the "Gateway to Mullumbimby" sign shown in Figure 1 below) is used as a trial site before consideration is given to amending LEP 2014 to permit advertising structures that may apply to a number of locations around the shire. This site is Council owned road reserve, is zoned RU2, has historically been used to informally display community event signage, and is considered appropriate as a trial site. A procedure for use of this site will need to be developed by staff.



Figure 1: Proposed trial site for advertising structure for community event signage

It is considered appropriate to use a trial site in the first instance as there are a number of matters that must be considered before proposing permanent advertising structures on multiple sites including:

- Costs associated with establishing and maintaining structures
- Referral to Transport NSW for advertising structures fronting a classified road
- Public liability matters associated with members of the public installing signage on Council infrastructure

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			

Legal/Statutory/Policy Considerations

Byron LEP 2014 was gazetted on 21 July 2014. Byron Shire DCP 2014 was adopted by Council on 26 June 2014 and came into effect on 21 July 2014.

These two documents establish the local assessment criteria for signage within Byron Shire and may be amended to resolve the issues identified within this report.

Financial Considerations

5

Not applicable.

Consultation and Engagement

10

Not applicable.

Report No. 13.14 **PLANNING - The Farm Update on Planning Proposal**
Directorate: Sustainable Environment and Economy
Report Author: Rob Van Iersel, Major Projects Planner
File No: I2020/1865

5

Summary:

10 Work has been progressing for some time on a Planning Proposal relating to existing unauthorised land uses at The Farm, Ewingsdale Road Byron Bay. Progress on the Planning Proposal, which does not authorise any additional uses of the site, has been delayed in order to resolve traffic issues.

15 In issuing the original Gateway determination, the Department of Planning, Industry (DPIE) and Environment directed that Council consult with Transport for NSW (TfNSW) to get agreement on the proposal before moving to public consultation.

20 Initial discussions with TfNSW resulted in a recommendation that a Voluntary Planning Agreement (VPA) be negotiated as part of the Planning Proposal to provide for a contribution *"to offsetting the development's contribution to the traffic and safety issues around access to the site"*.

25 The intention of the VPA was for the land owner to commit to dedicating a strip of land along the Ewingsdale Road frontage of the land to allow for the future widening of that road. The VPA would be signed by the land owner, Council and TfNSW, who would agree that this commitment constitutes the appropriate offset for the traffic generated by the unauthorised land uses facilitated by the Planning Proposal.

30 The land owner, while agreeing in principle, sought evidence and assurance that the value of the land to be dedicated was commensurate with the level to which their traffic contributes to the existing traffic problems. Until recently, it was not possible to provide such assurance as concepts had not been developed (or costed) for traffic solutions.

35 In the meantime, the Planning Proposal has been on hold. The Gateway determination has been extended twice, but will expire on 24 December 2020. DPIE have advised that no further extensions will be considered.

40 TfNSW have now proposed a number of concept ideas for traffic upgrades in the area. While much further work is yet to be done regarding these ideas, broad cost estimates are also now available, which can provide the assurance required by the land owner for the VPA to progress.

45 To move forward, Council will need to withdraw the current Planning Proposal and simultaneously request a Gateway determination for a new Planning Proposal. The new proposal would effectively be the same as the current, without the need for an SP2 Infrastructure zoning over the land that would be covered by the VPA.

Discussions with DPIE and TfNSW indicate that this will then allow progress on agreeing key principles for the VPA and then for the proposal to move forward to public exhibition.

50 NOTE TO COUNCILLORS:

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

RECOMMENDATION:**That Council:**

- 1. Notes the update provided on the Planning Proposal for The Farm.**
- 2. Agrees to withdraw the current Gateway Determination and associated Planning Proposal before 24 December 2020, as requested by the Department of Planning, Industry and Environment.**
- 3. Simultaneously with 2 above, authorises staff to submit an amended Planning Proposal to the Department of Industry and Environment for Gateway determination. The new Planning proposal to be the same as the current, with the exception of the need for an SP2 Infrastructure zoning over the land that would be now covered by the Voluntary Planning Agreement.**
- 4. Initiates discussions with the proponent and TfNSW to develop key principles that could form the basis of a Voluntary Planning Agreement, and report the results of discussions to Council prior to public consultation.**
- 5. Pending Gateway Determination undertakes public exhibition of the Planning Proposal and consult with government agencies in accordance with the Gateway Determination.**
- 6. Concurrently exhibits the draft amendment to Chapter E5 of Byron DCP 2014 - Certain Locations in Byron Bay and Ewingsdale (Attachment 2 E2020/6033)**
- 7. Receives a report outlining the public exhibition outcomes.**
- 8. Continues to suspend enforcement action in relation to matters subject of the Planning Proposal until such time as a determination is made. Council may, however, use its discretion to take enforcement action in circumstances where it is demonstrated that an unauthorised activity or use imposes significant impacts on the environment. This undertaking does not exclude Council from its regulatory obligations in relation to the Food Act, Local Government Act and/ or Protection of the Environment Operations Act.**

REPORT

Council most recently considered a Planning Proposal relating to The Farm, Ewingsdale Road Byron Bay at the Planning Meeting of 18 June 2020. At that meeting Council resolved (**Res 20-272**):

1. *Defers further action on the Planning Proposal pending a report outlining options and addressing the appropriateness and implications of a proposed zoning of SP2 Infrastructure (Local Road) for the strip of land along the Ewingsdale Road frontage of the property, and*
2. *Continues to suspend enforcement action in relation to matters subject of the Planning Proposal until such time as a determination is made. Council may, however, use its discretion to take enforcement action in circumstances where it is demonstrated that an unauthorised activity or use imposes significant impacts on the environment. This undertaking does not exclude Council from its regulatory obligations in relation to the Food Act, Local Government Act and Protection of the Environment Operations Act.*
3. *Notifies the proponent of its decision.*
4. *Writes to Transport for NSW requesting that work on traffic solutions for the western end of Ewingsdale Road is expedited.*

The Planning Proposal addresses existing unauthorised land uses at the Farm (it does not approve additional uses). Council had previously resolved (**Res 17-671**) to initiate this Planning Proposal and seek a Gateway Determination from the Department of Planning that would allow for its public exhibition.

The support for the Planning Proposal was to provide an approval pathway for the following uses at the site:

- the bakery;
- agricultural training/education facilities and activities;
- administration offices; and
- a small-scale information centre.

Additional controls are also proposed to be implemented by way of an amendment to Chapter E5 of the Byron DCP to support the approval pathways.

Previous compliance action was undertaken to address the produce store, which was significantly reduced in scale to be consistent with the existing approval for 'roadside stall', and the homewares/gift shop, which was modified to operate in accordance with the approval for a plant nursery.

In issuing the original Gateway determination, the Department of Planning, Industry and Environment (DPIE) directed that Council consult with Transport for NSW (TfNSW) to get agreement on the proposal before moving to public consultation.

Initial discussions with TfNSW resulted in a recommendation that a Voluntary Planning Agreement (VPA) be negotiated as part of the Planning Proposal to provide for a contribution "to offsetting the development's contribution to the traffic and safety issues around access to the site".

The intention of the VPA was for the land owner to commit to dedicating a strip of land along the Ewingsdale Road frontage of the land to allow for the future widening of that road. The VPA would be signed by the land owner, Council and TfNSW, who would agree that this commitment constitutes the appropriate offset for the traffic generated by the unauthorised land uses facilitated by the Planning Proposal.

The Farm advised that they would agree to such dedication provided that it could be demonstrated that the value of the land to be dedicated is commensurate with the scale of their contribution to existing traffic volumes.

5 They also sought to include provisions that provide for compensation should it be determined that the land value is greater than their contribution to the traffic problems.

To achieve this, Council, RMS and the land owner would need to agree on:

- 10
- traffic volumes generated by the nominated unauthorised uses at The Farm, quantified as a percentage of overall traffic volumes through the motorway interchange and on Ewingsdale Road in this location;
 - the value of the land to be dedicated; and
 - the construction cost of the agreed road improvement works.

15 Discussions with Council, RMS and The Farm could not reach an agreement on these numbers, and up until very recently it was not possible to estimate the construction cost of traffic solutions.

20 An alternative was therefore suggested, proposing to implement a SP2 Infrastructure zoning over the Ewingsdale frontage in lieu of the VPA, and an amended Gateway was received for this proposal, with an end date of 24 December 2020.

DPIE have advised that no further extensions will be considered.

25 The SP2 Infrastructure zone generates a responsibility to nominate a public authority who will be responsible to purchase the land. Council's original intention was that TfNSW would be responsible for acquisition. Discussions with TfNSW, however, indicated that Council would need to accept that responsibility.

30 TfNSW have now proposed a number of concept ideas for traffic upgrades in the area. While much further work is yet to be done regarding these ideas, broad cost estimates are also now available, which can provide the assurance required by the land owner for the VPA to progress.

35 Progressing with a VPA would negate the need for the SP2 zoning and Council would therefore not be required to the acquisition authority for the land.

To move forward, Council will need to withdraw the current Planning Proposal prior to 24 December and simultaneously request a Gateway determination for a new Planning Proposal.

40 The new proposal would effectively be the same as the current, without the need for an SP2 Infrastructure zoning over the land that would be covered by the VPA.

45 Discussions with DPIE and TfNSW indicate that this will then allow progress on agreeing key principles for the VPA and then for the proposal to move forward to public exhibition.

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

5

Legal/Statutory/Policy Considerations

This planning proposal would amend the Byron Local Environmental Plan 2014 as discussed in the report.

10

Financial Considerations

If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as an applicant initiated planning proposal. The proponent has paid for work undertaken to date. Full cost recovery of the remaining stages will be undertaken by Council. If the applicant chooses not to pay then the planning proposal will not proceed.

15

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

20

The suggested VPA will allow for the future widening of Ewingsdale Road to occur without cost to Council for land acquisition.

Consultation and Engagement

Minimal community consultation has occurred to date. Formal community engagement would occur if the Planning Proposal proceeds, in accordance with the Gateway determination.

25

Report No. 13.15 **Place Planning Collective - End of 2020 Update**
Directorate: Sustainable Environment and Economy
Report Author: Isabelle Hawton, Planner
 Andrew FitzGibbon, Place Liaison Officer
 Rob Van Iersel, Major Projects Planner
File No: I2020/1932

Summary:

In 2019 Council endorsed a new method for managing community engagement in relation to the delivery of Place Plans (**Res 19-45**). This was the inception of the Place Planning Collective (PPC). The purpose of this report is to provide Council with an update on how the PPC is contributing to and making an impact on Council projects, and provide feedback on how the group is advancing.

The PPC recently conducted a self evaluation survey of its members, with feedback being received from the community members, Councillors and staff. The overwhelming response was positive, with members applauding the chance for genuine early involvement in Council projects. Participants also suggested some improvements, including opportunities for less formal discussions and changes to the meeting location. These suggestions will be taken on board in 2021.

Throughout the year, the PPC have acted as a valuable conduit between Council and community, ensuring that priority projects from the place plans are being promoted and that appropriate levels of consultation are in place for these active projects.

Information on the Place Planning Collective, its charter, members and meeting minutes can be found on Council's website here:

<https://www.byron.nsw.gov.au/Community/Place-planning/Place-Planning-Collective>

RECOMMENDATION:

1. **That Council notes the End of 2020 update from the Place Planning Collective**
2. **That Council thanks the community members on the Place Planning Collective for their time and contributions made throughout the year, including meeting during COVID restrictions.**
3. **That Council also thanks both Councillors and staff involved in the Place Planning Collective meetings and projects throughout the year.**

REPORT

The Place Planning Collective (PPC) began in March of 2020, and was initially made up of 13 community members.

The PPC primarily engages with the adopted place plans for Bangalow, Mullumbimby, and the Byron Bay Arts and Industry Estate place plan.

Information on the Place Planning Collective, its charter, members and meeting minutes can be found on Council's website here:

<https://www.byron.nsw.gov.au/Community/Place-planning/Place-Planning-Collective>

The group has been meeting monthly since its inception, for an average of 1.5 hours a month.

There has been strong attendance from group members who nominated through an EOI process. However, attendance from group members selected through the citizens' lottery has been challenging due to competing work and lifestyle commitments.

Initial meetings were used to familiarise all members with the place plans, through presentations and walking tours.

The group has been a very strong advocate for greater levels of community engagement on the selection and implementation of priority projects in Byron Shire.

An overview of the projects worked on to date is discussed below:

Input to the Annual Budget Process

The first task of the PPC was to gain an understanding of the Council budget process and to provide feedback on suggested budget bids. The group worked collaboratively to identify priority actions from the place plans, and with staff, worked to ensure these were included in the budget bids.

Mullumbimby Projects

Burringbar Talking Street

The PPC were involved in the successful application for the Streets as Shared Spaces Grant for the 'Talking Street' in Mullumbimby. PPC members assisted in the planning and preparation of the application, as well as offering their technical skills to contribute illustrations. They were crucial to the success of the application, and followed this up with involvement in the Talking Street Working Group once the grant was awarded. They continue to assist in the delivery of this project.

<https://www.byron.nsw.gov.au/Community/Place-planning/Our-Mullumbimby-Masterplan/Talking-Street-Trial-Burringbar-St>

Stuart Street Greenspine

The PPC members have contributed at various stages to the Stuart Street Greenspine project. They provided input into the brief and also provided advice on the level of consultation required for this project. The greenspine design consultants presented very early drafts of the concept design at a Place Planning Collective meeting for their input.

<https://www.byron.nsw.gov.au/Community/Place-planning/Our-Mullumbimby-Masterplan/Stuart-Street-Greenspine>

Bangalow Projects

Bangalow DCP and structure plan for the Triangle

The PPC have been active in providing advice for the early consultation for the project looking to improve the planning controls in Bangalow. PPC members have ensured that key community members are aware of the project, and have provided their guidance on how the planning controls might be improved.

<https://www.yoursaybyronshire.com.au/bangalow-planning-controls>

Shared Paths in Bangalow

PPC members have offered advice on several key shared path projects in Bangalow. The first of these is a shared path along Ashton and Deacon Streets, connecting to the Bangalow Parklands. PPC members have been liaising with Infrastructure Services staff to achieve positive outcomes on this project.

Design work is also being carried out investigating options for paths to create better connections from Feros aged care facility to the Bangalow village centre. This project was strongly advocated by PPC members.

PPC members have also suggested input on the path linking Rifle Range Road with Bangalow town. Council staff have been pursuing a shared path option adjacent to Lismore Road to link the precincts, however there are some divergent views on where this path should be situated.

Community members on the PPC have expressed their strong desire for the path to be delivered within the rail corridor. Pursuing this option would require further time and investigation, and might result in a longer lead time for delivery of an active transport connection along this corridor.

<https://www.yoursaybyronshire.com.au/bangalow-shared-paths>

Byron Arts and Industry Estate Projects

Bayshore Drive Pocket Park

PPC members were involved in the initial round of consultation to inform the design of the Pocket Park at the corner of Bayshore Drive and Banksia Drive. Following this process, they were provided with an opportunity to have input on the draft design at a PPC meeting.

<https://www.byron.nsw.gov.au/Community/Place-planning/Byron-Arts-and-Industry-Estate/Pocket-Park-Bayshore-Drive>

Centennial Circuit One Way Trial

PCC members have received regular updates on the progress of the Centennial Circuit One Way Trial. In the coming months, they will be a key point of contact as the project moves from planning to implementation.

<https://www.byron.nsw.gov.au/Community/Place-planning/Byron-Arts-and-Industry-Estate/Centennial-Circuit-one-way-traffic-trial>

Federal Community Led Masterplan

Council has been working with a community group to commence a community led Masterplanning process for Federal Village. As part of the commencement of this project, a member of the Federal community was invited to present the scope at the most recent Place Planning Collective meeting. Members of the collective who have undergone a Masterplanning process in the past have offered to share their collective wisdom with the Federal group, enhancing the group's expertise in the process.

https://byron.infocouncil.biz/Open/2020/12/PLAN_10122020_AGN_1177.PDF

STRATEGIC CONSIDERATIONS

5

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	4.1.1.5	Implement Our Mullumbimby Masterplan, Bangalow Village Plan and Byron Arts and Industry Estate 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	Prepare Structure Plan and Development Control Plan for Bangalow town centre/Station Street (high priority action from the Bangalow Village 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	4.1.1.8	One way traffic trial for Centennial Circuit (Byron Arts and Industry Estate Precinct Plan action)
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	4.1.1.4	Develop a Landscape Plan for Stuart St Greenspine (Our Mullumbimby Masterplan action)
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	4.1.1.10	Park activation Bayshore Dr (Byron Arts and Industry Estate Precinct Plan)

Legal/Statutory/Policy Considerations

10 N/A

Financial Considerations

N/A

Consultation and Engagement

As described above.

15

Report No. 13.16 **PLANNING - Activity Application 88.2019.2.1 to Operate the Terrace Reserve Holiday Park, Brunswick Heads**
Directorate: Sustainable Environment and Economy
Report Author: Ben Grant, Planner
File No: I2020/1943

Proposal:

Description of Activity: Operate a Caravan Park and Camping Ground pursuant to Section 68 of the *Local Government Act 1993*.
Property description: Lot 313 DP 755692; Part Lot 416 DP 728666; Lot 403 DP 728637; Lot 1 DP 1169548 and Lot 50 DP 1169550
 The Terrace Reserve, Brunswick Heads
Parcel No/s: 5490; 183940; 164500; 183930; 205302
Applicant: NSW Crown Holiday Parks trading as Reflections Holiday Parks
Owner: Crown Land
Date received: 7 August 2019
Concurrence required Concurrence required due to a written objection to the 2005 Regulations. Concurrence can be assumed by Council.
Delegation to determine Council

Summary:

Council is in receipt of an application submitted pursuant to Section 68 of the *Local Government Act 1993* to operate the Terrace Reserve Holiday Park, Brunswick Heads. The Application seeks approval for 174 sites, comprising 26 long-term sites, 123 short-term sites and 25 camp sites.

In September 2018, Council considered a similar application to operate the Holiday Park. Due to concerns over potential impacts on the Coastal Cypress Pine Forest (CCPF) Endangered Ecological Community (EEC) in the Holiday Park's Southern Precinct, Council resolved to approve the application with the following special condition:

Special Condition "B":

"no further use of or activity within the Southern Area Precinct – Coastal Cypress Pines Community is to occur from the date of the Approval to Operate and all existing infrastructure (except the existing amenities facility) is to be removed where it is deemed to be a safe option".

The above condition had the effect of prohibiting camping and caravanning in the Southern Precinct and required existing infrastructure to be removed. The Approval specified that it was to remain in force for a period of three years from the date of issue until September 2020.

The current application is largely the same as the previous one, except for a minor reduction in the number of sites from 178 to 174. This is being achieved by consolidating sites in the Northern Precinct and deleting sites 191 and 193 in the Southern Precinct. The Application seeks to include the use Southern Precinct that was excluded from the previous approval.

Key Issues

There are two main issues for Council to consider in determining this application:

(1) Limitations on the exclusion of the Southern Precinct

Council previously addressed environmental concerns by excluding the Southern Precinct of the Holiday Park from the approval. Upon review, this approach is not considered to be valid due to limitations in the relevant legislation.

Section 94 of the Local Government Act 1993 does not offer Council the option of granting a 'partial' approval to a Section 68 application. That is, Council must decide to either approve the application as submitted (either unconditionally or subject to conditions), or to refuse the application. Any condition which artificially excises part of the Holiday Park from the approval could be viewed as being inconsistent with Section 94 and, therefore, potentially invalid.

A further limitation is applied by Section 3.39 of the Crown Lands Management Act 2016 which provides that a Council cannot grant approval to an activity application if it would result in a contravention of the Plan of Management for the land. Thus, any condition imposed by Council which materially alters the Park layout, such that it is no longer consistent with the adopted Plan of Management, would likely be in contravention of Section 3.39 and may also be invalid.

(2) Adverse impacts on the Coastal Cypress Pine Forest Endangered Ecological Community in the Holiday Park's Southern Precinct.

It is clear based on the available information that the Holiday Park has degraded the CCPF EEC in the Southern Precinct over several decades and these effects are likely to continue into the future unless ameliorative actions are taken. This is occurring primarily due to an impairment of natural regeneration processes and damage to existing trees.

Council's Natural Resource Planner noted that due to the rarity and extremely restricted distribution of the CCPF EEC, any further loss of occurrence or reduction in its extent within the Reserve should be regarded as a serious and irreversible impact on the environment.

As discussed in the body of this report, insufficient information has been provided to properly understand how the Southern Precinct could be used for camping while simultaneously avoiding damage to existing trees and providing adequate room for natural and assisted regeneration such that it ensures no net loss to the occurrence or extent of the CCPF within the Reserve.

It is considered that the proposed activity is likely to result in a loss of biodiversity values of the site and will adversely affect the integrity and long term viability of the endangered ecological community if approved. The application is therefore recommended for refusal on the basis that it is inconsistent with the principles of ecologically sustainable development established under Section 89 (3) of the Local Government Act 1993.

NOTE TO COUNCILLORS:

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












RECOMMENDATION:

That, pursuant to Section 94 of the *Local Government Act 1993*, Council refuse activity application 88.2019.2.1 for the following reason:

- (1) The proposed activity is likely to have a serious and irreversible impact on the Coastal**

Cypress Pine Forest Endangered Ecological Community located in the Southern Precinct of the Holiday Park. The activity is therefore considered to be inconsistent with the principles of Ecologically Sustainable Development as established under Section 89(3) of the Local Government Act 1993; in particular, that conservation of biological diversity and ecological integrity should be a fundamental consideration.

Attachments:

- | | | |
|----|---|---|
| 1 | Park Plan and Site Particulars, E2020/97283 |  |
| 5 | 2 Plan of Management - Terrace Reserve, E2020/97201 |  |
| | 3 Compliance Table 2005 Regs, E2020/97485 |  |
| | 4 Detailed Site Plan of Holiday Park, E2020/97204 |  |
| | 5 Written Objection to the 2005 Regulations (cl. 91), E2020/97294 |  |
| | 6 Arborsafe Report (May 2018), E2020/97360 |  |
| 10 | 7 Kingfisher Ecology Report, E2020/97361 |  |
| | 8 Vegetation and Threatened Species Report, E2020/97368 |  |
| | 9 Site Assessment by R. Kooyman (2017), E2020/97362 |  |
| | 10 Review of Environmental Factors (June 2018), E2020/97370 |  |
| 15 | 11 Review of Documents by R. Kooyman (18 June 2018), E2020/97372 |  |

REPORT

1. Background

5 Terrace Reserve Holiday Park is one of three holiday parks managed by NSW Crown Holiday Parks Land Manager in Brunswick Heads, the others being known as Ferry Reserve and Massey Greene. The Terrace Reserve has been operating as a caravan park and camping ground for at least 60 years and was managed by Byron Shire Council as a Reserve Trust Manager until late 2006. In December 2006 management of all three Reserves was transferred to the Crown.

10 In 2014, the Minister for Crown Lands approved three new Plans of Management (POM's) for Terrace Reserve, Ferry Reserve and Massey Greene. The POM's provide a framework for the future management and development of the Reserves over a 5-10 year period. POM's for Ferry Reserve and Massey Greene were later revised in 2019 in response to community feedback which called for greater site setbacks and improved open space. A revised POM for The Terrace was also considered but did not proceed.

1.1 Previous Application

20 The Applicant currently operates a caravan park and camping ground on the subject land in accordance with Activity Approval No. 55.2017.1144.1, granted by the Council at the Ordinary meeting of 20 September 2018. The Approval specified that it was to remain in force for a period of three years from the date of issue until September 2020.

25 In determining the Application, Council resolved to impose the following special condition to minimise the threat of environmental harm on the Coastal Cypress Pine Forest (CCPF) Endangered Ecological Community (EEC) in the Holiday Park's Southern Precinct.

Special Condition "B":

30 *"no further use of or activity within the Southern Area Precinct – Coastal Cypress Pines Community is to occur from the date of the Approval to Operate and all existing infrastructure (except the existing amenities facility) is to be removed where it is deemed to be a safe option".*

35 The above condition had the effect of prohibiting use of the Southern Precinct and required removal of existing infrastructure.

2. Subject Application

40 The subject application (no. 88.2019.2.1) was received by Council on 7 August 2019. The Application seeks approval to operate the existing caravan and camping ground at the Terrace Reserve, including the Southern Precinct that was excluded from the previous approval.

45 The proposal is largely the same as the previous application, except for a minor reduction in the number of sites from 178 to 174. This is being achieved by consolidating some sites in the Northern Precinct and deletion of sites 191 and 193 in the Southern Precinct.

The details of the caravan park and camping ground provided within the application are as follows:

Detail of sites:

Type of Sites	No. of Sites
Long term sites with Private Toilet and Shower Facilities	26
Short Term Sites – Cabins	10
Short Term Sites – Premium Powered Sites	15
Short Term Sites – Powered Sites	98
Camp Sites	25
Total	174

Detail of facilities:

Type of Facility	No.
Female Toilets	14
Male Toilets/Urinals	15
Female Showers and hand basins	9
Male Showers and hand basins	9
Family Bathroom	1
Unisex Toilet	2
Washing Machines and Dryers	6
Washing Tubs	4
Line Space	340 metres
Irons	6
Ironing Boards	4

Holiday Park Layout Plan:

5



Terrace Reserve



Figure 1: Extract of the holiday park map provided with the Application.

Land and Environment Court appeal

On 30 October 2019, the Applicant commenced proceedings in Class 2 of the Land and Environments Court's jurisdiction appealing against the deemed refusal of the application. Council has since engaged in mandatory conciliation to resolve outstanding issues and additional information has been provided.

3. The site

The Terrace Reserve Holiday Park is located on the western bank of Simpsons Creek and is a short walk south from the Brunswick Heads Town Centre. The main entrance to the park is off Fingal Street with a secondary entrance and exit off Nana Street. At the entrance to the Park is a footbridge which crosses Simpsons Creek and provides pedestrian access to the surf beach on the opposite side of the creek.

The Holiday Park is situated within a Crown Reserve which covers an area of 5.82 hectares. The Reserve includes Terrace and Banner Parks in the north, Terrace Reserve Holiday Park in the central area, and Simpsons Reserve containing native vegetation and a public walkway linking the site to residential areas in the south.

The Holiday Park has 174 sites, comprising a mixture of cabins, short-term sites, long-term sites and camping sites. A site office and managers residence is located near the park entrance at Fingal Street. A number of community facilities buildings and BBQ areas are located throughout the Park.

An aerial photograph is provided at **Figure 1**, with the subject land shaded pink.



Figure 1: Aerial image of the subject site. **Source:** Plan of Management for Terrace Reserve Holiday Park (NSW Government, 2014).

The Holiday Park is divided into three general precincts for management purposes. The Northern Precinct, north of Booyun Street, has been cleared of most native vegetation and contains holiday cabins, short-term van sites and most of the long-term sites.

The Central Precinct is less developed and retains scattered native trees including Coastal Cypress. It has short-term powered van sites and a handful of long-term sites.

The Southern Precinct, generally south of Nana Street, retains stands of mature Coastal Cypress and contains mostly unpowered sites used for short-term caravanning or tent camping.

The far southern end of the Reserve is known as Simpsons Reserve and is not part of the Holiday Park. It retains mature stands of Coastal Cypress amongst areas of mown grass. The area is traversed by a gravel pathway with lighting that follows the banks of Simpson Creek, linking the reserve to the Brunswick Heads Bowling Club and residential areas to the south.

The Holiday Park is known to contain the endangered ecological community Coastal Cypress Pine Forest in the NSW North Coast Bioregion. CCPF is protected under Schedule 2 of the *Biodiversity Conservation Act*. In the Central Precinct, the community has been reduced to isolated trees, while in the Southern Precinct mature stands of Coastal Cypress remain interspersed amongst short-term sites. Mid-storey and understorey vegetation in the park have been largely removed as a result of recreational and camping activities occurring over several decades.

4. Plan of Management

The reserve is subject to a Plan of Management (POM) that was adopted in April 2014. The POM establishes the boundaries of the Holiday Park and provides a framework for the future management, use and development of the reserved Crown land in accordance with the requirements of the former *Crown Lands Act 1989*.

A copy of the POM is included at **Attachment 2**.

Specific improvements and authorised activities/works identified in the POM include:

- Upgrades to the Park's managers residence.
- Reduction in sites and reconfiguration of the road access in the Northern and Southern Precincts.
- An additional pedestrian link from Fingal Street to the footbridge.
- New camp kitchens to be developed in the Northern and Southern Precincts.
- BBQ shelter in the Foreshore Precinct to be demolished.
- Increase cabins in the Northern Precinct from 10 to 12
- Amenities buildings in the Central and Southern Precinct to be demolished and replaced by a single amenities building in the Northern Precinct.
- Replace communal amenities in the Southern Precinct.
- Apply screening treatments to the boundary between the park and the adjoining residential area.
- Progressive removal of exotic species and protection of mature endemic vegetation.
- Protection and maintenance of vegetation in the intertidal zone along Simpsons Creek.
- Separation between functional area of the holiday park and on park boundaries that adjoin public areas.
- Existing fencing that does not follow the alignment of the park boundaries will be relocated.
- Existing structures will be progressively relocated away from foreshore sites to enable the re-establishment of a natural bank profile and the protection and restoration of vegetation communities.

- New signage will be required along with consolidation of existing signage.

Vegetation Management Plan

5 The POM includes a Vegetation Management Plan (VMP) which identifies the endangered ecological communities in the Reserve and establishes an action plan to minimise harm to the vegetation and, where possible, enhance vegetation through bush regeneration and weed control.

10 To summarise, the VMP proposes a number of measures to protect and enhance the CCPF, including seed collection and propagation of Coastal Cypress trees for landscaping and assisted regeneration, mapping of critical root zones, replacement of trees that are lost or removed and an ongoing program of weed control.

15 Specific details of the regeneration program are not specified in the VMP.

Supporting information and photographs were provided by the applicant showing a small amount of regeneration work undertaken in the Holiday Park. However, it is generally unclear to what extent the actions of the POM and the VMP have been implemented by Reflections at the current time.

5. Statutory Context

The following statutory controls are relevant considerations:

a. The Local Government Act 1993 (LG Act)

- Section 68: What activities, generally, require the approval of the council?
- Section 72: Determination of applications by the Crown.
- Section 82: Objections to application of regulations and local policies.
- Section 89: Matters that must be considered before approving an application.
- Section 90: Concurrence.
- Section 94: Determination of application.

b. Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 (2005 Regulation)

- Section 71: Factors for consideration before approval is granted.
- Section 72: Matters to be specified in approval.
- Section 73: Conditions of approval to operate caravan park or camping ground.
- Sections 83–131: Division 3 Caravan Parks and Camping Grounds.

c. Crown Land Management Act 2016 (Crown Lands Act)

- Section 3.39: Approvals of activities under must comply with plans of management.

d. Byron Shire Council Statutory Local Approvals Policy 2018 (Local Approvals Policy)

6. Summary of referrals

Referral	Comments/Issues
Natural Resource Planner	Not supported. Insufficient information has been provided to understand the full extent of the threats posed to the CCPF in the Southern Precinct due to the Park's operations. Refer to Section 4.4 of this report.
Building Surveyor	No objections subject to conditions of approval.
Office of Local Government	Application referred to OLG, seeking concurrence in

Referral	Comments/Issues
	relation to a proposed objection to the 2005 Regulations. OLG have not responded at the time of writing. As such, Council is able to assume concurrence in accordance with Section 91 of the LG Act.

4. LOCAL GOVERNMENT ACT 1993

4.1 Section 68 What activities, generally, require the approval of Council?

Pursuant to Section 68, Part F, of the LG Act, approval of the Council is required to operate a caravan park or camping ground. An approval lapses after five (5) years (or such shorter or longer time as the Council may set).

4.2 Section 72 Determination of applications by the Crown

Special provisions for activities undertaken by or on behalf of the Crown are contained in Section 72 of the LG Act. These provisions operate to limit the powers of councils. Section 72 (1) provides that councils must not refuse consent to a Crown application except with the written approval of the Minister, and must not impose a condition of approval except with the written approval of the Minister or the applicant.

Reflections are not considered to be the "Crown" for the purpose of the LG Act and therefore the provisions of Section 72 are not applicable.

4.3 Section 82 Objections to application of regulation and local policies

The Applicant has submitted a written objection to the need to comply with Section 91 of the 2005 Regulations.

The Objection was referred to the Office of Local Government seeking concurrence from the Departmental Chief Executive on 7 October 2020. Concurrence has not been provided by OLG at the time of writing this report.

Full consideration of the merits of the objection is covered in section 4.5 of this report.

4.4 Section 89 Matters for Consideration

Section 89 of the LG Act establishes three heads of consideration that the Council must turn its mind to before determining an application:

89 Matters for consideration

(1) *In determining an application, the council—*

- (a) *must not approve the application if the activity or the carrying out of the activity for which approval is sought would not comply with the requirements of any relevant regulation, and*
- (b) *must take into consideration any criteria in a local policy adopted under Part 3 by the council which are relevant to the subject-matter of the application, and*
- (c) *must take into consideration the principles of ecologically sustainable development.*

4.5 Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005

Section 71 of the 2005 Regulation provides that approval must not be granted unless Council is satisfied that the caravan park or camping ground is designed, constructed and maintained in accordance with Subdivisions 1–8 of Division 3.

71 Factors for consideration before approval is granted

- (1) *The council must not grant an approval to operate a caravan park or camping ground unless it is satisfied that it will be designed, constructed, maintained and operated—*
- (a) *in accordance with the relevant requirements of Subdivisions 1–8 of Division 3, or*
- (b) *in the case of a primitive camping ground, in accordance with the relevant requirements of Subdivision 9 of Division 3.*

Section 175: Savings Provisions

The Holiday Park is currently non-compliant with many of the requirements of the 2005 Regulations, particularly in relation to setbacks from boundaries, separation distances between dwellings, road widths and visitor parking. An assessment of the application against the relevant provisions of Subdivisions 1–8 of division 3 is included in **Attachment 3**.

However, due to its age, Terrace Reserve Holiday Park is exempted from the need to comply with many of these standards.

Exemptions to the current Regulations can be traced back to Ordinance 71 which came into force in December 1986 under the former *Local Government Act 1919*. Ordinance 71 included a savings clause under Section 108 that exempted “existing parks” from the need to comply with a wide range of the new standards specified in the Ordinance. The exemptions covered a range of matters relating to land area, setbacks, road widths, visitors parking and the requirements for fire hydrants, amongst other things.

Upon the commencement of the *Local Government Act 1993*, Ordinance 71 was renamed *Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993* (Transitional Regulation).

Exemptions under Section 108 of the Transitional Regulations, where applying, were subsequently carried forward via savings provisions into the *Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995* (1995 Regulation).

Upon the introduction of the 2005 Regulation on 1 September 2005, these exemptions were carried forward again and currently have effect under Section 175.

Non-compliances not covered by the savings provision

Some of the Park’s non-compliances are not covered by the savings provisions. The following elements are considered to be non-compliant with the 2005 Regulations and have no exemption available.

Table 1: Non-compliances with the 2005 Regulations that are not covered by the savings provisions

Subdivision 1 Land and site requirements	
85 Size of dwelling sites and camp sites	
<p>(1) A long-term site must have an area of at least 80 square metres.</p> <p>(2) A short-term site must have an area of at least 65 square metres.</p> <p>(3) A camp site must have an area of at least—</p> <p>(a) 40 square metres, in the case of a camp site for which a separate parking space is provided within 30 metres of the camp site, or</p> <p>(b) 50 square metres, in any other case.</p>	<p>Non-compliant.</p> <p>1 long-term site non-compliant:</p> <ul style="list-style-type: none"> • LT-74 (78m²) <p>9 short-term sites non-compliant:</p> <ul style="list-style-type: none"> • ST-148 (61 m²) • ST-149 (52 m²) • ST-156 (55 m²) • ST-159 (56 m²) • ST-160 (51 m²) • ST-161 (50 m²) • ST-162 (50 m²) • ST-163 (50 m²) <p>Refer to 2005 Regulation Issues Section.</p>
91 Separation distances	
<p>(1) A moveable dwelling must not be installed closer to any other moveable dwelling than—</p> <p>(a) 3 metres, if it is situated on a long-term site, or</p> <p>(b) 2.5 metres, if it is situated on a short-term site or camp site.</p>	<p>Non-compliant.</p> <p>Dwellings on sites 78 and 79 are less than 1m from one another.</p> <p>An objection to clause 91 of the Regulations has been submitted by the Applicant.</p> <p>Refer to 2005 Regulation Issues Section.</p>
<p>(2) This clause does not prohibit the installation of semi-detached relocatable homes on adjoining dwelling sites so long as they are separated by construction conforming to the fire safety and sound insulation provisions relating to class 1 buildings contained in Section 3.7.1 and 3.8.6 of Volume Two of the <i>Building Code of Australia</i>.</p>	<p>See above.</p>
98 Visitor parking for people with disabilities	
<p>(1) A caravan park or camping ground must contain at least one visitor parking space for people with disabilities.</p>	<p>Non-complaint.</p> <p>Two (2) disabled parking spaces are required.</p> <p>No (0) disabled parking spaces provided.</p> <p>Refer to 2005 Regulation Issues Section.</p>
<p>(2) A caravan park or camping ground that contains more than 100 sites must contain at least one visitor parking space for people with disabilities for each 100 sites or fraction of 100 sites.</p>	
<p>(3) Such parking is to be provided in accordance with AS/NZS 2890.1:2004 <i>Parking facilities—Off street parking</i>.</p>	
<p>(4) Visitor parking spaces for people with disabilities must be clearly identified as</p>	

such.	
(5) Visitor parking spaces provided under this clause may be counted for the purposes of clause 97.	
116 Drying areas	
(1) A caravan park or camping ground must be provided with clothes line space at the rate of 2 metres of line for each dwelling site.	<p>Non-compliant</p> <p>348m of line space is required.</p> <p>The Application states that 340m of line space is provided.</p> <p>Refer to 2005 Regulation Issues Section.</p>

2005 Regulations - Issues

Section 85 – Size of dwelling sites and camp sites

5 Section 85 establishes minimum standards for the area of a dwelling site or camp site in a caravan park or camping ground as follows:

85 Size of dwelling sites and camp sites

- 10
- (1) *A long-term site must have an area of at least 80 square metres.*
 - (2) *A short-term site must have an area of at least 65 square metres.*
 - (3) *A camp site must have an area of at least—*
- 15 (a) *40 square metres, in the case of a camp site for which a separate parking space is provided within 30 metres of the camp site, or*
 - (b) *50 square metres, in any other case.*

20 As indicated in the Applicant's site plan (**Attachment 4**), one (1) long-term site and nine (9) short-term sites are non-compliant with Section 85. The issue was not explained by the Applicant.

In relation to the long-term site, the degree of variation is only 2m² (< 3%) and the matter can easily be resolved via conditions of approval if necessary.

25 The short-term sites on the other hand cannot be increased in size without significant variation to the park layout and internal road network. The only option available to resolve the issue (other than the Applicant submitting an objection to the Regulations) is for these sites to be designated as 'camp sites' rather than 'short-term sites'. Camp sites are required to have an area of at least 50m² and the sites in question are able to comply with that standard.

30 The main difference being that a manufactured home (i.e. a cabin) can be installed on a short-term site whereas campsites can only support moveable dwellings such as tents, campervans and caravans.

Section 91 Separation distances

Section 91 establishes the minimum separation distances between moveable dwellings on long-term sites, short-term sites and camping sites.

Section 91 Separation distances

(1) *A moveable dwelling must not be installed closer to any other moveable dwelling than—*

- 5 (a) *3 metres, if it is situated on a long-term site, or*
 (b) *2.5 metres, if it is situated on a short-term site or camp site.*

10 (2) *This clause does not prohibit the installation of semi-detached relocatable homes on adjoining dwelling sites so long as they are separated by construction conforming to the fire safety and sound insulation provisions relating to class 1 buildings contained in Section 3.7.1 and 3.8.6 of Volume Two of the Building Code of Australia.*

Long-term sites numbered 78 and 79 do not comply with above separation distances. The moveable dwellings on these sites are less than 1m from each other.

15 The Applicant submits that compliance with Clause 91 is unreasonable and unnecessary in this case, and pursuant to section 82 of the LG Act, the Applicant has submitted a written objection against the requirement to comply with that clause. The objection was referred to the Office of Local Government on 7 October 2020 and no response has been received at the time of writing this report. In accordance with Section 90(5), Council can assume concurrence if at least 40 days
 20 have passed since concurrence was sought and the person or authority has not, within that period, expressly refused concurrence.

A copy of the Applicant's written objection can be found in **Attachment 5** at paragraphs 18-25.

25 Council's building surveyor has reviewed the Objection and commented that the exiting situation is safe and does not pose a danger to life or property in the Holiday Park. As such there is no particular reason why Council should not support a variation in the circumstances, subject to the non-compliance being rectified within 3 years as part of a program of works.

30 On the basis of this assessment, compliance with Clause 91 of the 2005 Regulations is considered to be unnecessary in this case and the objection is deemed to be well founded.

98 Visitor parking for people with disabilities

35 Section 98 establishes minimum standards for the provision of disabled parking, as follows:

98 Visitor parking for people with disabilities

- 40 (1) *A caravan park or camping ground must contain at least one visitor parking space for people with disabilities.*
 (2) *A caravan park or camping ground that contains more than 100 sites must contain at least one visitor parking space for people with disabilities for each 100 sites or fraction of 100 sites.*
 (3) *Such parking is to be provided in accordance with AS/NZS 2890.1:2004 Parking facilities—Off street parking.*
 45 (4) *Visitor parking spaces for people with disabilities must be clearly identified as such.*
 (5) *Visitor parking spaces provided under this clause may be counted for the purposes of clause 97.*

50 The Holiday Park has 174 sites and therefore requires 2 disabled car parking spaces in accordance with Section 98. The Site Particulars Document provided with the application states that no disabled car parking is provided at the current time.

It is considered that the non-compliance can be resolved through conditions of approval requiring the provision of two disabled car parking spaces to be implemented as part of a program of works within the next three years. Sufficient room exists in the Park to provide the required car parking.

5 Section 116 Drying areas

Section 116 specifies the minimum line space needed for a caravan park or camping ground.

116 Drying areas

- (1) A caravan park or camping ground must be provided with clothes line space at the rate of 2 metres of line for each dwelling site.
- (2) The minimum length of clothes line space to be provided is 50 metres.

Section 116 requires 2 linear metres of line for each dwellings site. The Application proposes 174 sites which require 348 metres of line. The Site Particulars Document states that the Park has 340m of line which is 8m short of the standard. As with the above mentioned issues, this is a minor matter that can be easily addressed by conditions of approval under a program of works.

20 Other Issues – Setbacks from boundaries

The Holiday Park is non-compliant with Sections 88 and 89 of the 2005 Regulation with respect to setbacks of community buildings and sites from road frontages and boundaries.

25 88 Setbacks of community buildings

- (1) A community building must not be located closer than 10 metres to the boundary of a caravan park or camping ground, or to the boundary of a dwelling site or camp site, unless the approval for the caravan park or camping ground so allows
- (2) The approval for a caravan park or camping ground must not allow a lesser distance than 10 metres unless the council is satisfied that the community building has been or will be properly screened, fenced, enclosed or otherwise treated.
- (3) A community building must not in any case be located closer than 3 metres to the boundary of a caravan park or camping ground or 5 metres to the boundary of a dwelling site or camp site.

40 89 Setbacks of dwelling sites and camp sites from road frontages

- (1) A dwelling site or camp site must not be located closer than 10 metres to a public road or 3 metres to any other boundary of the caravan park or camping ground unless the approval for the caravan park or camping ground so allows.
- (2) The approval for a caravan park or camping ground must not allow a lesser distance unless the council is satisfied that the dwelling site or camp site has been or will be properly screened, fenced, enclosed or otherwise treated.

Existing situation

Some of the Holiday Parks office and amenities buildings are less than 10m from a road boundary or a dwelling site, as follows:

Table 3: Non-compliant boundary setbacks for community buildings

Community building	Setback to road <10m
Central Amenities	4.3m
Office/residence	7.5m

Table 4: Non-compliant site setbacks for community buildings

Community building	Setback to site <10m
Northern Amenities	7.7m
Central Amenities	3.6m
Southern Amenities	4.3m
Office/residence	7.4m

In addition, 20 campsites are located close to the western boundary of the park and are within 10m of a public road reserve. Separation distances range from 8.5m to 0m from the road reserve, as follows:

Table 5: Non-compliant site setbacks from road boundaries

Site	Setback to road reserve	Site	Setback to road reserve
ST-P76	5.8m	ST-P189	7m
ST-P99	6.5m	ST-P190	7m
ST-P100	0m	ST-U194	7m
ST-P101	0m	ST-P195	8m
ST-P102	0m	ST-P196	4m
ST-P103	0m	ST-P197	5.5m
ST-P104	0m	ST-P198	7m
ST-P105	0m	ST-P199	8.5m
ST-P106	0m	ST-U200	7m
ST-U168	6.5m	ST-U201	6m

Assessment

In relation to setbacks, the current situation is undesirable and results in relatively poor outcomes for campers and adjoining residents alike. Sites P101 to P106 have a nil setback to the public road resulting in adverse noise and amenity issues for residences on the opposite side of The Terrace, while also reducing safety for campers.

The Applicant's site plan (**Attachment 4**) illustrates a possible 10 m setback for these sites, which demonstrates that an increased setback can be achieved while still meeting the minimum site area needed to satisfy Clause 85 of the Regulations. Increasing road boundary setbacks will require the removal of two dwellings on sites ST-P102 and LT-P105. It is acknowledged that relocation of these dwellings may take time and require individual negotiation with residents in accordance with the relevant legislation.

The existing community buildings near the intersection of The Terrace and Nana Street cannot be easily relocated to comply with the 10m setback requirements (they would need to be demolished). Strict compliance is therefore deemed unreasonable in the circumstances, subject to appropriate screening and landscaping between the buildings and the adjacent road reserve.

Exemptions

The Applicant claims that it has an exemption to sections 88 and 89 on the basis that it was an "existing park" before the introduction of Ordinance 71. This has been difficult to verify with respect to sites and community buildings on the western side of the Park. It has been acknowledged by

Council in previous assessments that these sites/buildings were established in a former road reserve and this likely occurred at some point after the introduction of Ordinance 71. A review of aerial photography from 1986 (just prior to the introduction of the Ordinance) appears to show that these community buildings and sites were not in existence at the time which supports this view.

Irrespective, Sections 88 and 89 permit Council to approve sites or community buildings with a reduced setback, so long as it is satisfied that the sites or buildings will be properly screened, fenced, enclosed or otherwise treated.

It is therefore recommended that, if the Council resolves to approve the application, that conditions for increased setbacks (minimum 5m) along with screening and landscaping be imposed. It is further noted that the application of screening treatments between the park and the adjoining residential area is one of the approved Actions of the 2014 Plan of Management and, as such, conditions of this nature would be consistent with the POM and the intended future vision for the reserve.

4.3 Section 89(1)(a) Byron Shire Local Approvals Policy

Byron Shire Local Approvals Policy (BLAP) provides that the installation of a relocatable home, caravan, tent or annexe on a dwelling site within a caravan parks is exempted from the need to obtain section 68 approvals from Council, subject to compliance with certain requirements in the Regulations.

The BLAP does not include any specific provisions relating to the operation of caravan parks or camping grounds.

4.4 Section 89(1)(c) Principles of Ecologically Sustainable Development

Section 89 (1) (c) of the LGA provides that, in determining an application, the Council must take into consideration the Principles of Ecologically Sustainable Development (ESD).

The principles of ESD are defined in the Dictionary to the LGA as follows:

Principles of ecologically sustainable development means the following statements of principle—

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs—

(a) *the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

In the application of the precautionary principle, public and private decisions should be guided by—

(i) *careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
(ii) *an assessment of the risk-weighted consequences of various options,*

(b) *inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations,*

- (c) *conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*
- (d) *improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as—*
 - (i) *polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*
 - (ii) *the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*
 - (iii) *environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.*

Background information

Both Council and the Applicant have commissioned Arboricultural and Ecological investigations of the subject site over the past decade. Two reports commissioned by Reflections in 2018 were resubmitted in support of the current application and have been included at **Attachments 6 and 7** to this report. Other reports commissioned by Reflections and Council in 2010, 2017 and 2018 have also been used to inform the assessment and are included at **Attachments 8 – 11**.

Reports supplied with the Application

- (1) Terrace Reserve Holiday Park: Southern Precinct Arboricultural Assessment. Prepared by Alex Austin and Andrew Clarke (Arborsafe) for Greg Asher (Reflections Holiday Parks), May 2018 (Arborsafe).
- (2) Biodiversity Assessment of proposed Vegetation Management, Terrace Holiday Park: Southern Precinct. Prepared by Ecological Consultants Australia Pty Ltd trading as Kingfisher Urban Ecology and Wetlands, June 2018 (Kingfisher).

Other reports used for background information

- (3) Vegetation and Threatened Species Report: Terrace Reserve Holiday Park. Prepared by G.N. Elks (Idyll Spaces Environmental Consultants), 16 December 2010 (Vegetation and Threatened Species Report).
- (4) Results of property inspection and site assessment of Crown Land. Prepared by Dr Robert Kooyman, 3 August 2017 (1st Kooyman Report).
- (5) Review of Environmental Factors tree Management and Vegetation Works Terrace Holiday Park: Southern Precinct. Prepared by Geraldine Dalby-Ball (Ecological Consultant's Australia Pty Ltd TA Kingfisher Urban Ecology and Wetlands) for Greg Asher (Reflections Holiday Parks), June 2018 (REF).
- (6) Review of Documents and 5-Part Test of Significance: For Actions Proposed to be undertaken by 'Reflections' in the Terrace Reserve Holiday Park, Brunswick Heads, Byron Shire (2nd Kooyman Report).

Ecological characteristics of the site

As explained earlier, the Reserve contains Coastal Cypress Pine Forest Endangered Ecological Community, which is present in Simpsons Reserve and the Southern Precinct of the Holiday Park.

- 5 There is general agreement in all of the reports regarding the condition and extent of the CCPF, which has been largely reduced to canopy trees in the Southern Precinct as a result of camping and caravanning occurring over several decades.

- 10 The EEC has a highly restricted distribution. The Scientific Determination that listed CCPF as an EEC estimated that the area occupied by the community may have declined by more than 77% since European colonisation, with a total remaining distribution of approximately 150 ha and certainly less than 200 ha (NSW Scientific Committee 2011). The conservation of CCPF is further limited by the environmental constraints on the occurrence of the community – CCPF typically occurs on the inland side of the coastal sandplain on low rises that represent eroded Pleistocene backbarrier dunes (Morand 1996). This represents a relatively small band of land adjacent to the coastline that is substantially developed and will be subject to further ongoing development pressure.

Threats posed by the Park's operations

- 20 The main threat to the CCPF identified in the Arborsafe report is the potential for fragmentation due to a lack of natural regeneration of Coastal Cypress trees along with infiltration of foreign weed species. The report notes that the CCPF in the Southern Precinct consists mostly of trees in the later stages of maturity and there is an absence of any significant younger regrowth. As mature trees are lost due to old age or are removed for safety reasons, there is an absence of younger emerging trees to replace them, which threatens the long term viability of the community.

- 30 Impairment of natural regeneration was also described as a threat in the reports by Kooyman and in the Vegetation and Threatened Species Report which accompanies the VMP for the Reserve.

- In terms of tree health, Arborsafe describes potential threats to the Coastal Cypress being soil erosion, root exposure and mechanical damage (lawn mower scalping, tent peg and guy rope damage, road and service installation). The report identified the majority of trees in the reserve as having fair health although it was acknowledged that with no younger replacement trees establishing there is a "gap in the treescape".

- 40 Kooyman identifies a similar range of potential threats, including hardening of surfaces (bitumen roads, tracks, campsites), damage from machine based maintenance activities, compaction (vehicles, campsites close to trees), removal of branches and alteration to natural drainage. Kooyman concludes that "in combination, these factors threaten the future viability of the individual trees and further reduce and residual function and recruitment of the 'original' community".

Severity of the impacts

- 45 The main area of disagreement between the reports is the severity of impacts on the CCPF from the Park's continued operation and the types of strategies or actions needed to mitigate those impacts.

- 50 The reports by Arborsafe and Kingfisher put forward a view that the Holiday Parks operations will not have a significantly adverse impact on the existing trees, subject to the implementation of mitigation strategies such as vegetation management work, ground protection measures, campsite delineation and assisted regeneration of Coastal Cypress in the southern precinct and Simpsons Reserve.

Kooyman takes a different view, noting that the lifecycle of the CCPF is being disrupted by the continuing use of the caravan park and continuation of the current activities will cause inhibition of key ecological processes across most of the subject site. Kooyman states that the end result will be “substantial impacts on the composition and extent of the EEC such that it is likely to be placed at risk of extinction through loss of large trees and continued suppression of ecological processes”.

Assessment - insufficient information

Council’s Natural Resource Planner reviewed the proposal and concluded that there was insufficient information to properly understand the full extent of the threats posed to the CCPF or whether the proposed mitigation strategies would be sufficient to prevent a loss in the occurrence or extent of the EEC within the Holiday Park.

The assessment by Council’s Natural Resource planner is reproduced below:

Threats posed to the CCPF by the park’s operations (as proposed in this application)

“It is considered that there is insufficient information provided in the application to understand the full extent of the threats posed to the CCPF in the Southern Precinct due to the park’s operations. Although these threats are not adequately addressed in the reports, several threats to the CCPF EEC that would result from the park’s operations can be inferred.

The submitted Arboricultural Report recommends the complete removal of three coastal cypress trees as well as branch removal from many trees throughout the park. These recommendations demonstrate the inherent conflict that would arise between the operation of a commercial tourist park and the conservation of an Endangered Ecological Community. The tree lopping and removal recommendations made by the report respond to real, justifiable safety risks that would result from the operation of a campground within a stand of old growth trees. These conflicts would undoubtedly continue to arise, maintaining pressure on the conservation of the CCPF in the Southern Precinct. The submitted Biodiversity Assessment Report does not connect the impacts of these ongoing activities to the ongoing conservation of the CCPF on the site.

It is noted that the demarcation and use of campsites within the CCPF stand in the Southern Precinct would remove the ability for the CCPF to regenerate from these areas, in effect reducing the total local area of occurrence of the community. The proposed use of load cells to facilitate access and site use within the Structural Root Zone of coastal cypress trees would also remove these areas from the local occurrence of the community, as it would prevent any regeneration/recruitment from occurring.

See below comments regarding measures to avoid and minimise the threat of environmental damage for further discussion regarding specific threats that would likely be posed by the park’s operations.

Potential serious and irreversible damage

The CCPF EEC has a highly restricted distribution. The Scientific Determination that listed CCPF as an EEC estimated that the area occupied by the community may have declined by more than 77% since European colonisation, with a total remaining distribution of approximately 150 ha and certainly less than 200 ha (NSW Scientific Committee 2011). The conservation of CCPF is further limited by the environmental constraints on the occurrence of the community – CCPF typically occurs on the inland side of the coastal sandplain on low rises that represent eroded Pleistocene backbarrier dunes (Morand 1996). This represents a relatively small band of land adjacent to the coastline that is substantially developed and will be subject to further ongoing development pressure.

Given the widespread contraction of the community's distribution, as well its environmental constraints, it is considered that any loss to the remaining extent of the community should be regarded as serious and irreversible. Noting this, the proposed operations would likely result in a substantial reduction in the occurrence of the community within the Crown Land reserve (see Fig 1 below).

It is noted that the submitted Biodiversity Assessment Report recommends offsite works to restore areas of CCPF by planting in the Brunswick Terrace road reserve. These proposed works should not be used as justification that impacts on the CCPF within the Southern Precinct will be avoided or minimised. The conservation value of the estimated 200-400 year old coastal cypress pines in the Park (see Kooyman 2017) will not be immediately replaced with the planting of immature trees. It is noted that the Biodiversity Assessment Report acknowledges that these proposed works are not relied upon to achieve a neutral biodiversity outcome.

As the submitted reports do not provide sufficient information to rule out a reduction in the occurrence of CCPF within the Park, it is considered that the proposed works would likely result in serious and irreversible damage to the EEC.

Measures to avoid and minimise the threat of environmental damage

The Biodiversity Assessment Report refers to the Arboricultural Report for details regarding vegetation management works including management of specific areas for natural and assisted regeneration. The Arboricultural Report provides some plans that show the location of existing coastal cypress pines and potential locations for campsites. However, these are relatively low quality and appear to be only preliminary (see Fig 1). Nevertheless, based on these plans it appears that campsite infrastructure would occupy a substantial portion of the site relative to the areas set aside for existing CCPF and regeneration areas, and would result in a substantial reduction to the occurrence of the community within the Crown Land reserve.



Fig 1: Proposed site plan from the Arboricultural Report showing potential site locations, regeneration/open areas, load cell installation sites, water and power points, and tree positions.

Furthermore, it is considered that insufficient information has been provided for Council to confidently understand how the Southern Precinct could be managed as a camping area concurrently with avoiding environmental damage to the fragments of the CCPF proposed to be protected and managed. Even with weed management and protection of individual trees, the community would still be impacted by a number of the listed major threats to the EEC, including:

- Risks associated with the community occurring in small, isolated stands exacerbating risks from environmental stochasticity, disruption to pollination and dispersal of fruits and seeds, and likely reductions in genetic diversity.
- Trampling and rubbish dumping due to the constant presence of people in the area.
- Edge encroachment associated with maintenance of service infrastructure.
- Suppression of natural recruitment/regeneration.

Given the above reasoning, as well as the lack of certainty regarding the effectiveness of the measures proposed by the Biodiversity Assessment Report and Arboricultural Report, I would concur with the recommendation of Option 1 in the abovementioned Kooyman report:

Permanently remove all camping and infrastructure in the south of the park and restrict all activities to the northern area. Remove bitumen roading from the southern area and allow the coastal cypress (Callitris columellaris) and associated species that form part of the EEC to regenerate”.

Assessment against the principles of ESD

An assessment against the relevant principles of ESD is given below, focusing on the precautionary principle and the conservation of biological diversity and ecological integrity.

The precautionary principle

The precautionary principle imposes an obligation on the decision maker to address uncertainty in the assessment process, and to ensure that potential though not well-defined or understood threats to the environment are taken into account.

- (a) *the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

In the application of the precautionary principle, public and private decisions should be guided by—

- (i) *careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
 (ii) *an assessment of the risk-weighted consequences of various options,*

Legal framework for considering the precautionary principle

In *Telstra Corporation Ltd v Hornsby Shire Council (2006) 146 LGERA 10*, Preston J, held that to trigger the precautionary principle, a threshold test with two rungs had to be passed.

- (1) There must be a threat of serious or irreversible environmental damage, supported by scientific evidence, and
 (2) Scientific uncertainty as to the nature and scope of the threatened environmental damage.

Once the precautionary principle is invoked, it requires the decision maker to assume that the activity will, or is likely to, have a serious and irreversible impact on the environment. Preventative or precautionary measures can then be employed to reduce the risk of environmental harm to an acceptable level.

Does the activity pose a threat of serious and irreversible environmental damage?

Council's Natural Resource Planner noted that due to the rarity and extremely restricted distribution of the CCPF EEC, any further loss of occurrence or reduction in its extent within the Reserve should be regarded as a serious and irreversible impact on the environment. The available evidence suggests that further loss of the EEC is plausible and likely to occur unless ameliorative actions are taken.

Is there scientific uncertainty as to the nature and scope of the environmental threat?

Reports available to Council agree on the threats facing the CCPF EEC, but draw different conclusions as to the scope and severity of the potential environmental damage resulting from the Holiday Parks operations.

The Arborsafe report concludes that the health, vitality and extent of the CCPF would be enhanced by mitigation strategies such as ground protection measures, redefining campsites and assisted

regeneration in the Southern Precinct. This finding was echoed in the Kingfisher ecology report which concluded that implementation of the recommendations of the Arboricultural report would result in an increase in the overall extent of the community.

- 5 Kooyman on the other hand concluded that the above reports did not properly consider the overall conflict between the continuing operations of a caravan park within an endangered ecological community, and that its ongoing use would likely have a substantial impact on the composition and extent of the CCPF such that it faces risk of localised extinction. This finding was endorsed by Council's Natural Resource Planner who ultimately concluded that there was insufficient
10 information to ensure that the probable threats facing the CCPF (i.e. reduced occurrence and extent) could be properly mitigated by the actions recommended in the Arborsafe report.

Is the precautionary principle activated?

- 15 The precautionary principle is considered to be activated in this case because both of the threshold tests set out in *Telstra* have been passed. Firstly, scientific evidence exists which indicates that the continued operation of the Holiday Park poses a risk of serious and irreversible impact on the environment, and, secondly, there is considerable uncertainty over the scope of the environmental harm as evident in the divergent views amongst the expert reports.

20 As such, a precautionary approach is needed in determining the application to limit the threat of environmental harm to an acceptable level.

- 25 Council previously addressed environmental concerns by excluding the Southern Precinct of the Holiday Park from the approval. However, upon review, this approach is not considered to be valid due to limitations in the relevant legislation.

30 Section 94 of the Local Government Act 1993 does not offer Council the option of granting a 'partial' approval to a Section 68 application. That is, Council must decide to either approve the application as submitted (either unconditionally or subject to conditions), or to refuse the application. Any condition which artificially excises part of the Holiday Park from the approval could be viewed as being inconsistent with Section 94 and, therefore, potentially invalid.

35 A further limitation is applied by Section 3.39 of the Crown Lands Management Act 2016 which provides that a Council cannot grant approval to an activity application if it would result in a contravention of the Plan of Management for the land. Thus, any condition imposed by Council which materially alters the Park layout, such that it is no longer consistent with the adopted Plan of Management, would likely be in contravention of Section 3.39 and may be invalid.

40 Given these limitations, and considering the lack of other possibilities to impose conditions or otherwise mitigate environmental harm to an acceptable level, the option of refusing the application as a preventative measure should be considered by Council.

Conservation of biological diversity and ecological integrity

45 The conservation of biological diversity and ecological integrity is required to be a fundamental consideration in this assessment. Preservation of biodiversity requires that ecosystems, species and genetic diversity within species be maintained.

- 50 (c) *conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*

55 As discussed elsewhere in this report, continued operation of the Holiday Park will likely lead to ongoing impacts to the CCPF in the Southern Precinct and its gradual decline over time due to an impairment of natural regeneration processes and damage to existing trees.

Insufficient information has been provided for Council to understand how the Southern Precinct could be used for camping while simultaneously avoiding damage to existing trees and providing adequate room for natural and assisted regeneration such that it ensures no net loss to the occurrence or extent of the CCPF within the Reserve. It is considered that the activity is likely to result in a loss of biodiversity values of the site and will adversely affect the ecological integrity of the endangered ecological community if approved.

The application is therefore recommended for refusal.

5. Crown Land Management Act 2016

Section 3.39 of the Crown Lands Management Act 2016 (the Crown Lands Act) provides that a Council must not grant approval to a Section 68 Application relating to Crown land, if the Approval authorises or requires a person to do anything that would contravene a plan of management applying to the land.

Section 3.39 is reproduced below:

3.39 Approvals of activities under must comply with plans of management

A local council cannot grant an approval for an activity under Part 1 of Chapter 7 of the Local Government Act 1993 that authorises or requires a person to do (or not to do) anything on or in relation to dedicated or reserved Crown land that would result in a contravention of a plan of management for the land.

The above clause also extends to any conditions that would materially alter the park layout or restrict its operations so that it is no longer consistent with the plan of management. For example, a condition that attempts to exclude certain precincts or parts of the holiday park from approval could potentially be viewed as contravening the Crown Lands Act.

Thus, if the Council forms a view that the Application should be approved, it is suggested that a 'partial' approval which excludes the Southern Precinct (similar to the previous application) should not be pursued as this would likely contravene the Crown Lands Act.

6. Public Submissions

There are no provisions under the LG Act that require Section 68 applications to be publicly notified or advertised. In addition, public submissions are not a statutory consideration when determining any such application.

Notwithstanding, two submissions were received from the public. Key issues have been summarised and addressed for completeness. The submissions mainly focus on the issues of inadequate site setbacks from roads and boundaries, and impacts on the Coastal Cypress Pines and Mangroves in the Reserve.

Issue	Comment
1. Setbacks from boundaries	
By not providing the legal 10m road setback, campers in the park are pitching and occupying tents only 1m from a busy road. This is incredibly dangerous with at least 3 cars having crashed into and gone through roadside fences in The Terrace in the last year.	<p>The current situation with nil setbacks to a public road is undesirable.</p> <p>Section 89 of the 2005 Regulations allows Council to approve a reduced setback less than 10m, so long as it is satisfied that the dwelling site or camp site has been or will be properly screened, fenced,</p>

By not providing the legal 10m road setback, there is no pedestrian access available along either side of this 70 metre section of busy street forcing all pedestrians onto a very thin roadway.	enclosed or otherwise treated. This assessment recommends refusal primarily for environmental reasons. However if the Council resolves to approve the application, it is recommended that sites P101-P106 facing The Terrace be setback from the road reserve by at least 5 metres and screened with appropriate screening or landscaping.
The section of Brunswick Terrace between Nana and Park Streets is the town's thinnest street and has no walkways available on either side. The street has heavy pedestrian use as it is in central Brunswick and is the main access way to the school, beach and shops for over half the population. Children are forced onto the road as they walk home from school.	
By not providing the legal 10m setback local residents have hundreds of short term campers only 5m from their homes which is causing huge noise and visual amenity issues.	
2. Cabins located in former road reserve not part of the original holiday park	
A 10m wide by 70m long strip of road reserve was compulsorily acquired after Council refused to sell or rezone the land. For the last 25 years, 5 cabins occupied this thin 70m by 20m section of road reserve since being illegally relocated there from other parts of the caravan park. This was always a short-term measure with Council ensuring that when the elderly owners of these cabins moved or died the structures were removed and the buffer of road reserve/parkland returned. Recently the owner of site 102 died and her cabin is currently being removed. This finally allows the buffer zone to be reinstated. The fence can now be moved back 10m and align with the other 200m of fence to the south that was moved back 3 years ago.	The issue of some sites being located in a former road reserve has been acknowledged in previous applications. I note the road reserve has since been compulsorily acquired by the Crown and now forms part of the Holiday Park. As discussed above, this assessment proposes that if the Council resolves to approve the application, site setbacks for The Terrace should be increased to 5 metres, along with appropriate screening and landscaping.
3. Safety Issues	
Reflections are currently allowing people to pitch flimsy 2 man tents as close to 1m from Brunswick Terrace.	Any camping which does not conform to the existing ATO and/or park boundaries is essentially a compliance issue for Reflections and Council to resolve.
4. Amenity issues	
Families opposite Brunswick Terrace now have to put up with year round amenity issues caused by hundreds of partying camper's only metres from their homes.	Proximity to residences on the opposite side of The Terrace is undesirable. Refer to comments in Point 1.
5. Coastal Cypress Pine Forest EEC	
Terrace Reserve is home to what remains of an endangered ecological community of Coastal Cypress Pines. These communities are very rare and must be protected under the NSW threatened Species Act.	CCPF EEC is currently protected under the <i>Biodiversity Conservation Act 2016</i> . Operation of the park must be undertaken in a manner that does not have a significant impact on the EEC. Given the likely impacts on the CCPF, the application is recommended for refusal.
Byron Shire Council commissioned an independent ecological consultant who stated that the trees were of such ecological significance that for their survival all camping and development at the southern end of the Terrace Reserve should cease.	The Report by Dr Kooyman has been used as background information for this assessment.

Reflections have stated that they already have a vegetation management plan in place. Their decade old VMP states that the protected trees have a very sensitive critical root structure and that compression of the soil around the trees will kill them. The stated action in the VMP is "no activities that cause soil compression within 5m of the tree trunks".	Noted. See above.
Despite this, for the past 14 years CLHPs/Reflections have denuded the trees of all branches below 4m so large vehicles and campervans could be driven and parked over the critical root structure. In peak times 90% of the trees have large camper or numerous vehicles parked over their roots so their claimed vegetation management is being totally ignored and killing this protected community.	It is unclear to what extent Reflections have implemented the actions and recommendations of the POM and VMP.
6. Historic WW1 Memorial Pine Park	
A large area of the reserve is the site of one of the oldest WW1 memorial parks within over 100 memorial trees planted in rows in 1918. This is listed under numerous heritage orders and is of great cultural significance to the local community.	Heritage investigations carried out in 2017 indicate that Cypress Pines in the Reserve were probably not planted but may have been shaped into a glade, with linear clearings giving the impression of a row of remembrance. It is acknowledged that the trees are listed on the Register of the National Trust and are recognised as having social significance to the local community.
7. Seasonal Primitive Camping Area	
Claims by Reflections that the southern end of Terrace Reserve is a longstanding, recognised and licenced camping area are fictitious as over half this area was road reserve until 2011. It is well documented the only previous camping exiting use was seasonal, primitive camping that was restricted to about 5 weeks of the year over Christmas and Easter.	It is not disputed that the historic use of The Terrace Reserve for seasonal camping may have been different to what is currently occurring. Please be aware that if continuing use rights are not available for the Southern Precinct (still a matter of debate), the Applicant can in any case rely on Clause 65 of SEPP Infrastructure to carry out "any development" without the need to obtain consent, so long as it is for the purposes of implementing a Plan of Management. I note that the current use of the Southern Precinct is generally consistent with the 2014 POM. In the event that continuing use rights are not available to Reflections for the current use of the Southern Precinct, they may need to undertake an Environmental Assessment in accordance with Part 5 of the EP&A Act 1979. This would need to be pursued as a separate matter to this assessment given there is no relationship between the EP&A Act 1979 and Council's consideration of a S.68 Application to operate a caravan park or camping ground under the LG Act.
8. Impacts on Mangroves	
Currently, 100m of riverbank and associated mangroves are being heavily trafficked and trampled by Terrace Campers who are accessing this area for	Access to the riverbank is largely a management issue for Reflections. The current situation with sites in close proximity to the riverbank is undesirable. It is

<p>water activities, watercraft storage and fishing.</p> <p>It is obvious that management have not informed campers that this area is under environmental protection.</p>	<p>hoped that dwellings and sites will eventually be removed from the riverbank and a greater setback provided that also allows public access along the foreshore. It is suggested that this outcome should be pursued as part of the development of a new Plan of Management for the Terrace Reserve.</p>
<p>This section of the riverbank is also seriously eroding due to an increase in occupation, the clearing of surrounding vegetation, and numerous illegal drainage pipes pouring stormwater and waste water down the bank.</p>	
<p>Large groups of campers are now pitching tents right on the riverbank causing serious erosion by going up and down the steep and eroding bank and dragging watercraft with them. They are now using this area as a general swimming, fishing and boating area and destroying the bank.</p>	

7. Conclusion

5 This Application seeks approval to operate the Terrace Reserve Holiday Park pursuant to Section 68 of the *Local Government Act 1993*. The proposal is similar to the previous application considered by Council in 2018 and includes use of the southern precinct of the holiday park for camping and caravanning.

10 On balance, it is considered that there is insufficient information for Council to be satisfied that the operation of the Holiday Park will not have a serious and irreversible impact on the environment should approval be granted. As such, the application is recommended for refusal on the basis that it contravenes the principles of Ecologically Sustainable Development established under Section 89 (3) of the *Local Government Act 1993*.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.17 **Linda Vidler Memorial Parklands - Pump Track Design**

Directorate: Infrastructure Services

5 **Report Author:** Malcolm Robertson, Team Leader Open Space

File No: I2020/1368

10 **Summary:**

This report seeks Council approval to progress to construction with of the Linda Vidler Park Pump Track.

15 The report also seeks Council to consider the option for a proposed Stage 2 of the Pump Track, including the funding, timing of works and procurement process for the additional stage.

RECOMMENDATION:

That Council:-


1. **Approves construction of the Stage 1 design plans for the Pump Track at Linda Vidler Park.**
2. **Allocates \$200,000 from the Suffolk Park Open Space Developer Contributions reserve to allow the design and construction of Stage 2 of the Pump Track.**
3. **Enters into a contract with World Trail Pty Ltd for the design and construction of stage two of the pump track without calling for tenders because inviting tenders would not achieve a satisfactory result due to the following extenuating circumstances:-**
 - a) **World Trail Pty Ltd already being selected by Council via market testing to construct stage 1 of the pump track;**
 - b) **The Suffolk Park Progress Association wanting an expansion of the pump track beyond stage 1;**
 - c) **The complexity of the contract arrangements between Council, the Suffolk Park Progress Association and World Trail Pty Ltd for stage 1 of the pump track – due to the track being funded by a combination of grant and Council funding – would need to be repeated with a new contractor; and**
 - d) **Tendering for the pump track extension rather than directly appointing the current contractor to complete it would cause financial loss to Council, due to it losing the economies of scale by continuing to contract with World Trail.**


Attachments:

20


1 Linda Vidler Pump Track - For Construction Plans, E2020/96178 

2 Pump Track Stage 2, E2020/96207 

3 Linda Vidler Park- Existing and Desired Use Overlay, E2020/96308 

4 Draft Drainage Plan for Linda Vidler Park, E2020/96326 



25

5 Linda Vidler Masterplan Preliminary Cost Estimates, E2020/96345 

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.17

- 6 Suffolk Park Progress Association Requesting additional funding to Stage 2 of Linda Vidler Pump Track, E2020/96766 
- 7 ByronPumpTrackDesign_201124-STAGE2 ZOOM250, E2020/97027 

5

REPORT**Background**

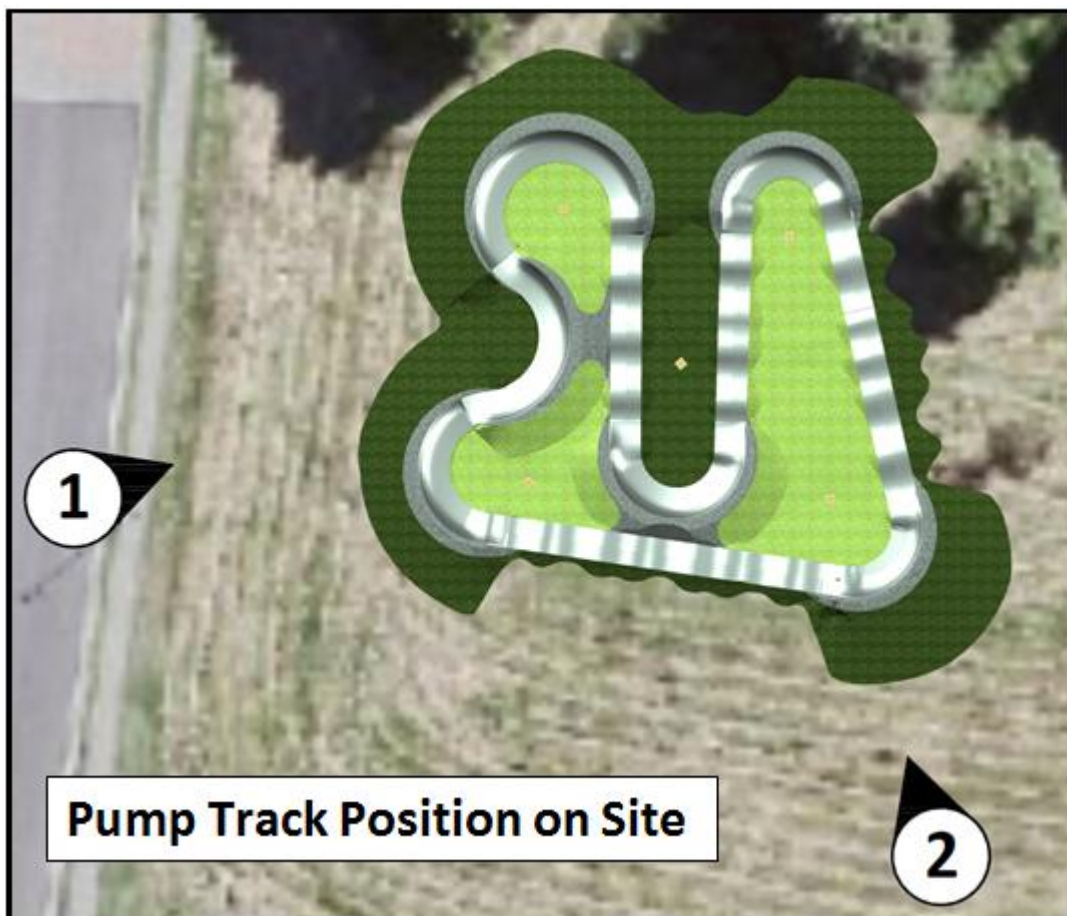
- 5 Suffolk Park Progress Association (SPPA) successfully applied for grant funding of \$156,300 through the 2019 *My Community Project* program to construct a BMX style pump track at Linda Vidler Park. Council Resolution **19-547** provided \$150,000 from the Suffolk Park Open Spaces developer contributions reserve to the project in support of the grant funding.
- 10 The design and construction component of the Pump Track was to be funded \$156,300 by SPPA and \$118,700 by Council (figures GST inclusive) (Total of \$275,000).

Additional funds allocated by Council resolution are for works ancillary to the pump track including independent review of environmental factors and the design and construction of access pathways.

- 15 Council has a formal agreement with the Suffolk Park Progress Association to project manage the design and construction of the Pump Track. A joint procurement process was completed in partnership with SPPA to identify a preferred contractor to design and construct.

20 **Pump Track Design**

Contractor World Trail has completed designs for the budgeted Pump Track as shown in the image below (refer to Attachment 1 for more detail).

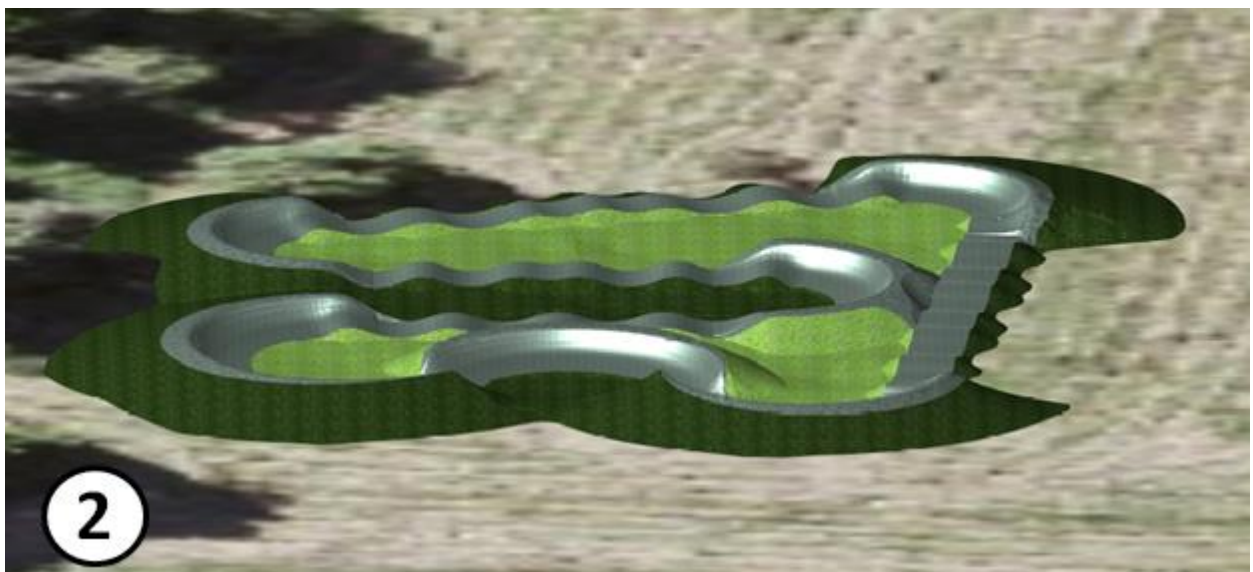
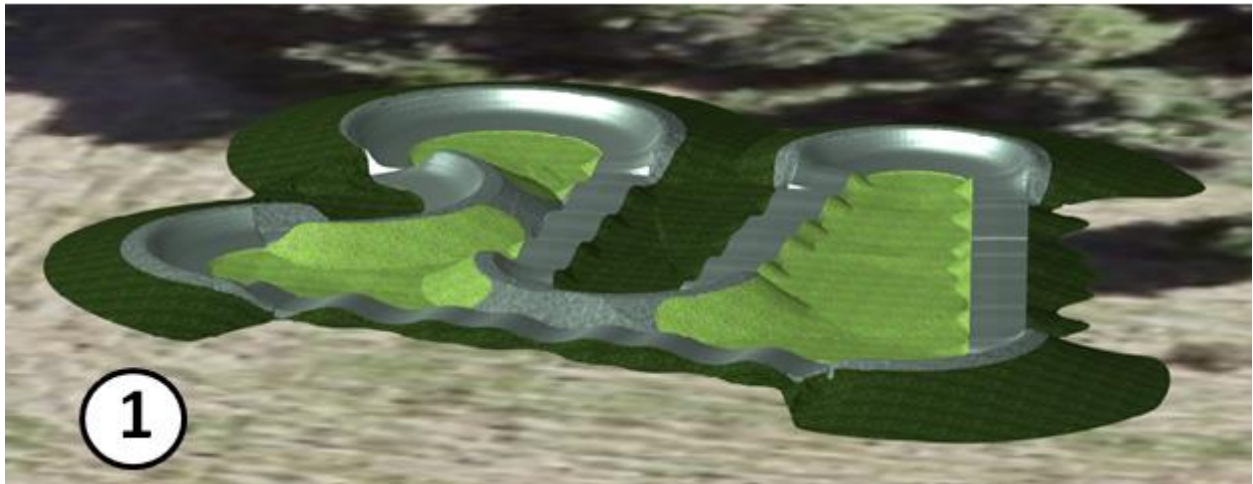


- 25 The draft plans have been developed through ongoing consultation with the SPPA. The design process has included ongoing consideration of the draft Review of Environmental Factors and drainage planning for the Pump Track site. Through the design process modifications to draft

designs have been made in consultation with environmental and drainage engineers following consideration of constraints around vegetation, soil quality and drainage.

5 The track was also designed in relation to the available budget, which allowed for a final rideable surface of around 400m², which equates to around 143m of track and 13m of transitions, as measured along the centre ride line. The actual ride line would be slightly longer due to angles across berms.

10 A visualisation/perspective from the image above from reference points 1 and 2 (from west and south viewpoints) is shown below.



15 The REF and overall park drainage plans are currently in final draft stage and these, along with finalisation of detail design for the Pump Track will be completed subject to adoption by Council of the draft design.

20 **Pump Track “Stage 2”**

25 SPPA are supportive with the design and features allowed for in the plans, however had originally desired an overall track length of 300m. SPPA have indicated strong preference for the track to be expanded in overall length and to include a more advanced jumps section. SPPA are seeking Council consideration to fund the Stage 2 works as a variation to the current project (Attachment 4).

This "Stage 2" has been considered by World Trail as a variation to the current project and the proposed design has been developed and costed. The additional track length can be accommodated within the original agreed footprint within the park, as shown in Attachment 2.

- 5 The total price of the proposed Stage 2 variation has been estimated as \$260,000, including design, construction and associated compensatory earthworks to meet the "no-fill" requirements of the precinct. If the works were able to be completed within the scope of the current project approximately \$60,000 in mobilisation and site establishment costs would be saved.

- 10 SPPA grant funding applies only to the Stage 1 project, therefore SPPA are requesting Council to consider funding Stage 2 as a variation to the current project, at an additional cost to Council of \$200,000.

Linda Vidler Park Masterplan

- 15 Council also requested in Res **20-068** that an overall masterplan for the Linda Vidler Parklands be developed subject to additional consultation, with a plan being brought back to Council for adoption. Council's goal with the Linda Vidler Park Masterplan is to create a plan and vision for the park that fulfils the range of community desires for the space.

- 20 The Masterplan aims to optimise the park through provision of safe and accessible facilities for the enjoyment of the community whilst maximising recreational opportunities, and protecting important environmental and cultural values. Plummer & Smith Landscape Architects have been engaged to undertake this exercise, utilising the background information and community feedback obtained through the Plan of Management development.

- 25 There are a number of conflicting demands on the open space, with key community stakeholders all having their own vision for the land. All stakeholders have proposed developments relating to their area of interest that have potential to exclude other uses. The overlap of desired uses is shown graphically in Attachment 3, which shows both the current uses, and an overlay of core stakeholder's desires.

- 30 Consultation with key stakeholders is underway with initial site meetings having been completed with Arakwal, Suffolk Park Progress Association, Suffolk Park Community Gardens and Suffolk Park Football Club. Community desires will be assessed alongside analysis of the site and any environmental, cultural and regulatory factors and constraints.

- 35 Drainage within Linda Vidler Park is currently poorly formed and impacts future development. Linda Vidler Park is also a designated no-fill zone due to the adopted Tallow Creek Flood Risk management Plan. Consultants have been engaged to complete an overall drainage plan for the Linda Vidler Precinct to inform the Masterplan and assist in resolving the drainage issues (draft drainage diagram at Attachment 4). This drainage plan is considering flood impacts and will incorporate WSUD for the site, seeking to allow potential water supply to the community gardens through a retention pond. The drainage plan will also identify compensatory material that can be removed from the site to balance imported fill required for the Pump Track and also any future masterplan projects.

Options

- 50 1) Council resolve to accept the Pump Track Stage 1 design, and approve planned construction to proceed.
- 2) Council resolve to accept proposed designs for Pump Track Stage 1 and Stage 2, but defer any construction works for Stage 2 subject to completion of Master planning process and identification of additional external funding to support the works.
- 55 3) Council resolve to accept proposed designs for Stage 1 and Stage 2 of the Pump Track, and to allocate an additional \$200,000 for the works to and proceed with World Trail on the basis

that it would be too costly and time prohibitive under the funding deed agreement for council to go out to Public Tender.

Next steps

Construction Works are tentatively planned for March 2021, with completion by no later than 30 May 2021. The construction dates will be confirmed once proposed design is adopted by Council.

STRATEGIC CONSIDERATIONS

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	2.3	Provide accessible, local community spaces and facilities	2.3.7	Deliver Open Space and Recreational services in line with Community Solutions Panel values (SP)	2.3.7.8	Deliver adopted infrastructure within the Suffolk Park Recreation Ground in accordance with POM and Community consultation

Legal/Statutory/Policy Considerations

Under the Local Government Act 1993, contracts valued at more than \$250,000 must go to tender. However, a contract is exempt from the tendering provisions where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, Council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.

Financial Considerations

Councils adopted 20/21 budget has an allocation of \$300,000 drawn from the Suffolk Park Open Space reserve to allow for Suffolk Park Recreation Grounds Plan of Management activation.

Around \$100,000 of these funds will be utilised for planning and development of required stormwater and drainage systems across the precinct. The balance of \$200,000 could potentially be utilised for Stage 2 of the Pump Track.

It has been confirmed that there is an additional \$596,000 of developer contributions held in the Suffolk Park Open Space reserve. These funds are held in reserve to leverage grants for the further implementation of the POM and Masterplan. These funds could also be used for Stage 2 of the Pump Track however the potential benefit in leveraging grant funding opportunities for the wider Masterplan should remain a key focus.

Preliminary costs estimates for rollout of the POM (subject to adoption of Masterplan) are in the vicinity of \$1.2M are shown in Attachment 5. Realisation of these improvements is only achievable with external funding sources.

This reserve received income from the 2005 contributions plan. The current income into the reserve from old development consents that pre date 2012 is minimal. This reserve receives no income under the current contributions plan. Once the money is spent in this reserve it will not replenish.

Consultation and Engagement

Widespread community consultation was undertaken within the POM development process.

- 5 Separate engagement was completed in relation to the positioning of the Pump Track within the precinct. Design works with World Trail Pty Ltd. have been progressing with ongoing consultation with stakeholders including the Suffolk Park Progress Association and representatives of the Suffolk Park Community Gardens.

- 10 Tim Fitzroy and Associates has been engaged to complete a Review of Environmental Factors for the Pump Track. Initial site analysis has been completed and the draft REF considerations used to inform Pump Track layout, with modifications made following consideration of constraints around vegetation, soils quality and drainage.

The REF will be finalised upon adoption by Council of the draft design.

Report No. 13.18 **Pedestrian Access - Byron Bypass**
Directorate: Infrastructure Services
Report Author: Andrew Pearce, Traffic Engineer
File No: I2020/1828

5

Summary:

10 The purpose of this report is to present a recommended way forward to ensuring safe and appropriate pedestrian access across the Byron Bay Bypass.

RECOMMENDATION:**That Council:-**

1. Notes the need to undertake further transport survey to identify traffic, pedestrian and bicycle volumes and pathways once the Byron Bay Bypass is operational.
2. Investigates the option of undertaking the above survey as part of a Byron Bay Access and Movement Plan to be reported to Council separately; and
3. If the above survey is not done as part of the Byron Bay Access and Movement Plan Council allocate \$40,000 at the next quarterly review to undertake the study.

15

REPORT

Council have been discussing the need for pedestrian access across the Byron Bay Bypass. In investigating pedestrian access across the Bypass two primary issues must be considered:

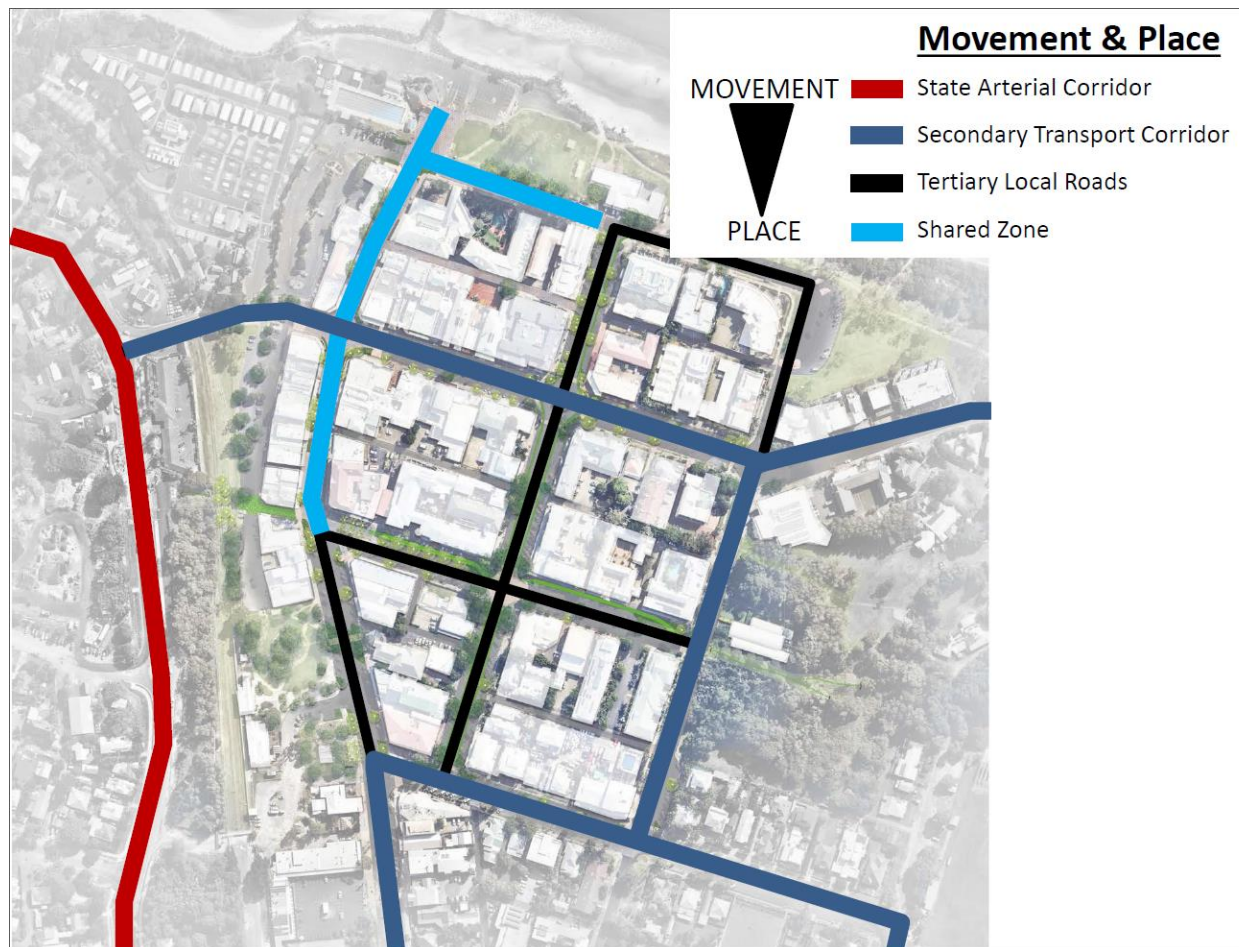
1. The crossing type. Do we want a pedestrian facility that directs people:
 - a. Across: pedestrian facilities that provide access across the Bypass at ground level, such as: refuge islands (already constructed as part of the Bypass), zebra crossings, signal crossings or traffic lights.
 - b. Over: facilities such as a ramped or elevator overpass
 - c. Under: such as a pedestrian tunnel.
2. Where to locate the pedestrian facility:
 - a. Where are the primary access points across the rail line to Jonson Street?
 - b. How will pedestrian / cycle pathways change once the Bypass is operational?
 - c. Which access points do we want to funnel pedestrians and cyclists towards?
 - d. The long term use of Butler Street Reserve and its potential to generate and attract pedestrian movements.

CROSSINGTYPE

In determining whether to adopt a facility that directs pedestrian across, over or under the Bypass the following needs to be considered:

Movement & Place

The following image reflects the road hierarchy proposed for Byron Bay Township.



As seen in this image the Bypass is a Arterial Corridor which reflects it is more a “Movement” corridor and less a “Place”.

As a comparison, the Jonson Street Shared Zone functions more as a “Place” and is low in regards to “Movement”. Therefore, in the Jonson Street Shared Zone, people are prioritised over cars. If a facility that prioritises pedestrians (such as a zebra crossing) is installed on the Bypass, this may negate the intended benefits of the bypass and cause the existing traffic congestion along Ewingsdale Road to remain even after the Bypass is operational.

This concern is amplified by the fact we do not know how many people will flow back and forth across the Bypass after it is operational or where they will primarily cross. If Butler Street Reserve is used in a way that generates or attracts higher pedestrian numbers at the same time as peak hour, this may have a significant impact on the Bypass’s ability to function effectively.

Given the Bypass is more a “Movement” corridor, it is recommended to consider an option that either separates cars and pedestrians so there is no conflict (i.e. an overpass or tunnel) or an options that provides a good balance between pedestrian and traffic priority

Environmental Conditions

Given Butler Street reserve has previously been used as a waste disposal site the management of ground contamination is under review.

The ground water table is approximately 0.5-1m below ground surface.

Only a portion of the south eastern corner of Butler Street reserve is not flood affected.

Based on the above considerations, any option that significantly disturbs in-situ soils, such as a pedestrian tunnel, are probably highly unsuitable. In addition, designs that displace flood waters or inhibit the flow of flood waters is not recommended.

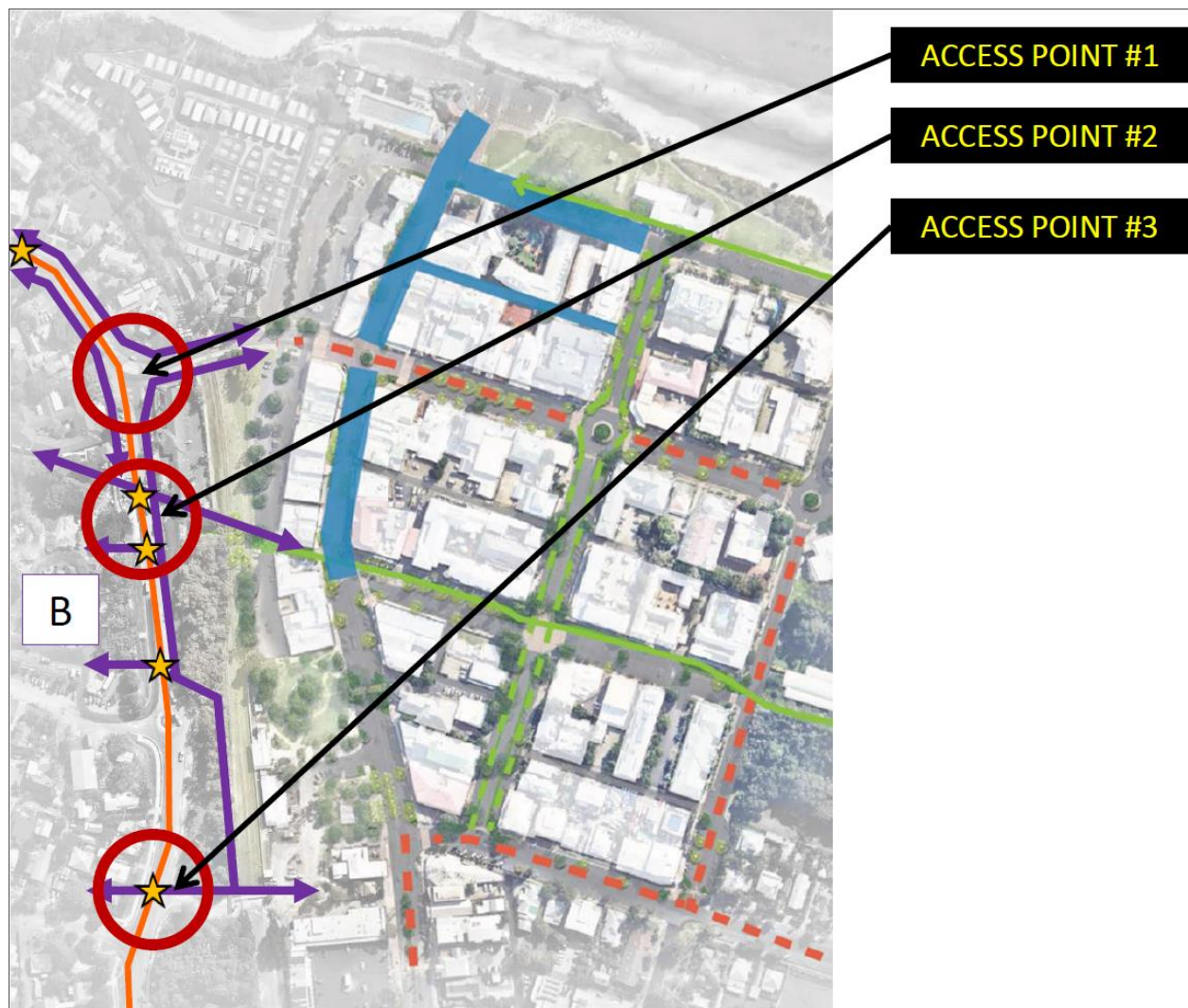
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Place Making Aesthetics

An additional consideration is the ability for the pedestrian facility to function as a place making feature or detract from the Byron aesthetic.

10 **WHERE TO LOCATE A PEDESTRAIN FACILITY?**

The image below shows the 3 primary access points across the Bypass and rail line to Jonson Street after the Bypass is operational. The image also shows the location of pedestrian refuge islands (shown as Stars) to be built as part of the Bypass.



15

It is anticipated that one or more of these access points will be the most suitable location for a pedestrian facility.

20 **FURTHER INVESTIGATION**

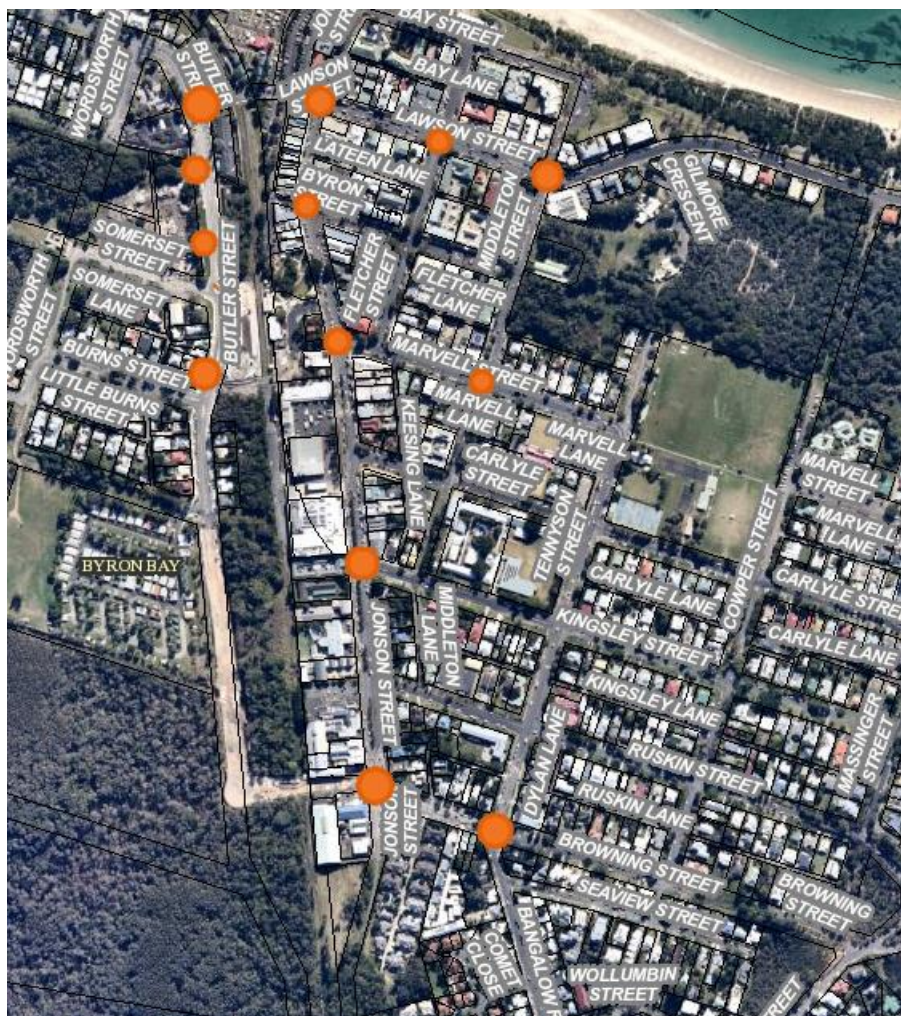
Before committing to a specific pedestrian facility and a location it is recommended Council undertake further investigation into the following areas to ensure any proposed pedestrian facility is used once constructed:

25 **1. Pedestrian / Cycle surveys**

It is recommended Council undertake pedestrian and cycle surveys once the Bypass is operational to accurately understand how people and bikes naturally flow across the Bypass.

- 5 Staff have begun investigations into how this can be best done and have identified potential products that can count and plot vehicle, pedestrian and bike pathways simultaneously. Such a product can be deployed across the township to accurately plot the primary pathways adopted by cars, bikes and people.
- 10 To purchase a camera is approximately: \$6,000 each
To study an intersection and analyse vehicle data is approx.: \$21 / hour
To include pedestrian and bicycle study: \$16 / hour
- 15 To purchase 3 cameras would cost approximately \$20,000.
To analyse traffic, pedestrian and bicycle movements at the locations shown in the image below (for 10 hours a day for 3 days) would cost approx.: \$15,000

These cost estimates are provided as a guide as this survey can potentially be done as part of the proposed Byron Bay Access and Movement Plan discussed below and as part of a separate Council report.



2. Byron Bay Access & Movement Plan

It is recommended Council consider undertaking an Access and Movement Plan for Byron Bay Township to support the Town Centre Masterplan objectives and to map out how Council wants people, bikes and cars to move through the township. Such a plan would potentially:

- i. integrate Council documents such as the PAMP, Bike Plan, Byron Master Plan, Integrated Transport Management Strategy
- ii. Integrate potential traffic generation resulting from future developments along Jonson St, Butler Street Reserve (i.e. used for markets or car parking) and undertake modelling of transport corridors presenting result for various options – such as over pass versus pedestrian signals.
- iii. Map out TfNSW's Movement and Place strategy for all of Byron Bay Township.

Discussions with the SEE Directorate have confirmed an Access and Movement Plan for the Byron Bay Township would have significant benefits for strategic planning and development assessments.

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	1.2.4	Provide active and passive recreational Community space that is accessible and inclusive for all (SP)	1.2.4.2	Deliver accessibility outcomes within Capital works and infrastructure renewal programs
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	1.2.6	Optimise Council's property portfolio (SP)	1.2.6.4	Progress infrastructure planning for the Ewingsdale Road corridor
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.3	Support, through partnership, a network of integrated sustainable transport options	1.3.1	Ensure an integrated and accessible transport network (SP)	1.3.1.2	Delivery prioritised Pedestrian and Access Mobility Plan (PAMP) facilities
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.3	Support, through partnership, a network of integrated sustainable transport options	1.3.1	Ensure an integrated and accessible transport network (SP)	1.3.1.3	Support the Byron Bay Bus Interchange in partnership with Transport for NSW

Community Objective 1: We have infrastructure, transport and services which meet our expectations Community Objective 1: We have infrastructure, transport and services which meet our expectations Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.6	Manage traffic and parking in an efficient manner	1.6.1	Implement review of parking management	1.6.1.5	Review Byron Bay Parking Scheme
	1.6	Manage traffic and parking in an efficient manner	1.6.2	Ensure future traffic demand and alternative solutions are addressed in major infrastructure plans	1.6.2.1	This continues to be a governing principle for all major infrastructure plans.
	1.7	Manage traffic and parking in an efficient manner	1.6.3	Ensure new infrastructure is planned and funded to meet the needs of the current and future population (SP)	1.6.3.3	Advocate and apply for grant improve transport networks

Legal/Statutory/Policy Considerations

N/A

5

Financial Considerations

To undertake a traffic, pedestrian and bicycle survey of key locations across Byron Bay Township using three Miovision type camera's and associated data analysis is expected to cost approximately \$35,000 to \$40,000.

10

This can potentially be done as part of the Byron Bay Access and Movement Plan.

Consultation and Engagement

N/A

15

Report No. 13.19 Waterlilly Park - Crime Prevention Through Environmental Design Report

Directorate: Infrastructure Services

Report Author: Michael Matthews, Manager Open Space and Resource Recovery

File No: I2020/1957

Summary:

On 27 August 2020, in response to a petition seeking inclusion of CCTV into the Waterlilly Park precinct, Council resolved the following (**Res 20-416**).

Resolved:

that Council receive a Crime Prevention through Environmental Design (CPTED) report for the Waterlilly Park precinct at the earliest possible Council meeting that considers the inclusion of CCTV and the positioning of other play scape elements such as future children's swings.

On 26 November 2020, in response to an additional petition seeking the return of Little Kids Swings to the Waterlilly precinct the following was resolved – **Res 20-660**.

Resolved:

- 1. That the Petition regarding the community's request to bring back the Little Kids Swings to Waterlilly Playscape in Ocean Shores be noted.*
- 2. That Council install the swings in accordance with recommendations provided within the CPTED report prior to the 25th December, 2020.*
- 3. That Council provide 2 bike racks just off the carpark in Waterlilly Park, that were an element in the SCC Grant allocation to accompany the 500 metres of shared concrete pathway installed through Waterlilly Park in 2018, to complete Stage 3.*
- 4. That staff action all Crime Prevention and Safety measures identified within the NSW Police, Crime Risk Assessment of Waterlilly Park dated 17th November 2020, within Council's current adopted budget, and that any actions that are unfunded be brought back in a report to Council in December 2020.*

An extract of the CPTED reports conclusion is provided below.

Conclusion

As a result of the Crime Risk Assessment (CRA), Waterlilly Park at Ocean Shores returned a very low overall risk rating of 9.8%. The general look and perception of the park is positive with the surrounding landscape well maintained and at the time of the CRA was being used appropriately by several mothers with young children, and a couple of adults playing tennis.

With such a low risk rating being returned during the CRA, and the small number of incidents of crime being reported to police at the location, with only 11 incidents being report to police, between February 2017 and December 2018, and nothing reported after December 2018, the request for CCTV cameras to be installed at the location would not be supported by police at this stage.

Police would make the following recommendations in an attempt to further reduce the risk of any unfortunate incidents:

- 5 • Trees and shrubbery that are directly adjacent to the playground equipment need to be under pruned, to approximately 1.5 meters, to provide better surveillance for adults supervising children and provide a clear view of the nearby lake from within the playground area.
- 10 • The placement of the single child swing which is situated approximately 20 meters away from the main playground equipment is a potential safety risk for young children due to limited adult supervision when parents have multiple children to supervise. In the Police opinion, the swing would benefit from being relocated closer to the main playground equipment if possible.
- 15 • Any future swings or play equipment to be installed is recommended to be situated in closer proximity to the main play area to aid in appropriate supervision of young children.

20 The under pruning of trees and shrubbery to provide for better surveillance for adults supervision of children is to be undertaken by staff within existing maintenance budget.



25 The renewal of signs, addition of sensor lights and the relocation of the Basket swing to a centralised position will require quotations from suppliers that have not been received to date at the time of writing of this report. Once received, budgets for these elements can be requested through a quarterly budget review.

RECOMMENDATION:

That:

1. Council notes the Crime Prevention through Environmental Design (CPTED) report for the Waterlilly Park precinct; and
2. Staff progress the implementation of measures identified within the report with any necessary budget adjustments is to be considered as part of Council's December 2020 quarterly budget review process.

Attachments:

- 30 1 Waterlilly Park CPR Report, E2020/96418 
- 2 Crime Prevention Through Environmental Design Waterlilly Park 12112020, E2020/96417 

REPORT

On 27 August 2020, in response to a petition seeking inclusion of CCTV into the Waterlilly Park precinct, Council resolved the following.

Resolved:

that Council receive a Crime Prevention through Environmental Design (CPTED) report for the Waterlilly Park precinct at the earliest possible Council meeting that considers the inclusion of CCTV and the positioning of other play scape elements such as future children's swings.

On 26 November, in response to an additional petition seeking the return of Little Kids Swings to the Waterlilly precinct the following was resolved.

Resolved:

1. *That the Petition regarding the community's request to bring back the Little Kids Swings to Waterlilly Playscape in Ocean Shores be noted.*
2. *That Council install the swings in accordance with recommendations provided within the CPTED report prior to the 25th December, 2020.*
3. *That Council provide 2 bike racks just off the carpark in Waterlilly Park, that were an element in the SCC Grant allocation to accompany the 500 metres of shared concrete pathway installed through Waterlilly Park in 2018, to complete Stage 3.*
4. *That staff action all Crime Prevention and Safety measures identified within the NSW Police, Crime Risk Assessment of Waterlilly Park dated 17th November 2020, within Council's current adopted budget and that any actions that are unfunded be brought back in a report to Council in December 2020.*

The Crime Prevention Through Environmental Design (CPTED) has been completed and is attached to this report.

A Crime Prevention Through Environmental Design (CPTED) is a situational crime prevention strategy that focuses on the design, planning and structures of our neighbourhoods. It aims to reduce opportunities for crime by employing design and place management principles that minimise the likelihood of essential crime ingredients from intersecting in time and space.

CPTED is based upon the International Risk Management Standard, AS/NZS/ISO:31000.2009. This assessment uses qualitative and quantitative measures of the physical and social environment to create a contextually adjustable approach to the analysis and treatment of crime opportunity.

Assessing and Reducing Crime Risk: A Practical Guide for Planners, Designers and Crime Prevention Professionals is an assessment kit comprising of two documents.

The first document 'Crime Risk Assessment' is an assessment instrument. It contains four parts:

- Part one establishes area context;
- Part two identifies situational crime opportunities;
- Part three explores the risk control measures to reduce opportunities for crime.
- Part four reassesses the site/location after the risk control measures have been developed and implemented to determine whether the measures implemented have reduced the level of risk.

The second document 'Companion to Crime Risk Assessment' (available electronically) contains instructions on how to use and interpret Part Two of the Crime Risk Assessment.

5 An extract of the CPTED reports conclusion is provided below.

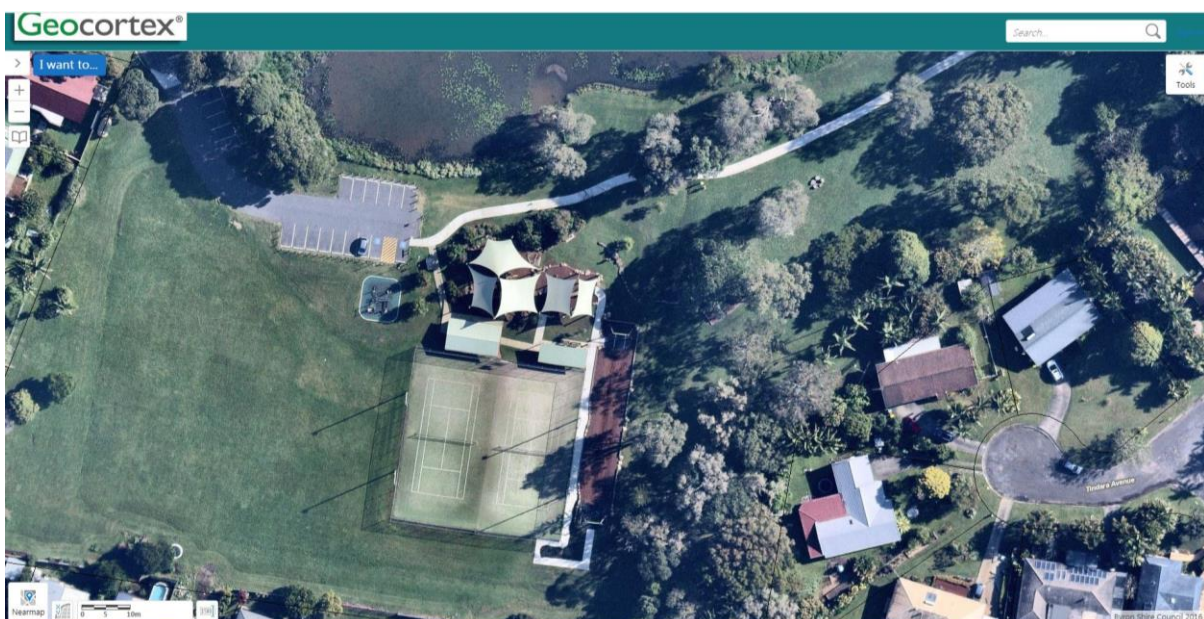
Conclusion

10 As a result of the Crime Risk Assessment (CRA), Waterlily Park at Ocean Shores returned a very low overall risk rating of 9.8%. The general look and perception of the park is positive with the surrounding landscape well maintained and at the time of the CRA was being used appropriately by several mothers with young children, and a couple of adults playing tennis.

15 With such a low risk rating being returned during the CRA, and the small number of incidents of crime being reported to police at the location, with only 11 incidents being report to police, between February 2017 and December 2018, and nothing reported after December 2018, the request for CCTV cameras to be installed at the location would not be supported by police at this stage.

20 Police would make the following recommendations in an attempt to further reduce the risk of any unfortunate incidents:

- Trees and shrubbery that are directly adjacent to the playground equipment need to be under pruned, to approximately 1.5 meters, to provide better surveillance for adults supervising children and provide a clear view of the nearby lake from within the playground area.
- The placement of the single child swing which is situated approximately 20 meters away from the main playground equipment is a potential safety risk for young children due to limited adult supervision when parents have multiple children to supervise. In the Police opinion, the swing would benefit from being relocated closer to the main playground equipment if possible.
- Any future swings or play equipment to be installed is recommended to be situated in closer proximity to the main play area to aid in appropriate supervision of young children.



The under pruning of trees and shrubbery to provide for better surveillance for adults supervision of children is to be undertaken by staff within existing maintenance budget.

- 5 The renewal of signs, addition of sensor lights and the relocation of the Basket swing to a centralised position that prevents division of a family and active supervision will require quotations from suppliers that have not been received to date at the time of writing of this report. Once received, budgets for these elements can be sort through a quarterly budget review. Staff anticipates the cost of completion of all these elements to be in the order of less than \$10,000.

10 **STRATEGIC CONSIDERATIONS**

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	2.3	Provide accessible, local community spaces and facilities	2.3.6	Ensure Shire wide assessment of the current and future needs of the community for active and passive recreation is integrated into Open Space works programs (SP)	2.3.6.2	Renewal of playground equipment (Shire wide - emergent)

15 ***Legal/Statutory/Policy Considerations***

N/A

Financial Considerations

- 20 The renewal of signs, addition of sensor lights and the relocation of the Basket swing to a centralised position that prevents division of a family and active supervision will require quotations from suppliers that have not been received to date at the time of writing of this report. Once received, budgets for these elements can be sought throu
- 25

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.20

Report No. 13.20 **House Raising Subsidy payment for 8 Park Street New Brighton.**
Directorate: Infrastructure Services
Report Author: Scott Moffett, Drainage & Flood Engineer, IS - Works - Infrastructure Planning
5 **File No:** I2020/1933

Summary:

- 10 Council has previously received grant funding to provide \$10,000 contribution to each household that complete house raising in the area detailed in the Marshalls Creek Floodplain Management Plan.
- 15 The residence at 8 Park Street, New Brighton has now been raised as per Council requirements and is eligible to receive the subsidy.

RECOMMENDATION:

That Council:

1. Approves the payment of a subsidy of \$10,000 to the owner of 8 Park Street, New Brighton as contribution to house raising of the dwelling, subject to receipt of a signed deed of release in Council's favour; and
2. Allocates a budget of \$10,000 funded by the Infrastructure Services Carryover Reserve to facilitate the subsidy payment outlined in recommendation 1.

Attachments:

- 20 1 Confidential - Council acknowledgment of owner acceptance and process required, DM277008
2 Confidential - Corrected floor level letter to owner from Council, DM291280
3 Confidential - 8 Park Street NEW BRIGHTON- 13.2009.297.1 - Final Completion Letter and Occupation Certificate(2), E2020/96646
- 25

REPORT

Byron Shire Council received a grant offer of \$50,000 from the Minister for Agriculture and Land and Water Conservation in August 2000. This subsidy offer was in response to Council's application for funding of Flood Mitigation works, recommended by the Marshall's Creek Floodplain Management Plan. This Plan was adopted by Council in 1997.

Council resolved to accept the grant offer and contribute its share of \$25,000. This provided funds to the level of \$75,000, which by Council resolution were to be spent as follows:

- \$6,160 to be directed toward the preparation and implementation of a public information and education program regarding flood awareness
- \$68,840 to be directed towards house raising of the most affected properties, in accordance with the Floodplain Management Plan

Following this, Council offered funding to the value of \$10,000 per household to properties which were affected by flooding in the Marshall's Creek Floodplain Management Plan. At the time only two (2) owners took up the offer and received the subsidy. The remaining funding was placed into Council reserves until such time as an owner wished to complete the house raising to Council specification and conditions.

The owner of 8 Park Street, New Brighton approached Council in 2001, to seek approval for the house raising subsidy, Council offered the subsidy and the owner subsequently accepted (refer attachment 1).

In accordance with the grant funding conditions and the house raising subsidy requirements from the previous offer made by Council, it was agreed to provide the subsidy providing the owner provided the necessary documentation and completed the works as required (refer attachment 2)

The owner has now completed the proposed works and is eligible to receive the \$10,000 subsidy (refer attachment 3).

It is recommended that on receipt of a signed deed of release in Council's favour from the owner of 8 Park Street, New Brighton that \$10,000 be taken from funding reserved by Council for the house raising subsidy and be paid to the owners of 8 Park Street, New Brighton.

STRATEGIC CONSIDERATIONS

Legal/Statutory/Policy Considerations

There are no statutory implications.

The Marshalls Creek Floodplain Management Plan details house raising as a cost effective approach to flood mitigation in the catchment.

It is noted that the house raising subsidy funds were received as a grant from state government and were provided for the sole purpose of subsidising house raising in the Marshalls Creek Catchment.

Financial Considerations

Council at 30 June 2017 was holding \$45,930.18 as an unexpended grant for house raising. Given the age of the grant funds and as there would be no acquittal required, the funds were reclassified from unexpended grants and transferred to the Infrastructure Services Carryover Reserve at that

time. There is funding in this reserve available to provide the \$10,000 subsidy as outlined in this report subject to Council's approval.

Report No. 13.21 **Byron Bay Access and Movement Plan**
Directorate: Infrastructure Services
Report Author: Andrew Pearce, Traffic Engineer
File No: I2020/1941

5

Summary:

- 10 The purpose of this report is for Council to consider the preparation of an Access and Movement
Plan for Byron Bay. The opening of the Byron Bay Bypass is to occur early in 2021 and with the
Byron Bay Masterplan it is clear the Byron Bay Township is currently experiencing a significant
period of change. However, it has also been identified that Council has not modelled or reviewed
15 the potential impact that many of the Masterplan projects may have on access and movement
within Byron Bay.

RECOMMENDATION:**That Council:-**

1. **Supports the preparation of an Access and Movement Plan for Byron Bay Town Centre;**
2. **Considers a funding proposal at the next available Quarterly Budget Review; and**
3. **Subject to a suitable funding source being available, engages a consultant to prepare a Byron Bay Access and Movement Plan with a 20 year design horizon.**

20

REPORT

The township of Byron Bay is anticipated to go through a period of significant and positive change over the next few years as a result of a number of projects. While these projects appear to be of great benefit, the potential combined impact of these projects has not been modelled or assessed.

Such projects and plans include, but are not limited to:

- The Byron Bay Masterplan (Jonson St Shared Zone, Byron Street pedestrianisation etc)
- Byron Bay Bypass
- The PAMP, bike plan, integrated transport strategy and MURC etc
- Butler Street Bypass
- Butler Street Reserve options
- Bypass pedestrian crossing
- Bypass Bus Interchange
- Activation of Sandhills area and adjacent Crown Land
- Ewingsdale Road Interchange signalling

In addition, there are a number of other developments and transport options potentially on the horizon that may significantly shape the way people move through and access Byron Bay. For example:

- Mercato Hotel
- Mixed use development on Jonson St and Browning St
- Harris Farm
- West Byron Urban Release Area
- Ewingsdale Road / Transport corridor upgrades
- Park n Ride services

A key concern is that the combined impact of the above items (as well as others not listed above) over the next 20 years is currently unknown, nor modelled. In addition, if the Bypass does not reduce the traffic volume passing through the CBD and large volumes of traffic continue to flow through the Jonson Street Shared Zone, what options can Council adopt to address this problem?

As a result, Staff recommend undertaking modelling of access and movement for the Byron Bay Township with a 20 year design horizon and prepare a Byron Bay Access and Movement Plan.

The purpose of the Access and Movement Plan is primarily to:-

- Model access and movement for the township of Byron Bay over a 20 year design horizon. In other words, what will be the anticipated impact of all proposed and possible projects on access and movement across the Byron Bay Township.
- Assist in planning Byron Bay Masterplan projects over the next 20 years through anticipating potentially negative impacts and key signature projects.
- Inform a contributions plan associated with the Byron Bay Masterplan

This will help Council to anticipate potentially negative impacts and solutions, help identify priority projects in advance and help inform a contributions plan associated with the Byron Bay Masterplan.

To undertake this access and movement modelling it is proposed to prepare a reverse brief and request a number of consultants to submit a quote. In general terms, the brief is anticipated to include the following:-

- Undertake a literature review of all relevant Council and TfNSW documents
- A solid understanding of the TfNSW Movement and Place strategy
- Model several scenarios of the Byron Bay township (the extents of the model TBC) to identify problem areas, impacts, solutions and key projects

- Engage with TfNSW and Council to include latest traffic modelling (from SEQ to Byron Bay) and traffic data.
- Include in the modelling projects associated with the PAMP, Bike Plan, Masterplan, integrated transport strategy and other key Council documents
- 5 Include in the modelling potential developments over the next 20 years, such as: Mercato Hotel, Harris Farm, Butler Street Reserve options, West Byron Urban Release area etc.

10 It is anticipated the brief will be ready by mid January 2021, quotes received by mid February and a consultant engaged by beginning of March. As part of the reverse brief the submissions will be asked to indicate the expected time required to undertake the scope of works.

Once a cost estimate is known a funding source can then be identified at the next appropriate Quarterly Budget Review.

15 **Next steps**

Once available, the draft Byron Bay Access and Movement Plan will be presented to a Council Strategic Planning Workshop, prior to being presented for adoption at Council or public exhibition.

20 **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	1.6.2	Ensure future traffic demand and alternative solutions are addressed in major infrastructure plans	1.6.2.1	This continues to be a governing principle for all major infrastructure plans.
	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	Investigate priority needs for future masterplans
Community Objective 4: We manage growth and change responsibly						

25 **Legal/Statutory/Policy Considerations**

N/A

30 **Financial Considerations**

No funding has been allocated to the project in the current budget. In order to proceed with the Byron Bay Access and Movement Plan, a funding source will need to be considered and allocated through a Quarterly Budget Review.

35 At the time of writing a suitable funding source had not been identified. Council may need to consider reprioritising projects in order to fund this work. Options will be provided to Council as quarterly review.

Consultation and Engagement

N/A

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES**Report No. 14.1 Report of the Finance Advisory Committee Meeting held on 12 November 2020**

Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2020/1802

Summary:

This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 12 November 2020 for resolution by Council.

RECOMMENDATION:

1. That Council notes the minutes of the Finance Advisory Committee Meeting held on 12 November 2020.

2. That Council adopts the following Committee Recommendations:

Report No. 4.1 Unrestricted Cash and Reserves at 30 June 2020
File No: I2020/1731

Committee Recommendation 4.1.1

1. That the Reserve Balances as outlined in Attachment 1 (#E2020/87284) at 30 June 2020 be noted by the Finance Advisory Committee.
2. That the Unrestricted Cash Balance of \$724,300 as at 30 June 2020 be noted by the Finance Advisory Committee.

3. That Council adopts the following Committee Recommendations:

Report No. 4.2 Quarterly Update - Implementation of Special Rate Variation
File No: I2020/1739

Committee Recommendation 4.2.1

That the Finance Advisory Committee notes the quarterly update on the Special Rate Variation Implementation as at 30 September 2020 as outlined in Attachment 1 (#E2020/88148).

4. That Council adopts the following Committee Recommendations:

Report No. 4.3 Budget Review - 1 July 2020 to 30 September 2020
File No: I2020/1758


Committee Recommendation 4.3.1

1. That Council notes that the itemised budget variations as shown in Attachment 2 (#E2020/88837) which include the following results in the 30 September 2020 Quarterly Review of the 2020/2021 Budget:
 - a) General Fund – \$60,700 increase to the Estimated Unrestricted Cash Result
 - b) General Fund - \$3,045,100 increase in reserves
 - c) Water Fund - \$800,900 decrease in reserves
 - d) Sewerage Fund - \$431,200 decrease in reserves

were adopted by Council at its Ordinary Meeting held on 26 November 2020.
2. That Council adopts the revised General Fund Estimated Unrestricted Cash Result of \$428,200 for the 2020/2021 financial year as at 30 September 2020.

Attachments:

5

- 1 Minutes 12 November 2020 Finance Advisory Committee, I2020/1763 

Report

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 12 November 2020 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2020/11/FAC_12112020_MIN_1232.PDF

The Committee considered the following items:

Report 4.1 Unrestricted Cash and Reserves at 30 June 2020

The Committee considered a report that outlined the detailed schedule of all Council reserves held at 30 June 2020. Whilst the schedule of reserves was adopted by Council as part of completing the 2019/2020 financial statements, the details of these reserves are summarised in Note 7 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 given the impacts to Council of the COVID-19 Pandemic to 30 June 2020. The report also identified that Council was able to maintain an unrestricted cash balance of \$724,300 as at 30 June 2020.

Report 4.2 Quarterly Update – Implementation of 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 \$7,404,700 (this includes the \$4,788,600 derived from the fourth year of the 4 year Special Rate Variation that commenced on 1 July 2017 and the residual amount unexpended at 30 June 2020 (\$151,700). As at the end of September 2020, Council had expended 20.74% of the overall program.

Report 4.3 Budget Review – 1 July 2020 to 30 September 2020

The Committee discussed the 30 September 2020 Quarter Budget Review, noting the proposed amendments to the 2020-2021 Budget and recommended their adoption to Council (this occurred at the 26 November 2020 Ordinary Meeting).

Of note in the report were the following major items:

1. Part recovery of the 2020-2021 budget deficit in the General Fund by \$60,700. Deficit position has improved from \$356,800 to \$296,100.
2. Expected improvement of the unrestricted cash balance of \$60,700 back towards the \$1,000,000 the Council's adopted benchmark. Projection is now \$428,200.
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 26 November 2020 Ordinary Council Meeting.

Financial Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 12 November 2020.

Statutory and Policy Compliance Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 12 November 2020.

Report No. 14.2 Report of the Audit, Risk and Improvement Committee Meeting held on 12 November 2020

Directorate: Corporate and Community Services

Report Author: Emma Fountain, Strategic Risk & Business Continuity Coordinator

File No: I2020/1811

Summary:

This report provides the minutes of the Audit, Risk and Improvement Committee Meeting held on 12 November 2020 for determination by Council.

RECOMMENDATION:

That Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 12 November 2020.

Attachments:

1 Minutes 12/11/2020 Audit, Risk and Improvement Committee, I2020/1751 

Report

5 The attachment to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 12 November 2020 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2020/11/ARIC_12112020_AGN_1231_AT_EMBEDDED.PDF

Committee Recommendations

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 Audit, Risk and Improvement Committee Meeting of 12 November 2020.

Statutory and Policy Compliance Implications

20

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 12 November 2020.

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY**Report No. 14.3 Report of the Sustainability and Emissions Reduction Advisory Committee Meeting held on 12 November 2020**

5 **Directorate:** Sustainable Environment and Economy
 Report Author: Kimberley Rogers, Environment Support Officer
 File No: I2020/1805

10 **Summary:**

The attachment to this report provides the minutes of the Sustainability and Emissions Reduction Advisory Committee meeting held on 12 November 2020 for determination by Council.

RECOMMENDATION:

15 1. **That Council notes the minutes of the Sustainability and Emissions Reduction Advisory Committee Meeting held on 12 November 2020.**

2. **That Council adopts the following Committee Recommendations:**

Report No. 4.1 Climate Emergency Response Update on Res 20-351
 File No: I2020/1455

Committee Recommendation 4.1.1

 1. **That Council note the report.**

 2. **That Resilient Byron be invited to join the Sustainability and Emissions Reduction Advisory Committee.**

3. **That Council adopts the following Committee Recommendations:**

Report No. 4.2 Sustainability and Emissions Reduction Projects - Update Report
 File No: I2020/1557

Committee Recommendation 4.2.1

 1. **That Council note the report**

 2. **That Council enter into a one year trial partnership with ClimateClever.**

4. **That Council adopts the following Committee Recommendation:**

Report No. 4.3 Updates from Zero Emissions Byron and COREM
 File No: I2020/1719

Committee Recommendation 4.3.1

That Council note the report.

Attachments:

- 1 Minutes 12/11/2020 Sustainability and Emissions Reduction Advisory Committee, I2020/1766 

5

Report

5 The attachment to this report provides the minutes of the Sustainability and Emissions Reduction Advisory Committee Meeting of 12 November 2020 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/Open/2020/11/SERAC_12112020_AGN_1230_AT_EMBEDDED.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 Sustainability and Emissions Reduction Advisory Committee Meeting of 12 November 2020.

Statutory and Policy Compliance Implications

20

As per the Reports listed within the Sustainability and Emissions Reduction Advisory Committee Meeting of 12 November 2020.

Report No. 14.4

Report of the Biodiversity Advisory Committee Meeting held on 23 November 2020

Directorate:

Sustainable Environment and Economy

Report Author:

Michelle Chapman, Project Support Officer

File No:

I2020/1867

Summary:

This report provides the minutes of the Biodiversity Advisory Committee Meeting of 23 November 2020 for determination by Council.

RECOMMENDATION:

That Council notes the minutes of the Biodiversity Advisory Committee Meeting held on 23 November 2020.

Attachments:

1 Minutes 23/11/2020 Biodiversity Advisory Committee, I2020/1816 

Report

- 5 The attachment to this report provides the minutes of the Biodiversity Advisory Committee Meeting of 23 November 2020 for determination by Council. The agenda for this meeting can be located on Council's website at:

https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2020/11/BAC_23112020_AGN_1256_AT_EMBEDDED.PDF

- 10 The committee recommendations are supported by management and are provided in the attachment to this report.

Financial Implications

- 15 As per the Reports listed within the Biodiversity Advisory Committee Meeting of 23 November 2020.

Statutory and Policy Compliance Implications

- 20 As per the Reports listed within the Biodiversity Advisory Committee Meeting of 23 November 2020.

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.1 **CONFIDENTIAL - Land Acquisition for Booyong Road dedication of land adjoining Lot 4 DP 707295**

Directorate: Infrastructure Services
Report Author: Deanna Savage, Roads and Property Officer
File No: I2020/1748

Summary:

This report is being presented to Council to agree a way forward in relation to completing the acquisition of land for road purposes, namely the alignment of Booyong Road, as per previous Council reporting and Resolution **20-227**.

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c) of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Land Acquisition for Booyong Road dedication of land adjoining Lot 4 DP 707295.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

Requires the discussion of land valuations under negotiation with the landowner for the acquisition of land for road purposes.

Attachments:

- 1 1st Survey Adrian Zakara Newton Deny Chapelle showing encroachments Booyong Road Lot 3 DP 707295, E2020/24612
- 2 Valuation Report Owen Allsopp from Herron Todd White re compulsory acquisition 319 Booyong Road Lot 4 DP 707295, E2020/80692
- 3 Revised Valuation Rob Holden Valuers Australia VA1111.2-CA Acquisition of Land - 319 Booyong Rd, Nashua Lot 4 DP 707295, E2020/24680
- 4 Email from Leanne Jarvis 319 Booyong Road, Nashua - Compulsory Acquisition _ offer, E2020/94069