



Byron Shire Council



Agenda Ordinary Meeting

Thursday, 23 September 2021
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
BUSINESS OF ORDINARY MEETING

- 1. PUBLIC ACCESS**
- 2. APOLOGIES**
- 3. REQUESTS FOR LEAVE OF ABSENCE**
- 4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**
- 6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
 - 6.1 Ordinary Meeting held on 26 August 2021
- 7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**
- 8. MAYORAL MINUTE**
- 9. NOTICES OF MOTION**

Nil
- 10. PETITIONS**
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- 13. STAFF REPORTS**

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Infrastructure Services

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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

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.

SUBMISSIONS AND GRANTS

Report No. 11.1 Grants and Submissions August 2021

Directorate: Corporate and Community Services

5 **Report Author:** Donna Johnston, Grants Coordinator

File No: I2021/1459


Summary:

10 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:

15 **That Council notes the report and Attachment 1 (#E2021/113174) for Byron Shire Council's Submissions and Grants as at 31 August 2021.**

Attachments:

20 1 Grants submissions - August 2021, E2021/113174 

BYRON SHIRE COUNCIL

SUBMISSIONS AND GRANTS

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Report

This report provides an update on grant submissions since the last report to Council. Currently Council has 28 grant submissions awaiting determination.

Successful applications

- 5 There were no successful applications notified during August.

Unsuccessful applications

Council was advised of the following unsuccessful applications in August:

Funding body	Funding scheme	Project name	Total project value \$	Amount requested \$
Transport for NSW	Safer Roads Program	Tweed Valley Way Safety Improvements	\$437,030	\$437,030
Transport for NSW	Safer Roads Program	The Pocket Road Route Safety Review	\$997,605	\$997,605
Transport for NSW	Safer Roads Program	Wilsons Creek Road - Coolamon Scenic Drive to Huonbrook Road Route Safety Review	\$1,873,594	\$1,873,594
Transport for NSW	Safer Roads Program	Coorabell Road - Coolamon Scenic Drive to Binna Burra Rd - Route Safety Review	\$832,384	\$832,384

Feedback

- 10 The above applications were submitted in August 2020. The Safer Roads Program prioritises funding to develop and deliver road safety infrastructure projects across NSW (regional projects only) and the 2020 round was assessed via a Benefit Cost Ratio (BCR) which includes safety data such as fatalities and casualties on nominated roads.

- 15 Feedback provided from Transport for NSW indicated the above were excellent projects with strong Benefit Cost Ratios and they were endorsed by the Centre for Road Safety. However, the road nominations missed the priority list cut off as other local government

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SUBMISSIONS AND GRANTS

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road areas were rated higher. Council was advised to resubmit the roads to the current round and this has been done.

Applications submitted in August

Funding scheme	Project name	Total project value \$	Amount requested \$
Safer Roads Program	Gulgan Rd Roundabout	\$2,733,641	\$2,105,641
Safer Roads Program	Midgen Flat Rd	\$1,077,068	\$782,500
Safer Roads Program	Mullum Rd & McAuleys Ln intersection	\$292,885	\$292,885
Safer Roads Program	The Pocket Road	\$1,052,212	\$1,052,212
Safer Roads Program	Coorabell Road	\$583,615	\$583,615
Safer Roads Program	Wilsons Creek Road	\$2,362,075	\$2,362,075
Coastal Estuary Implementation Program 2021	Byron Bay - Main and Clarkes Beach Dune Stabilisation Project	\$164,000	\$82,000

Upcoming grant opportunities

- 5 [Black Summer Bushfire Recovery Grants | National Recovery and Resilience Agency](#)
The \$280 million Black Summer Bushfire Recovery (BSBR) Grants program will help communities address priorities for recovery and resilience after the 2019-20 bushfires. This grants program comes from the National Bushfire Recovery Fund and is additional to support already provided through a range of bushfire recovery programs. The submission
- 10 deadline has been delayed until September.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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)	5.6.12.2	Provide sound governance for grants management

Legal/Statutory/Policy Considerations

- 5 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.

Financial Considerations

- 10 If Council is successful in obtaining the identified grants, this would bring funding sought to almost \$80 million 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 total amount below (\$63 million) includes projects that have been applied for in two earlier funding schemes (for example Bioenergy Byron and Sandhills Wetlands).
- 15

The potential funding is detailed below:

	Requested funds from funding bodies	\$36,622,859
	Council Contribution Cash	\$26,564,342
	Council Contribution In-Kind	\$36,000
20	Other contributions	\$112,869
	Funding applications submitted and awaiting notification (total value)	\$63,336,069

Consultation and Engagement

- 25 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 Rent Relief

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

5 **File No:** I2021/1364

Summary:

10 As a consequence of the NSW Government 'stay-at-home orders' affecting the Byron Shire during August and September 2021, a number of Councils commercial and community tenants have contacted Council requesting rent relief. This report proposes further rent relief to these tenants.

RECOMMENDATION:

- 15 1. That Council delegates to the General Manager, the authority to negotiate deferred rent relief, if any, with commercial and community tenants identified in this report, at a rate to be determined by the General Manager for the period 26 June 2021 to 12 July 2021.
- 20 2. That Council waives, in accordance with the *Retail and Other Commercial Leases (COVID-19) Regulations 2021 (NSW)*, a minimum of 50% of rent payable by commercial and community tenants identified in this report for the period between 13 July 2021 and 13 January 2022.
- 25 3. That Council delegates to the General Manager, the authority to enter into arrangements with commercial and community tenants identified in this report for the balance of 50% of rent owing between 13 July 2021 and 13 January 2022.

Attachments:

- 1 Confidential - Confidential Attachment 1: Andrew Bates Tennis Pty Ltd request for rent relief, E2021/107052
- 30 2 Confidential - Confidential Attachment 2: Australia Skydive Pty Ltd request for rent relief, E2021/108210
- 3 Confidential - Confidential Attachment 3: Fishheads @ Byron Bay Pty Ltd, E2021/108780
- 4 Confidential - Confidential Attachment 4: AFL Queensland Limited request for rent relief, E2021/109001
- 35 5 Confidential - Confidential Attachment 5: Mullumbimby District Cultural Centre Inc request for rent relief, E2021/107440
- 6 Confidential - Confidential Attachment 6: Upper Main Arm Community Association Inc request for rent relief, E2021/109031

Report

Council has received further requests from commercial and community tenants for rent relief due to the impact of COVID-19 lock downs and restrictions.

Council resolved (**20-258**):

- 5 a) *That Council waive all rent and licence fees to businesses affected and identified in the report from 15 March to 30 June 2020.*
- b) *That the General Manager is delegated to negotiate and enter into arrangements with each affected business on the payments due after 30 June until 31 October 2020; and*
- 10

Council resolved (**20-608**):

- 15 *That Council delegate to the General Manager the authority to negotiate and enter into arrangements with JobKeeper eligible businesses and not-for-profit organisations identified in this report, and including AFL Queensland Ltd, relating to rental payments due after 31 October 2020 until 28 March 2021 to 25% waived and 75% deferred.*

Council resolved (**21-336**):

4. *That Council:*
- 20 a) *delegates to the General Manager, the authority to negotiate deferred rent relief, if any, with commercial surf schools, stand up paddleboard schools, sea kayak sub licensees and Golden Breed Corporation, at a rate to be determined by the General Manager for any period between 29 March 2021 and 12 July 2021.*
- 25 b) *waives, in accordance with the recent ruling, the minimum of 50% of rent and licensee fees payable by commercial surf schools, stand up paddleboard schools, sea kayak sub licensees identified in the Report and Golden Breed Corporation for the period between 13 July 2021 to 13 January 2022.*
- 30 c) *Delegates to the General Manager authority to negotiate and enter into arrangements with commercial surf schools, stand up paddleboard schools, sea kayak sub licensees identified in the Report and Golden Breed Corporation for the balance of 50% rent between 13 July 2021 and 13 January 2022.*

35 Legislation

The *Retail and Other Commercial Leases (COVID-19) Regulations 2021* (NSW) reintroduced the National Cabinet's Mandatory Code of Conduct for Commercial Leasing mandating rent relief for eligible tenants impacted by COVID-19. Eligible tenants must have an annual turnover up to \$50 million and qualify for the COVID-19 Microbusiness grant, COVID-19 Business Grant, or JobSaver Payment.

40

The Legislation mandates that Council renegotiate rent to provide rent relief in proportion to the tenants decline in turnover with a minimum 50% rent waiver with remaining balance deferred for the period 13 July 2021 to 13 January 2022.

Rent Relief due to impacts of COVID-19

- 5 On 26 June 2021, the NSW Government locked down Greater Sydney including the Blue Mountains, Central Coast and Wollongong due to COVID-19. The loss of visitors from these areas had an immediate impact on retail businesses in Byron Bay.

- 10 On 9 August 2021 the Byron Shire was placed into mandatory lockdown stay at home orders to 10 September 2021. For the duration of the order no community sport was permitted, outdoor gathering limited to 2 people and all non-essential retail closed.

As a result of the above lockdown orders coupled with a hard border closure of the Queensland border, the following commercial tenants have request rent relief:

- 15 a) Andrew Bates Tennis Pty Ltd (Confidential Attachment 1) estimated a 70% loss of business due to stay at home orders because of the closure of
- a. after school children coaching,
 - b. ladies Tuesday and Thursday clinics,
 - c. all competitions affecting 40 players per week, and
 - d. courts hire by members, individual lessons available at reduced participation.
- 20 b) Australia Skydive Pty Ltd (Confidential Attachment 2) estimates a 79% decline in income compared to the same period in 2019 due to the extended Sydney lockdown with a 100% decline during the stay-at-home orders. The business continues to support its staff and is eligible for Job Saver Program and requests full rent relief for the affected period.
- 25 c) Fishheads @ Byron Bay Pty Ltd (Confidential Attachment 3) requests rent relief due significant financial pressure on the business from the compounded impact of Queensland border closure, the Sydney lockdown and stay at home orders for the Byron Shire in the form of:
- a. 50% for the Sydney lockdown border closure from 26 June to 9 August 2021,
 - b. 100% due to stay at home orders from 10 August to 10 September 2021 (or date of end), and a further
 - c. 50% from the end of stay-at-home orders until reopening of the Sydney lockdown.
- 30
- 35 d) AFL Queensland Limited (Confidential Attachment 4) has requested rent relief available for the of stay-at-home orders in the Byron Shire and ongoing closure of the Queensland border.

The following community tenants have requested rent relief:

- 40 a) Mullumbimby District Cultural Centre (Confidential Attachment 5) requests full rent relief from 26 June 2021 on the compulsory closure of the Drill Hall, the temporary halting of the 'Switzerland' theatre production, the closure of all 'SPRUNG' and other events normally held in the Drill Hall.

- b) Upper Main Arm Community Association Inc (Confidential Attachment 6) requests rent relief due to the mandatory closure of the Kohinur Hall and subsequent loss and cancellation of bookings because of the uncertainty of COVID-19 lockdowns and restrictions.

The following tenant of Council is eligible for rent relief under the NSW legislation but could not be contacted at the time of writing this report:

- a) Australia Red Cross Society Inc is an eligible tenant under the NSW legislation and is entitled for a minimum 50% rent waiver for the period 13 July 2021 to 13 January 2022.

Strategic Considerations

Community Strategic Plan and Operational Plan .

CSP Objective	CSP Strategy	DP Action	Code	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)	1.2.4.3	Maintain beach entry points to agreed levels of service

Recent Resolutions

- Resolution **20-258**
- Resolution **20-208**
- Resolution **21-336**

Legal/Statutory/Policy Considerations

Retail and Other Commercial Leases (COVID-19) Regulation 2021

Current version for 15 July 2021 to date (accessed 3 August 2021 at 10:09)

Definitions:

prescribed action means taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court or tribunal for any of the following—

- (a) eviction of the lessee from premises or land the subject of the commercial lease,

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- (b) exercising a right of re-entry to premises or land the subject of the commercial lease,
- (c) recovery of the premises or land,
- (d) distraint of goods,
- (e) forfeiture,
- (f) damages,
- (g) requiring a payment of interest on, or a fee or charge related to, unpaid rent otherwise payable by a lessee,
- (h) recovery of the whole or part of a security bond under the commercial lease,
- (i) performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease,
- (j) possession,
- (k) termination of the commercial lease,
- (l) any other remedy otherwise available to a lessor against a lessee at common law or under the law of this State.

prescribed breach of an impacted lease means—

- (a) a failure to pay rent, or
- (b) a failure to pay outgoings, or
- (c) the business operating under the lease not being open for business during the hours specified in the lease.

prescribed period means the period commencing at the beginning of **13 July 2021** and ending at the end of **20 August 2021**.

s4 Meaning of “impacted lessee”

(1) A lessee is an **impacted lessee** if—

- (a) the lessee qualifies for 1 or more of the following grants—
 - (i) Micro-business COVID-19 Support Grant,
 - (ii) COVID-19 NSW Business Grant,
 - (iii) Job Saver Grant, and

- (b) the following turnover in the 2020–2021 financial year was less than \$50 million—
 - (i) if the lessee is a franchisee—the turnover of the business conducted at the premises or land concerned,
 - (ii) if the lessee is a corporation that is a member of a group—the turnover of the group,
 - (iii) in any other case—the turnover of the business conducted by the lessee.

(2) To avoid doubt, in this clause, **turnover** of a business includes any turnover derived from internet sales of goods or services.

(3) In this clause, corporations constitute a **group** if they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

40s6 Prohibitions and restrictions relating to impacted leases

- (1) This clause applies if, during the prescribed period, a lessee is an impacted lessee.
- (2) The lessor must not take prescribed action against the impacted lessee on the grounds of a prescribed breach of the impacted lease occurring during the prescribed period unless—
 - (a) the matter has been referred for mediation under the Act, Part 8, Division 2, and

- (b) the Registrar has certified in writing that the mediation has failed to resolve the dispute.
- 5 (3) An impacted lessee must give the lessor the following information in respect of the impacted lease—
- (a) a statement to the effect that the lessee is an impacted lessee,
- (b) evidence that the lessee is an impacted lessee.
- (4) The information—
- (a) may be given before, or as soon as practicable after, the prescribed breach occurs, and
- 10 (b) must be given within a reasonable time after it is requested by the lessor.
- (5) An act or omission of an impacted lessee required under a law of the Commonwealth or the State in response to the COVID-19 pandemic—
- (a) is taken not to amount to a breach of the impacted lease to which the impacted lessee is a party, and
- 15 (b) does not constitute grounds for termination of the impacted lease or the taking of any prescribed action by the lessor against the impacted lessee.
- (6) Nothing in this clause prevents a lessor and impacted lessee agreeing to the parties taking action in relation to the impacted lease, including the lessor taking prescribed action or the parties agreeing to terminate the impacted lease.

20 **Financial Considerations**

To be determined by the General Manager or alternately determined by Council by Resolution.

Consultation and Engagement

- 25 Council consulted with all commercial and community tenants identified in this Report regarding rent relief due to impact on businesses/organisation resulting from COVID-19 lockdowns and other restrictions.

**Report No. 13.2 Lease to Tiger Moth Aerial Services Pty Ltd
(A.C.N 076 113 187)**

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

5 **File No:** I2021/1422

Summary:

Tiger Moth Aerial Services Pty Ltd (A.C.N. 076 113 187) holds a lease, under holding over provisions, to occupy Lot 9 DP856832 being Council owned land classified as operational.

10 Tiger Moth Aerial Services Pty Ltd requests a new five-year lease over the land for security to undertake capital improvements to its aircraft hangar built on the land.

RECOMMENDATION:

15 **That Council authorises the General Manager, under delegation, to enter into a lease with Tiger Moth Aerial Services Pty Ltd (A.C.N 076 113 187) over Lot 9 DP856832 Staceys Way Tyagarah on the following terms:**

- a) term five years,
- 20 b) base rent to be set by an independent market valuation with the rent annually increased thereafter by Consumer Price Index All Groups Sydney,
- c) for the purpose of storage of an aircraft,
- d) the Lessor and Lessee to agree that the Lessee owns all building improvements on the land,
- e) Lessee must, at its cost, be responsible for the following:
 - 25 i) all outgoing payable in respect of the land,
 - ii) all maintenance of all improvements on the land including but not limited all buildings, access road, and carpark constructed on the land,
 - iii) all insurances including a minimum \$20 million public risk insurance noting Byron Shire Council as an interested party, and
 - 30 iv) all consents, approvals and other authorisation to operate its business and improve its buildings on the land,

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- f) Lessee must at its cost, remove its building improvements from the land and return the land to vacant possession at the end of the lease unless a new lease is negotiated to commence on the day after the end date of the lease.

5 **Attachments:**

- 1 Confidential - Confidential Attachment 1: Tiger Moth Aerial Services Pty Ltd request for five year lease, E2021/109068

10

Report

Council resolved **(04-871)** at a confidential session of its 2 November 2004 meeting to grant a five-year lease with an option of five-years to Mr John Callanan (Tareeda Properties) over Lot 9 DP856832.

5 Council resolved **(06-382)** at its 27 June 2006 meeting:

1. *That Council authorise the transfer of the lease of Lot 9 DP856832 from John Callanan (Tareeda Properties) to Tiger Moth Aerial Service Pty Ltd.*
2. *That Council authorise a variation to the lease for the proposed change of lease purpose from “storage and operation of aircraft” to “Tiger Moth tourist flights and associated maintenance and storage and associated private use”.*

10

On 1 September 2006 a Deed of Consent and Assignment of Lease was entered into between Council Mr John Callanan (Tareeda Properties) and Tiger Moth Aerial Service Pty Ltd ('Tiger Moth').

15

Tiger Moth remains in occupation of Lot 9 DP856832 under holding over provisions as a month-by-month tenant at a rental one twelfth of the annual rent.

Tiger Moth has requested in writing (Confidential Attachment 1) a new five (5) year lease for security to undertake capital expenditure to its hangar built on the land.

The land:

Lot 9 DP856832 ('the Land') is Council owned land classified as operational land.

20

The Land is identified in Council's adopted Business and Industrial Lands Strategy as a preliminary site for a potential 9-hectare industrial land area referred to Area Number 3 Gulgan East Industrial Site.

25

The Strategy suggests a timeframe of 3-to-5-year to undertake a planning proposal to rezone the land. The rezoning is conditional on the provision of essential infrastructure to the site for water, sewerage and road connections to the M1 Motorway.

No action is currently reported in Councils Operational Plan to advance investigations into the Tyagarah site. Other lands identified in the Strategy are also being investigated.

As a result, the proposed five-year lease will not impact on the progress of the Business and Industrial Lands Strategy.

30

Improvements on the Land:

An aircraft hangar is built on the land and is owned by Tiger Moth.

35

Development consent 94/121 was granted for the construction of an ultralight storage hangar for private use on the Land. Consent condition 2 required a lease agreement to be completed with Council.

The original lease over the Land required the Lessee to remove all its equipment from the Land at the end of the lease and return the Land to its original condition.

- 5 A lease in the same form as the original lease was granted to Mr John Callanan (Tareeda Properties) and subsequently assigned to Tiger Moth. Terms of the lease requires the current lessee, at its cost, to remove all improvements on the Land at end of the lease.

Terms of proposed lease:

- 10 Council staff propose a new lease under the following conditions:
- a) over Lot 9 DP856832,
 - b) term five years,
 - c) base rent to be set by an independent market valuation (yet to be received) with rent
 - 15 annually increased thereafter by Consumer Price Index All Groups Sydney,
 - d) for the purpose of storage of aircraft,
 - e) the Lessor and Lessee to acknowledgement that the Lessee owns all building improvements on the Land,
 - e) Lessee must, at its cost, be responsible for the following:
 - 20 i) all outgoings payable in respect of the Land,
 - ii) all maintenance of improvements on the Land including but not limited to all buildings, road access and/or carpark constructed on the Land,
 - iii) all insurances including a minimum \$20 million public risk insurance noting Byron Shire Council as an interested party, and
 - 25 iv) all consents, approvals and others authorisation to operate its business and improve its buildings on the Land.
 - f) Lessee must at its cost, removal its building improvements from the Land and return the Land to vacant possession at the end of the lease unless a new lease is negotiated to commence on the day after the end date of the lease.

30 **Strategic Considerations**

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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)	1.2.6.9	Manage leases and contracts at Tyagarah Airfield

Recent Resolutions

Nil.

Legal/Statutory/Policy Considerations

- 5 A detailed in the report.

Financial Considerations

Base rent to be set by independent market rent valuation from an approved Valuer. Base rent will be increased annually by Consumer Price Index All Groups Sydney for the term.

- 10 Ancillary uses of the airfield; Tiger Moth pay separately for ancillary use of the airfield through landing fees, parking fees and aircraft access registration fees as adopted by Council's fees and charges.

Consultation and Engagement

Nil.

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Report No. 13.3 Section 356 Rates and Charges Donation Policy - Review following public exhibition

5 **Directorate:** Corporate and Community Services

Report Author: Stephen Ansoul, Revenue Coordinator

File No: I2021/1368

Summary:

10 Council resolved at the 24 June 2021 Ordinary Meeting through resolution **21-196** to place the updated draft Section 356 Donations – Rates and Charges policy on public exhibition for 28 days and if no submissions were received, adopt the updated policy. Any submissions received would require a further report to Council to consider the submission prior to adopting the draft policy.





15 A submission was received from Island Quarry Reserve Trust Inc and this report satisfies the 24 June 2021 resolution to report any submission(s) back to Council for consideration prior to adoption of the draft policy.

20 This report acknowledges the services provided by Island Quarry Reserve Trust Inc however, recommends exclusion from the draft 2021 policy as the organisation does not meet all elements of the draft policy eligibility criteria.

RECOMMENDATION:

- 25 1. **That Council adopts the draft ‘Section 356 Donations – Rates and Charges – 2021’ policy provided at Attachment 1 (#E2021/77889) effective from the commencement of the 2021/2022 financial year.**
2. **That Council does not accept the request from Island Quarry Reserve Trust Inc for a rates and charges donation under the ‘Section 356 Donations – Rates and Charges Policy – 2021’ (#E2021/77889).**

Attachments:

- 30 1 DRAFT Policy - Section 356 Donations - Rates and Charges - 2021, E2021/77889 
- 2 Policy: Section 356 Donations - Rates, Water and Sewerage (Changed as per Resolution 13-695) (Current_Policies), E2014/19569 
- 3 iQ - Submission to draft 2021 Rates Donation Policy - Email, E2021/108418 
- 35 4 iQ - Submission to draft 2021 rates donation policy - Email attachment - Overview of iQ, E2021/108419 

Background

A review of Council's 2014 rates and charges donation policy was undertaken by staff during 2020/21 and an updated draft 2021 policy was presented to Council at its 24 June 2021 meeting.

- 5 The eligibility requirements of the existing 2014 policy were as follows:
- The facility must be operated by a not-for-profit organisation and;
 - The facility must relate to a community centre, public hall or facility that is available for use and/or provides a charitable service to the general community.
- 10 The revised 2021 policy retains the general eligibility requirements of the current policy and expands financial and property use qualification criteria as follows:
- The organisation must be not-for-profit and/or provide a charitable service.
 - The property occupied by the organisation must be integral to the organisation's provision of services.
- 15
- The organisation must not be significantly funded from other revenue sources.
 - The services and/or activities provided by the organisation must benefit the local community.
 - The organisation must not qualify for a rating exemption under sections 555 or 556 of the Local Government Act 1993.
- 20
- The organisation can be defined as one of the following:
- Community preschool
 - Community based Hall or Community Centre
 - Surf Life Saving Club
 - Scouts or Girl Guides
- 25
- Historical Society
 - Community Garden
 - Showgrounds
 - Other charitable organisation approved for inclusion by Council

- 30 The level of donation for each eligible property (100% of rates and fixed annual charges) was retained in the draft 2021 policy.

The review process identified 4 properties that received a donation under the 2014 policy that do not meet the draft 2021 policy eligibility requirements and 21 additional properties that meet eligibility criteria and, as a result, have been included in the draft 2021 policy.

- 35 The current 2014 policy (Attachment 2 E2014/19569) and draft 2021 policy (Attachment 1 E2021/77889) are included with this report for information/background.

Submission to draft 2021 policy

- 40 A submission was received from one of the organisations proposed to be excluded from the draft 2021 policy being Island Quarry Reserve Trust Inc (IQ) that occupies 214 Ewingsdale Road Byron Bay (Attachment 3 E2021/108418 and Attachment 4 E2021/108419).

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IQ has asked Council to reconsider its proposed exclusion on the basis that it complies with the eligibility guidelines, stating that:

- IQ is a not-for-profit incorporated association and the appointed Crown Land Managers of Island Quarry Reserve.
- 5 • IQ provides numerous charitable services and facilities to the community.
- Island Quarry Reserve is integral to our organisation's provision of services and activities.

As background, Council provided a rates and charges donation of \$1,168.00 to the subject property in the 2020/21 rating year.

- 10 Many organisations that provide valuable services to the community do not receive a donation from Council towards their rates and charges. It is evident that IQ provides a range of services that benefit the community, however, it is suggested that it does not qualify for a donation under the draft policy for the following reasons:
- Although the draft 2021 policy provides Council with discretion to include any
15 charitable organisation, IQ cannot be defined as one of the specifically listed organisation types i.e.,
 - Community preschool
 - Community based Hall or Community Centre
 - Surf Life Saving Club
 - 20 • Scouts or Girl Guides
 - Historical Society
 - Community Garden
 - Showgrounds
 - One of the eligibility criteria in the draft 2021 policy states that the organisation must
25 not be significantly funded from other revenue sources.

Island Quarry Reserve Trust Inc has been appointed trust managers of the Crown Land at 214 Ewingsdale Road. The Crown has gazetted the land for the purpose of a tourism facility and services, allowing IQ to undertake commercial activities to raise revenue for its own purposes. Other properties included in the draft 2021 policy that are situated on
30 Crown Land are gazetted for **community** purposes, which limits their ability to raise funds via a commercial activity.

As a result, it is recommended that Council adopts the draft policy that was placed on public exhibition as outlined at Attachment 1 (#E2021/77889) and does not accept the request from Island Quarry via its submission that it be included in the draft policy and
35 receive a Section 356 donation for rates and annual charges.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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 community planning to inform decision making, build capacity and develop a shared responsibility for actions with the community.

Recent Resolutions

24 June 2021 Ordinary Council Meeting - **21-196** Resolved:

- 5 1. That Council places the updated draft 'Section 356 Donations – Rates and Charges – 2021' policy (Attachment 2 #E2021/77889) on public exhibition for a period of 28 days and if no submissions are received, adopts the policy.
2. That any submissions received on the updated draft 'Section 356 Donations – Rates and Charges – 2021' policy (Attachment 2 #E2021/77889) be reported to Council for
10 consideration, prior to the adoption of the draft policy.

Legal/Statutory/Policy Considerations

Donations provided by Council under section 356 of the Local Government Act 1993 are optional.

Financial Considerations

- 15 Funding for rates and charges donations is included in the annual budget.

The total amount of rates and charges donated in 2020/2021 under the current 2014 policy was approximately \$125,000. If donations were provided in 2020/2021 under the draft 2021 policy, a total amount of \$149,000 would have been donated. The draft 2021/2022 budget has adequate funding available should Council wish to offer the revised level of
20 donation proposed.

Consultation and Engagement

The draft 'Section 356 Donations – Rates and Charges – 2021' policy was advertised for public comment for 28 days in accordance with Council resolution **21-196** at its 24 June 2021 Ordinary Meeting. The public exhibition period closed on 4 August 2021.

Report No. 13.4 Council Investments - 1 August 2021 to 31 August 2021

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2021/1431

Summary:

This report includes a list of investments and identifies Council's overall cash position for the period 1 August 2021 to 31 August 2021 for information.

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

RECOMMENDATION:

That Council notes the report listing Council's investments and overall cash position as at 31 August 2021.

.

15

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Report

Council has continued to maintain a diversified portfolio of investments. As of 31 August 2021, the average 90-day bank bill rate (BBSW) for the month of August 2021 was 0.10%. Council's performance to August 2021 was 0.60%. 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 31 August 2021

Schedule of Investments held as at 31 August 2021

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fos sil Fuel	Type	Int. Rate	Current Value
24/03/17	1,000,000.00	NAB Social Bond (Gender Equality)	Y	AA-	24/03/22	N	B	3.25%	1,017,570.00
15/11/18	1,000,000.00	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	Y	B	3.00%	1,131,900.00
20/11/18	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	22/03/24	Y	B	3.00%	1,071,170.00
28/03/19	1,000,000.00	National Housing Finance & Investment Corporation	Y	AAA	28/03/31	Y	B	2.38%	1,093,870.00
21/11/19	1,000,000.00	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	Y	B	1.25%	1,028,040.00
27/11/19	500,000.00	National Housing Finance & Investment Social Bond	Y	AAA	27/05/30	Y	B	1.52%	510,995.00
31/03/17	1,000,000.00	CBA Climate Bond	Y	AA-	31/03/22	N	FRN	1.02%	1,005,120.00

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fos sil Fuel	Type	Int. Rate	Current Value
16/11/17	750,000.00	Bank of Queensland	Y	BBB+	16/11/21	N	FRN	1.04%	751,477.50
15/06/21	500,000.00	National Housing Finance & Investment Social Bond	Y	AAA	01/07/31	Y	FRN	0.21%	501,615.00
02/09/20	1,000,000.00	Bank of Queensland	Y	BBB+	01/09/21	N	TD	0.78%	1,000,000.00
02/09/20	1,000,000.00	NAB	N	AA-	02/09/21	N	TD	0.75%	1,000,000.00
24/09/20	2,000,000.00	NAB	N	AA-	24/09/21	N	TD	0.65%	2,000,000.00
30/09/20	2,000,000.00	CBA Green Deposit	N	AA-	30/09/21	N	TD	0.70%	2,000,000.00
07/10/20	2,000,000.00	MyState Bank Limited	Y	NR	07/10/21	Y	TD	0.70%	2,000,000.00
04/11/20	2,000,000.00	NAB	N	AA-	04/11/21	N	TD	0.55%	2,000,000.00
09/11/20	1,000,000.00	Community First Credit Union	Y	NR	09/11/21	Y	TD	0.65%	1,000,000.00
23/11/20	1,000,000.00	AMP Bank	Y	BBB	23/11/21	N	TD	0.75%	1,000,000.00
24/11/20	1,000,000.00	Judo Bank	Y	NR	24/11/21	Y	TD	0.84%	1,000,000.00
26/11/20	1,000,000.00	Community First Credit Union	N	NR	26/11/21	Y	TD	0.65%	1,000,000.00
26/11/20	1,000,000.00	Macquarie Bank	Y	A	22/10/21	N	TD	0.50%	1,000,000.00
17/12/20	2,000,000.00	NAB	N	AA-	17/12/21	N	TD	0.50%	2,000,000.00
05/01/21	2,000,000.00	NAB	N	AA-	05/01/22	N	TD	0.45%	2,000,000.00
20/01/21	1,000,000.00	Westpac (Tailored)	Y	AA-	20/01/22	N	TD	0.38%	1,000,000.00
27/01/21	1,000,000.00	The Mutual	Y	NR	27/01/22	Y	TD	0.50%	1,000,000.00

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fos sil Fuel	Type	Int. Rate	Current Value
		Bank							
29/01/21	1,000,000.00	ME Bank	Y	BBB	31/01/22	Y	TD	0.45%	1,000,000.00
13/04/21	1,000,000.00	The Mutual Bank	N	NR	10/09/21	Y	TD	0.50%	1,000,000.00
05/05/21	1,000,001.00	AMP Bank	N	BBB	03/11/21	N	TD	0.55%	1,000,001.00
09/06/21	1,000,000.00	Illawarra Credit Union	Y	NR	09/12/21	Y	TD	0.45%	1,000,000.00
24/06/21	1,000,000.00	ME Bank	N	NR	24/02/22	Y	TD	0.45%	1,000,000.00
29/06/21	1,000,000.00	Gateway Credit Union	Y	NR	28/09/21	Y	TD	0.40%	1,000,000.00
30/06/21	1,000,000.00	ME Bank	N	NR	27/01/22	Y	TD	0.45%	1,000,000.00
06/07/21	1,000,000.00	Judo Bank	N	NR	04/07/22	Y	TD	0.70%	1,000,000.00
07/07/21	1,000,000.00	Illawarra Credit Union	N	NR	06/10/21	Y	TD	0.45%	1,000,000.00
23/07/21	1,000,000.00	AMP Bank	N	NR	23/12/21	Y	TD	0.50%	1,000,000.00
30/07/21	1,000,000.00	AMP Bank	N	NR	28/06/22	Y	TD	0.75%	1,000,000.00
30/07/21	1,000,000.00	Judo Bank	N	NR	29/10/21	Y	TD	0.60%	1,000,000.00
09/08/21	1,000,000.00	The Mutual Bank	N	NR	07/02/22	Y	TD	0.45%	1,000,000.00
26/08/21	1,000,000.00	AMP Bank	N	BBB	22/02/22	N	TD	0.35%	1,000,000.00
N/A	13,580,000.89	CBA Business Saver	N	AA-	N/A	N	CALL	0.20%	13,580,000.89
N/A	153,265.21	CBA Business Saver – Tourism Infrastructure Grant	N	AA-	N/A	N	CALL	0.20%	153,265.21
N/A	2,113,650.01	NSW Treasury Corp	N	AAA	N/A	Y	CALL	0.01%	2,113,650.01
N/A	11,009,184.87	Macquarie Accelerator	N	A	N/A	N	CALL	0.40%	11,009,184.87

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value
		Call							
Total	69,606,101.98						AVG	0.60%	69,967,859.48

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

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

Note 3.

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

Environmental and Socially Responsible Investing (ESRI)

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

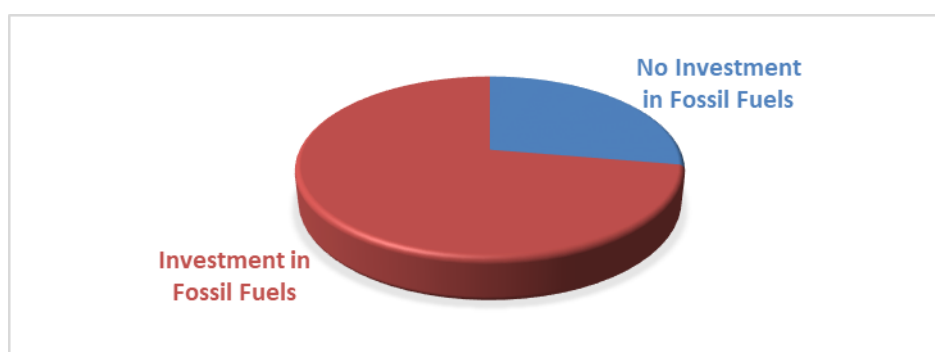
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Council has three investments with financial institutions that invest in fossil fuels but are nevertheless aligned with the broader definition of Environmental and Socially Responsible investments i.e.:

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				ACTUAL	Variance
% per institution should not exceed the following					
AAA to AA	A1+	100%		54.34%	Meets policy
A+ to A-	A1	60%		15.55%	Meets policy
BBB to NR	A2.NR	40%		30.11%	Meets policy

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

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.

The investment portfolio is outlined in the table below by investment type for the period 1 August 2021 to 31 August 2021:

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Dissection of Council Investment Portfolio as at 31 August 2021

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
35,000,001.00	Term Deposits	35,000,001.00	0.00
3,250,000.00	Floating Rate Note	3,329,382.50	79,382.50
13,580,000.89	CBA Business Saver	13,580,000.89	0.00

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
153,265.21	CBA Business Saver – Tourism Infrastructure Grant	153,265.21	0.00
2,113,650.01	NSW Treasury Corp	2,113,650.01	0.00
11,009,184.87	Macquarie Accelerator	11,009,184.87	0.00
4,500,000.00	Bonds	4,782,375.00	282,375.00
17,776,100.09		18,058,475.09	282,375.00

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

The table below provides a reconciliation of investment purchases and maturities for the period of 1 August 2021 to 31 August 2021 on a current market value basis.

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Movement in Investment Portfolio – 31 August 2021

Item	Current Market Value (at end of month) \$
Opening Balance at 1 August 2021	68,472,639.73
Add: New Investments Purchased	2,000,000.00
Add: Call Account Additions	9,000,000.00
Add: Macquarie Accelerator Interest	2,735.10
Add: Tourism Call Account Interest	26.03
Add: TCorp Account Interest	45.02
Add: Call Account Interest	1,731.10
Less: Call Account Redemption	0.00
Less: Investments Matured	9,500,000.00
Less: Fair Value Movement for period	9,317.50
Closing Balance at 31 August 2021	69,967,859.48

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 August 2021 the table below identifies Council's overall cash position as follows:

Dissection of Council's Cash Position as at 31 August 2021

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	35,000,001.00	35,000,001.00	0.00
Floating Rate Note	3,250,000.00	3,329,382.50	79,382.50
CBA Business Saver	13,580,000.89	13,580,000.89	0.00
CBA Business Saver – Tourism Infrastructure Grant	153,265.21	153,265.21	0.00
NSW Treasury Corp	2,113,650.01	2,113,650.01	0.00

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Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Macquarie Accelerator	11,009,184.87	11,009,184.87	0.00
Bonds	4,500,000.00	4,782,375.00	282,375.00
Total Investment Portfolio	69,606,101.98	69,967,859.48	361,757.50
Cash at Bank			
Consolidated Fund	7,115,291.60	7,115,291.60	0.00
Total Cash at Bank	7,115,291.60	7,115,291.60	0.00
Total Cash Position	76,721,393.58	77,083,151.08	0.00

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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

Legal/Statutory/Policy Considerations

- 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*.

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.

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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.

- 5 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. 13.5 2021-2022 Financial Assistance Grant

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

File No: I2021/1454

5 Summary:




The NSW Local Government Grants Commission has advised Council of its 2021-2022 Financial Assistance Grant entitlement via letter dated 20 August 2021. The letter requests that its contents be tabled at the next Ordinary Meeting of Council.

10 This report also provides Council with some additional information related to the Financial Assistance Grant entitlement for the 2021-2022 financial year.

RECOMMENDATION:

15 **That Council receives and notes the 2021-2022 Financial Assistance Grant Report as outlined in Attachment 1 (#E2021/112359), 2 (#E2021/112363) and 3 (#E2021/112364).**

Attachments:

- 20 1 Letter from NSW Grants Commission outlining 2021-2022 Financial Assistance Grant Outcome, E2021/112359 
- 2 2 Details of Byron Shire Council 2021-2022 Financial Assistance Grant Entitlement, E2021/112363 
- 25 3 Schedule of Financial Assistance Grant Payments 2021-2022 to NSW Councils, E2021/112364 

Report

The NSW Local Government Grants Commission has advised Council of its 2021-2022 Financial Assistance Grant entitlement via letter dated 20 August 2021. The letter requests that its contents be tabled at the next Ordinary Meeting of Council and has been included at Attachment 1 (#E2021/112359).

This report addresses that request and provides Council with some additional information related to the Financial Assistance Grant entitlement for the 2021-2022 financial year.

The monetary value of the Council's 2021-2022 Financial Assistance Grant is provided in the table below:

Grant Component	Value \$
General Purpose	2,176,076
Roads Component	1,299,469
Gross Financial Assistance Grant	3,475,545
Add CPI Adjustment from 2020-2021 General	34,469
Add CPI Adjustment from 2019-2020 Roads	18,937
Total Financial Assistance Grant 2020-2021	3,528,951

The total General Purpose component of the Financial Assistance Grant for 2021-2022 is \$2,210,545 and the total Roads component is \$1,318,406 after adjustments from the previous year's Consumer Price Index (CPI) outcome. The gross grant allocation for Council is a 4.8% increase (including CPI adjustments) on the 2020-2021 Financial Assistance Grant.

The Commonwealth Government again determined to pay part of the 2021-2022 Financial Assistance Grant in advance. In this regard, Council received a total advance payment of \$1,715,625 on 28 June 2021. The remaining grant payments will be received during the 2021-2022 financial year and will be reduced by the amount of the advance payment. The remaining instalments payable to Council in 2021-2022 are outlined in Attachment 2 along with details of the Byron Shire Council specific grant entitlement.

The Financial Assistance Grant is a general purpose grant. That is, whilst it has defined components as outlined in the table above, there are no conditions attached about how Council spends it. Council recognises this grant in the General Purpose Revenues Program along with rate revenue, which is distributed to Council programs through the budget.

Incorporating the advance payment received at the end of the 2020-2021 financial year, that Council has carried forward to expend in the 2021-2022 financial year, Council's estimated revenue budget is approximately \$154,300 above the proposed net 2021-2022 Financial Assistance Grant.

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This additional \$154,300 will be included in the 30 September 2021 Quarterly Budget Review which will be presented to Council at the 25 November 2021 Ordinary Meeting. It is proposed that the increase will be used to help offset the general revenue losses that are likely to arise from the COVID-19 lockdown(s), including rates, rent, lease and licence income.

Attachment 3 provides a schedule of all Financial Assistance Grant payments to NSW Councils for the 2021-2022 financial year. The table below shows the net grant entitlements of neighbouring Councils.

Whilst each Council has its own circumstances that contribute to the grant calculations i.e., disability factors, population, property values etc., the table demonstrates that the Financial Assistance Grant Revenue received by Byron Shire Council remains low relative to our neighbouring councils.

2021-2022 Financial Assistance Grant Outcomes

Council	Population	Net General Purpose	Net Roads Component	Total Net Financial Assistance Grant
Ballina	45,217	3,358,238	1,569,650	4,927,888
Byron	35,773	2,210,545	1,318,406	3,528,951
Clarence Valley	51,730	8,068,917	3,555,405	11,624,322
Kyogle	8,788	3,158,013	1,741,426	4,899,439
Lismore	43,667	4,615,061	2,213,359	6,798,420
Richmond Valley	23,490	3,825,733	1,727,602	5,553,335
Tweed	98,382	8,173,303	3,182,751	11,356,054

The table below sets out the actual grant differences.

2021-2022 Financial Assistance Grant Differences

Council	Additional FAG Revenue compared to Byron \$	Grant Entitlement greater than Byron (times)
Ballina	1,398,937	1.40
Clarence Valley	8,095,371	3.29
Kyogle	1,370,488	1.39
Lismore	3,209,469	1.91
Richmond Valley	2,024,384	1.57
Tweed	7,827,103	3.22

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.5: Manage Council's finances sustainably	5.5.1: Enhance the financial capability and acumen of Council	5.5.1.1	Financial reporting as required provided to Council and Management

5

Legal/Statutory/Policy Considerations

The Financial Assistance Grant is provided by the Commonwealth Government via the NSW Local Government Grants Commission. The NSW Local Government Grants Commission determines the amount of the distribution to each Council in NSW from the pool of funds allocated to the State of NSW by the Commonwealth Government. Each State in Australia is required to have a Local Government Grants Commission to determine distributions.

15 Financial Considerations

There are no financial implications associated with this report as it is informing Council of its Financial Assistance Grant entitlement for 2021-2022.

20

Report No. 13.6 Financial Assistance - COVID-19 Pandemic and Byron Music Festival

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2021/1456

Summary:

Council and the community have been grappling with the impacts of the COVID-19 Pandemic for over eighteen months now.

10 Through consideration of a Mayoral Minute, and staff reports at various times throughout 2020 and 2021 Council has approved a series of recommendations to assist the community in dealing with the economic impacts of the pandemic.

This report is provided for Council to consider whether it wishes to provide further assistance to the community.

15 This report also puts forward a request for Council determination to reduce or waive Council fees for the Byron Music Festival.

RECOMMENDATION:

20 **That Council:**

1. **Waives the footpath dining and goods display fees from Monday 9 August 2021 until Saturday 11 September inclusive, and a credit applied to the next quarterly invoice; and further:**

25 a) **Endorses the use of the Debt Management and Financial Hardship Assistance Policy 2019 to allow business owners to enter into suitable payment plans where businesses are unable to pay footpath dining/goods display license fees by the due date.**

30 b) **Delegates to the General Manager the Authority to waive footpath dining and goods display fees, should a future lockdown order be imposed under a Public Health Order on the Byron Shire Local Government area, for the period of the lockdown order, with a credit applied to the next quarterly invoice.**

35 2. **Waives Food Administration Fees from Monday 9 August 2021 until Saturday 11 September inclusive, and a credit applied to the next quarterly invoice; and further:**

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- a) **Endorses the use of the Debt Management and Financial Hardship Assistance Policy 2019 to allow business owners to enter into suitable payment plans where businesses are unable to pay Food Administration fees by the due date.**

- 5 3. **Sets the interest rate applicable to outstanding rates and charges arrears for all ratepayers to 0% for the period 1 October 2021 to 28 February 2022**
4. **Determines the request to reduce or waive Council Fees for the Byron Music Festival.**

Attachments:

10

- 1 Confidential - Byron Music Festival 2021 - Final Report, E2021/111398
- 2 Confidential - Byron Music Festival 2021 - Request for reconsideration of BSC fees, E2021/111412
- 3 Schedule of Council COVID-19 related resolutions, E2021/112913 

15

Report

Council and the community have been grappling with the impacts of the COVID-19 Pandemic for over eighteen months now and during that time Council has approved a series of recommendations to assist the community in dealing with the economic impacts of the pandemic.

Background

Council considered the following reports:

- At the 26 March 2020 Ordinary Meeting adopted a Mayoral Minute concerning the COVID-19 Pandemic. The Mayoral Minute covered a range of actions covering public safety and health, the visitor economy and Council operations.
- At the 16 April 2020 Planning Meeting adopted a Mayoral Minute concerning COVID-19 Financial Support which called on the Federal and NSW Governments to deliver comprehensive financial support and stimulus packages to Local Government.
- At the 23 April 2020 Ordinary Meeting adopted a staff report considering COVID-19 financial assistance actions that provided four recommendations to provide financial assistance.
- At the 28 May 2020 Ordinary Meeting adopted a Mayoral Minute regarding footpath dining. The Mayoral Minute requested the current suspension of the use of the footpath for dining purposes be lifted from 1 June 2020 for those premises with a valid footpath dining approval in place.
- At the 28 May 2020 Ordinary Meeting adopted a confidential staff report and again at the 25 June 2020 Ordinary Meeting (public staff report) regarding rent relief for commercial and non-profit tenants of Council during the COVID-19 crisis.
- At the 30 July 2020 Extraordinary Meeting adopted a staff report on busking licences. The report requested the current suspension on the use of public spaces for busking be extended to 31 January 2021.
- At the 17 September 2020 Planning Meeting adopted a staff report on footpath dining and COVID-19 impacts. The report requested a temporary reduction in fees of 50% for licences for business wishing to use the footpath with restrictions on table numbers to comply with COVID-19 requirements for the 2020/2021 financial year.
- At the 24 September 2020 Ordinary Meeting adopted a staff report extending payment arrangements for ratepayers due to COVID-19 and NSW Government decisions until 25 March 2021.
- At the 25 March 2021 Ordinary Meeting adopted a staff report on Expiry of Rates and Charges Financial Assistance due to COVID-19. Council was requested to cease taking new payment arrangements due to COVID-19, ratepayers who had registered for a payment agreement before 25 March 2021 would have interest write-off

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provisions extended to 30 June 2021 and Council continued to suspend debt recovery except for the issuance of a reminder notice until 30 June 2021.

- 5 • At the 26 August 2021 Ordinary Meeting considered a staff report on rent relief to commercial leases and sub-licence holders due to COVID-19. This report requested exhibition of revised Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves and delegates to the General Manager to negotiate with certain commercial lease holders and licence holders to waive/defer rent over various periods between 29 March 2021 and 13 January 2022.

Council's decisions put in place the following actions to assist the community:

- 10 1. Suspended footpath dining and associated fees for the period 1 April 2020 to 1 June 2020. Reduced footpath dining fees by 50% for the 2020-2021 financial year for those with footpath dining approvals.
2. Closed all halls and sporting centres and waived all cancellation fees incurred as a result, for the period 1 April 2020 to 30 June 2020.
- 15 3. Promoted Council's Debt Management and Financial Hardship Assistance Policy and supported people to make payment arrangements.
4. Suspended the merchant services surcharge.
5. Increased flexibility in the Debt Management and Financial Hardship Assistance Policy by relaxing the owner/occupier rule to allow owners with multiple properties to establish payment arrangements.
- 20 6. Deferred the payment of deferred Section 64 Developer Contributions from 1 April 2020 for a further six months with repayments recommenced on 1 October 2020.
7. Established a bank overdraft for Council with a facility limit of \$1,000,000.
8. Suspended all debt recovery action beyond issuance of a reminder notice or statement.
- 25 9. Extended payment arrangement terms to ratepayers following amendments to the Local Government Act 1993 in May 2020 to defer debt recovery for six months, the abolition of overdue interest on rates and charges until 31 December 2020 and the later issue of 2020-2021 rate notices and condensed instalment payment times.
- 30 Further extensions granted to March 2021 and then June 2021.
10. Rent relief/deferments in accord with Government direction for Council properties either owned or controlled subject to a lease. Further relief provided up to 13 January 2022.

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Current circumstances since commencement of the 2021/2022 financial year

The latest lockdowns resulted in more impacts to the local economy and Council has received requests for further financial assistance, including:

- Rent relief on a case by case basis (separately reported from time to time).
- 5 • Reduction in particular fees and charges such as footpath dining and food premises administration fees.
- The possibility of extending payment arrangements to ratepayers and considering the application of interest to arrears for rates and charges.
- 10 • Council has also been requested to consider a request from the Byron Music Festival to waive or reduce event fees.

Each item is outlined below with a specific recommendation for Council's consideration:

Footpath Dining Fees

- 15 Council has received requests for either payment relief or assistance in regard to footpath dining fees. Footpath dining fees became applicable again from 1 July 2021 without any reduction and invoices for the first quarter of the 2021-2022 financial year have been issued. Business have suffered from reduced visitation and the recent lockdown.

Proposed Recommendation 1:

- 20 1. **Footpath dining and goods display fees be waived from Monday 9 August 2021 until Saturday 11 September inclusive, and a credit applied to the next quarterly invoice.**
2. **Endorse the use of the Debt Management and Financial Hardship Assistance Policy 2019 to allow business owners to enter into suitable payment plans where businesses are unable to pay footpath dining/goods display license fees by the due date.**
- 25 3. **That Council delegate to the General Manager the Authority to waive footpath dining and goods display fees, should a future lockdown order be imposed under a Public Health Order on the Byron Shire Local Government area, for the period of the lockdown order, with a credit applied to the next quarterly invoice.**

Annual Food Administration Fees

30 Council issues an annual administration fee to relevant businesses to recover indirect costs for inspections carried out by Council Environmental Health Officers under the Food Act 2003. The activities the Food Administration Fee assists with funding include:

- Periodic newsletters or mail outs providing food safety information to food shops.
- 35 • Advertising, promoting, and implementing various initiatives such as the Food Safety Supervisor.
- Maintaining relevant food premises databases.
- The development and delivery of training and/or educational materials.
- Council involvement in any food recall activity.

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- Negotiating with various stakeholders such as solicitors, builders, shop fitters or contractors on behalf of an existing or new food business operator.
- Providing verbal advice on plans for new food businesses or changes to existing food businesses.
- 5 • The inspection of premises that may have been subject of a complaint which, upon inspection, cannot be substantiated and consequently no inspection fee is charged against the business.
- The service of letters of an advisory or warning nature.
- 10 • In serious situations where the closure of a business or part thereof is required in the interests of food safety, the service of a Prohibition Order and the subsequent Clearance Certificate.

The invoices for 2021/2022 financial year for Food Administration Fees are yet to be issued.

Proposed Recommendation 2:

- 15 1. **Food Administration Fees be waived from Monday 9 August 2021 until Saturday 11 September inclusive, and a credit applied to the next quarterly invoice.**
2. **Endorse the use of the Debt Management and Financial Hardship Assistance Policy 2019 to allow business owners to enter into suitable payment plans**
20 **where businesses are unable to pay Food Administration fees by the due date.**

Outstanding Rates and Charges – Payment Arrangements and Application of Interest.

25 Previous special payment arrangements regarding outstanding rates and charges, and the application of no interest to arrears expired on 30 June 2021. Currently, any ratepayers experiencing payment difficulty make application to Council under the Debt Management and Financial Hardship Policy 2019, with interest on outstanding rates and charges arrears payable from 1 July 2021. This rate is 6.0% per annum as advised by the Office of Local Government as the maximum interest rate allowable for the 2021/2022 financial year.

30 Lessons have been learned from the previous COVID-19 payment arrangements (which created complex management issues) and it is suggested that if Council wishes to offer further assistance, it could re-set the interest rate on outstanding rates and charges for all ratepayers to 0% for a period. This negates the need to establish specific individual payment arrangements.

35 It is suggested that this applies from 1 October 2021 to 28 February 2022. Due to system limitations, it is difficult to unwind interest charged and simpler to stop interest being charged from a future date. A start date of 1 October 2021 provides Council the opportunity to consider this proposal (staff do not have authority to stop interest being charged without a Council decision). The end date of 28 February 2022 coincides with the due date of the third rate instalment and Council may, at that point, be in a better position
40 to reassess COVID-19 impacts. If it is necessary to consider any extension beyond 28 February 2022, a further report can be brought to Council for consideration.

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Offering a blanket interest free period assists all ratepayers with arrears without the need for them to make a formal request and provides the simplest administration process.

Proposed Recommendation 3:

- 5 **That Council sets the interest rate applicable to outstanding rates and charges arrears for all ratepayers to 0% for the period 1 October 2021 to 28 February 2022**

Byron Music Festival

- 10 The Byron Music Festival ran from Friday 18 to Sunday 20 June 2021. The main event was held at Denning Park on Saturday 19 June 2021. As a commercial event, the application was presented to Council for approval. It was considered on 25 February 2021, 13 May 2021, and via a Mayoral Minute on 10 June 2021.

The Licence was granted for Friday 18 June 2021 (set up), Saturday 19 June 2021 (event day), and Sunday 20 June 2021 (pack down).

- 15 Event organisers have written to Council at outlined at Confidential Attachment 2 to request the \$13,020 fees paid be either reduced or completely waived. (Please note that a \$2,000 bond was paid and has been released. It is not included in the above amount). The fees payable are as follows:

Parking Fees – request for use of 6 spaces for the event day:

- 20 \$ 163 Parking Application Fee
\$ 222 Parking Fee (\$37 per space for six spaces in total)

Event Fees

- 25 \$ 244 Event Application Fee (Commercial Rate)
\$10,212 Temporary Licence for Activity on Crown Reserve, Private Rate (three days at \$3,404 per day)
\$ 42 Native Title Search Fee
\$ 1,440 Event Administration Fee (ten hours at \$144 per hour)
\$ 604 Event Inspection Fee (four hours at \$151 per hour)
\$ 93 Filming Application Fee (filming of music festival)

- 30 The Temporary Licence Activity on Crown Reserve Private Rate was charged because event fencing was set up on the Friday and removed on the Sunday, limiting public access to the site.

A Post Festival Report has been supplied to Council by the organisers; please refer to Confidential Attachment 1 for information on event expenditure.

- 35 As this was a new event, there was a significant amount of administrative work in establishing the event parameters, reviewing, and assessing the event scope and related documentation, and several Council reports had to be prepared (resolutions below), in addition to the usual event approval processes.

While the Byron Music Festival team worked constructively with Council to find solutions, changing their event proposal to meet conditions imposed by Council, on event day it was

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noted that there was some variation to the event set up (site plan) as agreed with Council. This included the licenced area being larger than agreed in the site plan resolved below, and while market stalls requiring vehicles were required to be on the south side of the path, several vehicles parked on the dune side of the path for the duration of the event.

5

It has been noted in the attached request from Byron Music Festival (Confidential Attachment 2) that the estimated cumulative financial impact of meeting the conditions imposed by Byron Shire Council on Byron Music Festival is over \$73,000. This additional cost has been borne by the organisers at a time when business is already impacted and under pressure from COVID restrictions and lockdowns. In a time when live events rarely go ahead, and creative industries and businesses are suffering, this event has demonstrated its support for local artists and performers.

10

Should Council wish to provide some form of financial assistance, it has the following options:

15

1. No fee relief

Council may wish to resolve that all adopted fees of \$13,020 as outlined above are deemed to be payable by Byron Music Festival.

20

2. Reduce fees payable

Alternatively, Council may wish to support the event and its contribution to the local arts and business community, by offering a reduction of fees. An option for a reduction of fees is to include the private rate for the event day only, and standard rate for the set up and pack down event days, when tickets were not required to enter the location. The Temporary Licence for Activity on Crown Reserve fees would then reduce from \$10,212 to \$4,086 (a reduction of \$6,126). This reduced fee combined with the other fees would equate to a total fee payable to Council of \$6,894.

25

3. Waive all fees

Finally, Council has the option to fully waive all fees.

30

The consequences of subsidising adopted fees payable for the commercial use of community land include setting a precedent for future commercial events to have fees waived, and loss of income to Council, impacting on the delivery of other programs and projects.

35

If Council was to offer financial assistance in respect of the fees payable by the Byron Music Festival, the Crown Reserve which receives the revenue cannot be disadvantaged so any subsidy granted by Council would have to be taken from the General Fund as taking the subsidy from the Events Fund would limit the ability of Council to support other events in the future.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.5: Manage Council's finances sustainably	5.5.1: Enhance the financial capability and acumen of Council	5.5.1.1	Financial reporting as required provided to Council and Management

Recent Resolutions

- 5 Council has passed a series of resolutions regarding addressing the impacts of COVID-19 on Council and the community. Attachment 3 details the following Council resolutions applicable since the Pandemic commenced and up to the 26 August 2021 Council Meeting:
- **20-124**
 - **20-160**
 - 10 • **20-171**
 - **20-262**
 - **20-257**
 - **20-330**
 - **20-360**
 - 15 • **20-478**
 - **20-512**
 - **21-077**
 - **21-336**

Council passed the following resolutions relating to the Byron Music Festival:

- 20 **21-040 Resolved:**
1. That Council grants a temporary licence in accordance with section 2.20 of the Crown Land Management Act for the purpose of Entertainment, Exhibition and Markets to the Byron Music Festival between Friday 18 June 2021 and Monday 21 June 2021 for occupation of Denning Park.
 - 25 2. That the granting of the temporary licence be subject to receipt and favourable assessment of a full Event Application including:
 - a) management of environmental risks on the site with consideration to the dune areas
 - b) financial structure and management of the event.

13.6

1. That any restrictions affecting the sale and consumption of alcohol in that part of Denning Park Byron Bay highlighted in red in the following aerial be suspended for the duration of the Byron Music Festival on 19 June 2021.



- 21-198 Resolved** that Council grants a temporary licence in accordance with section 2.20 of the Crown Land Management Act for the purpose Entertainment, Exhibition and Markets to the Byron Music Festival for Saturday 19 June 2021 for occupation of Denning Park, subject to:

- 20

Legal/Statutory/Policy Considerations

Relevant Council policy or legislation has been referenced in the report above.

Specifically for the Byron Music Festival request, Council needs to consider the following in respect of Legal/Statutory/Policy Considerations:

- 5 The *Crown Land Management Act 2016 (NSW)* and *Crown Land Management Regulation 2018 (NSW)* inform the following Council policy which governs the use of the location where the Byron Music Festival took place.

- 10 The foreshore area known as Denning Park is subject to Council's *Commercial Activities on Coastal and Riparian Crown Reserves Policy*. Objectives of the policy includes 'To regulate the level of temporary business or commercial activity on coastal Crown reserves under the care, control and management of Council'. It notes (Clause 13.1) that Council must determine the fees and charges in accordance with this Policy as part of Council's Integrated Planning and Reporting Framework. Clause 13.5. states that 'Fees will be determined taking into account, and not limited to, the following: (a) nature of the activity;
- 15 (b) scale of its operation; (c) use and impact on the coastal Crown reserve; and (d) impact on the community both beneficial and detrimental' and Clause 13.7 states that 'All fees are payable unless subsidised by Council or its delegated officer, in accordance with Council policy and approved delegations.'

Financial Considerations

- 20 Should Council adopt the recommendations outlined in this report, there will be a financial impact from the revenue losses. It is difficult to identify the exact amount as this will depend upon the following variable factors:
- The extent of arrears of rates and charges as the basis of interest calculation and interest forgone.
- 25 • The extent of financial assistance Council may provide to the Byron Music Festival and whether any funding comes from the Events Fund.
- Any subsequent reports to Council requesting rent relief.

- 30 There will be further impacts from lost revenue due to restrictions/ lockdowns in areas such as pay parking, childcare, holiday parks, and the Cavanbah Centre. The duration of Queensland border restrictions is also a factor.

As the 2021/2022 financial year progresses, Council will assess potential revenue losses through the Quarterly Budget Review process, and report any impacts to the General Fund through the Finance Advisory Committee and to Council.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.7 Section 138 Approval 51.2019.616.2 -
request for relief from fees for use of
Council road reserve**

Directorate: Sustainable Environment and Economy

Report Author: Kylie Grainey, Business Improvement Officer
Chris Larkin, Manager Sustainable Development

File No: I2021/1421

Summary:

DA 10.2019.616.1 for demolition of existing buildings and construction of mixed-use development on the corner of Jonson and Browning Street, Byron Bay, comprising three stories of development plus roof top facilities (pool) and two levels of basement car park was approved on 21 May 2020.

A subsequent Roads Act Approval under Section 138 has been issued for the use of Council land for loading and unloading of vehicles for the period of construction under approval 51.2019.616.2.

Payment of fees for private use of the road reserve have been levied in accordance with Council's Fees & Charges. The fees have been paid in full.

The applicant has asked for a reduction, or a refund of fees paid. As staff do not have the delegation to reduce or refund fees of this amount, this request is reported to Council.

It is recommended that the fees not be reduced or refunded as requested for a number of reasons: the development is utilising a large proportion of the frontage to Jonson and Browning Street for private purposes; the general disruption and inconvenience to the public and the amenity of the neighbourhood the result, and the precedent this may set for other developers to seek a refund or reduction in their fees and charges.

RECOMMENDATION:

That Council not support the request for a reduction or refund of fees for the use of Council's Road reserve.

Attachments:

- 1 Confidential - Email J Dunn 10.2019.616.1 requesting relief from fees and charges on public land, E2021/113566

Report

DA 10.2019.616.1 for demolition of existing buildings and construction of mixed-use development was approved 21 May 2020. The development entails two levels of basement car park, a ground floor commercial retail area and two levels of residential development above plus a roof top swimming pool area for residents.

Subsequent Roads Act approvals under Section 138 have been issued:

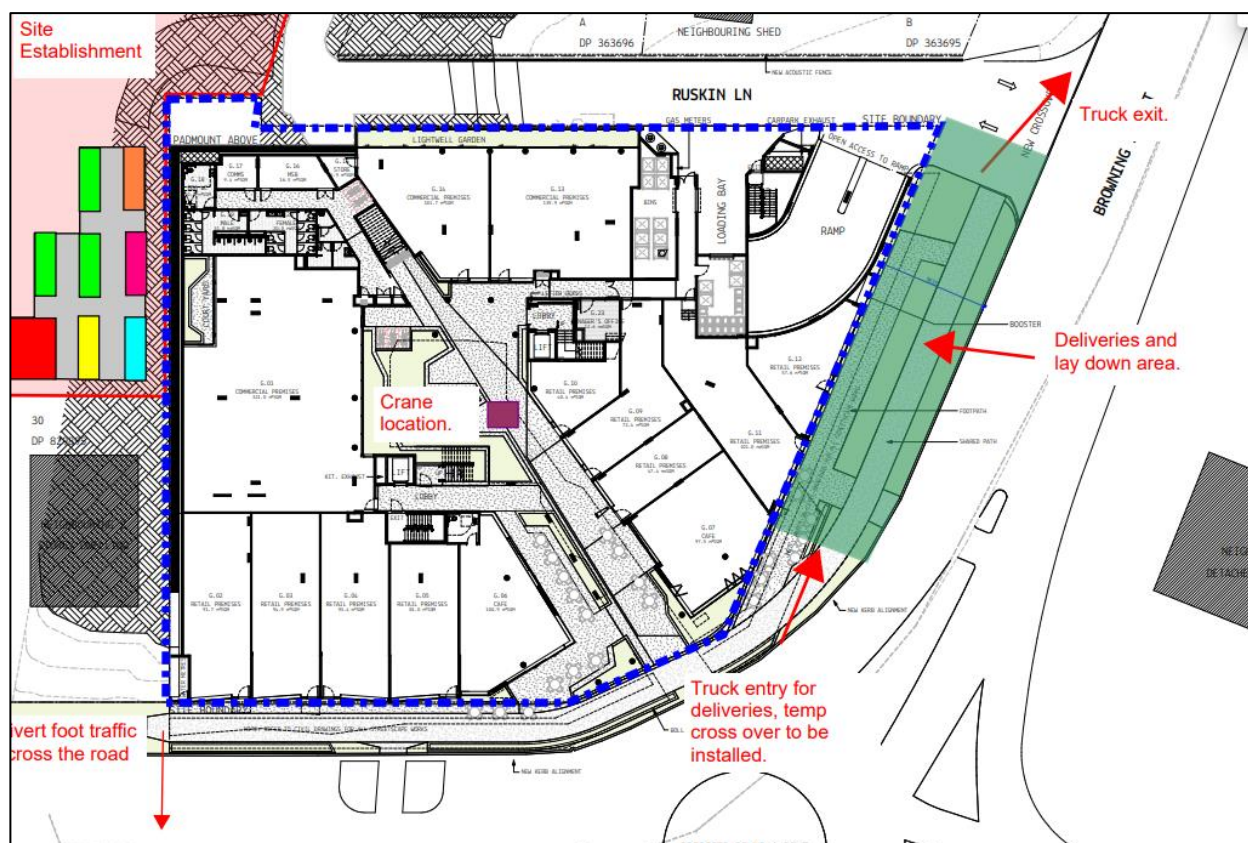
- 51.2020.1053.1 - Construction Traffic Management Plan & Public Safety Plan for Mixed Use Development issued 03/12/2020.
- 51.2019.616.1 - Browning Street Central Median and Regulatory Signage – issued 21/5/2020
- 51.2019.616.2 – Civil Works for Ruskin Lane Upgrade and 2.5m Wide Shared Footpath – issued 04/03/2021
- 51.2019.616.3 - Amended TGS for Concrete Pours – issued 09/07/2021

The conditions of Approval 51.2019.616.1, 51.2019.616.2 and 51.2020.1053.1 require the payment of fees associated with the private use of the road reserve for construction activities associated with the development. The fees for the private use of Council land or road reserves as such are set within the adopted Fees and Charges. (Extract below)

Name	Fee (excl. GST)	GST	Fee (incl. GST)
Application fee	\$180.00	\$0.00	\$180.00
<i>(Eg. Hoarding, temporary fencing for construction works, events, or temporary use of Council land or road reserve)</i>			
Urgency fee	\$185.00	\$0.00	\$185.00
<i>Where use is required within 10 working days of the application being lodged</i>			
Byron Bay – Precinct 1 (Use fee)			\$13.00 per m ² per day
<i>Jonson Street from Lawson Street to Bay Street, Bay Street from Jonson Street to Middleton Street, Fletcher Street from Bay Lane to Bay Street, Bay Lane from Jonson Street to Fletcher Street</i>			
Byron Bay – Precinct 2 (Use fee)			\$10.00 per m ² per day
<i>Lawson Street from railway line to Middleton Street, Byron Street from Jonson Street to Fletcher Street, Jonson Street from Marvell Street to Lawson Street, Fletcher Street from Byron Street to Bay Lane, Middleton Street from Lawson Street to Bay Street, Bay Lane from Fletcher Street to Middleton Street, Lawson Street from Jonson Street to Fletcher Street</i>			
Byron Bay – Remaining properties (Use fee)			\$9.00 per m ² per day
Remainder of Shire (Use fee)			\$6 per m ² per day
Use of car spaces in Byron Bay – Precincts 1 and 2			\$200.00 per parking space per day
<i>Jonson Street from Lawson Street to Bay Street, Bay Street from Jonson Street to Middleton Street, Fletcher Street from Bay Lane to Bay Street</i>			
Use of car spaces shirewide			\$65.00 per parking space per day
<i>Other than Byron Bay Precincts 1 and 2</i>			

13.7

5



The fees that have been levied and paid for to date are as follows:

Period use	Days	Area m ²	\$9/m ² /day	Total	Date paid
22/04/2021 to 12/08/2021 (dewatering plant)	112	59	\$531/day (\$3177/week)	\$59,472	6/5/2021
22/4/2021 to 21/7/2021 (Loading/ unloading Area)	90	82	\$738/day (\$5166/week)	\$66,420	6/9/2021
Period of 22/7/2021 to 21/10/2021 (Loading Unloading Area)	91	82	\$738/day (\$5166/week)	\$67,158	6/9/2021
Total				\$193,050	

20

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13.7

The current fee structure does not contain allowances or reductions for works over longer periods of time or provide mechanisms for staff to waive or refund fees as requested.

The applicant has requested that the fees be reviewed and refunded (Attachment 1).

5 It is noted that the development is utilising a large proportion of the frontage to Jonson and Browning Street. This creates a general disruption to the public and the amenity of the neighbourhood.

10 When a development seeks to utilise the entire site like this one, boundary to boundary with basement carparks, this is one of the challenges that result, and need to be managed in the construction of such a building. Alternatives exist. A smaller development footprint with consideration for a loading and unloading area, and a platform to work from onsite is one way of limiting the need to rely upon neighbouring landowners and or Council land.

15 Further, setting a fee in Council's Fees and Charges is one way to send a price signal to ensure developers minimise the use of public land both time and spatial to the least amount of time as possible. A refund and or reduction in adopted fees as requested at this time otherwise will send mixed messages.

It is also considered should the fees be reduced or refunded; this may create a precedent for other developers in Byron Bay with similar proposals to seek a refund or reduction in their fees and charges.

20 Council has reviewed the fees structures from other Council's and as an example Tweed Shire and the Hills Shire in Sydney use a linear rate for such charges. Tweed Shire fees would come to \$2142 per week and the Hills Shire \$2030 per week for the area on Browning Street which is being used by the developer.

25 Should Council be of a mind to want to change the current adopted fees, it could do so as part of the FY2022/23 Fees and Charges review. This would ensure that any amended fees are formally exhibited and adopted by Council under the Local Government Act 1993. These fees would then be charged for new development post adoption as opposed to ad-hoc requests from developers as currently is this request/case.

30 Such a review could look at linear rates like the Tweed and Hills Shire. They could also include sliding scales that increase the longer a developer remains on Council's land whilst constructing the building, and other mechanisms to lessen impacts and inconvenience to pedestrians and the general amenity of the public domain.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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

- 5 The works are pursuant to a s138 approval. As such, Council may charge a fee for the granting of approval under s223(2)(e) of the Act (set out below).

223 Roads authorities may charge fees for services

(1) A roads authority may charge and recover fees for any service it provides.

(2) The services for which a fee may be charged include the following provided under this Act or the regulations—

- 10 (a) supplying a service, product or commodity,
- (b) giving information,
- (c) considering an application for an approval, permit or consent,
- (d) carrying out an inspection in connection with an application for an approval, permit or consent,
- 15 (e) granting an approval, permit or consent,
- (f) issuing a certificate.

(2A) Without limiting subsections (1) and (2), a roads authority may charge and recover a fee for a route assessment (within the meaning of Part 4.7 of the Heavy Vehicle National Law (NSW)) that it carries out.

- 20 (3) The amount of a fee must not exceed the maximum fee (if any) prescribed by or calculated in accordance with the regulations for the kind of service concerned.

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The Road Act does not contain appeal provisions from the imposition of a fee, and there is no maximum fee specified under the Roads Regulations 2018.

5 The only action which may be taken is to assert an error in the way that Council adopted its fees and charges in relation to an administrative oversight, not on the amount of the fee. Council has not been presented with any evidence to demonstrate such an oversight has occurred.

Conclusion

10 The fees for use of Council's Road reserve have been levied as per the adopted fees and charges. It is recommended Council does not reduce or refund the fees levied as requested in this instance for the reasons provided in the report.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.8 Streetlight Glare Shields Policy 2021

Directorate: Infrastructure Services

5 **Report Author:** Joshua Provis, Road and Bridge Engineer

File No: I2021/1178

Summary:

At the Ordinary meeting held on 22 April 2021, Council resolved to place the Draft Streetlight Glare Shields Policy 2021 on public exhibition.

10 During the exhibition period, there were five submissions received. This report provides those submissions and advises whether changes need to be made to the Policy as a result of the feedback received from the public.

15

RECOMMENDATION:

1. That the draft **Streetlight Glare Shields Policy 2021** be adopted and incorporated into Council's policy register; and
2. That the proposed fees and charges be adopted within Council's **2021/22 Fees and Charges Schedule**.

20

Attachments:

- 1 Confidential - Draft Glare Shield Policy Submissions, E2021/108737
- 2 Draft Policy Streetlight Glare Shields 2021, E2021/47567 

25

Report

Council resolved the following at the 22 April 2021 Ordinary Council meeting:

Resolution **21-171**:

- 5 *That the draft Streetlight Glare Shields Policy 2021 be placed on public exhibition for a minimum period of 28 days, and*
- a) *That in the event that any submissions are received on the draft policy, it be reported back to Council prior to adoption; or.*
- b) *That in the event that no submissions are received on the Streetlight Glare Shields Policy 2021 that:-*
- 10 i) *It be adopted and incorporated in Council's Policy Register; and*
- ii) *The proposed fees and charges be adopted within Council's 2021/22 Fees and Charges schedule.*

15 The public exhibition period was initially from 6 May 2021 to 3 June 2021, however it was extended to 10 June 2021, due to a request from a member of the public to allow more time for their submission.

During the exhibition period, there were five (5) submissions received, and have been summarised in the table below:

Submission	Action taken
<p><u>Submission 1</u></p> <p>I live in a 2 story residence with a very bright sodium light directly outside.</p> <p>This particular light shines into 2 bedrooms and 2 living areas on the top floor, and 1 bedroom and 1 living area on the ground floor.</p> <p>Any Glare Shield positioned behind the light to stop the light shining onto the wall of the residence would have absolutely no impact on the amount of light presently shining on the road, nor have any impact on any light shining on the footpath.</p> <p>The light is extremely bright and intrusive. It is impossible to shield either the bedrooms</p>	<p>The customers comments have been noted and staff met the customer at their residence to inspect and discuss the glare issue.</p> <p>It is noted that the street light causing the issue is lighting the intersection of a Main Road (also a Regional Road) which also has a footpath which is behind the streetlight. While a glare shield could be fitted to this light to reduce the throw of light onto the residence, Council also needs to consider that it will reduce the throw of light onto the footpath and the level of lighting on the footpath would no longer meet Australian Standards.</p>

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Submission	Action taken
<p>or the living areas from the impact of the light. I have installed blinds on all the windows but it's impossible to keep the light from coming around each side of the blinds. And the glare is still sufficiently bright to create sleeping problems.</p> <p>I would, at the very least, like someone from the Council to take the time to come and inspect my situation, and explain how a shield would prevent the illumination of the footpath or the road.</p> <p>Sincerely,</p>	<p>No proposed change to the Policy has been made in response to this submission as Staff do not recommend glare shields are installed where there will be a departure from Australian Standards which may cause safety issues – in this case for pedestrians using the footpath.</p>
<p><u>Submission 2</u></p> <p>Yes please put a Shield on light positioned outside <address removed>, as it shines into my house at <address removed>.</p>	<p>The Policy has not been amended to reflect this feedback since the streetlight causing the issue is across the road from the residence and glare shields are only available to reduce throw of light behind the streetlight, not in front of the streetlight.</p> <p>However, the streetlight has been referred to Essential Energy for inspection to ensure the light is installed correctly and is of the correct brightness.</p>
<p><u>Submission 3</u></p> <p>Across the road is not applicable?</p> <p>This is ridiculous. We have a street light across our very quiet cul-de-sac, which shines directly into our master bedroom, causing so much lost sleep that we currently do not use that room. We have requested a glare shield before, so are thrilled that this is finally being addressed, but come on, lights shine across roads you know!</p> <p>Please make way for flexibility in the application of this new policy. We need a glare shield please, so that we can use our</p>	<p>The Policy has not been amended to reflect this feedback since the streetlight causing the issue is across the road from the residence and glare shields are only available to reduce throw of light behind the streetlight, not in front of the streetlight.</p> <p>However, the streetlight has been referred to Essential Energy for inspection to ensure the light is installed correctly and is of the correct brightness.</p>

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Submission	Action taken
<p>whole house, not just part of it.</p> <p>Thank you,</p>	
<p><u>Submission 4</u></p> <p>I would appreciate a glare shield on the streetlight that is across the road from <Address removed>. At present the light floods into my bedroom at night and I have to keep the shutters closed to try to block the light. Thanks</p>	<p>The Policy has not been amended to reflect this feedback since the streetlight causing the issue is across the road from the residence and glare shields are only available to reduce throw of light behind the streetlight, not in front of the streetlight.</p> <p>However, the streetlight has been referred to Essential Energy for inspection to ensure the light is installed correctly and is of the correct brightness.</p>
<p><u>Submission 5</u></p> <p>Extract of submission:</p> <ul style="list-style-type: none"> • Prioritise glare shields for existing lights especially those that are creating light trespass and sky glow • Review where and how lighting is placed ie in small neighbourhood areas there is inconsistency how lighting is placed. <ul style="list-style-type: none"> ○ In many cases small local intersections are excessively over lighted with 2 lights on one small corner (eg corner Helen St and Kolara Way SGB). ○ Similar intersections have no lights (eg cnr Shara Bvde and Kallaroo Cct SGB). ○ Larger intersections only have 1 light eg cnr Shara Bvde and 	<p>This submission discussed a range of issues not related to the Glare Shield policy and as such this response and any action taken has only targeted the sections of the submission that are relevant to the proposed policy:</p> <p>Glare shields are only available to reduce throw of light to the rear of the streetlight. Where light is causing nuisance to resident from the throw on light in front of the light, Council will refer the streetlight to Essential Energy for inspection to ensure it is installed correctly and the level of brightness is correct.</p> <p>Staff are not aware of any issues of sky glow in Byron Shire, but note that as part of the Bulk LED rollout proposed in FY 23, where every luminaire will be switched to the new energy efficient LED standard, any instances of sky glow due to faulty or incorrectly installed lights will be corrected.</p> <p>As part of the Bulk LED rollout all existing</p>

Submission	Action taken
<p align="center">Kolora Way SGB</p> <ul style="list-style-type: none"> • Whilst the draft policy states that no discussion will be entered into under the following situations this leaves very little scope for the installation of glare shields. It is strongly recommended that these limitations be reviewed <ul style="list-style-type: none"> ○ at pedestrian crossing ○ at intersections ○ across the road or along the road from your residence ○ at roundabouts ○ at road bends ○ adjacent to local area traffic management devices (i.e. traffic island). 	<p>lighting of intersections and streets will be audited to ensure the correct level of lighting is in place, and corrective action taken if required.</p> <p>Council has no other plans to audit existing scenarios where there is no street lighting to determine what level of lighting should be in place as per the Australian Standards. Such an audit could find that significant amount of the shire is not lit to the required standard and would be of significant expense to bring up to the current standard. However, any new works or developments are required to design and construct lighting to the relevant standards.</p> <p>Specific instances of glare issues raised in the submission have been referred to Essential Energy for inspection to ensure lighting has been installed correctly and is of the correct brightness.</p> <p>Staff do not recommend modifying the list of situations where glare shields should not be approved for reasons stated in the previous Council report, draft policy and Next Steps section of this report.</p>

Key issues

The key issues raised in the submissions are nuisance caused by streetlight glare by one of the two following scenarios:

- 5 1. A Streetlight across the road from their residence, causing nuisance from the throw of light in front of the light
2. A streetlight in front of their residence, causing nuisance from the throw of light behind the light

Options

There are a range of glare shield options which are designed to reduce the throw of light behind the light.

- 5 There are no real glare shield options available to address forward throw other than undertaking an audit of the streetlight to confirm that it has been installed correctly and that the level of lighting is correct for the area. Staff have therefore followed these issues up with Essential Energy and will continue to do so for any future requests.

Next steps

- 10 Council may engage Essential Energy to install a glare shield on any light but must enter into a Glare Shield Agreement with Essential Energy, which places responsibility on Council for any departure from the Australian Standard AS/NZS 1158.

Staff therefore recommend that Draft Glare Shield Policy be adopted in its current form summarised as follows:

- 15 Council undertake its own assessment on a case by case basis, and that glare shields are only approved where there will be no departure from the Australian Standard for the level of lighting required for the particular scenario.

Staff also recommend that Council do not allow glare shields to be installed at the following locations under any circumstances:

- 20
- at pedestrian crossings
 - at intersections
 - across the road or along the road from the resident making the request
 - at roundabouts
 - at road bends where the light is required for safety
 - adjacent to local area traffic management devices (i.e. traffic island or pedestrian refuge).
- 25

If after making its assessment, Council staff and the Director Infrastructure Services deem it is safe and the light can still comply with the provisions of the Australian Standard with a glare shield fitted, the Essential Energy waiver can be signed and the installation of the glare shield approved.

- 30 The cost to supply and install a Glare Shield is to be charged to the resident and is included in the draft Council's Fees and Charges Schedule for 2021/22, which is currently proposed at \$800.

Strategic Considerations

Community Strategic Plan and Operational Plan

The Streetlight Glare Shield Policy relates to Australian Standard AS/NZS 1158 Lighting for roads and public spaces.

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
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	2.4.2: Support community driven safety initiatives	2.4.2.1	Support and deliver programs that improve community safety

5 Recent Resolutions

- 21-171 – 22 April 2021

Legal/Statutory/Policy Considerations

The draft Streetlight Glare Shield Policy relates to Australian Standard AS/NZS 1158 Lighting for roads and public spaces.

10 Consultation and Engagement

The report and proposed policy has been developed in response to customer requests on the issue of bright street lights.

Report No. 13.9 **The Buttery - connection to sewerage system**

Directorate: Infrastructure Services

Report Author: Dean Baulch, Principal Engineer, Systems Planning

5 **File No:** I2021/1216

Summary:

The Buttery is a not-for-profit, charitable mental health organisation supporting drug and alcohol rehabilitation with its headquarters near Bangalow in Northern NSW.

10 Several Councillors recently received correspondence from 'The Buttery' requesting in-principal support to allow a connection to Council sewerage system because of ongoing issues related to their Onsite Sewage Management System.



15 'The Buttery' is located on a rural property at 346 Lismore Road, Binna Burra (Lot 1 DP124647), approximately 1.5km southwest of the Bangalow STP and industrial estate and, as it is rural, it is not in a sewerage service area.

RECOMMENDATION:

That in relation to the connection of 346 Lismore Road, Binna Burra (*The Buttery*) to the Bangalow Sewerage System, Council:

- 20 1. **Supports the connection on the basis that *The Buttery* is a registered charitable organisation, the community benefit it provides and its ongoing provision of community services.**
2. **Supports the deferral of s64 Contributions on the basis the conditions detailed in the Report.**
- 25 3. **Requires a special agreement for connection to sewerage system to be prepared by the relevant staff and executed by the General Manager; and**
4. **Determines that all costs relating to installation, required approvals, ongoing operation, maintenance, repair and replacement are borne by *The Buttery*.**

Attachments:

- 30 1 Buttery - Request for Connection to Mains Sewer, E2021/90302 
- 2 The Buttery - OSMS - Alderson's Report 26 Feb2021, E2021/110207 

Report**Information/Background:**

The Buttery is a not-for-profit, charitable mental health organisation supporting drug and alcohol rehabilitation with its headquarters near Bangalow in Northern NSW.

- 5 Through residential and community-based programs, The Buttery specialises in the treatment of alcohol and other drug misuse and mental health issues.

As well as residential programs, it also operates community outreach programs throughout the NSW Mid-North Coast and NSW Northern Rivers Regions.

- 10 The Buttery now employs over 100 people and assists more than 2,400 people each year to overcome substance use disorders, supports people with mental health conditions and is active in the Byron Shire on addressing homelessness

'The Buttery' is located on a rural property at 346 Lismore Road, Binna Burra (Lot 1 DP124647), approximately 1.5km southwest of the Bangalow STP and industrial estate and, as it is rural, it is not in a sewerage service area.

- 15 Several Councillors recently received correspondence from 'The Buttery' requesting in-principal support to allow connection to Council sewerage system because of ongoing issues related to their Onsite Sewage Management System.

Key issues

- 20 A number of principles and Council Plans do not generally support the connection of rural properties to the water supply and sewerage systems operated and maintained by Council.

- 25 1. Rural properties have enough land area to dispose effluent with the use of an Onsite Sewerage Management System (OSMS). Permissible development on these properties needs to be proportional with the capacity of the land to dispose of the effluent via an OSMS.

- 30 2. The adopted Development Servicing Plan for Water Supply and Sewerage defines the boundaries for all land in the Byron Local Government Area (LGA) that is within the water supply and/or sewerage service areas and are to be connected to the Council water supply system and/or sewerage service as a result of development.

- 35 The basis for defining the DSP area boundaries is the existing and future development serviced by the Council water supply systems and sewerage systems. Documents that define where development can happen include the Development Servicing Plan for Water Supply and Sewerage; Development Contributions Plan 2012 and Amendments; Section 94 Contributions Plan 2005; Business and Industrial Lands Strategy October 2020; Residential Strategy December 2020.

3. Any development outside the water supply and sewerage service areas requires a special agreement with Council.

An assessment relating to the OSMS of The Buttery by Greg Alderson & Associates [Attachment 2] suggests that the site is very constrained (does not have adequate area) and will not accommodate an upgraded system to operate and adequately perform based on the loading and relevant guidelines. This suggests that the scale of the development is well above the capacity of the land, refer to Key Point 1 above. The Alderson report suggests connection to Council's sewerage system as an option or the purchase of additional land to suit the loading on the OSMS.

If Council were to support this connection, The Buttery would be required to build, operate, maintain its own pump station and sewer rising main. This would also require obtaining approvals and licences to locate private services in road reserve or railway reserve. It may also be required to comply with Liquid Trade Waste regulations.

A connection to the sewerage system will also mean 'The Buttery' will be required to pay s64 contributions, however, these could be deferred on the basis that it [The Buttery] is a non-profit and charitable organisation, which by virtue of carrying out such development, is considered to be making a significant and positive contribution to the community and is unable to recover the charge from the end user [Clause 2.7 of the Development Servicing Plan for Water Supply and Sewerage]. The magnitude of the s64 contributions is calculated as \$166,259.79 at today's rates.

Discussion

In the scenario that The Buttery connects to sewer as a registered charity providing community service as detailed above, what happens if the non-profit charitable status changes or The Buttery decides to sell the rural zoned property? How would that affect the connection to sewerage?

It is the staff view that if The Buttery became a profit-making business but providing similar services that it would call on the s64 Contributions to be paid immediately.

If the property owned by The Buttery were to be sold, then it is expected that the property would be disconnected from the sewerage system as no rural connections are currently permitted. Allowing a rural connection without a special circumstance would be creating a precedent for other rural properties to connect.

As 'The Buttery' is rural and sits outside a development area, it requires a special agreement for connection as per Clause 2.2 of the Development Servicing Plan for Water Supply and Sewerage, refer to Key Point 3 above. The terms and conditions for the Buttery to connect or disconnect given certain circumstances will need to be included in a special agreement.

Strategic Considerations

Legal/Statutory/Policy Considerations

- 5 The adopted Development Servicing Plan for Water Supply and Sewerage defines the boundaries for all land in the Byron Local Government Area (LGA) that is within the water supply and/or sewerage service areas and are to be connected to the Council water supply system and/or sewerage service as a result of development.

Any development outside the water supply and sewerage service areas requires a special agreement with Council

Financial Considerations

- 10 All costs for connection are borne by The Buttery.

The s64 Contributions required to be paid by The Buttery of \$166,259.79 are subject to the determination of this Report by Council, and are recommended to be deferred by Council.

This exemption is outlined in Council's Development Servicing Plan for Water Supply and Sewerage.

15

Report No. 13.10 Request for Council consent: Addition of unformed council road to Mount Jerusalem National Park

Directorate: Infrastructure Services

5 **Report Author:** Deanna Savage, Roads and Property Officer

File No: I2021/1190

Summary:

10 The purpose of this report is to seek direction on whether Council gives consent to move forward with the transfer of a Council Road Reserve to National Parks and Wildlife Service within the Mount Jerusalem National Park.

In preliminary discussions staff have had with National Parks, the request for the transfer will facilitate the possibility for a Telco tower to be erected on the current road reserve.

15

RECOMMENDATION:

20 That Council endorse the transfer of Council Road Reserve to incorporate it into Mount Jerusalem National Park and give consent to National Parks and Wildlife Service to publish a gazette notice to reserve the road as per the *National Parks and Wildlife Act 1974*.

Attachments:







- 1 Letter to Byron Shire Council - Requesting concurrence to add council road to Mount Jerusalem National Park, E2021/99158 
- 25 2 Email Request for Council consent_ Addition of unformed council road to Mount Jerusalem National Park PDF version no attachments, E2021/99657 
- 3 Information Sheet - Reservation of council roads under the National Parks and Wildlife Act 1974, E2021/99160 
- 30 4 Eletter to residents of Koonyum Range Mount Jerusalem National Park re: request for Council consent addition of unformed council road to Mount Jerusalem National Park, E2021/106759 
- 5 Compiled instruments giving access to private properties along - Koonyum Range Road - Mount Jerusalem National Park, E2021/108861 
- 35 6 Supporting diagrams - Access roads through Mount Jerusalem National Park, E2021/108862 



Image 2

Image marks the proposed location for the Telco tower, on the map of Mount Jerusalem National Park

- 5 Telco has been in contact with National Parks for the proposed tower to be erected in this position. Once the transfer of the road reserve is complete, negotiations for the tower will not involve Council and will be between Telco and National Parks and Wildlife Service.

Several residents access their property via the Koonyum Range Road Reserve and various access tracks in the National Park. They have been informed of the possible
10 closure of Council's road reserve and that this report is being presented at the September 2021 Council meeting. At the time of writing this report, no feedback has been received from the landowners. (*Attachment 4 E2021/106759*)

National Parks and Wildlife have assured Council that these private residences will have ongoing access to their properties. There are current legislated instruments which
15 address ongoing access to the private properties that use Koonyum Range Road for access, through Mount Jerusalem National Park. There are two instruments that combined establish the National Parks and Wildlife Service commitment to retaining access to the private properties to the north.

1. *National Park Estate (Land Transfers) Act 1998* – this legislation is the first step in
20 formalising continued access to properties which accessed by existing access roads at commencement of the Act. The Act gives the continued right for any access road that are excluded from the reservation of the national park to be used for the purpose of access to private properties, if it was being used for that purpose immediately before the Act commenced (clause 6, Schedule 7). This right continues while the
25 properties are in private ownership (clause 8, Schedule 7). This provision applies to any access roads that are gazetted by the NPWS Minister as excluded from the national park and vested in the Minister under Part 11 of the National Parks and Wildlife Act (clause 5, Schedule 7).

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2. NSW Government Gazette (special supplement) – gazette notice published by NPWS Minister specifying what access roads are vested in the Minister and excluded from the national park under the Forestry and National Park Estate Act*. The excluded access roads were defined by Diagram 7 of the notice, showing Koonyum Range Road, Boogarem Road and part Loop Trail as excluded from Mount Jerusalem National Park.

Please review Attachment 5 E2021/108861.

- 10 * Forestry and National Park Estate Act 1998 was repealed by National Park Estate (Land Transfers) Act 1998 which is in currently in force.

Where the access roads Koonyum Range Road, Boogarem Road and Loop Trail are located within Mount Jerusalem National Park they have been maintained by the National Parks and Wildlife Service since the reserve was established on 1 January 1999.

- 15 Although contingent on funding allocation which is directed by the Government of the day, it is the intention of National Parks and Wildlife Service to continue maintaining these roads to the current level of service where they are located within the national park.

- 20 The attached supporting maps show the detail of what access roads were excluded from reservation for continued purpose of access (Attachment 6 E2021/108862). The Council road does not provide full or practical access to the properties to the north as it expires within the national park. The practical alignment of the access roads is within the Part 11 vested corridor. These factors had initially been why the option to add the road as part Mount Jerusalem National Park has been considered a viable option by National Parks and Wildlife Service.

25 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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)	1.2.6.2	Ongoing detailed road assessment and valuation for the purposes of closure and potential land sale as required.

Legal/Statutory/Policy Considerations

National Parks and Wildlife Act 1974

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1974-080#>

Attachment 3 E2021/99160

- 5 Under the *National Parks and Wildlife Act 1974* (NPW Act), publishing a gazette to reserve a council public road as an addition to a national park, nature reserve, state conservation area, regional park or historic site, has the effect of extinguishing the road without needing to complete a formal road closure under the *Roads Act 1993* (Roads Act).
- 10 This means that publishing a gazette notice for the reservation of a council road under the NPW Act, has the dual function of both transferring ownership of the land to NPWS and closing the road.

Financial Considerations

No financial considerations for Council. All the work and costs, if any, for the transfer will be incurred by National Parks.

15 Consultation and Engagement

Discussions have been had internally within Infrastructure Services and through email correspondence with National Parks.

Report No. 13.11 Part road reserve closure adjoining Lot 1 DP 557721 874 Coolamon Scenic Drive Coorabell

Directorate: Infrastructure Services

5 **Report Author:** Deanna Savage, Roads and Property Officer

File No: I2021/1295

Summary:

This report is being presented to Council to endorse the closure of part Council road reserve adjoining Lot 1 DP 557721.

10 As per Crown Land determination the road/land will vest in Council upon closure, and it is proposed to sell the land to the adjoining landowner of Lot 1 DP 557721.

Land size is approximately 43m².

RECOMMENDATION:




- 15 1. That Council endorses the closure of part road reserve adjoining Lot 1 DP 557721, as highlighted in the report.
- 20 2. That Council ascertains market value by retaining a suitably qualified Valuer and delegate to the General Manager the authority to enter a contract for sale of the closed part of the road with the owner of Lot 1 DP 557721 at a value no less than the value placed on the part closed road by the independent Valuer.
- 25 3. That the applicant pays all costs associated with the part road closure, including but not limited to:
a) Council application fees
b) Council's surveyor's fees and survey, valuation, and legal costs
c) All registration fees
d) Legal costs
- 30 4. The allotment created by the part road closure to be consolidated into the existing Parcel No 113060 Lot 1 DP 557721.
5. That Council authorises the execution of all documents necessary to affect the road closure, sale, transfer, and consolidation of the part closed road.

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Attachments:

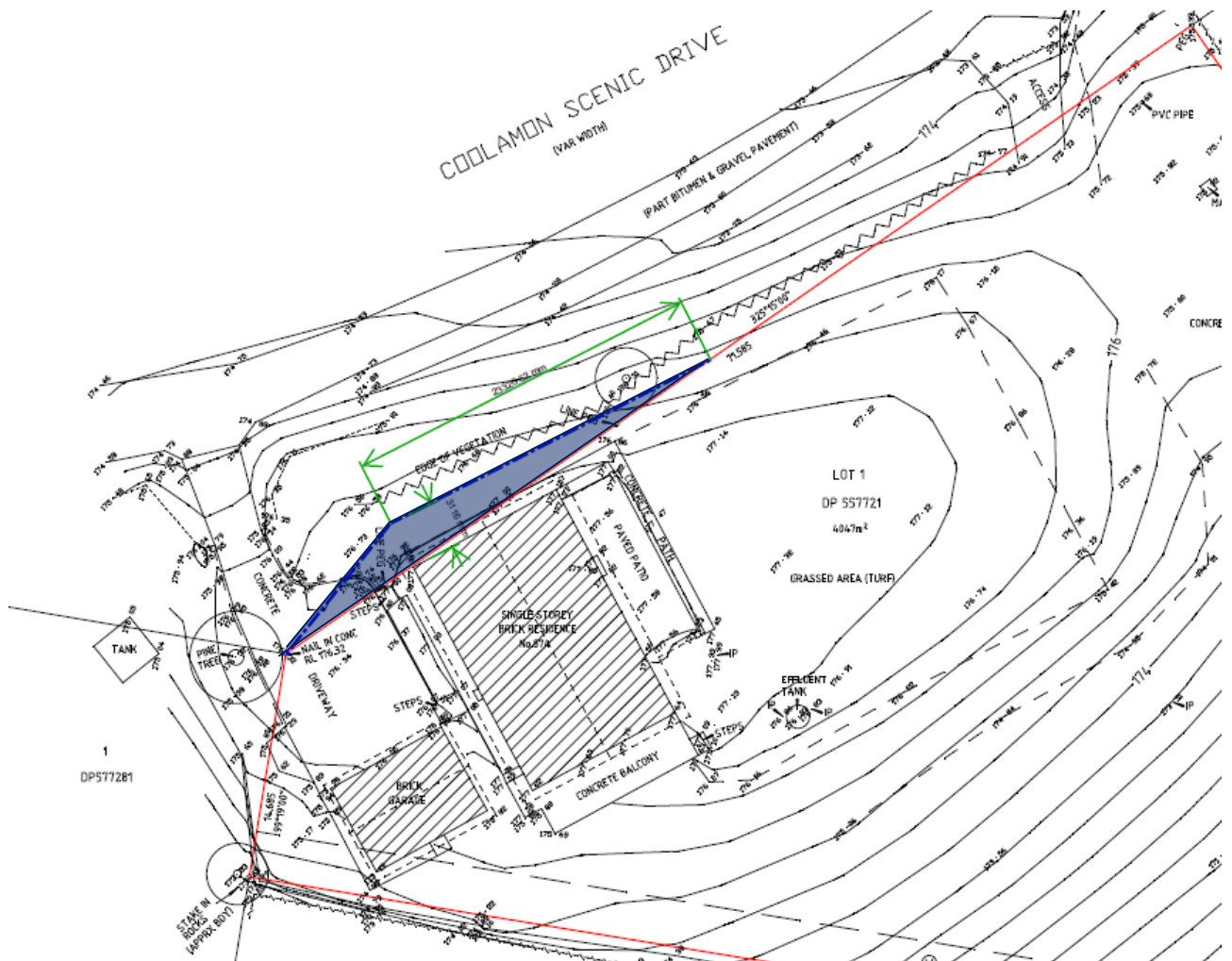
- 1 Crown land determination part Council road closure proposal part Coolamon Scenic Drive - adjoining lot 1 dp 557721, E2021/106597 
 - 5 2 Submission of objection adjoining land owner proposed part road closure adjoining lot 1 dp 557721 coolamon scenic, E2021/106600 
 - 3 All submissions from authorities no objections part road reserve closure adjoining 874 Coolamon Scenic Drive Lot 1 DP 557721, E2021/106631 
- 10

Report

Information/Background:

Council was approached by the owner of Lot 1 DP 557721 874 Coolamon Scenic Drive Coorabell to discuss encroachment issues on Council's road reserve.

- 5 Council's Development Engineers have been assessing a development application 10.2020.346.1 submitted by the owner of Lot 1 DP 557721, and the possibility of a part road closure of Council's road reserve was discussed to resolve the encroachment issues as per **Image 1** below highlighted blue.



10 **Image 1**
Development application and the possibility of a part road closure

- 15 An application was received from the owner of Lot 1 DP 557721, in March 2021, requesting the closure and purchase of part of Council road reserve, highlighted in blue, **Image 1** above.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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)	1.2.6.2	Ongoing detailed road assessment and valuation for the purposes of closure and potential land sale as required.

Legal/Statutory/Policy Considerations

Roads Act 1993

5

Part 4 Closing of public roads

Division 3 Closing of council public roads by councils

38A When council may close council public road

10 A council may propose the closure of a council public road for which it is the roads authority if:

- (a) the road is not reasonably required as a road for public use (whether for present or future needs), and
- (b) the road is not required to provide continuity for an existing road network, and
- 15 (c) if the road provides a means of vehicular access to particular land, another public road provide lawful and reasonably practicable vehicular access to that land.

38B Notification of proposal to close council public road

20 (1) A council that is proposing to close a council public road must cause notice of the proposal:

- (a) to be published in a local newspaper, and
- (b) to be given to:
 - (i) all owners of land adjoining the road, and
 - (ii) all notifiable authorities, and
 - 25 (iii) any other person (or class of person) prescribed by the regulations.

(2) The notice:

- (a) must identify the road that is proposed to be closed, and

- (b) must state that any person is entitled to make submissions to the council with respect to the closing of the road, and
- (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

5

38C Public submissions and formal objections

(1) Any person may make submissions to the council with respect to the closing of the road in the manner and within the period specified in the notice published under section 38B.

- 10 (2) Without limiting subsection (1), a notifiable authority in relation to the road may include a statement in the authority's submission to the effect that the authority formally objects to the closing of the road. The authority may withdraw the objection any time by written notice given to the council.

Note.

- 15 If a formal objection is made, section 38D (2) provides that the road may not be closed until the objection is withdrawn by the authority or set aside by the Land and Environment Court under this section.

(3) The council may appeal to the Land and Environment Court against a formal objection made by a notifiable authority against the closing of the road.

- 20 (4) On any such appeal, the Land and Environment Court may:

- (a) affirm the objection, or
- (b) set aside the objection.

(5) In deciding whether to affirm or set aside the objection, the Land and Environment Court must have regard to the public interest.

25

38D Decision of proposal

(1) After considering any submissions that have been duly made with respect to the proposal, the council may, by notice published in the Gazette, close the public road concerned.

- 30 (2) However, a council public road may not be closed:

- (a) in the case of a classified road—unless RMS consents to the closure of the road, or

- (b) in the case where a notifiable authority has formally objected under section 38C to the closing of the road—until the objection is withdrawn by the authority or set

- 35 aside by the Land and Environment Court under that section.

38E Effect of notice of closure

(1) On publication of the notice closing the council public road concerned:

- (a) the road ceases to be a public road, and

- 40 (b) the rights of passage and access that previously existed in relation to the road are extinguished.

(2) The land comprising a former road:

(a) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place)—remains vested in the council, and

5 (b) in any other case—becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

38F Appeals to Land and Environment Court against closure decision

(1) A person referred to in section 38B (1) (b) may appeal to the Land and Environment Court against the closure of a council public road by a council.

10 (2) On any such appeal, the Land and Environment Court may:

(a) affirm the closure, or

(b) set aside the closure.

(3) Section 38E is taken never to have applied to a closure that is set aside.

15 (4) To avoid doubt, an appeal under section 38C does not prevent an appeal under this section.

Financial Considerations

All costs associated with the road closure and consolidation will be borne by the landowner.

Consultation and Engagement

20 As per the Roads Act 1993 requirements, the necessary notices and submissions period were undertaken, and no objections were received.

Report No. 13.12 Part Road Reserve Closure and sale adjoining Lot 3 DP 707295 336 Booyong Road Nashua NSW

Directorate: Infrastructure Services

5 **Report Author:** Deanna Savage, Roads and Property Officer

File No: I2021/1360

Summary:

This report is being presented to Council to endorse the closure of Council road reserve adjoining Lot 3 DP 707295.

10 As per Crown Land determination the road/land will vest in Council upon closure, and it is proposed to sell the land to the adjoining landowner of Lot 1 DP 557721.

Land size is approximately 4,960m².

15

RECOMMENDATION:




1. That Council endorses the closure of part road reserve adjoining Lot 3 DP 707295 as detailed in the report.
- 20 2. That Council accepts the valuation as per *Attachment 3 E25021/108820* that has been agreed upon by the landowner.
3. That the applicant pays all remaining costs associated with the part road closure and consolidation.
 - 25 a) Council application fees
 - b) Council's surveyor's fees and survey, valuation, and legal costs
 - c) All registration fees
 - d) Legal costs
4. The allotment created by the part road closure to be consolidated into the existing Parcel No 200 Lot 3 DP 707295.
- 30 5. That Council authorises the execution of all documents necessary to affect the road closure, sale, transfer, and consolidation of the part closed road.

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Attachments:

- 1 Crown Response 11629 - Council road closure proposal - Lot 3 DP 707295 Booyong Road Response, E2021/108762 
 - 5 2 1st Survey Adrian Zakara Newton Deny Chapelle showing encroachments Booyong Road Lot 3 DP 707295, E2020/24612 
 - 3 Confidential - Page Extraction Current Market Valuation Rob Houlden Valuers Australia- Boundary Adjustment road encroachment 336 Booyong Road Lot 3 DP 707295, E2021/108820
 - 10 4 Confidential - PDF of E2021/108744 Email response Re Potential Road closure to rectify encroachment Lot 3 DP 707295 336 Booyong Road Nashua acceptance of valuation and road closure, E2021/108759
 - 5 5 All submissions for part road closure Booyong adjoining Lot 3 DP 707295, E2021/108812 
- 15

Report

Council was approached by the owners of Lot 3 DP 707295 336 Booyong Road Nashua to discuss encroachment issues on Council's road reserve. A survey plan was presented (*Attachment 2 E2020/24612*) which shows building encroachments and the existing formed road lying within adjoining part Lot 4 DP 707295.

A road closure of Council's road reserve was discussed to resolve the encroachment issues as per **Image 1** below, and a valuation was carried out (*Attachment 3 E2021/108820*) with the value agreed upon by the previous owner of Lot 3 DP 707295 and the current owner. The new owner of Lot 3 DP 707295 purchased the property knowing and agreeing in writing to the value and road closure. (*Attachment 4 E2021/108744*)



Blue indicates section of road proposed to be closed

RED indicates actual road

Image 1

Image highlights the location of the proposed road closure, alongside a marked line which shows the actual road.

A Notice was placed in The Byron Echo on 7 July 2021 and could be viewed on Council website. Notifications went out to adjoining landowners and all authorities advising the closure of the section of Booyong Road outlined in Image 1 highlighted blue as per **Roads Act 1993 Part 4 Division 3 Closing of council public roads by council 38B Notification of proposal to close council public road.**

There was a 28-day submission period with no submissions of objection given by either adjoining landowners or authorities. All submissions *Attachment 5 E2021/108812*.

- 5 A resolution of Council is required to finalise the road closure process. The final plans when completed, will be registered with Land Registry Services. A plan of consolidation will also need to be drawn up and registered with Land Registry Services.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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)	1.2.6.2	Ongoing detailed road assessment and valuation for the purposes of closure and potential land sale as required.

10 Recent Resolutions

- Res 20-227

Legal/Statutory/Policy Considerations

Roads Act 1993

- 15 ***Part 4 Closing of public roads***
Division 3 Closing of council public roads by councils

38A When council may close council public road

A council may propose the closure of a council public road for which it is the roads authority if:

- 20 (a) the road is not reasonably required as a road for public use (whether for present or future needs), and
- (b) the road is not required to provide continuity for an existing road network, and
- (c) if the road provides a means of vehicular access to particular land, another public road provide lawful and reasonably practicable vehicular access to that land.

25

38B Notification of proposal to close council public road

(1) A council that is proposing to close a council public road must cause notice of the proposal:

(a) to be published in a local newspaper, and

(b) to be given to:

(i) all owners of land adjoining the road, and

(ii) all notifiable authorities, and

(iii) any other person (or class of person) prescribed by the regulations.

(2) The notice:

(a) must identify the road that is proposed to be closed, and

(b) must state that any person is entitled to make submissions to the council with respect to the closing of the road, and

(c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

38C Public submissions and formal objections

(1) Any person may make submissions to the council with respect to the closing of the road in the manner and within the period specified in the notice published under section 38B.

(2) Without limiting subsection (1), a notifiable authority in relation to the road may include a statement in the authority's submission to the effect that the authority formally objects to the closing of the road. The authority may withdraw the objection any time by written notice given to the council.

Note.

If a formal objection is made, section 38D (2) provides that the road may not be closed until the objection is withdrawn by the authority or set aside by the Land and Environment Court under this section.

(3) The council may appeal to the Land and Environment Court against a formal objection made by a notifiable authority against the closing of the road.

(4) On any such appeal, the Land and Environment Court may:

(a) affirm the objection, or

(b) set aside the objection.

(5) In deciding whether to affirm or set aside the objection, the Land and Environment Court must have regard to the public interest.

38D Decision of proposal

(1) After considering any submissions that have been duly made with respect to the proposal, the council may, by notice published in the Gazette, close the public road concerned.

(2) However, a council public road may not be closed:

(a) in the case of a classified road—unless RMS consents to the closure of the road, or

(b) in the case where a notifiable authority has formally objected under section 38C to the closing of the road—until the objection is withdrawn by the authority or set aside by the Land and Environment Court under that section.

38E Effect of notice of closure

- 5 (1) On publication of the notice closing the council public road concerned:
 (a) the road ceases to be a public road, and
 (b) the rights of passage and access that previously existed in relation to the road are extinguished.
- 10 (2) The land comprising a former road:
 (a) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place)—remains vested in the council, and
 (b) in any other case—becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

38F Appeals to Land and Environment Court against closure decision

- 15 (1) A person referred to in section 38B (1) (b) may appeal to the Land and Environment Court against the closure of a council public road by a council.
- (2) On any such appeal, the Land and Environment Court may:
 (a) affirm the closure, or
 (b) set aside the closure.
- 20 (3) Section 38E is taken never to have applied to a closure that is set aside.
(4) To avoid doubt, an appeal under section 38C does not prevent an appeal under this section.

Financial Considerations

The costs associated with this road closure be paid for by the adjoining landowner.

Consultation and Engagement

- 25 As per the Roads Act 1993 requirements, the necessary notices and submissions period was undertaken, and no objections were received.

Report No. 13.13 Byron Shire Rail with Trail (Update)

Directorate: Infrastructure Services

Report Author: Therese Black, Business Analyst

File No: I2021/1418

5 Summary:

The purpose of this report is to provide a quarterly update on the progress of the Byron Bay to Mullumbimby; "Byron Shire Rail with Trail" project in accordance with Council Resolutions **20-127**, **20-572** and **21-234**.

10 Key points of progress include two workshops with key representatives from TfNSW and - the newly formed Department of Regional NSW that were held on 6 November 2020 and 5 March 2021. The focus of these workshops was to identify potential infrastructure planning options for the combined use of the road and rail corridors to support the future growth of the Byron region.

15

RECOMMENDATION:

That Council continues to work with Transport for NSW on the delivery of outcomes articulated in Resolutions **20-127**, **20-572**, and **21-234**.

20

Report

The purpose of this report is to provide a quarterly update on the progress of the Byron Bay to Mullumbimby “Rail with Trail” in accordance with Council Resolutions **20-127**, **20-572**, and **21-234**.

5 ***Provided below is an update on the key activities undertaken in response to Res 20-127:***

1. Commence planning for a rail link connecting Mullumbimby and Byron Bay as part of a multi-use activation of the rail corridor.

10 ***(Planning has been undertaken and workshops held in November 2020 and March 2021 with representatives from TfNSW along with other key NSW Government departments.)***

2. Incorporate the project as a key element of the draft Integrated Transport Strategy, which is supported by Park and Ride and other measures to promote active and public transport development within the Strategy.

15 ***(Completed - Council has incorporated the activation of the Rail Corridor into the draft Integrated Transport Strategy as a key element.)***

3. Prepare an economic and social business plan including development of a governance framework to support the project.

20 ***(Work in Progress – staff had commenced preliminary work on the potential governance framework. However, there are many factors that will influence the final governance model. Dan Champness TfNSW confirmed during the workshop on 5 March 2021 that the Government will have the major influence over the final Governance model. Awaiting further guidance from TfNSW.)***

- 25 4. Provide notice of the intention to establish a rail link to Infrastructure Australia, Infrastructure NSW, TfNSW and other relevant agencies to seek advice on funding criteria and project development.

30 ***(Completed – Letters to the above were sent on 19 June 2020. A single response has been received from Chris Hanger, noting the government will require the following; evidence of a viable and sustainable business model; have undertaken effective community consultation and engagement with adjacent landholders that demonstrates overwhelming community support; and have addressed issues relating to potential biosecurity concerns.)***

- 35 5. Investigate Federal, NSW and other funding bodies to identify funding sources including, but not limited to tourism, infrastructure, transport and climate change mitigation/adaption grants with a priority focus on funding vegetation removal within the rail corridor.

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(Ongoing - currently no funding opportunities have been identified to support this project. However, ongoing consultation with TfNSW will support the final funding model.)

- 5 6. Actively seek expressions of interest from potential operators interested in providing commuter shuttle and visitor-oriented services.

(To be commenced concurrently or after the detailed engineering assessment has been completed.)

7. Seek support including funding through Federal and NSW Ministers for Transport, Hon. Tamara Smith MP, Hon. Ben Franklin MLC and Hon. Justine Elliot MP.

10 ***(Letters have been sent.)***

8. Receive six monthly reports on progress.

(Ongoing - This report is the third quarterly progress report to be issued to Council. The cycle is every quarter due to the requirements of the Operations Plan.)

- 15 9. The business plan be included in the 20/21 Operational Plan, forward Delivery Plans and draft budget.

(Completed - included in the 20/21 Operational Plan.)

10. Item 2 above be funded from the existing Integrated Transport Strategy budget.

20 ***(Completed - Incorporating the activation of the rail corridor into the Integrated Transport Strategy, together with recommended projects and actions, has been and will continue to be funded from the existing Integrated Transport Strategy.)***

11. Implement Actions 4, 5, 7 and 8 immediately and include as part of a rail link project in the 20/21 Operational Plan and forward Delivery Plans that includes item 6 above as an action as well as consideration of a budget for project management.

25 ***(Items 4, 5, 7 and 8 are variously completed or in progress. Item 6 - a budget allocation was considered at the March 2021 quarterly review, with no budget currently applied to this project.)***

Provided below is an update on the key activities undertaken in response to Res 20-572:

- 30 1. That Council prioritises the section of rail corridor between Bayshore Drive and Tyagarah for investigation into the alternatives including multi use.

(Further prioritization beyond Part 1 of Res 20-127)

2. That Council seeks community and local Land Care support to carry out environmental works on the rail corridor between Bayshore Drive and Tyagarah for removal of unwanted vegetation

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(Advice has been sort from senior regional TfNSW officers, Dan Champness and Vicki Oszko. Whilst no response has been received to date it is expected this matter can be further raised at the next planned workshop.)

3. That Council seeks funding for the clearing of the vegetation on the line

5 ***(As per Part 5 Res 20-127)***

4. That Council, when funding is available, commissions a structural assessment and cost estimate of a sample of the timber bridges suitable for facilitating movement up to a weight that can support light rail and very light rail options outlined in the MURC. (Richardson/Ndiaye)

10 ***(As per Part 11 Res 20-127, no funding has been allocated for engineering assessment)***

Provided below is an update on the key activities undertaken in response to Res 21-234:

15 1. That Council continues to work with Transport for NSW on the delivery of outcomes articulated in Resolutions 20-127 and 20-572 and requests that TFNSW expedites a workshop meeting.

(No date has been set for the third workshop.)

2. Seek TFNSW funding to clear vegetation from the rail corridor.

20 ***(Funding options are being sought from TfNSW. However, TfNSW has not yet identified a budget and funding source.)***

3. Proactively engages with state and federal governments regarding funding for multi-use activation of the rail corridor.

25 ***(Grant funding opportunities are being investigated. The Building Better Regions Fund has been flagged as a possibility. However, we are awaiting the program guidelines to assess the eligibility of this project to fit the assessment criteria.)***

Strategic Meeting with TfNSW

30 On Friday 6 November 2020 and Friday 5 March 2021, Councillors and staff attended Movement & Place Workshops organised by TfNSW. The workshops were facilitated by Vicky Sisson (A/Director Northern Region). In attendance were key representatives from TfNSW and the newly formed Department of Regional NSW along with Councillors and staff.

A third workshop was discussed and was to be scheduled in June/July 2021. Staff are actively seeking an update from TfNSW on a revised date.

Key issues

The lack of available government (local, state and federal) funding remains the prohibitive factor in moving this project to the next stage.

- 5 A detailed Engineering Assessment is required to fully understand the state of the existing rail infrastructure on the line between Byron Bay and Mullumbimby.

Vegetation clearing on the length of the rail corridor, is required before an Engineering Assessment can be carried out. The NSW government has clearly stated that they have no current budget to fund this work.

Next steps

- 10 The important next steps to realise the reactivation of the Byron Shire Rail Corridor Stage 1 (Mullumbimby to Byron Bay) include:
- Continued liaison with TfNSW and the Department of Regional NSW to discuss potential funding sources and infrastructure options.
 - Continue to identify grant funding opportunities to provide detailed design and planning budget.
- 15

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
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)	1.3.1.5	Prepare Road Access and Safety Principles (RASPs) procedure for capital works and maintenance
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)	1.3.1.6	Update road related DCP chapters to embed Road Access and Safety Principles (RASPs) in line with procedure for adoption in 2021/22

Recent Resolutions

Report to Council - 27 June 2019
Resolution **19-335** (Closed as per 20-518)

- 5 Report to Council - 28 Nov 2019
Resolution **19-616** (Closed as per 21-053)

- Report to Council – 26 March 2020
10 **Resolution 20-127 (Open) Key working resolution for this project (the primary subject of this report)**

Report to Council – 24 September 2020
Resolution **20-518** (Closed)

- 15 NoM – 22 October 2020
Resolution 20-572 (Open)

- Report to Council – 25 February 2021
Resolution **21-053** (Closed)

- 20 Report to Council – 24 June 2021
Resolution 21-234 (Open)

Financial Considerations

- 25 Council considered a budget allocation to progress this project as part of the 2021/22 budget process. However, no funding source was identified for this project.

Consultation and Engagement

Key Stakeholders:

Government: TfNSW, NSW State and Federal Government representatives.

- 30 Neighbouring Shire Councils: Tweed, Lismore and Richmond Valley and Northern Rivers Joint Organisation (NRJO).

Community Groups: e.g. Trains on our Tracks (TOOT).

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Audit, Risk and Improvement Committee Meeting held on 19 August 2021

- 5 **Directorate:** Corporate and Community Services
- Report Author:** Alexandra Keen, Audit, Risk & Improvement Coordinator
- File No:** I2021/1354

Summary:

- 10 This report provides the minutes of the Audit, Risk and Improvement Committee Meeting held on 19 August 2021 for determination by Council.

RECOMMENDATION:

- 15 1. **That Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 19 August 2021 at Attachment 1 (I2021/1313).**

2. **That Council adopts the following Committee Recommendation:**

Report No. 3.1 Adoption of Minutes from Audit, Risk and Improvement Committee Meeting 20 May 2021
File No: I2021/1158

Committee Recommendation 3.1.1

That the minutes of the Audit, Risk and Improvement Committee Meeting held on 20 May 2021 be confirmed.

3. That Council adopts the following Committee Recommendation:

Report No. 4.1 Audit, Risk and Improvement Committee Performance Assessment

File No: I2021/1297

Committee Recommendation 4.1.1

That ARIC members consider its performance in accordance with the requirements of the ARIC constitution and prepare a report for the next ARIC meeting.

4. That Council adopts the following Committee Recommendation:

Report No. 4.2 NSW Auditor-General Annual Work Program 2021-2024

File No: I2021/1292

Committee Recommendation 4.2.1

That ARIC note the NSW Auditor-General's Annual Work Program for 2021-2024 (#E2021/100974).

6. That Council adopts the following Committee Recommendation:

Report No. 4.4 Delivery Program 6-monthly Report and 2020/21 Operational Q4 Report - to 20 June 2021

File No: I2021/1234

Committee Recommendation 4.4.1

That the Audit, Risk, and Improvement Committee notes the Delivery Program 6-monthly Report and 2020/21 Operational Plan Fourth Quarter Report for the period ending 30 June 2021 (#E2021/97874).

7. That Council adopts the following Committee Recommendation:

Report No. 4.5 AASB1059 - Service Concession Arrangements: Grantors

File No: I2021/1241

Committee Recommendation 4.5.1

That the Audit, Risk and Improvement Committee consider the requirements of AASB1059 Service Concession Arrangements: Grantors and concur with the view that the requirements of AASB 1059 have no application to Byron Shire Council and therefore no disclosure obligations in the financial statements.

8. That Council adopts the following Committee Recommendations:

Report No. 5.1 Internal Audit Report - June 2020-21

File No: I2021/1192

Committee Recommendation 5.1.1

That the Audit, Risk and Improvement Committee:

- 1. Notes the Internal Audit Status Report – June 2021 (#E2021/95033)**
- 2. Endorses the recommendations from the Executive Team to close off 10 recommendations in Appendices A and B of the Internal Audit Status Report (#E2021/95033)**
- 2. Requests management to implement the recommendations made in the Internal Audit of Procurement (Tendering) – June 2021 (#E2021/76376)**

9. That Council endorses the Internal Audit Plan at Confidential Attachment 2 (E2021/97611) as per the following Committee Recommendation:

Report No. 5.2 Internal Audit Plan 2021-2024

File No: I2021/1096

Committee Recommendation 5.2.1

That the Committee endorses the Internal Audit Plan for 2021 - 2024 (#E2021/97611) for approval by Council.

10. That Council adopts the following Committee Recommendation:

Report No. 5.3 Risk Management Update

File No: I2021/1097

Committee Recommendation 5.3.1

That the Audit, Risk and Improvement Committee notes the strategic and operational risk reports for the quarter ending 30 June 2021 (#E2021/88532).

11. That Council adopts the following Committee Recommendation:

Report No. 5.4 2020-2021 Continuous Improvement Pathway Program

File No: I2021/1106

Committee Recommendation 5.4.1

That Audit Risk and Improvement Committee notes the results of the CIP 2020-2021 workbook (#E2021/86609).

12. That Council adopts the following Committee Recommendations:

Report No. 5.5 Cyber Security and System Outages Quarterly Update

File No: I2021/1196

Committee Recommendation 5.5.1

That the Audit Risk and Improvement Committee:

- 1. Notes the report and attached security reports;**
 - a) ARIC Security Incident Report 2021 Q2. (#E2021/95614)**
 - b) ARIC Incident Outage Report 2021 Q2. (#E2021/95613)**
- 2. Receives ongoing cyber security and system outage status reports.**

13. That Council adopts the following Committee Recommendation:

Report No. 5.6 External Audit Actions Quarter 4 2020-2021 Update

File No: I2021/1246

Committee Recommendation 5.6.1

That the Audit, Risk and Improvement Committee notes the external audit update (including the closure of four issues) for the quarter ending 30 June 2021 (#E2021/100193).

Attachments:

- | | | |
|---|---|--|
| | 1 | Minutes of the Audit, Risk and Committee Meeting of 19 August 2021, I2021/1313  |
| 5 | 2 | Confidential - Internal Audit Plan 2021-2024, E2021/97611 |

Report

Attachment 1 (I2021/1313) to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 19 August 2021 for determination by Council. The agenda for this meeting can be located on Council's website at: [Agendas and Minutes - Byron Shire Council \(nsw.gov.au\)](https://www.byronshire.nsw.gov.au/agendas-and-minutes)

Confidential Attachment 2 (E2021/97611) provides the three year Internal Audit Plan 2021-2024 prepared by Council's Internal Auditors, Grant Thornton, for endorsement by Council.

Financial Implications

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 19 August 2021.

Statutory and Policy Compliance Implications

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 19 August 2021.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.2 Report of the Water, Waste and Sewer
Advisory Committee Meeting held on 19
August 2021**

Directorate: Infrastructure Services

Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services

File No: I2021/1353

Summary:

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 19 August 2021 for determination by Council.

RECOMMENDATION:

1. That Council notes the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 19 August 2021.

2. That Council adopts the following Committee Recommendation(s):

Report No. 3.1 Adoption of Minutes from Previous Meeting

File No: I2021/1289

Committee Recommendation 3.1.1

That the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 20 May 2021 be confirmed.

3. That Council does not adopt the following Committee Recommendation(s) 4.1 as detailed in the Report , but instead adopts the Management Recommendation(s) as follows:

Report No. 4.1 DA water

File No: I2021/716

Committee Recommendation 4.1.1

That Council notes the report.

4. That Council adopts the following Committee Recommendation(s):

Report No. 4.2 Waste Issues of interest

File No: I2021/705

Committee Recommendation 4.2.1

That Council notes the report.

5. That Council adopts the following Committee Recommendation(s)

Report No. 4.3 Byron STP Condition 9 Additional Load - Quarterly Report

File No: I2021/717

Committee Recommendation 4.3.1

- 1. That Council notes the report.**
- 2. Once the audit of consent conditions has been completed, if necessary, the extraordinary meeting of Water Waste and Sewer Advisory Committee is held.**

Attachments:

- 1 Minutes 19/08/2021 Water, Waste and Sewer Advisory Committee, I2021/1312 **

Report

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 19 August 2021 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Water, Waste and Sewer Advisory Committee Meeting - Thursday, 19 August 2021 \(infocouncil.biz\)](http://infocouncil.biz)

Committee Recommendation

The committee recommendations 4.2 and 4.3 are supported by management and are provided in the attachment to this report.

- 10 Committee recommendation 4.1 is not supported by management.

Committee Recommendation 4.1

1. That Council notes the report.

2. The Strategic Planning Workshop is held in the next term of Council to discuss future water and sewer infrastructure planning in Byron Bay/Ewingsdale.

15 Management Comments

Management do not agree with the Committee recommendations 4.1 for the reasons given below and alternatively recommended:

- 20 Staff Management do not support item 4.1.2 Committee Recommendation: The Strategic Planning Workshop is held in the next term of Council to discuss future water and sewer infrastructure planning in Byron Bay/Ewingsdale.

Staff Note: There is a Council adopted Developers Services Plan (DSP) that covers this area in addition to the rest of the shire.

The reasons for the suggested change in the recommendation is as follows:

- 25 The DSP is up for review next financial year. Committee and Council will have their opportunity to workshop the DSP at that time as it forms the standard community/committee consultation process.

Financial Implications

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 19 August 2021.

30 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 19 August 2021.