



Byron Shire Council



Agenda Ordinary Meeting

Thursday, 28 October 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.

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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 23 September 2021
- 7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**
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15. QUESTIONS WITH NOTICE

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

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Infrastructure Services

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

NOTICES OF MOTION

Notice of Motion No. 9.1 Mayoral Fund 2021/2022 - Allocation of Funding

5 **File No:** I2021/1563

I move:

10 **That Council confirms the donations from the Mayor’s Discretionary Allowance 2021/2022 as per recommendation in Attachment 1 (E2021/119623), including applications partially supported.**

Attachments:

15 1 Confidential - Mayoral Fund 2021/2022 Applications received, E2021/119623

Signed: Cr Michael Lyon

Councillor’s supporting information:

20 One method that Council uses to support community groups, organisations and local schools is through the provision of funding by way of the “Mayor’s Discretionary Allowance”.

25 Following a review in March 2021 (Res 21-075) of how the Mayor’s Discretionary Allowance is considered and determined, community groups, organisations and local schools were invited to apply for funding, including justification for the request, with the Mayor’s decision to be reported to Council for confirmation in accordance with the Act and Res **09-349**.

30 On 09 August 2021 Council announced the Mayoral Fund for 2021/2022 as being open for applications via Council’s website, with applications closing on 17 September 2021. This year the total budget is \$3,900.00. Ten applications were received with a total of \$6,077.00 funding requested.

Applications received are for multiple locations across the Shire, including a variety of community groups, organisations, and local schools, and align with the following themes of the Community Strategic Plan:

- 35 • Community - We cultivate and celebrate our diverse cultures, lifestyle, and sense of community

- Environment - We protect and enhance our natural environment.

Staff comments

by Vanessa Adams, Director Corporate and Community Services:

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

- 5 There is sufficient funding available to allocate as per the recommendations in Attachment 1, including partial allocations for five of the requests. If the Notice of M is supported staff will process accordingly.

Financial/Resource/Legal Implications:

- 10 The 2021/2022 Budget adopted by Council included an allocation of \$3,900 for budget item Mayor – Discretionary Allowance. Sufficient funds are available for making the nominated donations of \$3,900.

In relation to the making of Section 356 Donations from Mayor – Discretionary Allowance, Council at its Ordinary meeting held on 14 May 2009 resolved as follows:

- 15 “09-349 Resolved that Council confirm that all s356 donations, to be made from the budget allocation “Mayor – Discretionary Allowance”, must be the subject of a resolution of the Council at Ordinary or Extraordinary meeting.”

The Section 356 Donation will be advertised, and public notice of financial assistance provided in accordance with Section 356 of the Local Government Act 1993.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2: Create a culture of trust with the community by being open, genuine and transparent	5.2.2: Incorporate wellbeing framework within organisation to inform decision making	5.2.2.2	Deliver annual Community Donations Program

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Notice of Motion No. 9.2 Pay Parking Potential

File No: I2021/1635

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I move:

1. Pay parking revenue in 2018-19 broken down into meter charges, worker permits and resident permits, including an analysis of what the meter charges revenue would have been at \$5 and \$6 per hour.
- 10 2. Potential profit from schemes introduced into Brunswick Heads, Mullumbimby and Bangalow based on expected usage under business-as-usual conditions, at rates of \$4, \$5 and \$6 per hour.
3. The Breakdown of pay parking revenue from meters originating from residents of NRJO, being Byron, Ballina, Lismore, Kyogle, Richmond Valley and Tweed Shires vs those coming from elsewhere.
- 15 4. Ways that parking meters in a town like Bangalow could be made to better suit aesthetically the Heritage nature of the town.
5. Areas like the Rail Corridor in Mullumbimby that could be used for edge-of-town parking lots to deal with the substantial increase over the last few years and the expected growth in coming years.
- 20

Attachments:

- 1 Byron_bay Monthly Financial Summary 2019-08, E2021/128161 

25 **Signed: Cr Michael Lyon**

Councillor's supporting information:

Council has improved its financial stewardship out of sight over the last 5-10 years, enabling us to invest in neglected infrastructure in record sums over the last few years. We have been able to leverage our strong financial performance to obtain grants requiring matching funds as well as instil confidence in State and Federal Governments in our ability to utilise grant and other funding wisely. At the start of this term we made the tough decision to increase rates in order to address the shortfall in revenue required to maintain our assets like roads and drainage. Making tough decisions like this has seen our counterparts at State level come to the party due to the recognition that we are doing all we can to improve our position. This saw a \$25 million dollar election commitment come our way, which we have put to good use alongside our own money.

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BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.2

5 While we have made incredible progress over the last few years, we must continue to find new ways to increase revenue, especially as there is continual cost-shifting from State government to Local Government. This has been seen most recently with the Infrastructure Contributions tightening and Compliance Levy centralisation. Further, we currently have little means to charge the 2.2 million visitors to our shire for their impact on our infrastructure. Pay parking is about the only means we have, which, due to this visitation we are able to justify due to the parking congestion in our major centres.

10 This NOM is about understanding the potential increase to revenue that could be generated by pay-parking changes across the Shire, including looking at the potential of making it free for locals by removing the \$55 charge. The breakdown regionally is about understanding the impacts a change could make on visitation from these areas given the concerns that businesses have expressed and to flag the potential exploration of a way to provide a discount to those visitors from the NRJO and the feasibility of such.

Staff comments

15 **by Andrew Pearce, Traffic Engineer, Infrastructure Services:**

NOM - Item 1

Limited individual parking meter data is available due to a new contract commencing in December 2020. However, Council does have the following data:

- 20
- Total pay parking revenue per month for each month between August 2018 to August 2020.
 - Individual meter payment data for all meters for the month of August 2019 and the month of November 2019.

Total Revenue

Below is a summary of revenue and estimates provided by Council's Manager Finance:

25 *From the outset it needs to be recognised that fees charged for pay parking at the meter is subject to GST and fees charged for parking permits are exempt from GST.*

In 2018/2019 Council net of GST received the following revenues according to the general ledger:

Item	GL Account	Amount \$
Parking Meter Revenue (1)	1722.013, 1722.014 and 1722.015	3,594,190
Resident Permits	1724.001	608,991
Worker Permit	1724.003	110
	Total	4,203,291

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NOTICES OF MOTION

9.2

- (1) Revenue is from meters located in Byron Bay, including Wategos Beach and Captain Cook Carpark (National Parks).

5 To determine revenue at \$5 per hour or \$6 per hour, an estimate based on 2018-2019 yields is on the assumption that increasing the meter fee to either \$5 or \$6 dollars would still mean the usage of parking spaces achieved in 2018-2019 is maintained. It would be difficult to determine what the impact of increasing the fees would have on usage of the parking spaces. With this assumption in mind the following calculation is potentially indicative:

Fee	2018-2019 Yield GST exclusive \$	2018/2019 Yield GST Inclusive \$	Additional Revenue GST exclusive \$
At \$4 per hour GST inclusive	3,594,190	3,953,609	-
At \$5 per hour GST inclusive – 25% increase	4,492,737	4,942,011	898,547
At \$6 per hour GST inclusive – 50% increase	5,391,285	5,930,414	1,797,095

10 Therefore, on the assumption usage levels did not change whether there was a 25% increase in the fee (\$5 per hour) and 50% increase in the fee (\$6 per hour), Council after considering GST implications would have obtained the following additional revenues based on 2018-2019 monetary yields:

- At \$5 per hour an additional approx. \$898,500
- At \$6 per hour an additional approx. \$1,797,100

The above revenue predictions would be less if the fee increases reduce the usage of the parking scheme but that is unknown.

Individual Meter Revenue

20 Attachment 1 illustrates the data available for the month of August 2019 showing revenue for individual meters. Another table is available for November 2019 only.

Given the time required to undertake calculations needed for individual meters at a tariff of \$5 and \$6 these calculations were not able to be done as part of this report.

NoM Item 2

25 While a number of assumptions will need to be made in regard to parking supply, demand and occupancy rates it is anticipate an estimate can be provided in collaboration with Finance. This can be submitted to Council at the 30th November Council meeting once the calculations have been completed.

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NOTICES OF MOTION

9.2

An estimate regarding capital / budget costs to implement such scheme is recommended as well.

NOM - Item 3

5 Infrastructure Services and Finance do not have the level of detail required to confirm where parking patrons originated. Staff are not able to provide an answer to proposed NoM Item 3.

10 Consultation with Council's Economic Development staff also confirmed that tourism data does not provide sufficient information. While total number of visitors is known, the information does not indicate how they travelled to Byron Bay and how many people are in each car.

To undertake this work in detail an origin destination review or number plate recognition review would need to be undertaken. A number plate survey would require assistance from TfNSW to provide origin detail which may be subject to confidentiality and cost.

NOM - Item 4

15 In consultation with the pay parking contractors it has been confirmed there are several options available to Council to provide heritage friendly parking meters.

The following options are available to Council:

- Smaller and more subtle card only meters can be considered.
- Meter can be powder coated to whatever preferred colour or patterns of colour.
- 20 • Meters may be "wrapped" in whatever preferred colour or pattern
- Other Council's have placed an artistically designed and box around meters
- The number of meters may be significantly reduced and located in subtle location when used in combination with PayStay phone app.

NOM - Item 5

25 It is understood this item refers only to Mullumbimby.

30 Preliminary discussions have taken place earlier in 2021 between Council's Place Planning team, Council's Traffic Engineer and members of the Mullumbimby community regarding. These discussions looked at potential sites for parking on the fringes of Mullumbimby. One such area discussed was the vacant land within the vicinity of the Mullumbimby train station.

A more detail summary with associated maps of potential areas can be submitted to the 30th November 2021 Council meeting.

Financial/Resource/Legal Implications:

Council's Finance Manager has been consulted and assisted with the above response.

Additional consultation will be undertaken to prepare additional information for the 30th November Council Meeting.

- 5 Consideration would need to be given to the capital costs to implement aspects of the Notice of Motion and impacts arising from Master Plan projects within town centres, such as the Green Spine in Mullumbimby and Tincogan street works.

Is the proposal consistent with any Delivery Program tasks?

- 10 While the Notice of Motion is related to OP Activity 1.6.1.2 adoption of several aspects of this Notice of Motion would require

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.6: Manage traffic and parking in an efficient manner	1.6.1: Implement review of parking management	1.6.1.2	Maintain Byron Bay Paid Parking System

PETITIONS

Petition No. 10.1 150 Tandys Lane Brunswick Heads Petition

Directorate: Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy

File No: I2021/1439

Council is in receipt of a Community Petition from Andersons Hill Community Group containing 33 signatures (*Attachment 1*) which states:

10 *Tandys Lane and Andersons Hill is a no-through, family-focused neighbourhood. We are a small community ranging from young families to the very elderly, all of whom make regular use of our no through laneway for recreation and informal community catch ups.*

The Andersons Hill and Tandys Lane Community (TLC) sincerely thank council for listening to and recognising our many concerns at the Council Meeting on August 5th.

15 *In our address on August 5th² with limited time to address Council, our focus was on legalities and the numerous non-compliance issues. As a community, we maintain that this DA is not permitted to be approved under the LEP for reasons already submitted and backed by substantial independent legal opinion. We write to submit further Community Concerns, supporting our unanimous request that this DA be rejected.*

20 *Firstly, it is clear this is no small-scale development, nor is it in keeping with the area, which contains protected environmental zones and many species, some of which are threatened. These include koalas, white-bellied sea eagles, echidnas, goannas, many species of snakes, wallabies and bandicoots. Additionally, a past environmental study found the endangered potaroo to reside in the area. The development would represent a*
 25 *threat to both flora and fauna within these protected environmental zones.*

Tandys Lane is a dead end, and the local traffic knows to look out for children, bikes, pedestrians, wildlife, and ponies, whilst navigating the road. To add four more dwellings in this context, in addition to the two existing significant dwellings (both comprising 4
 30 *bedrooms) will significantly increase traffic movements, impacting on the safety of the neighbourhood. When taking into consideration service vehicles for cleaning, bedding, and other services on top of the number of movements per bedroom per day (12 including the cabins), this represents more than doubling the traffic on Tandys Lane.*

As it is, the lower section of the road is dangerous: unlit, winding, narrow in sections and incredibly potholed. In fact, the Applicants themselves recognised this issue when they
 35 *submitted a petition to Council in November 2018, describing how dangerous the road is for residents who are familiar with the road and the need to drive onto the verge in sections to avoid potholes and oncoming traffic. Their proposal, which would add daily*

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PETITIONS

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tourist traffic and large service vans to the mix, is a disaster waiting to happen. As such, Council should not accept the notion that their proposal is 'low' impact and 'low scale' to the existing community.

5 *In addition to the large primary dwelling in which the Applicants currently reside, they converted a massive barn into a second luxury home, approved for Dual Occupancy (10.2016.818.2). This dwelling is marketed as 'The Barn'. As per the LEP, the second luxury home would 'provide alternative accommodation for rural families and workers'. This second full-sized dwelling on the property already provides the additional 4 bedrooms, associated parking and far more than 4x60M2 provision for 'Tourist Accommodation' under*
10 *the LEP and provides ample opportunity to generate additional income. In addition, this luxury home has a large inground pool, a second 'Art*

Studio' and a basketball court. As such, we believe that no further Tourist Accommodation can be permitted.

15 *The TLC also notes that the Applicants recently moved two additional-and unapproved-- dwellings from their existing luxury hotel in Byron Bay: 'The Atlantic' @atlanticbyronbay. One, an Airstream caravan, has been set up under a permanent structure with an outdoor area. The other, called 'The Albatross', is a separate dwelling and may or may not be still onsite. Both dwellings were accommodation offerings at The Atlantic and as such, we can only assume are fully equipped as tourist accommodation. These unapproved buildings*
20 *would add a further 3+ existing bedrooms on site, not counting the unapproved cabin already situated alongside Simpsons Creek. The TLC has always been concerned about the intended long-term objectives of The Applicants given their primary business is large scale tourist accommodation. This concern appears well founded. We ask Council to address the Airstream Caravan and whether 'The Albatross' has been permanently located*
25 *on the property in the Compliance Review, along with the removal of all 4 structures alongside Simpsons Creek.*

The council review of cumulative impact has not been fully assessed, as it doesn't take into account the existing illegal rentable dwellings on site. The community is seriously concerned about the impact on our safety and the existing poor infrastructure due to these
30 *illegal rentable dwellings.*

Environmental disaster. 150 Tandys Lane itself contains a number of environmental zones. In addition, the eastern boundary is a Marine Park and '7a Coastal Wetlands Area'; the southern boundary an 'Area of High Environmental Value'; and the northern boundary sees regular koala sightings, with the adjoining property containing numerous
35 *environmental zones, including several pockets of 'E2 Environmental Conservation'. As a community, we believe in the significance of these zones, are actively working to preserve and regenerate them and are asking for Council to support the ongoing protection of these critically important environmental zones.*

40 *The Applicants have consistently demonstrated a disregard for council policy and the environment. A composting toilet and two large platforms built by the Applicants on the water's edge of Simpsons Creek-a Marine Conservation Zone-have been under complaint since 2017. Despite orders for removal, they remain in place and have been used to host numerous commercial events. A recently built large Cabin including a deck and carport sits*

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5 *within 30 metres of Simpsons Creek. The Instagram account @riverhawkbranch with over 20,000 followers (which has not been visible since the August 5 Council meeting) demonstrated the use of powerboats and wake-boarding by the applicants and their guests on the protected waters and banks of Simpsons Creek. We ask Council to raise an order that all 4 structures be immediately removed and all power boat activities from the property be banned in order to protect a fragile and precious natural resource.*

10 *The TLC has grave concerns about the intended use of this DA and the burden it places on the Council to actively police it, when the applicant has blatantly ignored existing compliance orders since 2017, has built further unauthorised structures and has until recently illegally tenanted the*

'Art Studio' and holiday let 'The Barn' (against the conditions of the DA approval).

15 *The TLC understand that the Applicant planted an approximately 150-metre-long hedge in response to the community objection to the development application, to block the view of the community, both local residents and visitors, to Cape Byron and Julian Rocks. The hedge is already well above fence height and is obstruction & the iconic view that the community and visitors have enjoyed for generations. This is a view that most community members do not have from their individual properties, and they are devastated that it can no longer be enjoyed along Tandys Lane. The Applicant raised that the hedge was planted to block the view of the proposed cabins; however due to the slope of the land, this hedge need only be fence height to fulfill this purpose, without blocking the community view. At the moment the Applicants are only keeping the fence hedge height where it impacts their own view to the Cape. We ask Council to order the hedges on the property to be kept at fence height.*

25 *As a community, we ask that council reject this development as it is not permitted under the LEP and gives rise to material environmental degradation and is a material risk to the members of the community.*

This submission is made on the 26 August 2021 by the following land owners and residents of Tandys Lane and Andersons Hill, who represent all of the property owners and residents of this community.

Comments from Director Sustainable Environment and Economy:

At the planning meeting of 5 August 2021 Council considered DA 10.2019.343.1 for tourist and visitor accommodation comprising four holiday cabins at 150 Tandys Lane, Brunswick Heads. Twenty-six submissions were received objecting to the proposal, with a focus of concern being alleged unauthorised development including the erection of structures near Simpsons Creek and use of the property for tourist and visitor accommodation.

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](#)

Council resolved (**21-280**) to defer the matter pending a review of outstanding compliance issues at the property.

Community enforcement officers visited the site on the morning of Monday 13 September 2021 and carried out a compliance audit of all buildings and structures on the property.

Five significant non-compliances were identified:

- (1) Conversion of an art studio to a dwelling/holiday cabin.
- (2) Conversion of a farm shed to a habitable building that was being used as an art studio at the time of inspection.
- (3) Construction of a boat shed ~50m from the bank of Simpsons Creek.
- (4) Construction of two wooden decks ~3m from the bank of Simpsons Creek
- (5) Construction of a composting toilet ~10m from the bank of Simpsons Creek.

At the planning meeting 14 October 2021, Council considered a report in response to **Resolution 21-280** link below:

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 14 October 2021 \(infocouncil.biz\)](#)

The issues raised in the submissions received to the DA and petition were addressed in that report.

RECOMMENDATION:

1. That the petition regarding 150 Tandys Lane Brunswick Heads be noted and referred to the Director Sustainable Environment and Economy.
2. That the petition as referred to the Director Sustainable Environment and Economy had been considered by staff in the report to the 14 October Planning Meeting.

Attachments:

- 1 Confidential - TLC Petition 2021, E2021/111199

SUBMISSIONS AND GRANTS

Report No. 11.1 Grants and Submissions September 2021

Directorate: Corporate and Community Services

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

File No: I2021/1609

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 (#E2021/123605) for Byron Shire Council's Submissions and Grants as at 30 September 2021.**

Attachments:

20 1 Grant applications awaiting determination - September 2021, E2021/123605 

Report

This report provides an update on grant submissions since the last report to Council. Currently Council has 27 grant submissions awaiting determination.

Successful applications

- 5 There were no successful applications notified during September.

Unsuccessful applications

Council were no unsuccessful applications notified during September.

Upcoming grant opportunities

- 10 [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.

- 15 • Application to be submitted to support the redevelopment of the Byron Community Hub (old Byron Hospital)

[Regional Sport Facility Fund | NSW Government](#)

- 20 The \$50 million program will assist eligible organisations to develop quality core sport infrastructure that will meet the current and future needs of the community; including utilised new and improved sport infrastructure projects that can directly impact and support participation and performance opportunities in sports at all levels.

- Application submitted for extension and upgrade of Suffolk Park Football Club change room and amenities
- Application submitted for Cavanbah Centre for additional portable seating, centre audio upgrades and commercial fans for stadium.

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 \$65 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 (\$65 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	\$38,301,855
	Council Contribution Cash	\$26,713,342
	Council Contribution In-Kind	\$36,000
20	Other contributions	\$300,000
	Funding applications submitted and awaiting notification (total value)	\$65,351,197

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 Lease to Callanan Holdings Pty Ltd (A.C.N. 050 199 865)

5 **Directorate:** General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2021/1479

Summary:

10 Callanan Holdings Pty Ltd (A.C.N. 050 199 865) holds a lease, under holding over provisions, to occupy Lot 2 DP749851 Staceys Way Tyagarah being Council owned land classified as operational.

Callanan Holdings Pty Ltd requests a new five-year lease with a five-year option over the land for security to undertake capital improvements to its aircraft hangar built on the land.

15

RECOMMENDATION:

20 That Council authorises the General Manager, under delegation, to enter into a lease with Callanan Holdings Pty Ltd (A.C.N 050 199 865) over Lot 2 DP749851 Staceys Way Tyagarah on the following terms:

- a) term five years,
- 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 aircraft,
- 25 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:
 - i) all outgoing payments payable in respect of the land,
 - 30 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

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- iv) all consents, approvals and other authorisation for storage of aircraft,
 - 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

Report

Callanan Holdings Pty Ltd ('Callanan Holdings') has written to Council requesting a new 5-year lease with an option of 5-years over Lot 2 DP749851 ('the Land') for security to undertake capital improvements to its aircraft hangar built on the Land.

- 5 Callanan Holdings has held a lease over the Land since 1 October 2005 for the purpose of storage and operation of aircraft and caretaker's residence

Background

- 10 In December 1986, following a tender process, Council offered a 14-year lease over the Land to J & P Heard for the purpose of 'manufacture of ultralight aircraft & flying school'.
10 Terms of the lease permitted the construction of hangar for the manufacturing and storage of aircraft.

Terms of the lease required the Lessee, at its cost, to remove all improvements from the Land on termination of the lease.

- 15 Prior to termination of the lease (in October 1995), Council consented to the transfer of the lease to Skylimits Sports Aviation Pty Ltd for the purpose of ultralight aircraft storage and manufacture, caretaker residence, aviation, and associated activities.

- 20 Following a tragic accident in which the Lessee was killed, the administration of the Lessee's estate saw the Lessee's property at the Tyagarah airfield sold to Callanan Holdings. Council, by resolution (05-77), granted a new four-year lease with holding over to Callanan Holdings for the purpose of storage, operation of aircraft and caretaker residence. Although that lease remains valid at the time of writing this report, the inclusion in the lease of a caretaker residence is inconsistent with development consents in respect of the land. This aspect is addressed later in this report.

The land:

- 25 Lot 2 DP749851 is Council owned land classified as operational.

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.

- 30 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 Council's Operational Plan to advance investigations into the Tyagarah site. Other lands identified in the Strategy are also being investigated.

- 35 The report recommends that a five-year lease is granted to prevent any impact on the progress of the Business and Industrial Lands Strategy by Council.

Improvements on the Land:

An aircraft hangar and other improvements built on the land is owned by Callanan Holdings.

- 5 Development consent 94/121 was granted for the construction of an ultralight storage hanger for private use on the Land. Consent condition 2 required a lease agreement to be completed with Council. The consent did not authorise a caretaker's residence on the Land nor has there been any subsequent amendment to the consent.
- 10 However, the Land does enjoy dwelling entitlements. Callanan Holdings has indicated it will accept a lease which excludes leasing of a caretaker residence and will seek development approval, should it be awarded a new lease, for a caretaker's residence within the aircraft hangar.
- 15 In-line with the original lease over the land, this report recommends that the propose new lease to Callanan Holdings also requires the Lessee, at its cost, to remove all its improvements on expiry of the lease.

Terms of proposed lease:

Council staff propose a new lease under the following conditions:

- 20
- a) over Lot 2 DP749851,
 - b) term five years,
 - c) base rent to be set by an independent market valuation (yet to be received) with rent annually increased thereafter by Consumer Price Index All Groups Sydney,
 - 25 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:
 - 30 i) all outgoing payments 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
 - iv) all consents, approvals and others authorisation for storage of aircraft,
 - 35 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.

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
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	5.5.1.2	Support the organisation in identifying financial implications of projects, proposals and plans

Recent Resolutions

- Nil.

5 Legal/Statutory/Policy Considerations

As 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; Callanan Holdings to 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.

**Report No. 13.2 Amendment to Policy 5.52 Commercial
Activities on Coastal and Riparian Crown
Reserves**

Directorate: General Manager

5 **Report Author:** Paula Telford, Leasing and Licensing Coordinator

File No: I2021/1564

Summary:

10 Council resolved (**21-336**) to amend Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves to extend the term of commercial sub-licences granted in accordance with the Policy by one-year.

That Council call for public submissions on the Policy amendment and report back to Council with all submissions received.

15

RECOMMENDATION:

1. **That Council considers the submission received from public consultation to amend Policy 5.52 Commercial Activities on Coastal and Riparian Crown to extend current Class 2 Sub-Licences to 1 November 2024.**
- 20 2. **That Council, delegates to the General Manager, the authority to amend Policy 5.52 Commercial Activities on Coastal and Riparian Crown as stated in (1) above.**

Attachments:

- 25 1 Submission to amendment Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves., E2021/119722 

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Report

Council resolved (**21-336**) at its 26 August 2021 meeting:

- 5 1. *That Council authorises 28-day public consultation to amend Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves to increase the term of Class 2 Sub-Licences by twelve-months to enable an extension of the current Class 2 Sub-Licences to 1 November 2024.*
2. *That Council delegates to the General Manager, the authority to amend Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves as stated in (1) above if no submissions are received from public consultation.*
- 10 3. *That a report be brought to Council for consideration to amend Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves as stated in (1) above if submissions are received from the public consultation.*

15 Council resolved to amend Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves ('Policy 5.52') to increase the term of commercial sub-licences granted in accordance with the Policy by twelve-months. The sub-licence term extension being part of a rent relief package to commercial sub-licensee's suffering a significant downturn in turnover due to COVID-19 lockdowns, restrictions and domestic border closures.

20 Council placed an amended Policy 5.52 on public advertisement from 15 September to 12 October 2021. Advertisements were placed in the Byron Echo Newspaper and on Councils Internet site.

Council received the following submission:

Submission (E2021/119722)	Council response:
<ul style="list-style-type: none">• Request that physical training including but not limited to personal training, 1 on 1 training, group fitness training including boot camp style fitness, HIIT training, circuit training etc be included in Policy 5.52.• Disappointing not to be able to run a legitimate business on the most beautiful part of town	<ul style="list-style-type: none">• A new Policy dealing with personal fitness training and other types as requested on Crown foreshores managed by Council is being created by Staff for adoption by the Elected Council later this year.

It is recommended that Council, after considering the submission received resolve to amend Policy 5.52 in accordance with resolution (**21-336**).

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.4	Provide active and passive recreational Community space that is accessible and inclusive for all (SP)	1.2.4.3	Deliver Stage 1 of a Public Open Space Accessibility Program

Recent Resolutions

- Resolution 21-336

5 Legal/Statutory/Policy Considerations

Nil.

Financial Considerations

Nil.

Consultation and Engagement

- 10 Public notice of proposed amendment to Policy 5.52 between 15 September and 12 October 2021 by advertisements in Byron Echo Newspaper and on Council's internet website.

Report No. 13.3 Lease to Parington Pty Ltd (A.C.N 002 015 581)

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

5 **File No:** I2021/1570

Summary:

Mr William Francis Bailey holds a lease, under holding over provisions, over Lot 6 DP836887, Staceys Way Tyagarah being Council owned land classified as operational.

10 Mr Bailey requests a new seven-year lease with a seven-year option over Lot 6 DP836887 for secured hangar access to support his farming business. Mr Bailey requests the new lease in his farming business name Parington Pty Ltd.

15 **RECOMMENDATION:**

That Council authorises the General Manager, under delegation, to enter into a lease with Parington Pty Ltd (A.C.N. 002 015 581) on the following terms:

- 20 a) Lot 6 DP836887 Staceys Way Tyagarah,
- b) term five-years,
- 25 c) base rent to be set by an independent market valuation (yet to be received) with rent annually increased thereafter by Consumer Price Index All Groups Sydney,
- d) for the purpose of storage of aircraft,
- 30 e) the Lessor to consent to the Lessee sub-leasing part of the leased land to T & L West ('the Sub-Lessee') for the same term and purpose as the Head Lease held by the Lessee,
- 35 f) the Lessor acknowledges that the Lessee and Sub-Lessee owns all buildings and improvements on the Land,
- g) Lessee must, at its cost, be responsible for the following:
- 40 i) all outgoing payments 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,

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- 5
- iii) minimum \$20 million public risk insurance covers noting Byron Shire Council as an interested party provided by the Lessee and Sub-Lessee; and
 - iv) all consents, approvals and others authorisation for storage of aircraft on the Land.
- 10
- h) Lessee and Sub-Lessee must at their cost, removal all buildings and other 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.

Attachments:

- 15
- 1 Confidential - Letter from Bill Bailey - Request for a Lease at Tyagarah Airfield, S2021/4893

Report

Mr William Francis Bailey ('the Lessee') has written to Council requesting a new 7-year lease with an option of 7-years over Lot 6 DP836887 ('the Land') for secured hangar access to support his farming business.

- 5 The Lessee has held a lease over the Land since 12 August 1993 for the purpose of a hangar and associated aviation activities. Mr Bailey requests the new lease is granted in his farming business name Parington Pty Ltd.

Background

- 10 Lot 6 DP836887, as vacant land, was first leased to Ron Llewellyn between 15 September 1988 and 14 September 1995 for the purpose of construction of a hangar for a Centre Aircraft, clubhouse for Centre, recreation, camping, children's playground and other uses associated with aviation as approved by Council from time to time. This lease ended without any construction on the Land taking place.

- 15 On 12 August 1993, Council entered into a 7-year lease, with a 7-year option approved by Council resolution (**02-1237**), with the Lessee for the purpose of a hangar and associated aviation activities. Terms of the lease permitted the construction of a hangar, office, amenities and carparking subject to development consent. Terms of the lease required the Lessee, at its cost, to remove all improvements from the land within one-month of termination of the lease.

- 20 On 13 November 1997, Council, by letter signed by the General Manager Mr Ray Kent, consented to the Lessee sub-leasing part of the leased land for the same purpose as the Lessee's lease.

- 25 A second lease was entered into with the Lessee for a term of 5-years commencing 1 July 2007 for hangar and associated activities. The Lessee currently retains this lease under holding over provisions. Clause 13(b) of this lease requires the Lessee to remove, at its cost, all its improvements from the Land at the end of the lease

The Land:

Lot 6 DP836887 is Council owned land classified as operational.

- 30 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.

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.

- 35 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.

The report recommends that a five-year lease is granted to the Lessee to prevent any impact on the progress of the Business and Industrial Lands Strategy by Council.

Improvements on the Land:

Two aircraft hangars are built on the Land.

- 5 • Hanger One, built to the rear of the Land was authorised by development consent 94/487 granted to the Lessee.

- Hanger Two, built to the front of the Land was authorised by development consent 99/0227 after a Land and Environment Court ruling.

- 10 According to terms of the current lease, the Lessee owns Hanger One along with all its other improvements on the Land.

Hanger Two appears to be owned by T & L West and occupies the land under a private agreement with the Lessee following Council consent on 13 November 1997 authorising the Lessee to sub-lease part of the Land.

- 15 Staff recommend that the new proposed five-year lease to the Lessee permits the Lessee to sub-lease part of the land to T & L West ('the Sub-Lessee') only for storage of an aircraft for a term of five-years.

- 20 That the proposed five-year lease requires the Lessee and its Sub-Lessee to remove, at their cost, all improvements from the land upon termination of the lease unless a new lease can be entered into.

Terms of proposed lease:

Council staff propose a new lease to Parington Pty Ltd (A.C.N. 002 015 581) on the following:

- 25 a) lot 6 DP836887,
- b) term five years,
- c) base rent to be set by an independent market valuation (yet to be received) with rent annually increased thereafter by Consumer Price Index All Groups Sydney,
- d) for the purpose of storage of aircraft,
- 30 e) the Lessor to consent to the Lessee sub-leasing part of the leased land to T & L West ('the Sub-Lessee') for the same term and purpose as the Head Lease held by the Lessee,
- f) the Lessor acknowledges that the Lessee and Sub-Lessee owns all buildings and improvements on the Land,
- 35 g) Lessee must, at its cost, be responsible for the following:
 - i) all outgoing payments 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,
 - 40 iii) minimum \$20 million public risk insurance noting Byron Shire Council as an interested party provided the Lessee and Sub-Lessee, and

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- 5
- iv) all consents, approvals and others authorisation for storage of aircraft on the Land,
 - h) Lessee and Sub-Lessee must at their cost, removal all building and other 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.

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
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	5.5.1.2	Support the organisation in identifying financial implications of projects, proposals and plans

Recent Resolutions

- 10
- Nil.

Legal/Statutory/Policy Considerations

As detailed in the report.

Financial Considerations

- 15
- 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.

Ancillary uses of the airfield; Parington Pty Ltd (A.C.N. 002 015 581) and its Sub-Lessee to 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

Council staff have advised Mr Bailey that the report will recommend a five-year lease instead of his requested seven-year with seven-year option to prevent any impact on the progress of the Business and Industrial Lands Strategy by Council over the leased land.

Report No. 13.4 Brunswick Valley Woodchop and Entertainment Committee request for sub-licence for market stalls

Directorate: General Manager

5 **Report Author:** Paula Telford, Leasing and Licensing Coordinator

File No: I2021/1573

Summary:

10 The Brunswick Valley Woodchop and Entertainment Committee Inc was awarded a five-year community market licence to commence 1 November 2021 at Memorial Park Brunswick Heads. The Committee has requested a sub-licence from Council for an additional 50 market stalls on adjacent land being part Lot 7307 DP 1167806.

15 Lot 7307 DP 1167806 is Crown land included in licence RI564194 held by Council for business purposes (low impact commercial recreational activities). In accordance with the licence RI564194, Council may grant a sub-licence for markets on Lot 7307 DP 1167806.

RECOMMENDATION:

20 **That Council delegate to the General Manager, the authority to enter into a sub-licence with the Brunswick Valley Woodchop and Entertainment Committee Inc for a market sub-licence over Part of Lot 7307 DP1167806 on the following:**

- 25 a) term five-years to commence 1 November 2021,
- b) rent to be set in accordance with Council Fees and Charges,
- c) conditional on the sub-licensee holding a community market licence for Memorial Park Brunswick Heads; and
- d) all special conditions in the community market licence to be replicated in the sub-licence.

30

Report

Council resolved (**19-161**) that:

5 *Council delegate to the General Manager the authority to enter into a sub-licence with the Brunswick Valley Woodchop and Entertainment Committee Inc. for a market licence over Part of Lot 7307 DP1167806 on the following:*

- a) *Term of 30 months;*
- b) *rent to be set in accordance with Council Fees and Charges;*
- c) *conditional that the sub- licensee holds a Trust licence for community markets on the adjacent land; and*
- 10 d) *all special conditions in the Trust licence to be replicated in the sub-licence.*

The Brunswick Valley Woodchop and Entertainment Committee Inc ('the Committee') has requested a new five-year sub-licence over part Lot 7307 DP1167806 for the purpose of markets. The Committee was awarded a five-year market licence for Memorial Park Brunswick Heads to commence 1 November 2021.

15 **Authority to grant the sub-licence**

Lot 7307 DP 1167806 is included in Crown licence RI564194 held by Council for business purposes (low impact commercial recreational activities). In accordance with licence RI564194, Council has the authority to grant a sub-licence for the purpose of a market on Part Lot 7307 DP 1167806.

- 20 Clause 64(e) of licence RI564194 requires Council to undertake some form of competitive process to grant a sub-licence. The proposed sub-licence area of 570m² is considered too small to operate a viable standalone market. As a result, the Committee is the only entity in a viable position to operate a market on Part Lot 7307 DP 1167806.

Terms of the sub-licence

25 The proposed sub-licence will be granted on the following:

1. over Part of Lot 7307 DP1167806,
2. rent to be in accordance with published Council Fees and Charges,
3. the sub- licensee must hold a community market licence for Memorial Park Brunswick
30 Heads; and
4. all special conditions in the community market licence to be replicated in the sub-
licence.

Native Title

- 35 In accordance with Licence RI564194 Council may only grant sub-licences for low impact future acts that exclude any form of excavation, vegetation clearing, mining and construction, hazardous disposals onto the land or the right of exclusive possession.

The proposed sub-licence for community markets is a type of low impact future act that has been validated as a future act by the Department of Planning, Industry and Environment prior to grant of Licence RI564194 to Byron Shire Council.

Strategic Considerations

5 Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.1	Develop and maintain collaborative relationships with government, sector and community	2.2.1.2	Participate in and inform community planning

Recent Resolutions

- Resolution (19-161).

Legal/Statutory/Policy Considerations

As detailed in the report.

10 Financial Considerations

Rent under the proposed sub-licence will commence at \$131 inclusive of GST per market and increase with Councils published fees and charges.

Consultation and Engagement

Nil.

Report No. 13.5 Council Investments - 1 September 2021 to 30 September 2021

5 **Directorate:** Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2021/1592

Summary:

10 This report includes a list of investments and identifies Council's overall cash position for the period 1 September 2021 to 30 September 2021 for information.

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 30 September 2021.

15 .

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Report

5 Council has continued to maintain a diversified portfolio of investments. As of 30 September 2021, the average 90-day bank bill rate (BBSW) for the month of September 2021 was 0.02%. Council's performance to September 2021 was 0.57%. 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.

10 The table below identifies the investments held by Council as at 30 September 2021

Schedule of Investments held as at 30 September 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
06/09/21	1,000,000.00	Northern Territory TCorp	Y	Aa3	15/12/26	Y	B	1.40%	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
16/09/21	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	02/03/32	Y	B	1.50%	1,000,000.00
31/03/17	1,000,000.00	CBA Climate Bond	Y	AA-	31/03/22	N	FRN	1.02%	1,005,120.00
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
07/10/20	2,000,000.00	MyState Bank Limited	Y	Baa2	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	BBB-	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 Bank	Y	NR	27/01/22	Y	TD	0.50%	1,000,000.00
29/01/21	1,000,000.00	ME Bank	Y	BBB	31/01/22	Y	TD	0.45%	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
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	BBB	24/02/22	Y	TD	0.45%	1,000,000.00
30/06/21	1,000,000.00	ME Bank	N	BBB	27/01/22	Y	TD	0.45%	1,000,000.00
06/07/21	1,000,000.00	Judo Bank	N	BBB-	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	BBB	23/12/21	Y	TD	0.50%	1,000,000.00
30/07/21	1,000,000.00	AMP Bank	N	BBB	28/06/22	Y	TD	0.75%	1,000,000.00
30/07/21	1,000,000.00	Judo Bank	N	BBB-	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
01/09/21	1,000,000.00	Bank of Queensland	Y	BBB+	02/03/22	N	TD	0.33%	1,000,000.00
10/09/21	1,000,000.00	The Mutual Bank	N	NR	10/03/22	Y	TD	0.45%	1,000,000.00
03/09/21	2,000,000.00	Suncorp	Y	A+	02/03/22	Y	TD	0.30%	2,000,000.00
03/09/21	2,000,000.00	Bank of Queensland	N	BBB+	04/01/22	N	TD	0.30%	2,000,000.00
06/09/21	1,000,000.00	Volt Bank	Y	NR	06/12/21	Y	TD	0.40%	1,000,000.00
09/09/21	1,000,000.00	Illawarra Credit Union	N	NR	09/09/22	Y	TD	0.55%	1,000,000.00
N/A	11,081,926.37	CBA Business Saver	N	AA-	N/A	N	CALL	0.20%	11,081,926.37
N/A	153,290.40	CBA Business Saver – Tourism Infrastructure	N	AA-	N/A	N	CALL	0.20%	153,290.40

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value
		Grant							
N/A	2,113,495.47	NSW Treasury Corp	N	AAA	N/A	Y	CALL	0.01%	2,113,495.47
N/A	11,012,171.07	Macquarie Accelerator Call	N	A	N/A	N	CALL	0.40%	11,012,171.07
Total	69,110,884.31						AVG	0.57%	69,472,641.81

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.

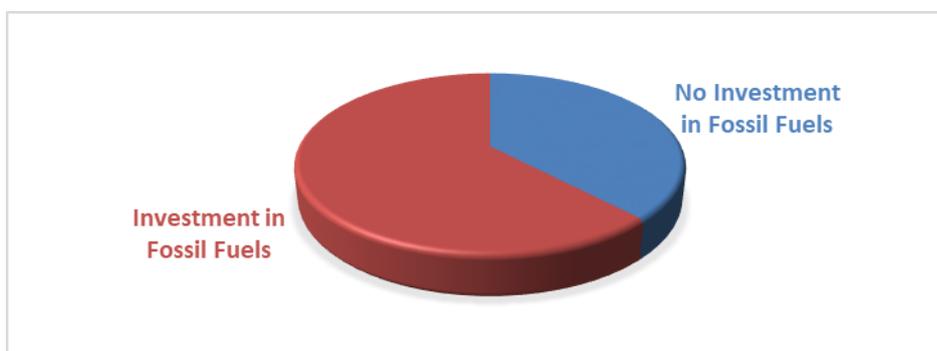
Environmental and Socially Responsible Investing (ESRI)

- 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
- 10 classification across Council's total investment portfolio in respect of fossil fuels only.

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

- 5 Council has two investments with financial institutions that invest in fossil fuels but are nevertheless aligned with the broader definition of Environmental and Socially Responsible investments i.e.:
1. \$1,000,000 investment with the National Australia Bank maturing on 24 March 2022 known as a Social Bond that promotes Gender Equity.
 - 10 2. \$1,000,000 investment with Commonwealth Bank maturing on 31 March 2022 known as a Climate Bond.



Investment Policy Compliance

Investment policy compliance				ACTUAL	Variance
% per institution should not exceed the following					
AAA to AA	A1+	100%	45.36%	Meets policy	
A+ to A-	A1	60%	17.38%	Meets policy	
15 BBB to NR	A2,NR	40%	37.26%	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).

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Associated Risk

5 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 September 2021 to 30 September 2021:

Dissection of Council Investment Portfolio as at 30 September 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
11,081,926.37	CBA Business Saver	11,081,926.37	0.00
153,290.40	CBA Business Saver – Tourism Infrastructure Grant	153,290.40	0.00
2,113,495.47	NSW Treasury Corp	2,113,495.47	0.00
11,012,171.07	Macquarie Accelerator	11,012,171.07	0.00
6,500,000.00	Bonds	6,782,375.00	282,375.00
69,110,884.31		69,472,641.81	361,757.50

10 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.

15 The table below provides a reconciliation of investment purchases and maturities for the period of 1 September 2021 to 30 September 2021 on a current market value basis.

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Movement in Investment Portfolio – 30 September 2021

Item	Current Market Value (at end of month) \$
Opening Balance at 1 September 2021	69,967,859.48
Add: New Investments Purchased	10,000,000.00
Add: Call Account Additions	9,000,000.00
Add: Macquarie Accelerator Interest	2,986.20
Add: Tourism Call Account Interest	25.19
Add: TCorp Account Interest	-154.54
Add: Call Account Interest	1,925.48
Less: Call Account Redemption	11,500,000.00
Less: Investments Matured	8,000,000.00
Less: Fair Value Movement for period	0.00
Closing Balance at 30 September 2021	69,472,641.81

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

Dissection of Council's Cash Position as at 30 September 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	11,081,926.37	11,081,926.37	0.00
CBA Business Saver – Tourism Infrastructure Grant	153,290.40	153,290.40	0.00

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Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
NSW Treasury Corp	2,113,495.47	2,113,495.47	0.00
Macquarie Accelerator	11,012,171.07	11,012,171.07	0.00
Bonds	6,500,000.00	6,782,375.00	282,375.00
Total Investment Portfolio	69,110,884.31	69,472,641.81	361,757.50
Cash at Bank			
Consolidated Fund	3,732,781.09	3,732,781.09	0.00
Total Cash at Bank	3,732,781.09	3,732,781.09	0.00
Total Cash Position	72,843,665.40	73,205,422.90	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

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

10 The Report must be presented at the next Ordinary Meeting of Council after the end of the month being reported. The current Council Meeting cycle does not always allow this to occur, especially as investment valuations required for the preparation of the report are

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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.

- 5 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.

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

10 **Financial Considerations**

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

Report No. 13.6 Annual Report 2020/21

Directorate: Corporate and Community Services

Report Author: Heather Sills, Corporate Planning and Improvement
Coordinator

5 **File No:** I2021/1600

Summary:

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

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

Council is asked to note the Annual Report 2020/21 and its submission to the Minister for Local Government.

15 A separate report on the 2020/21 Financial Statements will be prepared for the consideration of Council.

RECOMMENDATION:

20 **That Council notes the Annual Report 2020/21 (#E2021/118348), included as Attachment 1 to this report and its submission to the Minister for Local Government.**

Attachments:

25 1 Byron Shire Council Annual Report 2020/21, E2021/118348 

Report

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

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

10 In addition to the prescribed information, this Annual Report is one of the key points of accountability between Council and our community. The Annual Report highlights some of our achievements in implementing the Delivery Program over the last year and the ways in which these activities contribute to the overarching objectives in the Community Strategic Plan 2028:

- 15 • **INFRASTRUCTURE** - We have infrastructure, transport and services which meet our expectations
- **COMMUNITY** - We cultivate and celebrate our diverse cultures, lifestyle and sense of community
- **ENVIRONMENT** - We protect and enhance our natural environment
- **GROWTH** - We manage growth and change responsibly
- 20 • **GOVERNANCE** - We have community led decision making which is open and inclusive

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	5.2: Create a culture of trust with the community by being open, genuine and transparent	5.2.1: Provide timely, accessible and accurate information to the community	5.2.1.3	Prepare and submit End of Term Report and Annual Report

Legal/Statutory/Policy Considerations

25 [Section 428](#) of the *Local Government Act 1993* requires Council to prepare an annual report within 5 months after the end of each year and to detail its achievements in implementing its delivery program and the effectiveness of the principal activities undertaken in achieving the objectives at which those principal activities are directed.

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The Local Government (General) Regulation

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

Financial Considerations

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

10 **Consultation and Engagement**

The Annual Report will be published on Council's website.

Report No. 13.7 Draft 2020/2021 Financial Statements

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

File No: I2021/1651

5 **Summary:**

The Draft 2020/2021 Financial Statements have been prepared, and at the time of writing, are subject to external audit, which is still in progress, albeit close to finalisation. Council's file has been lodged with the NSW Audit Office for review and has been subject to audit review by the contracted auditor, Thomas Noble and Russell.

10 This report to Council the adoption of the Draft 2020/2021 Financial Statements as prepared and the completion of the statutory steps outlined in Section 418 to 420 of the Local Government Act 1993.

15

RECOMMENDATION:

1. **That Council adopts the Draft 2020/2021 Financial Statements incorporating the General Purpose Financial Statements (#E2021/127421) and Special Purpose Financial Statements (#E2021/127426).**
- 20 2. **That Council approves the signing of the "Statement by Councillors and Management" in accordance with Section 413(2)(c) of the Local Government Act 1993 and Section 215 of the Local Government (General) Regulation 2021 in relation to the 2020/2021 Draft Financial Statements.**
- 25 3. **That the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 25 November 2021 in accordance with Section 418(1) of the Local Government Act 1993.**

30 **Attachments:**

- 1 Draft 2020-2021 General Purpose Financial Statements, E2021/127421 
- 2 Draft 2020-2021 Special Purpose Financial Statements, E2021/127426 
- 3 Draft 2020-2021 Special Schedules, E2021/128420 

35

Report

5 The Draft 2020/2021 Financial Statements have been prepared, and at the time of writing this report, are subject to external audit which is still in progress, albeit close to finalisation. Council's file has been lodged with the NSW Audit Office for review and has been subject to audit review by the contracted auditor, Thomas Noble and Russell.

10 This report recommends to Council, following consideration, the adoption of the Draft 2020/2021 Financial Statements as prepared and the completion of the statutory steps outlined in Section 418 to 420 of the Local Government Act 1993. The Audit, Risk and Improvement Committee will also be considering the Draft 2020/2021 Financial Statements their Committee Meeting held on 21 October 2021.

The Financial Statements are a statutory requirement and provide information on the financial performance of Council over the previous twelve-month period.

15 The Draft 2020/2021 Financial Statements provided in the attachments are broken down into:

- General Purpose Financial Statements – Attachment 1
- Special Purpose Financial Statements – Attachment 2

20 As in previous years, Council produces Special Schedules that are not audited (except Permissible Income for General Rates). However, from the 2018/2019 financial year, whilst the Special Schedules are still produced and submitted to the Office of Local Government, they are no longer required to be published as part of Council's Financial Statements, except for the Special Schedules relating to Permissible Income for General Rates and Report on Infrastructure Assets.

Brief explanations for each item follow:

30 **General Purpose Financial Statements**

35 These Statements provide an overview of the operating result, financial position, changes in equity and cash flow movement of Council as at 30 June 2021 on a consolidated basis with internal transactions between Council's General, Water and Sewerage Funds eliminated. The notes included with these reports provide details of major items of income and expenditure with comparisons to the previous financial year. The notes also highlight the cash position of Council and indicate which funds are externally restricted (i.e., may be used for a specific purpose only), and those that may be used at Council's discretion.

40 **Special Purpose Financial Statements**

45 These Statements are a result of the implementation of the National Competition Policy and relate to those aspects of Council's operations that are business oriented and compete with other businesses with similar operations. Mandatory disclosures in the Special Purpose Financial Reports are Water and Sewerage.

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Additional disclosures relate to Council business units that Council deems 'commercial'. In this regard Council has traditionally reported its caravan park operations, being Suffolk Beachfront Holiday Park and First Sun Holiday Park, on a combined basis. These financial reports must also classify business units in the following categories:

5

- Category 1 – operating turnover is greater than \$2million
- Category 2 – operating turnover is less than \$2million

10 All Council's business units are classed as Category 1 with all having operating turnover greater than \$2 million.

15 Another feature of the Special Purpose Financial Reports is to build taxes and charges, where not physically incurred, into the financial results in order that the results can be measured on a level playing field with other organisations operating similar businesses, who *are* required to pay these additional taxes and charges. These taxes and charges include:

- Land tax – Council is normally exempt from this tax, so notional land tax is applied.
- Income tax – Council is exempt from income tax and in regard to these reports, company tax. Any surplus generated has a notional company tax applied to it.
- Debt guarantee fees – Generally due to the low credit risk associated with Councils, Councils can often borrow loan funds at lower interest rates than the private sector. A debt guarantee fee inflates the borrowing costs by incorporating a notional cost between interest payable on loans at the interest rate borrowed by Council and one that would apply commercially.

25

The Special Purpose Financial Reports are prepared on a non-consolidated basis - in other words they are grossed up to include any internal transactions with the General Fund.

30

Specific Items relating to 2020/2021 Draft Financial Statements

35 Before consideration is given to actual financial outcome, it needs to be pointed out that the Office of Local Government restructured the Local Government Code of Accounting Practice and Financial Reporting for the 2020/2021 financial year. This means that the notes to the General Purpose Financial Statements are now broken into Sections as follows:

- Section A – About Council and these Financial Statements
- Section B – Financial Performance
- Section C – Financial Position
- Section D – Council Structure
- Section E – Risks and Accounting Uncertainties
- Section F – People and Relationships
- Section G – Other Matters
- Section H – Additional Council Disclosures

45

Some line items previously within certain notes have been moved to other notes.

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The Draft 2020/2021 Financial Statement results have been impacted by the following items that require explanation:

5 • Operating Result from Continuing Operations

10 The 2020/2021 financial year has seen a positive overall financial result. Council recorded a \$9.468million surplus compared to the \$23.778million surplus in 2019/2020. This result incorporates the recognition of capital revenues such as capital grants and contributions for specific purposes and asset dedications amounting to \$23.404 million, compared to \$32.021million in 2019/2020. Capital grants and contributions in 2019/2020 were significantly influenced by additional grant funding i.e., from the Election Commitment Grant which has continued in 2020/2021 and recognising asset values for the former Byron Hospital over and above the \$1 purchase price.

15 A more important indicator is the operating result before capital grants and contributions. This result was a deficit of \$13.936 million in 2020/2021 compared to a deficit of \$8.243million in 2019/2020, representing an increase of \$5.693million between financial years. This indicates Council's operating expenditures exceeded its operating revenues. 20 Whilst operating revenues, excluding capital grants and contributions, grew by \$4.571million, overall operating expenses grew by \$10.264million. Major contributors to additional operating expenditure as non-cash expenses were due to the increase in depreciation expense (\$1.844million) and increase in net losses from disposal of assets (\$5.062million).

25 With reference to the Income Statement to the General Purpose Financial Reports included at Attachment 1, the following table indicates the major changes between 2020/2021 and 2019/2020 by line item:

30

Item	Change between 2020/2021 and 2019/2020 \$'000	Change Outcome	Comment
Income			
Rates & Annual Charges	+\$6,784	Increase	Reflects imposition of the final year of the 7.50% Special Rate Variation and changes in annual charges from Council's adopted 2020/2021 Revenue Policy.
User Charges and Fees	-\$489	Decrease	A contributor to this change was the change in residential sewerage charging to remove the volumetric charge in favour of a fixed charge. The volumetric charge was classified as a user charge and fee. Further information is available in Note

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Item	Change between 2020/2021 and 2019/2020 \$'000	Change Outcome	Comment
			B2-2 to Attachment 1.
Other Revenues	+\$184	Increase	The major increase in this item relates to fine revenues.
Grants & Contributions – Operating	-\$712	Decrease	Overall operating grants and contributions decreased by \$712k. Major difference is one-off stimulus funding Council received in 2019/2020 following the 2020 Bushfires. Further information is available in Note B2-4 to Attachment 1.
Grants & Contributions – Capital	-\$8,617	Decrease	Revenue decrease in this item mainly relates to the fact that in 2019/2020 Council recognised former Byron Hospital assets at fair value compared to the purchase price of \$1 (\$8.4million). Other than that capital grants and contributions have remained consistent. Further information is available in Note B2-4 to Attachment 1.
Interest and Investment Revenue	-\$1,145	Decrease	Interest rates during 2020-2021 have remained at historic lows, plus liquidity measures by the Reserve Bank during COVID-19 have reduced investment rates significantly, lowering the return on Council's investments. Cashflow around scale of works and recovering grant payments has also been an influence.
Other Income	-\$51	Decrease	Principally relates to change in disclosure regarding Byron Shire Council's share of a surplus for Richmond Tweed Regional Library for 2019/2020. For 2020/2021 this is allocated straight to the Statement of Comprehensive Income and Statement of Changes in Equity and was a loss of \$64k.
Total Income Change	-\$4,046	Decrease	
Expenditure			
Employee Benefits and Oncosts	+\$1,687	Increase	Decreased leave entitlement expenses of \$287k reflect an emphasis on controlling leave balances and the impact of declining interest rates on present value

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Item	Change between 2020/2021 and 2019/2020 \$'000	Change Outcome	Comment
			of liability calculations. A \$348k increase on superannuation payments. An increase of \$1,915k of employee costs capitalised on capital works in 2020/2021 compared to 2019/2020 and gross salary and wages increased \$3,349k. More information is provided at Note B3-1 to Attachment 1.
Borrowing Costs	-\$297	Decrease	Reduction due to ongoing repayment of existing loans and borrowing of new loans at lower interest rates given current market conditions.
Materials & Services	+\$1,793	Increase	Materials and Services increased \$1,793k overall. Changes include an additional \$116k in legal expenses (\$701k for the year), \$164k in insurance costs, \$170k for IT software costs, \$494k in waste contract costs, \$665k increase in temporary employment costs. Other changes can be found at Note B3-2 to Attachment 1.
Depreciation	+\$1,844	Increase	Respective changes between asset classes are outlined at Note B3-4 to Attachment 1. Essentially major increase is due to the revaluation of transport assets in 2019/2020 now flowing through with increased depreciation expense.
Other Expenses	+\$175	Increase	Overall small but there were variations in line items as disclosed at Note B3-5 to Attachment 1. The major item is an increased contribution to Richmond Tweed Regional Library of \$92k.
Net Losses from Disposal of Assets	+\$5,062	Increase	Reflects the written down value of assets disposed of at the end of financial year and is contingent upon the extent of assets disposed and their written down value at the time of disposal which can vary. For 2020/2021, Council has significantly more disposals than gains, including the disposal of infrastructure \$7,634k, reflecting the level of capital works, plant and equipment \$183k gain.

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Item	Change between 2020/2021 and 2019/2020 \$'000	Change Outcome	Comment
			Further details can be found at Note B4-1 to Attachment 1
Total Expenditure Change	+\$10,264	Increase	
Change in Result	-\$14,310	Decrease	Decrease in overall surplus between financial years.

Following from the operating results, are the performance ratios at Note H1-1 to the General Purpose Financial Statements. These have been derived following the financial assessments undertaken by NSW Treasury Corporation on all NSW Councils in 2012 and are now incorporated into the latest update to the Code of Accounting Practice and Financial Reporting that determines the content of Council's Financial Statements. These ratios present either a stable or improving result for Council except for the following:

1. Operating Performance Ratio reflects Council's operating result. The benchmark is to be greater than 0% but in 2019/2020 Council's ratio was -7.08% and in 2020/2021 it was -6.87%, a slight improvement. This ratio was impacted by some one-off items i.e., demolition costs of the former Mullumbimby Hospital and revenue losses due to COVID-19. Additionally in 2020/2021 it was significantly influenced by Council recognising over \$1.8million in expenditure restoring damaged infrastructure from the December 2020 and March 2021 natural disaster events but not recognising any corresponding revenues. Council has not gained funding approval for this expenditure at 30 June 2021 and therefore cannot recognise it even though the Council area was included in the declaration by State. Council needs to improve this result back towards the benchmark.
2. Outstanding, Rates and Annual Charges – Whilst still within the industry benchmark, Council's ratio has increased to 8.33% in 2020/2021 from 7.32% in 2019/2020. The increase can be attributable not only to the last year of the special rate variation, and increases to rates plus annual charge increases but also to the impact of the COVID-19 pandemic. Through its assistance program Council has offered ratepayers extended payment arrangements and suspended debt recovery. Six months of the financial year also had interest on outstanding rates and charges set to 0% which whilst providing assistance, also reduces the incentive for people to pay.

- Asset Revaluations

During 2020/2021, a revaluation of assets relating to Operational Land, Buildings, Other Structures and Open Space Assets was undertaken. These revaluations have increased Council's asset values by the following amounts:

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- Operational Land – \$74.652million
- Buildings – \$4.722million
- Other Structures and Open Space Assets - \$1.420million

5

For the upcoming 2021/2022 financial year, Council will need to consider the revaluation of Water and Sewerage Infrastructure assets given these assets have not been revalued since 2017 and are due for revaluation, albeit they are indexed annually between revaluations.

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- Asset Recognition

15

As indicated at Note C1-7 to Council's financial statements, Council expended \$40.286million on asset renewals and \$3.179million on new assets. The extent of asset renewals is significant and demonstrates ongoing commitment in that area. The depreciation expense of Council's assets for 2020/2021 was \$17.529million so it is pleasing to see that asset renewal was significantly more than the financial depreciation of Council's assets.

20

- Cash and Investments

25

As at 30 June 2021 as detailed at Note C1-3 to the financial statements, Council has maintained \$0.518million in unrestricted cash and investments being a reduction of \$0.206million compared to 2019/2020. This is a satisfactory result given the ongoing impacts of COVID-19 and the assistance Council has endeavoured to provide the community during these uncertain times.

30

Whilst still dealing with COVID-19 Council was not able to restore one of its short term financial goals of reaching an unrestricted cash balance of \$1million by the end of 2020/2021. All other cash and investments totalling \$71.955million at 30 June 2021 are restricted for specific purposes. Overall, the cash and investment position of Council decreased by \$4.089million during the year.

- Receivables and Contract Assets

35

As at 30 June 2021 as detailed at Note C1-4 and C1-6 to the financial statements, Council was due \$13.027million in receivables and contract assets. Of this amount \$2.946million was due from other levels of Government for grants, \$1.074million from the Commonwealth Government for Goods and Services Tax and \$0.740million in Government grants and subsidies. Overall receivables and contract assets increased by \$0.553million compared to the 2019/2020 financial year.

40

- Payables, Contract Liabilities and Provisions

45

At 30 June 2021 as detailed at Note C3-1 for payables, Note C3-2 for Contract Liabilities, Note C3-4 for Employee Benefit Provisions and Note C3-5 for Provisions, total payables by Council were \$14.110million including \$4.323million held in security bonds, deposits and retentions, \$0.734million in accrued expenses and \$8.384million payable to suppliers.

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5 In addition at 30 June 2021, Council has accrued employee leave entitlements valued at \$7.220million. Specific employee leave entitlements include \$2.635million for annual leave, \$4.429million for long service leave and \$0.156million for gratuities. At 30 June 2021 Council also had \$6.274million in contract liabilities relating to unexpended capital grants and advance bookings for its holiday parks. It has also made provisions of \$7.972million for the restoration of landfill and quarry assets. In comparison to 2019/2020, total liabilities have increased \$4.454million.

- 10 • Loan Borrowings

During 2020/2021 Council borrowed new loans of \$1.750million and continued to make normal loan repayments.

15 Council's outstanding loans as at 30 June 2021 are \$61.058million. Total loan expenditure for 2019/2021 included interest of \$3.046million and principal payments of \$3.527million. Total expenditure in 2020/2021 related to loan repayments was \$6.573million or 7.96% of Council's revenue, excluding all grants and contributions.

20 The outstanding loans by Fund totalling \$61.058million are as follows:

- General Fund \$22.858million
- Water Fund \$0 – Water Fund is debt free
- Sewerage Fund \$38.200million

- 25 • New Accounting Standards

The 2020-2021 financial year has required Council to implement the following new accounting standard:

- 30 • AASB 1059 – Service Concession Arrangements: Grantors

A position paper was presented to the Audit, Risk and Improvement Committee on 19 August 2021 suggesting after review that this new Accounting Standard had no impact on the financial reporting or results for Byron Shire Council.

- 35 • Liquidity

40 Council's Statement of Financial Position (balance sheet) indicates net current assets of \$46.082million. It is on this basis, in the opinion of the Responsible Accounting Officer, that the short term financial position of Council remains in a satisfactory position and that Council can be confident it can meet its payment obligations as and when they fall due. That is, there is no uncertainty as to Council being considered a 'going concern'. In addition, Council's cash expense cover ratio is at 9.36 months whereas the minimum benchmark is 3 months. Council exceeds this benchmark by three times.

45 Council's Unrestricted Current Ratio has declined to 2.41, demonstrating Council has \$2.41 in unrestricted current assets compared to every \$1.00 of unrestricted current liabilities. This exceeds the benchmark of \$1.50.

On a longer term basis Council will need to consider its financial position carefully. Nevertheless, in isolation, the financial results for 2020/2021 continue to present a ‘stable’ financial position especially given the ongoing impacts of COVID-19. Effort will need to be made to manage the trend towards reducing operational deficits before capital grants and contributions. Furthermore, it will be a goal to endeavour to restore the unrestricted cash balance back to \$1million during the 2021/2022 financial year which could not be achieved during 2020/2021.

10 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.5	Manage Council’s finances sustainably	5.5.2	Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.2	Complete annual statutory financial reports

15 Legal/Statutory/Policy Considerations

Section 413(2)(c) of the Local Government Act 1993 and Section 215 of the Local Government (General) Regulation 2021 requires Council to specifically form an opinion on the financial statements. Specifically Council needs to sign off an opinion on the Financial Statements regarding their preparation and content as follows:

20

In this regard the Financial Statements have been prepared in accordance with:

- The Local Government Act 1993 (as amended) and the Regulations made thereunder.
- The Australian Accounting Standards and professional pronouncements.
- The Local Government Code of Accounting Practice and Financial Reporting.

25

And the content to the best of our knowledge and belief:

- Presents fairly the Council’s operating result and financial position for the year.
- Accords with Council’s accounting and other records.
- Management is not aware of any matter that would render the Financial Statements false or misleading in any way.

30

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Section 416(1) of the Local Government Act 1993, requires a Council's annual Financial Statements to be prepared and audited within four (4) months of the end of that financial year i.e. on or before 31 October 2021.

- 5 Section 417(4) of the Local Government Act 1993 requires, as soon as practicable after completing the audit, the Auditor must send a copy of the Auditor's Reports to the Departmental Chief Executive and to the Council.

- 10 Section 417(5) of the Local Government Act 1993 requires Council, as soon as practicable after receiving the Auditor's Reports, to send a copy of the Auditor's Reports on the Council's Financial Statements, together with a copy of the Council's audited Financial Statements, to the Departmental Chief Executive before 7 November 2021.

- 15 Section 418(1) of the Local Government Act 1993 requires Council to fix a date for the Meeting at which it proposes to present its audited Financial Statements, together with the Auditor's Reports, to the public, and must give public notice of the date so fixed. This requirement must be completed within five weeks after Council has received the Auditor's Reports.

Financial Considerations

- 20 There are no direct financial implications associated with this report as the report does not involve any future expenditure of Council funds but is a report advising on Council's draft financial outcomes during the 2020/2021 financial year, which are identified in this report and attachments. These financial outcomes are also still subject to final review by the NSW Audit Office at the time of report preparation and may change.

25

Consultation and Engagement

- 30 Section 420 of the Local Government Act 1993 requires Council to provide the opportunity for the public to submit submissions on the Financial Statements. Submissions are to be submitted within seven days of the Financial Statements being presented to the public. In the case of the 2020/2021 Financial Statements, the closing date for submissions is expected to be 3 December 2021.

Report No. 13.8 Update on Expression of Interest for Suffolk Park Community Garden

5 **Directorate:** Sustainable Environment and Economy

Report Author: Julia Curry, Sustainability and Emissions Reduction Officer
Paula Telford, Leasing and Licensing Coordinator

File No: I2021/1341

Summary:

10 The Linda Vidler Masterplan includes a community garden. In accordance with **resolution 21-264**, an expression of interest seeking interested groups was run from 22 June to 21 July 2021. Only one group submitted an application, being the Suffolk Park Community Garden Inc.

15 Prior to granting a licence to the Suffolk Park Community Garden Inc, Council is required to publicly advertise the proposed licence. The proposal was advertised between 22 September to 19 October. At the time of writing this report 10 submissions had been received and the exhibition period was yet to close. The submissions received to date have been in favour of the community garden. If further submissions are received these will be provided in a memorandum to Councillors.

20 This report recommends that Council accepts the expression of interest submitted by the Suffolk Park Community Garden Inc and grants a new five-year licence for a community garden on part Lot 60 DP817888 known as Linda Vidler Park.

25

RECOMMENDATION:

1. **That Council accepts the expression of interest by Suffolk Park Community Garden Incorporation to operate and manage a community garden on part Lot 60 DP817888 known as Linda Vidler Park.**
- 30 2. **That Council, having considered all submissions received following 28-day public notice of a proposed five-year licence for a Suffolk Park Community Garden, delegate to the General Manager, the authority to enter into the following Licence with the Suffolk Park Community Garden Incorporation on the following:**
 - 35 a) **term five (5) years with no holding over;**

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- b) for the purpose of a community garden as defined in Byron Shire Community Gardens 2020 Policy;
- c) rent to commence at \$490 (exclusive of GST) and thereafter increased annually by Consumer Price Index All Groups Sydney for the term;
- 5 d) the Licensee to pay usage charges for all services connected to the land including waste management services and provide public liability and contents insurance; and
- e) the Licensor to pay outgoings of the value of general land rates and fixed water and sewer chargers (if payable).

10

Attachments:

- 1 Linda Vidler Park Masterplan ADOPTED, E2021/115591 
 - 2 Submissions to Licence to Suffolk Park Community Garden Inc, E2021/119711 
- 15

Report

5 Following **resolution 21-264** from the 27 May 2021 Council Report Linda Vidler Park Masterplan, Council advertised an expression of interest to the public for the licence of part of Council owned land known as Linda Vidler Park for the purposes of establishing a community garden. The subject area for the Community Garden is identified on page 10 of the Masterplan (see Attachment 1).

The expression of interest was open to applicants from 22 June to 21 July 2021. One application was received from Suffolk Park Community Garden Inc.

Proposed New Licence

- 10 Lot 60 DP 817888, 46 Beech Drive, Suffolk Park, is Council owned land classified as community land and categorised as a park. The Plan of Management for the land expressly permits the grant of a license for purposes authorised by the Local Government Act. A license for a community garden to support the physical, cultural, social and intellectual development of the public is a purpose authorised by the Act.
- 15 Terms of the proposed licence will include:
- i. five-year term with no holding over;
 - ii. initial rent to commence at \$490 (exclusive of GST) and annually increased thereafter by Consumer Price Index All Groups Sydney;
 - iii. Licensee outgoings:
 - 20 a. all usage costs for all services connected to the land including waste management services; and
 - b. public liability and contents insurances.
 - iv. Licensor outgoings:
 - a. Annual fixed rates and charges (if payable)
- 25 Once a formal license is issued, the garden will be established in line with Council's [Byron Shire Community Gardens Guidelines](#) and [Byron Shire Community Gardens Policy](#). The granting of a license will also enable the group to seek external grant funding opportunities to develop the garden.
- 30 Prior to granting a formal licence, Council is required to publicly advertise the proposal in accordance with the Local Government Act. The proposed 5 year Suffolk Park community garden license was advertised from 22 September to 19 October 2021.

At the time of writing this report 10 submissions had been received and the submission period had not yet closed. If required, a memorandum will be provided to Councillors detailing any further submissions received post finalising this report.

35

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The following table summarises the submissions so far received. A full copy of the submissions are provided in Attachment 2.

Submissions	Council response
<ul style="list-style-type: none"> • Approve of proposed licence. • That the garden will comprise of garden beds that residents can lease. • That the garden will be structured, rather than the current sprawl that looks like a land grab than any real use. • That the garden will be maintained by its community users and not a Council responsibility to maintain. 	<ul style="list-style-type: none"> • Noted. • The establishment and ongoing management of the garden will be the responsibility of the licensee, in accordance with the 2020 Policy. • Council will not be responsible for the maintenance and management of the community garden.
<ul style="list-style-type: none"> • Love the garden, great space for families and community recreation. 	<ul style="list-style-type: none"> • Noted.
<ul style="list-style-type: none"> • Approve of the garden. • The garden to be structured and maintainable, rather than a dictated structure upon everyone else. be maintained. 	<ul style="list-style-type: none"> • Noted. • All community gardens on Council land in the Byron Shire are required to adhere with the 2020 Policy, and follow the recommendations for establishing and maintaining a garden in the Byron Shire Community Gardens Guidelines.
<ul style="list-style-type: none"> • Is the best space to educate children, grow vegies and respect the land? 	<ul style="list-style-type: none"> • Noted. • The Policy definition for a community garden supports this – “Community gardens provide a range of social, environmental and educational needs.”
<ul style="list-style-type: none"> • Great space for adults and children. • Request a natural footpath and fence between the pump track and garden to prevent kids driving very fast through the garden and younger kids playing around. 	<ul style="list-style-type: none"> • Noted. • Council will investigate the need for a fence to stop children riding though the garden. • Council will work with the community garden to create a natural boundary.
<ul style="list-style-type: none"> • Children love the garden, and a place to meet people. • Request the garden is organic and grass roots as possible particularly the permaculture aspect and the trees. 	<ul style="list-style-type: none"> • Noted. • The style, structure and vision of the garden will be the responsibility of the licensee, and will adhere to the Guidelines and Policy documents.
<ul style="list-style-type: none"> • In favour of the community garden and excited for its future as an essence of a true community project. 	<ul style="list-style-type: none"> • Noted.

<ul style="list-style-type: none"> • Look forward to seeing Council work with the community to create a wholesome community project in the most regenerative and abundant way possible. • The garden is a great source of connection for all ages. 	
<ul style="list-style-type: none"> • The community garden is a vital space and haven for locals who do not have garden space, a place for children to learn and grow and a place to grow fresh food and flowers. 	<ul style="list-style-type: none"> • Noted.
<ul style="list-style-type: none"> • Very positive development for the community garden 	<ul style="list-style-type: none"> • Noted.
<ul style="list-style-type: none"> • Small, dedicated group of local gardeners with a creative insight to build a productive space. • The garden is a new cultural identity for the town and should be encouraged and supported. 	<ul style="list-style-type: none"> • Noted.

It is recommended, that Council having considered all submissions received as detailed in this report, and memorandum (if required), grants the proposed licence to the Suffolk Park Community Garden Incorporated on the terms included in this report.

Strategic Considerations

5 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.2: Strive to become a sustainable community	3.2.2: Support community environmental and sustainability projects	3.2.2.3	Support community gardens in accordance with the Policy and Guidelines
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.3: Provide accessible, local community spaces and facilities	2.3.7: Deliver Open Space and Recreational services in line with Community Solutions Panel values (SP)	2.3.7.7	Deliver adopted infrastructure within the Suffolk Park Recreation Ground in accordance with POM, adopted Master Plan and Community consultation

Recent Resolutions

- 21-264
- 21-286

Legal/Statutory/Policy Considerations

- 5 • Local Government Act 1993 Section 47A

Financial Considerations

The Licensee is to pay annual rent commencing at \$490 (exclusive of GST) with rent to be annually increased thereafter by Consumer Price Index All Groups Sydney.

- 10 The Licensee to pay all usage charges for all services connected to the land including waste management services and to provide public liability and contents insurance cover. The Licensor outgoings are limited to the value of annual general land rates and fixed charges (if payable).

Consultation and Engagement

- 15 Council advertised an expression of interest for a community garden in Linda Vidler Park from 22 June to 21 July 2021.

Council publicly advertised the proposed licence for at least 28 days between 22 September to 19 October 2021 for public comment.

Report No. 13.9 Main Beach Shoreline Project - outcome of community consultation on the 7 options

Directorate: Sustainable Environment and Economy

Report Author: Chloe Dowsett, Coastal and Biodiversity Coordinator

5 **File No:** I2021/33

Summary:

10 Launched in August 2019, the [Main Beach Shoreline Project](#) (MBSP) is focused on finding the solution for modification of the degraded coastal protection works that will give the best possible outcomes for Main Beach, Byron Bay and adjacent areas. Council is presently preparing a Coastal Management Program (CMP) for this section of the open (Northern Shire) coastline from Cape Byron to South Golden Beach. The MBSP is a CMP Stage 2 investigation and is part of the overall CMP preparation. The outcomes of the MBSP will
15 be incorporated into the CMP as it progresses.

An appraisal of generic options has been completed and a preliminary suite of seven discrete designs selected for further consideration, being:

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

25 At the 27 August 2020 meeting Council endorsed the seven discrete options for key stakeholder and broader community engagement. The resolution also called for an alternative option 8 to be assessed in accordance with the overall project objectives. However, the findings of the assessment conclude that the alternative Option 8 is not considered feasible and as such it was not added to the top seven options for broader
30 engagement.

Community engagement was undertaken along with key stakeholder consultation during December 2020 and January 2021. The aim of the community consultation was to gain an appreciation of what the community value most about Main Beach and to inform the selection / development of the top three (3) preferred discrete options to progress to the
35 next phase of the project, being detailed technical investigation.

Key outcomes and results of this community engagement are provided in this report.

415 people responded to the survey though not all 415 people provided comments on each question. The questions which allowed specific feedback were answered by around 30% of the 415 survey respondents.

5 Survey results for the elements of the foreshore protection design provide clear feedback and messaging to Council's project team for consideration moving forward. The feedback on individual options was mixed and difficult to interpret and characterise into support and opposition.

10 To this end, the results on foreshore values and foreshore protection design are the most robust. However, the results from the questions on the individual options have also been considered within the context of the open-ended responses.

6 community member, 2 key stakeholder and one agency submission were received via email.

Several key themes were outlined in the community and key stakeholder submissions received which is provided below along with detailed response from the project team.

15 In general, the project team consider that broad and extensive community and stakeholder engagement process for Main Beach Shoreline Project was undertaken. The 415 responses to the survey testify to the engagement efforts.

20 The key objective of engagement is to inform the selection / development of the top three (3) preferred discrete options to progress to the next phase of the project, being detailed technical investigation. This has been achieved with the recommended concept options to take forward as outlined below.

- **Option 5 – protective structure moved landward by 10m**
- **Option 7 – existing structure upgraded to contemporary standards; and**
- **Option 2 – berm rock revetment and pathway**

25 Technical investigation will include geomorphological assessment and coastal modelling of how the options perform within the coastal environment to understand the advantages and disadvantages of each option now and into the future.

A report on the outcomes of the detailed technical investigation will be reported to Council once complete.

RECOMMENDATION:

That Council:

1. **Notes the outcomes of community engagement activities and feedback received for the Main Beach Shoreline Project outlined in this report.**

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2. **Endorses the recommended three options as outlined in Attachment 1 (E2020/40490) to progress to detailed investigation:**
 - **Option 5 – protective structure moved landward by 10m**
 - **Option 7 – existing structure upgraded to contemporary standards; and**
 - **Option 2 – berm rock revetment and pathway**
3. **Receives a further report once the detailed technical investigations on the three options are complete.**

Attachments:

- 5 1 Main Beach Shoreline Project - Concept Design Development Report (Bluecoast, November 2020), E2020/40490 
- 2 Main Beach Shoreline Project - Assessment of Alternative Option 8 as resolved at the 27 August 2020 Council meeting in Beach Shoreline Project, E2020/90352 
- 3 Main Beach Shoreline Project - Engagement Methods, Survey Analysis and Results, E2021/117372 
- 10 4 Main Beach Shoreline Project - Submission Comments and Detailed Response, E2021/121718 
- 5 5 Main Beach Shoreline Project - Stakeholder & Agency - Submissions, E2021/107048 
- 6 6 Main Beach Shoreline Project - Community Member Submissions, E2021/107046 
- 15 7 Confidential - Legal Advice, E2021/122699

Background

Launched in August 2019, the [Main Beach Shoreline Project](#) (MBSP) is focused on finding the solution for modification of the degraded coastal protection works that will give the best possible outcomes for Main Beach, Byron Bay and adjacent areas. The design investigation being delivered by [Bluecoast Consulting Engineers](#) aims to understand how the current degraded protection structures can be improved to best protect both the Byron Bay Town Centre from coastal erosion and climate change impacts into the future, and improve public safety, beach amenity and access. The project is based on a 'multiple lines of evidence' approach which includes coastal modelling, geomorphological assessment of the shoreline, collection of wave data and expert observations. In addition, social, environmental and economic values will be explored and considered as part of the evidence based approach.

Council is presently preparing a Coastal Management Program (CMP) for this section of the open (Northern Shire) coastline from Cape Byron to South Golden Beach. A CMP sets out the long-term strategy for the coordinated management of the coastal zone by Council, public authorities, land managers and the community. Preparation of a CMP is a four-stage process which can take several years to complete. The MBSP is a CMP Stage 2 investigation, being completed within the processes involved in preparation of the CMP and is part of the overall CMP preparation. The outcomes of the MBSP will be incorporated into the CMP as it progresses.

Options Assessment

An appraisal of generic options has been completed and is outlined in the Concept Design Development Report, November 2020 (Attachment 1). Following this appraisal, a preliminary suite of seven (7) discrete designs was selected for further consideration being:

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

At the 27 August 2020 meeting Council endorsed the seven discrete options (as outlined in Attachment 1) for key stakeholder and broader community engagement (Res 20-436; item #1). As resolved in item #2 of the resolution a further alternative option was also assessed in accordance with the overall project objectives. However, the findings of the assessment conclude that the alternative Option 8 is not considered feasible and as such it was not added to the top seven options for broader engagement. The assessment report on Option 8 (Attachment 2) has been made public and is provided on Council's website.

40

Community Engagement

5 Council has previously been criticised for not consulting early enough in previous design investigations for coastal protection works. As such broader community engagement was undertaken along with key stakeholder consultation during Dec/Jan 2021. The aim of the community consultation was to gain an appreciation of what the community value most about Main Beach, their expectations and objectives as to how the foreshore is managed and to get feedback on the key design elements and the seven concept options.

10 The key objective of engagement is to inform the selection / development of the top three (3) preferred discrete options to progress to the next phase of the project, being detailed technical investigation. Technical investigation will include coastal modelling and detailed assessment to understand how each option interacts with the surrounding environment, the positive and negative impacts/performance associated with each option now and into the future and to further develop and refine the design of options.

15 Outcomes of community engagement will also be used to update and confirm the project Key Performance Indicator's (KPIs) and associated assessment criteria. These KPIs form the 'backbone' of the design process. An outline of engagement methods undertaken is provided in Attachment 3.

20 A campaign on social media resulted in a reach of 13,899 and post engagement of 6,827 meaning the 13,899 people saw the content in their news feed and 6,827 people reacted to it by commenting, clicking on links in the post etc. The survey on Your Say Byron Shire received 415 responses. This result is significant given a similar community survey for a council area with a population of 345,809 with significant erosion problems that were reported on extensively in the national media in 2020 received 514 responses. In comparison Byron Shire has a population of only 35,773.

25 The project team reviewed the results of the survey questions on multiple occasions to ensure equal assessment of the results was completed. Assessment involved analysing the questions and categorising the results as to whether there was support or opposition.

Results of the online survey analysis are provided in Attachment 3.

30 Survey results for the elements of the foreshore protection design provide clear feedback and messaging to Council's project team for consideration moving forward. Key design considerations which can be incorporated into all design options carried forward are outlined below.

- Consider a **range of structure alignments** in the options taken forward.
- Consider a **range of treatments for the existing groynes** (retain or remove) in the options taken forward.
- **Incorporate better vehicle, handicap and pedestrian beach access** – *there was strong support for disabled and vehicle access as well as shared pathway along the top of the foreshore structure.*

- **Reduce the car park** – the grassy area is more valued than the car park and the ability to check the surf is more valued than car parking.
- **Rock structure** – Rock, in the form of a sloping revetment, were the preferred construction material and structure type.
- 5 – **Incorporate a pathway/boardwalk** – there was good support for incorporating a shared pathway/boardwalk.

The feedback on individual options was mixed and difficult to interpret and characterise into support and opposition. The number of comments characterised (i.e. support/oppose) and the way the comments are characterised influences the outcomes.

- 10 To this end, the results on foreshore values and foreshore protection design are the most robust. However, the results from the questions on the individual options have also been considered within the context of the open-ended responses.

Feedback from Submissions

- 15 Six community member, 2 key stakeholder and one agency submission were received via email. The agency submission was received from DPI – Fisheries and Marine Parks which outlined requirements under the Fisheries Management Act for when the final design of the works has been determined such as approvals/permits for any works below mean high water mark. These agencies will continue to be consulted as the project progresses.

- 20 Several key themes were outlined in the community and key stakeholder submissions received which is provided below along with a brief response from Council's project team. Detailed response to the community and key stakeholder submissions is provided in Attachment 4.

Full submissions are provided in Attachment 5 and Attachment 6 of this report.

- 25 **Theme #1: Council should pursue a 'whole of embayment approach' to planning.**

Submission comments relating to this theme were made as outlined below:

- 30 • *The best outcome for the Byron Bay community is for Council to pursue a "whole of embayment" approach in planning the future management of the Byron Bay beachfront. The planning zone should encompass the entire area from the Cape Byron Headland to Belongil Creek and not the piecemeal segmentation presently proposed.*
- 35 • *Council and Councillors have not followed the orthodox procedure for the formulation of a CMP.*

Staff response to submission comments:

5 Council has adopted a 'whole of embayment approach' and is presently preparing a Coastal Management Program (CMP) for this section of the open (Northern Shire) coastline from Cape Byron to South Golden Beach. Preparation of CMP is a four-stage process which can take several years to complete. The MBSP is acknowledged in the *Stage 1 (Scoping Study) for the (Northern Shire) Cape Byron to South Golden Beach CMP* as a study for continuation in Stage 2. The MBSP investigation is considered within the processes involved in preparation of the CMP and is part of the overall CMP preparation.
10 The outcomes of the MBSP will be incorporated into the CMP as it progresses.

The outcomes of the MBSP investigation will be fully synchronised and incorporated within the overall CMP preparation, hence the evaluation and selection of the preferred modification design will be completed in Stage 3 of the CMP development (CMP Stage 3 – 'Identify and evaluate options'). This provides a holistic and embayment wide approach to coastal management.
15

Theme #2: Predetermination of the coastal management strategies in advance of development of a CMP.
20

Submission comments relating to theme #2 include the below:

- *The Main Beach Shoreline Project unequivocally evidences to have predetermined in advance any formulation of any Coastal Management Plan to "protect the town centre by fortifying the JSPW".*
25
- *This predetermination is a great concern.*
- *It seems that Council still fails to comprehend that a CMP is legally required to formulate a legally valid proposal to manage the whole of the Byron Bay Embayment, not just Jonson Street.*
30

Staff response to submission comments:

The decision-making process by Council in relation to undertaking the MBSP is based on:

- previous resolutions to protect the town centre and public lands over the years made by Council;
- management of a key public asset in the coastal zone; and
- protection of public safety having regard to identified risks in various reports and advice relating to the state of the JSPW.
40

Council's ability to make a decision with respect to mitigating public safety and acting on previous resolutions associated with the JSPW is not limited until such time as a CMP is prepared. Council is able to take steps to repair a public asset that protects the town

centre as the CMP does not require all works or projects cease pending CMP preparation and adoption. Coastal management decisions in Byron Shire cannot be made based on a 'blank slate' but need to be considered in the context of various competing factors, priorities and historical decisions.

5

Other submission comments relating to theme #2 also include:

- *The extent of predetermination by Council is corroborated by Bluecoast which states that Council has pre-determined in advance of formulation of its CMP that:*
 - *the JSPW will be rebuilt and/or fortified with all seven (7) options involving rock revetment and/or concrete; and*
 - *only 'softer management measures' (to the exclusion of rock revetment and/or concrete) will be considered elsewhere.*

10

Staff response to submission comments:

15

This is misinterpretation of the words in the Bluecoast report (Attachment 1). "*All the options for the structural modifications of the JSPW should be considered in combination with other softer management measures. Council is currently in the process of developing a Coastal Management Program (CMP) for Byron Bay which will consider a range of management measures that could be considered to complement the modified JSPW, for example: dune rehabilitation or maintenance, beach scraping, beach nourishment, planning controls, managed retreat and landscaping.*"

20

The intention of this statement in the Bluecoast report was not to state that only 'soft measures' will be used at all other parts, it merely says that 'soft' measures can be used to compliment the JSPW works to create a more natural looking landscape, should community want this.

25

Theme #3: Legal considerations of the 7 options.

30

Submission comments relating to theme #4 include the below:

35

- *It appears that insufficient consideration has been given to the legal and engineering considerations involved in the options*
- *Council should obtain legal advice about the consequences of pursuing these seven (7) options in the context of legal advice it has previously received about the implications of the JSRW.*

Staff response to submission comments:

Council has obtained legal advice on this matter which is provided to Councillors as a confidential and privileged Memo (Attachment 7) to this report.

40

Recommended Options to Progress and Other Considerations

The recommended options to take forward are:

1. Option 5 – protective structure moved landward by 10m

- 5 o Considerable support for landward alignment of structure. Of the two landward realignment options the 10m option was preferred over the more extreme 30m landward alignment. The 30m landward option would have a large impact on Main Beach as well as the Jonson Street area (e.g., loss of car park, open space, beach access, beach width (to the high value Main Beach area updrift (eastern) area, Fishhead's building, surf club, possible loss of pool). Many impacted items were highlighted as being valued by the community, hence the reason to take the 10m landward realignment forward rather than the 30m realignment option (Option 6).
- 10
- o When considering the more subjective responses to individual options across the level of support and opposition, this option ranked highest of the seven options.
- 15

2. Option 7 – existing structure upgraded to contemporary standards

- 20 o This option was well supported by responses to the design element questions, including existing alignment supported, retention of the groynes and the use of rock revetment supported. This option can be refined to include aspects like increasing grassy open space by reducing the car parking area or incorporation of shared pathways.
- o When considering the more subjective responses to individual options across the level of support and opposition, this option ranked third highest, after the two landward realignment options.

25 3. Option 2 – berm rock revetment and pathway

- 30 o Feedback received on design elements supported this option to be taken forward, including taking forward a range of alignment and groyne treatments. This option takes the current alignment with the groynes removed and therefore provides a differentiation between Option 7 and Option 5 in terms of the treatment of the groynes when combined with alignment.
- 35 o One aspect of this option that was not strongly supported was the shared pathway at a lower level. The related survey question used a photo of a lower level pathway in an urban setting (Bondi Beach) and the project team feel that the low support for the lower level pathway was possibly a result of the photo selected, which may have biased the responses. Quite a few comments along the lines of "*this is not Bondi*"; "*...too much like Bondi..*"; "*...don't make it like Bondi..*" were made.

- 5 ○ The project team acknowledge that the lack of support for the shared pathway does not necessarily support the advancement of Option 2, however, it is envisaged that further exploration of this element and possible refinement would be the incorporation of an elevated boardwalk on the berm section. A boardwalk was well supported, as was a pathway along the top of the structure.

- When considering the more subjective responses to individual options across the level of support and opposition, this option ranked fifth.

Concluding remarks and next steps

10 In general, the project team considers that the community and stakeholder engagement undertaken for the Main Beach Shoreline project was broad and extensive. People were given the opportunity to provide input and commentary in a range of ways including social media, Your Say Byron Shire, workshops, telephone and via email or letter.

15 The key objective of engagement is to inform the selection / development of the top three (3) preferred discrete options to progress to the next phase of the project, being detailed technical investigation. This has been achieved with the recommended concept options to take forward as outlined above.

Technical investigation will include geomorphological assessment and coastal modelling of how the options perform within the coastal environment to understand the advantages and disadvantages of each option now and into the future.

20 A report on the outcomes of the detailed technical investigation will be reported to Council once complete.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.3: Partner to protect and enhance the health of the Shire’s coastlines, estuaries, waterways and catchments	3.3.1: Implement Coastal Management Program	3.3.1.1	Continue preparing a Coastal Management Program (CMP) in accordance with the staged process for Cape Byron to South Golden Beach

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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.3: Partner to protect and enhance the health of the Shire's coastlines, estuaries, waterways and catchments	3.3.1: Implement Coastal Management Program	3.3.1.2	Continue pre-construction phase of Main Beach Shoreline Project (Jonson Street protection works)

Related Resolutions

Resolved (Res 20-347):

- 5 1. That Council notes the preliminary options assessment and top seven concept designs presented in the Concept Design Development – Report (Attachment 1 – E2020/40490).
2. That Council endorses the top seven concept options outlined in Attachment 1 (E2020/40490) for key stakeholder and broader community engagement.
3. That Council receives a report following the community engagement detailing the submissions received and staff response to these submissions. (Ndiaye/Lyon)

10 Resolved (20-436)

1. That Council endorses the top seven concept options outlined in Attachment 1 (E2020/40490) for key stakeholder and broader community engagement.
- 15 2. That Bluecoast undertake an assessment of a further 'hybrid' concept (Option 8) in accordance with the Project Objectives and provide feedback in the form of a Memo to Councillors on the feasibility of Option 8.
- 20 3. Depending on the outcome of Item # 2 above (Option 8) it may be added to the top seven concept options to progress to the next stage.
4. That Council receives a report during the community engagement on the assessment of Option 8, detailing the submissions received and staff response to these submissions, and extend the exhibition period
accodingy (Hackett/Lyon)

25 Resolved (Res 20-730) that Council:

1. Notes the community engagement activities for the Main Beach Shoreline Project presently being undertaken on the seven concept design options (as outlined in Table 1 of this report).

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2. Receives a report in early 2021 on the outcomes of community engagement activities and feedback received to inform the selection by Council of three of the seven discrete concept options to progress to the next stage of the project for further refinement and detailed technical assessment. (Hackett/Cameron)

5 **Resolved (Res 21-164)** that Council:

1. Writes to the Department of Planning, Industry and Environment and the Coastal Council to request a meeting to discuss how the Coastal Management Process could be improved, timeframes shortened and the development of a Coastal Management Program ("CMP") for Byron Shire resourced more effectively.
- 10 2. Notes that the draft Scoping Study for the Southern Shire - Cape Byron to Seven Mile Beach including the Belongil Creek estuary will be sent to state agencies for their review as required by the CMP process and a copy placed on the web for public feedback. (Hackett/Coorey)

The motion was put to the vote and declared carried.

15 **Legal/Statutory/Policy Considerations**

NSW Coastal Management Framework:

- Coastal Management Act 2016
- Coastal Management SEPP
- Coastal Management Manual
- 20 ○ Environmental Planning and Assessment Act 1979

Financial Considerations

The project budget has already been committed and is matched by grant funding.

Consultation and Engagement

As outlined in this report.

25

Report No. 13.10 Lot 12 Bayshore Drive - Valuation as per Resolution 21-188

Directorate: Sustainable Environment and Economy

5 **Report Author:** Matt Meir, Solicitor
Andrew FitzGibbon, Place Liaison Officer

File No: I2021/1095

Summary:

10 [Council Resolution 21-188](#) relates to the master planning of Lot 12 Bayshore Drive, Byron Bay and the sale of part of the site to the successful Lot 12 Expression of Interest proponent, Creative Capital.

The purpose of this report is to provide an update on point three of this resolution relating to land valuation.

15

RECOMMENDATION:

20 **That Council endorses the valuation range of \$1,811 /m² to \$1,860/m² of land area as per confidential annexures (Attachments 4 and 5) for the sale of land marked 'Lot 1' in the Subdivision Concept Plan (refer Attachment 2), and that sale negotiations continue as previously defined in Council resolution 21-188.**

Attachments:

- 1 Lot 12 Subdivision Concept Plan, E2021/58790 
- 25 2 Lot 12 Masterplan Creative Capital, E2021/59395 
- 3 Land Acquisition and Disposal Policy, E2021/115541 
- 4 Confidential - Herron Todd White - Lot 12 Bayshore Drive Valuation - Sept 2021, E2021/121883
- 5 Confidential - Valuers Australia - Lot 12 Bayshore Drive Valuation - Sept 2021, E2021/121884

30

Report

Council Resolution **21-188** relates to the masterplanning of Lot 12 Bayshore Drive, Byron Bay and the sale of part of the site to Creative Capital. This resolution from the Council Meeting on 13 May 2021 is [linked here](#).

- 5 The purpose of this report is to provide an update on point three of this resolution – which authorised the sale of part of Lot 12 subject to a land valuation being reviewed and endorsed by Council.

The part of Lot 12 subject to valuation and sale is described as ‘Lot 1’ in the Subdivision Concept Plan (refer Attachment 1).

- 10 The Subdivision Concept Plan is based on the masterplan prepared by Creative Capital and previously endorsed by Council (refer Attachment 2).

Council has a Land Acquisition and Disposal Policy (refer Attachment 3). This policy recommends two independent valuations be sought for the sale of Council worth more than \$1m.

- 15 Two independent valuations have been sought.

- Herron White Todd (refer Attachment 4)
- Valuers Australia (refer Attachment 5)

- 20 Note that the total site area for the land described as ‘Lot 1’ is still being refined as part of the three lot subdivision development application that is being prepared. As such, staff recommend that a value per square metre of land area is used as a basis for the sale as opposed to a total value.

Next steps

If endorsed, staff will proceed with the project as per Resolution 21-188.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.6	Optimise Council's property portfolio (SP)	1.2.6.1	Progress Lot 12 Baysshore Drive Byron Bay future use
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.5	Implement Our Mullumbimby Masterplan, Bangalow Village Plan and Byron Arts and Industry Estate Plan

Recent Resolutions

Number	Meeting Date	Primary Subject Matter
20-161	16 April 2020	Request to develop Lot 12 development options
20-285	18 June 2020	Adoption of Byron Arts and Industry Estate Precinct Plan and request to refine development options for Lot 12
20-304	26 June 2020	Request to prepare a Site Strategy and Urban Design Protocol for Lot 12
20-446	31 August 2020	Adoption of Lot 12 Site Strategy and Urban Design Protocol and endorsement to undertake EOI process
20-664	26 November 2020	EOI outcomes, TAFE lease and planning proposal
20-697	17 December 2020	Authority to enter an agreement for lease with TAFE NSW
21-188	13 May 2021	Update on resolution 20-664

Legal/Statutory/Policy Considerations

5 The Independent Commission Against Corruption (ICAC) issued a publication in September 2007 (still current) titled Corruption risks in NSW development approval processes – position paper. Recommendation 14 in this publication makes reference to the sale of land by Council and states that Councils disposing of their own land should consider using a competitive process for the sale of valuable land notwithstanding the absence of a statutory requirement to do so.

Consistent with the ICAC publication, Council selected Creative Capital as the proposed purchaser after a public expression of interest regarding Lot 12's redevelopment.

10 Financial Considerations

15 Part 5 of Resolution 21-188 adopted by Council at the 13 May 2021 Planning Meeting outlines that any revenue derived from the sale of part of Lot 12 Bayshore Drive or the proposed Lot 1 as indicated in this report be quarantined to a newly created reserve titled 'Property Development Reserve – Lot 12 Bayshore Drive'. The valuation range identified in this report, should it be accepted by Council, will assist in determining a sale price for the proposed Lot 1 once the area is formally determined. Should the sale be finalised, part 5 of Resolution 21-188 will be implemented.

Consultation and Engagement

20 Community consultation and engagement will take place at multiple future stages in accordance with Council's Community Participation Plan. This will occur as part of the:

- initial 3 lot subdivision Development Application;
- Planning Proposal process; and
- any Development Applications for future subdivisions or development over the lots.

Report No. 13.11 Submissions report - Unauthorised Dwellings Policy

Directorate: Sustainable Environment and Economy

5 **Report Author:** Dylan Johnstone, Development Investigations Lead
Sarah Nagel, Manager Public and Environmental Services

File No: I2021/1358

Summary:

10 Council considered Report 13.19 Unauthorised Dwelling Policy [Agenda of Ordinary Meeting - Thursday, 27 August 2020](#) at its meeting 27 August 2020 and resolved to put the Policy on exhibition and receive a report detailing submissions and potential ways forward following.

15 **RECOMMENDATION:**

1. That Council acknowledges the submissions detailed in Attachment 1 (E2021/123747) in response to the public exhibition of the Draft Unauthorised Dwellings Policy detailed in Attachment 2 (E2020/59113).
- 20 2. That Council agrees to the Draft Unauthorised Dwellings Policy being converted to a guideline document for internal use by staff to outline the process for reactive investigations initiated by complaints and owner-initiated actions.
- 25 3. That Council agrees to the guideline document, including the Planning Pathways outlined in Report 13.19 Draft Unauthorised Dwelling Policy to the August 27, 2020, Ordinary Meeting, become a supporting document to the Enforcement Policy 2020.

Attachments:

- 30 1 Public submissions - Draft Unauthorised Dwellings Policy, E2021/123747 
- 2 Draft Unauthorised Dwellings Policy, E2020/59113 

Report

5 Council considered Report 13.19 Draft Unauthorised Dwelling Policy at its meeting on 27 August 2020, to support to publicly exhibit the draft Byron Shire Unauthorised Dwellings Policy prepared in accordance with Resolution **20-283** adopted at the Planning Meeting held on 18 June 2020.

Council resolved as follows:

20-417 Resolved:

- 10
1. *That Council endorses the Draft Byron Shire Unauthorised Dwellings Policy in Attachment 1 (E2020/59113) and places the document on public exhibition for minimum a period of 28 days.*
 2. *That following exhibition, Council receives a further report detailing submissions made and potential ways forward.*

15 To recap, the objective of the Policy is to clearly establish the planning pathways and consequences relating to unauthorised dwellings within the Shire. This will inform the community of the options available to them and assist staff in Council's response to unauthorised dwellings.

The Draft Policy outlines three (3) planning pathways for unauthorised dwellings seeking regularisation:

20 *Pathway 1 - Land has a Dwelling entitlement in accordance with Clause 4.2A of LEP 2014 or Clause 15 of LEP 1988 and contains:*

- 25
- A single unapproved dwelling (or converted farm building), unapproved dual occupancy or secondary dwelling. For unapproved Multiple Occupancy or other residential accommodation refer to Pathway 2.

Requirements

- 30
- Where land has no significant natural constraints and the use is capable of approval and complies with LEP and DCP provisions:
 - Development Application pathway subject to assessment of DA for land use, Section 68 application for onsite sewage management, Building Information Certificate for works completed.
 - Payment of Section 7.11 contributions and any applicable Section 64 contributions.

35 *Pathway 2 - Land does not have a Dwelling entitlement and contains:*

- A single unapproved dwelling (or converted farm building), unapproved dual occupancy or secondary dwelling, Multiple Occupancy or other residential accommodation.

Requirements

- 40
- Land must meet strategic merit test for LEP amendment
 - Planning proposal required to add permitted land use to the particular site in Schedule 1 of LEP 2014 or Schedule 7 of LEP 1988 (depending on the zoning of the land).
 - Development Application pathway subject to assessment of DA for land use, Section 68

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application for onsite sewage management, Building Information Certificate for works completed.

- Cost agreement under Voluntary Planning Agreement equivalent to Section 7.11 contributions and any applicable Section 64 contributions for each dwelling.

5

Pathway 3 - Land may or may not have a Dwelling entitlement and contains:

- A single unapproved dwelling (or converted farm building), unapproved dual occupancy or secondary dwelling, Multiple Occupancy or other residential accommodation.

10

- In circumstances where land does not meet strategic merit test for LEP amendment, does not have the ability to accommodate appropriate effluent disposal, non compliant with LEP and DCP provisions.

15

- Enforcement action as per Enforcement Policy 2016 to follow i.e. Orders to demolish/restore to previously approved use as appropriate. Orders may be subject to appeal in the Land and Environment Court.

The Draft Policy was on public exhibition from 23 September 2020 to 4 November 2020 and a total of twenty (20) submissions were received which are included in Attachment 1 of this report.

20

A summary of issues raised within submissions in favour of the Draft Policy included

- A need to address existing environmental matters including inappropriate disposal of sewage near waterways

- A need to address the safety of occupants of unauthorised dwellings

25

- A need for landowners to protect themselves from liability in the event of injury to tenants of unauthorised dwellings

- The process of legalising unauthorised dwellings would see an increase in developer contributions and rates to maintain infrastructure such as roads.

30

- Council has a duty of care and a responsibility to ensure that residents are living in safe and hygienic conditions

A summary of issues raised within submissions against the Draft Policy included

- Inappropriate timing due to COVID and a housing crisis

- Council needs to offer an incentive for landowners with unauthorised dwellings to come forward i.e. professional assistance at a subsidised / reduced rate or temporary rate relief

35

- Unauthorised dwellings are the only form of affordable housing in the shire

- Many people do not have the finances to legalise unauthorised dwellings

- Will result in increased homelessness

- More community consultation required i.e. public meetings

40

- Longer timeframes and moratorium period are required to achieve approvals

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- Distinction should be made between single unauthorised dwellings and land containing two or more unauthorised dwellings, and also between dwellings used for long term vs short term accommodation. A more lenient approach should be taken with regard to single unauthorised dwellings housing long term tenants.
- 5 • Council should consider alternatives such as certificates of non-action and fire evacuation plans
- Policy seems to be focussed on rural areas but should also concentrate on residential / industrial areas
- 10 • An engineering certificate should be sufficient to prove structural safety of a dwelling
- Special consideration for aged pensioners
- Provide an amnesty rather than moratorium
- Definition of “strategic merit test” needs to be included
- Policy needs to be written in plain English
- A clear outline of the Policy’s objectives is required
- 15 • Legalisation of many unauthorised dwellings could have significant impacts on native vegetation clearing required to comply with bushfire requirements while dwelling upgrades to comply with bushfire requirements could be extremely costly
- Council should pursue the tradesmen who specialise in unauthorised dwellings
- 20 • Policy should address all unauthorised residential accommodation and not just dwellings
- Policy should be integrated with Policies on affordable housing, reducing and avoiding homelessness, the Enforcement Policy etc
- Council should only investigate complaints and not proactively carry out compliance investigations
- 25 • Policy should be consistent with Council’s Rural Land Use Strategy which sets out principles for policy framework for unauthorised rural dwellings
- Policy should be implemented similarly to the Enforcement Policy in the sense that the level of enforcement action should be proportionate to the level of the risk and the seriousness of the breach.
- 30 • Difficulty for landowners in having to retrofit dwellings that may be 30-50 years old to meet current building standards
- Further explanation of what a Building Information Certificate is
- Explanation of the history of planning instruments and approvals i.e. pre Interim Development Order, IDO, LEP 1988, LEP 2014, BAs, development consents etc.
- 35 • The legality of retrospective approvals, charging developer contributions and seeking costs under a Voluntary Planning Agreement
- The legality of a moratorium

These issues as noted have informed the staff response below.

40 **Key issues**

The overarching legislation regulating development in NSW is the *Environmental Planning and Assessment Act 1979*. The Act grants powers to local Council’s to prepare Local Environmental Plans (LEPs).

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The primary purpose of an LEP is to prescribe appropriate land use zonings to the shire and to prescribe what land uses are permitted within those zones.

5 There are currently two Local Environmental Plans that apply to the Byron Shire: LEP 2014 and LEP 1988. LEP 2014 was introduced as part of the state-wide standardisation of LEP templates by the NSW government and applies to most of the shire. LEP 1988 applies to land in the shire whose zonings remain unresolved from the transition to LEP 2014. Most of these areas are being resolved through Council's E zone review process.

Dwellings are permitted only with consent in accordance with LEP 1988 and LEP 2014.

10 Prior to LEP 1988, the planning scheme for the Byron Shire was the Interim Development Order No. 1 – Shire of Byron, which commenced on 8 November 1968.

15 It is important to note that there was no planning scheme in place prior to 8 November 1968. Therefore, any dwellings or other development that existed prior to this date did not require approval and are therefore considered lawful. However, any alterations and additions to such buildings made after 8 November 1968 may have required approval subject to the applicable planning scheme at the relevant date.

The planning process in NSW requires that development consent, in the form of an approved development application, and a construction certificate are obtained prior to works being carried out.

20 Where certain development standards can be achieved under a state policy (*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*) a Complying Development Certificate (CDC) may be obtained as a substitute for a development consent and construction certificate.

25 Only Council can issue a development consent as the consent authority however construction certificates and CDCs may be issued by either Council or a private certifier as the principal certifying authority (PCA).

30 Where a private certifier is the PCA, it is their responsibility to ensure that construction works comply with the conditions of a development consent or CDC. It is now mandatory for private certifiers to issue a written directions notice to the responsible person (i.e. builder) on becoming aware of any non-compliance with the conditions of a development consent or CDC. If the notice is not complied with within the specified period, the private certifier must notify Council. It is generally only at this point that Council will take on a regulatory role where it is not the PCA. Private certifiers are regulated by NSW Fair Trading.

35 Where unauthorised development has been carried out, and regularisation is sought, there is a different process compared to proposed works.

Development consent cannot be obtained in retrospect for works that have already occurred: see for example *Signorelli Investments Pty Ltd v Sutherland SC [2001] NSWLEC 78*.

However, development consent may still be sought and granted in respect of the future use of those works: see for example *Mineral Wealth Pty Limited v Gosford City Council (2003) 127 LGERA 74*.

5 The legality of the physical works may be addressed by seeking a building information certificate (formerly known as a building certificate) from Council.

The certificate is a confirmation that Council will not issue an order for the repair, demolition, alteration etc. of the building for a period of seven (7) years from the date of issue of the certificate.

10 Several submissions proposed that a distinction should be made between land containing a single unauthorised dwelling vs land containing two or more unauthorised dwellings, and also between dwellings used for long term vs short term accommodation, with a view that Council should adopt a more lenient assessment approach with regard to single unauthorised dwellings housing long term tenants.

15 However, as outlined above, there is a process by which regularisation may be sought for unauthorised development. This process is guided by the legislation and the courts, and Council cannot relax or overstep its regulatory role by making the process any easier or harder, or less/more expensive for certain types of unauthorised development.

20 Similarly, Council must consider the relevant legislation and planning controls when placing conditions on development consents to ensure appropriate construction standards, bushfire safety, environmental controls etc. Such conditions must be applied consistently for Council to uphold its regulatory responsibilities.

Options

25 Due to the legal complexities of unauthorised development, the divergent views on it in the community highlighted in the public submissions, coupled with the impacts of COVID19 on housing availability and affordability in the Shire, staff have sought legal advice to inform a risk-based approach to unauthorised development. This advice is summarised below:

What is the risk associated with Council's knowledge about unauthorised dwellings?

30 The regulation of this risk is primarily addressed in the *Civil Liability Act 2002 (CL Act)*. Having regard to the provisions of the CL Act, and the ability for Council resources to be considered when a question as to liability arises, Council may consider the following steps, as a way of mitigating liability (although, noting that by doing so, compliance with the steps will be important because failing to carry them out may be relevant to the issue of liability):

- a) Undertaking a risk analysis of properties that are known to have unauthorised dwellings, by reference to a range of different health and safety issues;
- 35 b) Determining the resources that Council has available to address the issue of unauthorised dwellings;
- c) Setting out a methodology as to how Council will respond to unauthorised dwellings, having regard to the above two matters.

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Having considered the above steps there are three investigative options available to Council regarding unauthorised dwellings:

1. Proactive investigations initiated by staff
2. Reactive investigations initiated by complaints
- 5 3. Owner initiated actions

In recognising the limited resources of Council staff to address the estimated high number of unauthorised dwellings throughout the shire, it is proposed that Council staff now move to prioritise and respond to reactive, and owner-initiated investigations in the first instance.

- 10 As a consequence, the Draft Policy is now proposed to be converted into a high-level guideline (document used for internal purposes) outlining this and process to be followed for these types of investigations.

- 15 The guideline, including the Planning Pathways outlined in Report 13.19 Draft Unauthorised Dwelling Policy to the August 27, 2020, Ordinary Meeting, is also proposed to become a supporting document to the Enforcement Policy 2020.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.4	Enhance community safety and amenity while respecting our shared values	2.4.3	Enhance public safety, health and liveability through the use of council's regulatory controls and services	2.4.3.1	Monitor, investigate and resolve complaints in relation to community safety, land use and the environment
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.1	Finalise the Residential Strategy

Recent Resolutions

- 20-283
- 20 • 20-417

Legal/Statutory/Policy Considerations

The relevant legal/statutory/policy considerations have been noted above.

Financial Considerations

- 5 Current legislation provides a mechanism for Council to collect limited revenue associated with the processing of applications seeking approval for the use of existing unauthorised dwellings.

- 10 The costs associated with enforcement actions against unauthorised development are generally higher than that recouped through the development application process and or fines.

- 15 A report on the [Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021](#) highlighted this and also talked about the proposed prohibition on councils charging a compliance levy on development applications and the impact that this is to have on council enforcement resourcing from next year.

Consultation and Engagement

- 20 Council must give public notice of a draft Policy after it is prepared under *Local Government Act 1993 – Section 160 Public notice and exhibition of draft local policy*.

Under *Local Government Act 1993 – Section 160* the period of public exhibition must be not less than 28 days.

- 25 The draft Unauthorised Dwellings Policy was placed on public exhibition for 42 days from 23 September 2020 to 4 November 2020.

All submissions are included in Attachment 1 of this report.

Report No. 13.12 Expression of Interest for next village/town masterplan

Directorate: Sustainable Environment and Economy

5 **Report Author:** Kristie Hughes, Planner
Andrew FitzGibbon, Acting Place Activation Coordinator

File No: I2021/1491

Summary:

Council has supported the development of place plans using different public participation approaches from Involve to Empower on the [IAP2 Public Participation spectrum](#).

10 To date place plans have been developed for Byron Bay, Bangalow, Mullumbimby, Byron Arts and Industry Estate and soon to be completed for Federal.

Through the development of each plan, lessons have been learned which have helped to refine and evolve our approach to place planning.

15 This report outlines two methods for the development of future place plans: one for larger towns and villages and one for smaller villages and communities.

It recommends an expression of interest process to invite the remaining towns and villages to express their interest in developing a masterplan for their place.

20 This recommendation aligns with Operational Plan action 4.1.1.3 to investigate priority needs for future village/town masterplans.

RECOMMENDATION:

- 25
1. That Council endorses an expression of interest process in early 2022 for the next village/town Masterplan as outlined in this report.
 2. That Council receives a further report on the expression of interest process, with the report to include a recommendation for a preferred village/town masterplan and a project plan and resourcing plan showing staff time and other budget required to undertake the work.
 - 30 3. That Council note depending on 2, the timeframe for the new village/town masterplan may be delayed in part or all until Financial Year 2023/24.

Attachments:

- 35 1 New Brighton Village Masterplan - request to council - January 2021, E2021/122878 

Report

This report provides an update on the Operational Plan action 4.1.1.3 to investigate priority needs for future village/town masterplans via an expression of interest process.

The report provides a strategic review of:

- 5 • village/town masterplans that have been undertaken to date, the methodologies used and associated costs;
- learnings to date and preferred methodologies for future masterplans; and
- villages/towns where a masterplan may be appropriate; and
- next steps for the expression of interest process.

10 Existing village/town masterplans

Location	Method	Duration	Cost
<p>Byron Bay Town Centre</p> <p>Byron Bay Town Centre Masterplan</p>	<p>Traditional village planning process</p> <p>Led by Consultant</p> <p>In collaboration with Council and the Byron Town Centre Guidance Group (20-25 members)</p> <p>IAP2 Spectrum Level: Involve</p>	<p>2+ years</p> <p>Adopted June 2016</p>	<p>\$265,000 (approx.)</p> <ul style="list-style-type: none"> • Consultant fee • Consultation costs • Excludes Council staff costs
<p>Bangalow</p> <p>Bangalow Village Plan (and Implementation Plan)</p>	<p>Traditional village planning process</p> <p>Led by Council</p> <p>In collaboration with the Bangalow Masterplan Guidance Group (19 members)</p> <p>IAP2 Spectrum Level: Collaborate</p>	<p>3+ years</p> <p>Adopted February 2019</p>	<p>\$110,000 (approx.)</p> <ul style="list-style-type: none"> • Movement and access study • Workshop facilitation • Consultation costs • Excludes Council staff costs
<p>Mullumbimby</p> <p>Our Mullumbimby Masterplan</p>	<p>Traditional village planning process</p> <p>Led by Council</p>	<p>3+ years</p> <p>Adopted December</p>	<p>\$125,000 (approx.)</p> <ul style="list-style-type: none"> • Movement and

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Location	Method	Duration	Cost
	In collaboration with the Mullumbimby Masterplan Guidance Group (10-15 members) IAP2 Spectrum Level: Collaborate	2019	access study <ul style="list-style-type: none"> • Workshop facilitation • Consultation costs • Excludes Council staff costs
Byron Arts and Industry Estate Byron Arts and Industry Estate Precinct Plan	Enquiry by Design process (intensive 2 day workshop) Led by Consultant In collaboration with Council and the Guidance Group (10 members approx.) IAP2 Spectrum Level: Collaborate	1 year Adopted June 2020	\$60,000 (approx.) <ul style="list-style-type: none"> • Consultant fee • Excludes Council staff costs
Federal In progress Link to website information	Traditional village planning process Led by Community (Steering Group with 10 members) In collaboration with Council IAP2 Spectrum Level: Empower	1.5 years estimate Not yet adopted	\$15,500 (budgeted) <ul style="list-style-type: none"> • Facilitation costs • Consultation material costs • Excludes Council staff costs

Key process learnings to date

The following points define the key learnings observed to date.

- 5
- a) Timelines for the masterplanning process have often been quite long (3+ years) and sometimes stop-start. This can put a strain on community and Council resources and can also affect project budgets.
 - b) Most masterplans have included a significant number of actions (35+). If there are too many actions and they are not categorised and scoped well, it can make implementation very challenging.

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- 5 c) The timeframe associated with a traditional masterplanning process is considerable (1.5-3 years). The Enquiry by Design (intensive workshops) method can be much quicker. However, there needs to be a balance between allowing enough time to generate community buy-in, while not letting the process go for too long that it exhausts those more heavily involved.
- 10 d) There is a great deal of community relationship capital built up during a masterplanning process. If this process is lead by a consultant – this relationship capital is developed between the consultant and the community and is largely lost at the end of the process.
- e) The community-led process underway in Federal has required a very significant commitment from the community representatives that may not always be possible in other locations.
- 15 f) Although community-led, the Federal masterplan process has required significant staff resources from the Place Activation Team, project support and other specialist staff across the organisation.

Villages/towns to be considered for the next masterplan

Population and dwelling figures from ABS Census 2016.

Place	Population	Dwellings	Commerce notes
Ocean Shores	5,137	2,371	Significant shopping centre complex
Suffolk Park *1	3,795	1,699	Small street based commercial precinct
Brunswick Heads *2	1,630	1,025	Significant street based commercial precinct
Sunrise *3	-	-	Small shopping centre complex
South Golden Beach	809	396	One café
Main Arm	586	271	General store
New Brighton *4	356	217	One café and general store/post office

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Place	Population	Dwellings	Commerce notes
Eureka	343	146	NA
Billinudgel	218	95	Small local centre near large industrial area

Note 1 – In May 2021, Council considered a report on pedestrian safety and amenity in Suffolk Park and resolved (res **21-263**) in part to consider including funding for a Place Planning process for Suffolk in the 2021/22 Operational Plan and budget.

5 Note 2 – The Tweed Street Masterplan developed for Brunswick Heads would be an important consideration for future masterplanning work.

Note 3 – Sunrise statistics are included as part of the broader Byron Bay area and as such have not been presented here.

Note 4 – In January 2021 the New Brighton Village Association wrote to Council requesting masterplanning support (refer Attachment 1).

10 Methods for future masterplans

The following methodologies are proposed for village/town masterplans in Byron Shire going forward. This has been developed in consideration of a) key learnings/experience to date, and b) the types of villages and towns still to be masterplanned.

Category	Description	Method	Appropriate Locations
A: Larger Towns / Villages	Large residential population and visitation, and services for surrounding areas (shops, schools, infrastructure)	Mix between traditional masterplanning process and EBD/intensive workshops Timeframe: 1.5 years Budget: \$120,000 Led by Council In collaboration with a representative community reference group (10-15 members)	Ocean Shores Suffolk Park Brunswick Heads

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Category	Description	Method	Appropriate Locations
		IAP2 Spectrum Level: Collaborate	
B: Smaller Villages / Communities	A small residential community with minimal local services	EBD/intensive workshops method Timeframe: 9 to 12 months Budget: \$60,000 Led by Community or Council Representative community steering/reference group (10 members) IAP2 Spectrum Level: Empower/Collaborate	Sunrise South Golden Beach Main Arm New Brighton Eureka Billinudgel

Next steps

An expression of interest (EOI) can be undertaken in early 2022, leading to a masterplan process beginning in the next financial year (FY22/23)

- The EOI would seek applications across both categories A and B. The review of any EOIs received would then be reported back to Council for a decision.

To support this process, a budget allocation for the 2022-23 financial year will be required.

Other considerations

COVID-19

- The impact of COVID-19 with its associated restrictions and lockdowns has been significant during 2020 - 2021. Village/town masterplanning is a process that requires substantial community engagement and leadership. The lockdowns can have a significant impact on a masterplanning process. This risk is difficult to mitigate against for these types of projects. This situation will need to be monitored closely in advance of starting the next masterplanning process.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.1: Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.3	Investigate priority needs for future masterplans

Recent Resolutions

NA

5 Legal/Statutory/Policy Considerations

The EOI process will need to be conducted in accordance with Council policies and any relevant Local Government Act provisions.

Village/town masterplans are not a planning instrument under the Environmental Planning and Assessment Act 1979.

10 Financial Considerations

There is no forward budget identified for new village/town masterplans.

A further report on the expression of interest process is required to determine this.

15 The report will also need to identify a preferred village/town masterplan and include a project plan and resourcing plan showing staff time and other budget required to undertake the work.

Depending on the above, the timeframe for the new village/town masterplan may be delayed in part or all until FY 23/24.

Consultation and Engagement

20 Consultation and engagement for the next masterplan will occur as per the Byron Shire Council Community Participation Plan.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.13 Draft Policy - Memorials in Open Space

Directorate: Infrastructure Services

5 **Report Author:** Malcolm Robertson, Team Leader Open Space

File No: I2021/1636

Summary:

10 Demand for installation of memorials on Council land outside cemeteries is ongoing. Without appropriate control there is risk that our public parks may become saturated with memorials and as a result become pseudo cemeteries.

15 Policy Guidelines are required to provide direction for Byron Shire Council's approach to the management of requests for the installation of commemorative plaques, memorials and monuments in public spaces outside cemeteries in the Byron Shire region.

RECOMMENDATION:

That Council endorses the exhibition of the Draft Policy - Memorials in Open Space as shown in Attachment 1 (E2021/126759) for a period of 28 days and;

- 20 a) should no submissions be received, the Draft Policy be adopted.
- b) should submissions be received, a further report to Council to be provided at the close of the exhibition period detailing the community response received and any recommended or necessary amendments.

25 **Attachments:**

- 1 Draft Policy Public Memorials in Open Space, E2021/126759 

Report

5 Requests are often received by Byron Shire Council from individuals and organisations for permission to place memorials or plaques to an individual, organisation or event within public spaces within the Council area. Public open space areas are an important community resource and memorials, monuments and plaques need to be carefully considered to ensure that they do not impact negatively on these spaces.

10 Council's Open Space have received 21 requests for new memorial installations in the last 5 years. Memorial requests are currently being declined pending an adopted Policy position however in two recent instances requests direct to Councillors have resulted in NOMs with associated Resolutions to install memorials, one on Main Beach reserve and one in Heritage Park Mullumbimby.

There are currently four memorials installed on Main Beach reserve, three on bench seats installed to host the memorial plaque. Five requests for additional memorial seats on Main Beach reserve were declined in the last five years, pending adoption of Policy.

15 There are already 52 seats or picnic tables with associated seating along Main Beach reserve. Continued placement of new park furniture to meet the commemorative desires of grieving community has potential to impact both current usage and future planning.

20 It is recognised that with time a particular location may become saturated with plaques and memorials, and in that case, it would be appropriate to consider strict limitations or a moratorium of future installations at a particular location or area. The draft Policy seeks to specifically restrict memorials on Main Beach and Clarkes Beach reserves until a Master Plan for this area has been adopted. This recommendation is due to the significance of these areas to the Byron community and the potential impact to the ongoing community use and enjoyment of this space.

25 Key issues

Approval for a particular site will only be granted if consistent with Council's master plan or strategic development framework for that site. If a master plan is pending or outstanding no new approvals will be granted until such masterplan has been adopted by Council.

30 No new plaque, memorial or monument will be considered on Main Beach parklands, which includes Apex Park, Denning Park and the Clarkes Beach parklands, until adoption of Master Plan for these areas.

35 Requests will be assessed against defined criteria and are required to demonstrate the significance of the subject of the memorial to the location and/or community in which the memorial is to be located. Community amenity value should be enhanced by the memorial and any new memorial must be demonstrated to be of lasting value to the community for social, cultural, historical, educational or aesthetic reasons, within the context of the current use of the area.

Requests for memorials to Byron Shire Council will be considered on a case-by-case basis by Council, following assessment by a Memorial Panel comprised of the Open Space

Technical Officer, Open Space Team Leader, Community and Social Services Arts and Culture Officer. Requests from Arakwal people to have a memorial plaque for an Arakwal Elder will be given precedence on their Country. Council's assessment process will include referral to the traditional owners of the land.

- 5 Byron Shire Council via resolution will provide final approval of appropriate sites and will determine the exact location of any plaque or memorial.

10 Memorials are most frequently requested in the form of a public bench seat. This requires the acquisition and installation of a new asset. Where a new asset is to be installed, Council staff will oversee the design, manufacture and installation. All costs associated with establishing, fabricating, installing and maintaining a memorial will be met by the proponent of the memorial project for a period of 15 years.

15 It is recognized that some memorials will have a limited lifespan. Byron Shire Council does not guarantee to retain a memorial after a period of 15 years, at which time a de-accessioning process may be initiated. Council may also temporarily remove the memorial for works or maintenance, or permanently remove the memorial before 15 years if the use of the site changes significantly.

Next steps

20 It is recommended that the draft Policy will be placed on public exhibition for a period of 28 days. Community feedback and any required amendments to the draft Policy will be considered prior to returning the matter to Council for adoption.

Strategic Considerations

Community Strategic Plan and Operational Plan

25 Community Objective 1 in the Operational Plan Delivery Program is to have infrastructure, transport and services which meet our expectations. Action 1.2.7.1 is to Develop concept plans for the upgrade of Byron Bay foreshore (action from Byron Bay Town Centre Masterplan). This Policy seeks to ensure that any future installation of memorials on the Byron Bay foreshore are restricted until they can be considered under the guidance of an adopted Masterplan.

Financial Considerations

30 All costs associated with establishing, fabricating, installing and maintaining a memorial will be met by the proponent of the memorial project for a period of 15 years, at which time a review of the condition and significance of the memorial will be undertaken.

Consultation and Engagement

35 Council Cemeteries Unit, Council Arts and Culture Officer, Council Open Space Technical Officer have all provided input to the draft Policy. The Arakwal Board have provided initial feedback which has been incorporated into the draft Policy and have confirmed intent to provide further review during the Public Exhibition phase.

Report No. 13.14 Broken Head Reserve Road and Seven Mile Beach Road - Update

Directorate: Infrastructure Services

5 **Report Author:** Andrew Pearce, Traffic Engineer
Sarah Nagel, Manager Public and Environmental Services

File No: I2021/1319

Summary:

The purpose of this report is to provide Council with a project update in relation to works proposed for Broken Head Reserve Road and Seven Mile Beach Road.

10 Designs for these two areas have been progressed in accordance with Resolution **21-161**. Staff now need to finalise the design to construction issue and complete the construction of initial work stages before the end of the financial year.

RECOMMENDATION:

15 **That Council:**

1. **Supports the development of issue for construction designs and the commencement of construction works for Broken Head Reserve Road Stage 1 and Seven Mile Beach Road Stage 2 in accordance with the designs provided at attachments 1 (E2021/114798) and 2 (E2021/114799).**
- 20 2. **Supports the use of Election Commitment Grant Pavement Asphalt Overlay Program funding to supplement the works in item 1 as required to complete these approved works.**
3. **Publishes the issue for construction drawings on Council's website for information when complete.**
- 25 4. **Advises local resident groups and the wider community where and how to find the final design drawings.**
5. **Supports the progression of Option 1 - In ground parking sensors as a parking control solution for Seven Mile Beach Road and Broken Head Reserve Road as funding permits.**
- 30 6. **Supports staff discussing the funding of Broken Head Reserve Road Stage 4 – Kings Beach Carpark with the National Parks and Wildlife Service.**

Attachments:

- 35 1 2772_PRELIMINARY_REV2 - Broken Head Reserve Road, E2021/114798 
- 2 2831_SMB RD_PRELIM, E2021/114799 
- 3 LOU Letter of Understanding, E2021/51962 

Report

Within the Broken Head Reserve Area staff have been progressing two inter-related projects to address parking and traffic management, namely:

- Broken Head Reserve Road works, and
- 5 • Seven Mile Beach Road works

The goal of these works is to:

- Create a more traffic calmed pedestrian friendly environment
- Improve parking management and prevent illegal and dangerous parking
- Support enforcement teams
- 10 • Reduce traffic volumes, where possible

To help achieve these goals staff have completed, and are progressing, a number of steps.

The purpose of this report is to provide an update on what steps have been completed and what is required to progress these works to construction.

15 **LETTER OF UNDERSTANDING (LOU)**

To address concerns relating to traffic management and antisocial behaviour in the Seven Mile Beach Road and surrounding environment a LOU was co-signed by Council, NPWS and the Police. Refer to Attachment 3.

20 The purpose of this LOU was to establish a framework for a cooperative working relationship between Council, NPWS and the Police for the purposes of traffic management, reserve use and responses to antisocial behaviour in the Seven Mile Beach Road area and the surrounding environment.

In summary, the LOU defines:

- The areas Council, NPWS and Police agree are their sole areas of responsible,
- 25 • The activities Council, NPWS and Police agree they are solely responsible for,
- The risk classification of illegal activities,
- How Council, NPWS and Police will work collaboratively, and
- High Risk illegal activities to be reported via calling 000 immediately

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As concerns arise within the Seven Mile Beach Road and surrounding environment the LOU will enable Council, NPWS and Police to respond to these matters in a collaborative and consistent manner.

LAND OWNERSHIP

5 Crown Land

The southern end of Seven Mile Beach Road and carparks may be partly located on Crown land.

10 Byron Shire Council is the Crown Land Manager on this reserve and there are no current Native Title or Indigenous Land Use Agreements (ILUA) relating to this reserve. Council still needs to complete due diligence and obtain Native Title Manager advice for this proposal and any future act done on the land still needs to comply with the Native Title Act 1993 and to the extent that a future act impacts native title rights and interests, compensation may become payable for that act.

15 Although approvals are not required staff have provided Crown with the proposal and provided design plans for comment.

A survey is currently underway to confirm how much of Seven Mile Beach Rd is located within Crown Land. The results of this survey were not known at the time this report was written.

No works will be proposed in this area until such time that these issues are resolved.

20 NPWS Land

25 Kings Beach car park is located approximately 770m south of the start of Seven Mile Beach Road and is located within the Broken Head Nature Reserve. The reserve is owned and managed by NPWS. NPWS have been consulted on the design plans and have attended meetings and site visits with staff. NPWS have formally given their support for the proposal and plans in a letter to Council in August 2021. However, at this time NPWS do not have any funding to complete the works in their land.

Should Council propose paid parking in the area, in the future, it may be possible to use the revenue to fund the construction works through an agreement with NPWS, however, this is a more long-term goal at this time.

30 Private Land

35 Some residents of Seven Mile Beach Road have raised concerns that portions of Seven Mile Beach Rd may encroach onto private property. To clarify the alignment of the road, a survey is currently underway in locations where Council's mapping system shows some ambiguity in the alignment of property boundary. The results of this survey were not known at the time this report was written.

A search of Councils document management system shows historical surveys have been undertaken by private property owners in some areas of concern. The private surveys

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states there are no encroachments on to the private property. Council's current survey will confirm the accuracy of this statement.

ENFORCEMENT RESPONSE

5 During community consultation residents have raised illegal parking, overnight camping, beach fires, illegal beach access, pedestrian and cyclist safety, wildlife safety and high traffic volumes as areas of significant concern they would like addressed, particularly with the summer period approaching.

10 While the proposed works (such as bollards, rocks and formalised parking areas) will improve many of the issues in the short to medium term, some require a more complex long term solution involving the use of parking technology and enforcement by Council, NPWS and Police. The collaborated management of enforcement between Council, NPWS and Police is outlined in the LOU section above.

15 Short to medium term solutions are discussed in the design section below and will be delivered as part of the stage 1 works. Long term solutions are discussed in the Parking Technology section below and would be implemented as part of the stage 2 works.

Until the stage 1 and 2 works are complete, Council's enforcement team will continue to respond to all reports of illegal activities, and undertake daily patrols of the area, in accordance with the LOU.

20 Enforcement staff will undertake regulatory interval patrols at least once daily and continue to document patrols. All responses by enforcement staff will occur in accordance with Council's 2021 Compliance Priorities Program, Council's Enforcement Policy 2020 and Council's resourcing.

DESIGNS

25 Design plans have been developed. The aim of these designs is to provide better traffic and parking management along Broken Head Reserve Rd and Seven Mile Beach Rd.

For Broken Head Reserve Road refer to Attachment 1.

For Seven Mile Beach Road refer to Attachment 2.

30 Council does not have sufficient funds at this time to construct the full designs provided in the attachments. Therefore, staff are recommending the direction of the available funds at tasks that will help support natural compliance with the parking rules. These are the stage 1 works for both projects.

Broken Head Reserve Road

35 It is proposed to develop the Broken Head Reserve Rd area in two stages. The current cost estimate to undertake the full package of works is approximately \$818,000. For Stage 1, the goal is to create a traffic calmed, pedestrian friendly environment and improve parking management within the village precinct.

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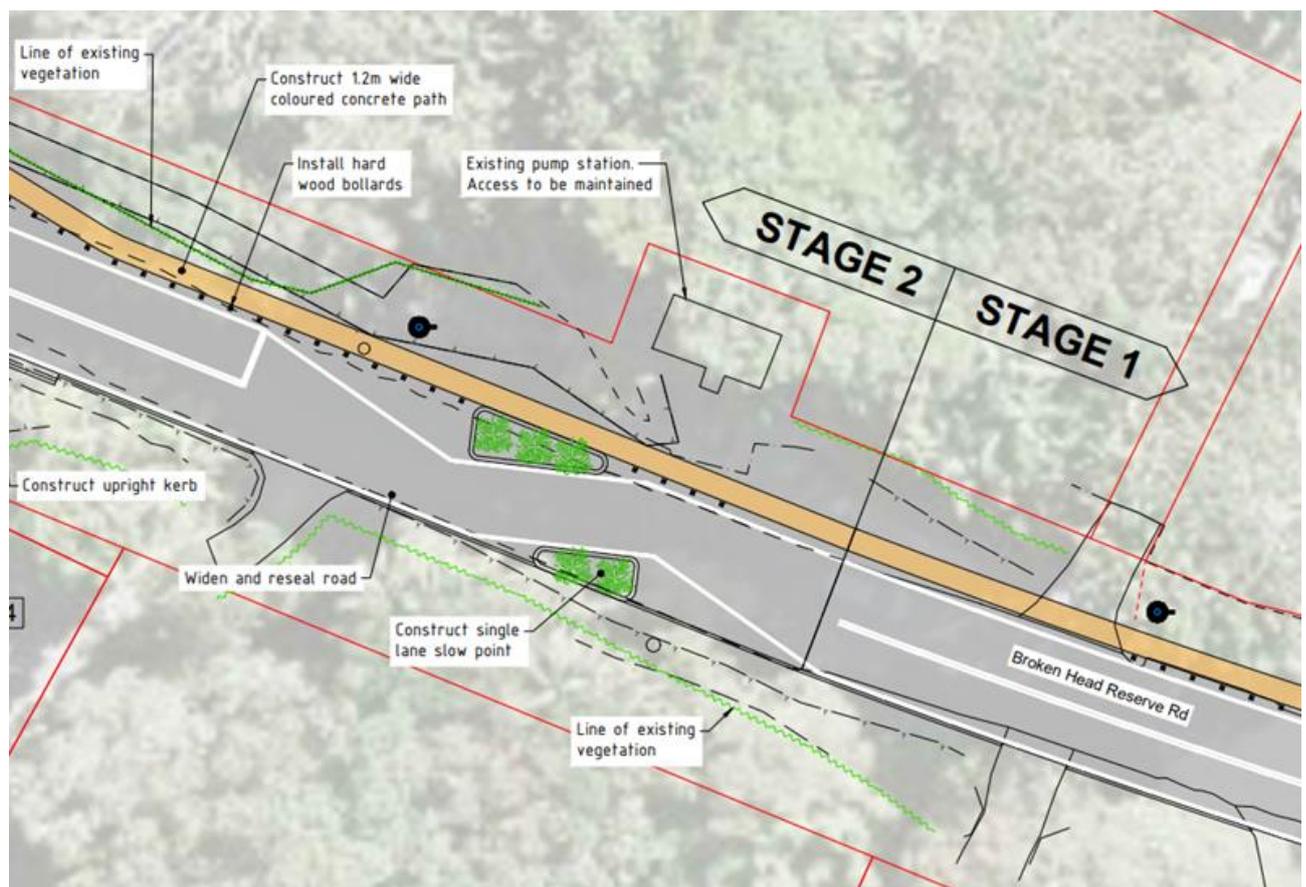
For Stage 2, the goal is to extend parking management, install parking technology and further traffic control devices in order to create a pedestrian friendly environment west of the village precinct, through to Taylors Lake Rd.

Details associated with parking technology is discussed in a separate section below.

- 5 Cost of works to implement the proposed design for Broken Head Reserve Road is detailed below. Currently, there is a budget of \$265,000 allocated to the project and it is proposed that this will fund a portion of the stage 1 works. Election Commitment Grant Pavement Asphalt Overlay Program funds are proposed to supplement the works as required to complete stage 1. Stage 2 will be subject to future funding allocation or a
- 10 successful grant application.

It is noted that at the time of report writing staff were investigating a change to the speed hump design due to noise concerns raised by a resident on the day of finalising the report.

- 15 The layout below is the most feasible alternative to both proposed speed humps, however, it will result in traffic queuing at times as drivers arriving will need to give way to drivers leaving Broken Head. Staff are comfortable with either option and will take direction from Council. Adopting as recommended will support speed humps.



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Works Break Down:

Stage	Works	Cost	Budget
Stage 1	Village entrance treatment, sealing and line marking on new parking layout, installation of mini roundabout, footpath construction, bollard installation to control parking and traffic control devices.	\$432,000	\$265,000 (Roads to Recovery) \$167,000 (ECG – Pavement Asphalt Overlay Program)
Stage 2	Sealing and line marking of additional parking area, extension of footpath to Taylors Lake Road, including boardwalk construction. Installation of parking technology.	\$330,000 \$56,000	Not funded. Staff seeking funding opportunities in 2022/23 budget and grants.

Seven Mile Beach Road

5 The goal of works along Seven Mile Beach Road is to seal the full length of the road, formalise car parking areas and install associated bollards, signs, lines and parking technology.

There is insufficient funding to complete all of these works in one package, however this would be the preference. The current cost estimate to undertake the remaining works on Seven Mile Beach Road is approximately \$1,295,000.

10 Because funding is limited, works must be rolled out in four stages. It is proposed that the current funding of \$150,000 will fund the construction of stage 1 works as per the designs, it is proposed to first focus on controlling car parking areas (including 50m either side of the car park areas), then seal, line mark and complete traffic calming works associated with the first 770m of the road.

15 The main goal of stage one is to contain and control car parking in order achieve natural compliance and to support Council's enforcement teams in their role of enforcing parking compliance. This will include sealing if budget allows.

Election Commitment Grant Pavement Asphalt Overlay Program funds are proposed to supplement the works as required to complete stage 2.

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Some works such as the proposed audio tactile markers on the road corners require the road to be sealed first and therefore will need to await funding for the road sealing. These will be part of stage 2 works.

- 5 Locations where there is a clear potential for illegal parking in between the car parks will be physically blocked with bollards or rocks.

As additional funding allows, stage two will involve sealing the road to create a sealed road for its full length, further traffic calming works, audio tactile makers on bends and the implementation of the preferred parking technology option.

- 10 Upgrading roadside drainage swales and culverts would also occur along with delineation line marking to improve traffic management, as required.

Works Break Down:

Stage	Works	Cost	Budget
Stage 1	Sealing works completed to date	Complete	Complete
Stage 2	Sealing and line marking of Brays and Whites car parks, installation traffic control devices to first 770m of Seven Mile Beach Road and 500 treated pine bollards or rocks to manage illegal parking either side of the car park areas.	\$205,000	\$150,000 (Roads to Recovery) \$55,000 (ECG – Pavement Asphalt Overlay Program)
Stage 3	Sealing of remaining Council car parks, sealing of unsealed sections of Seven Mile Beach Rd and installation or traffic control devices. Installation parking technology.	\$835,000 \$140,000	Not yet funded. Staff seeking funding opportunities in 2022/23 budget and grants.
Stage 4	Sealing and line marking of Kings Beach car park.	\$115,000	Not funded. Staff seeking funding opportunities in 2022/23 budget and grants.

CONSULTATION PROCESS

Throughout the design process staff have undertaken community consultation in several formats.

5 A Your Say webpage was created to present design plans for both roads to the broader community. This page was promoted for Shire wide feedback in January and February 2021. Relevant and appropriate comments have been addressed in the designs.

10 Regarding works associated with Seven Mile Beach Road, a resident's group have been invited to several meetings and email exchanges at different stages of the design process and to submit comments associated with public exhibition of plans on Your Say. The most recent zoom meeting was held between staff and residents on 21st July 2021.

Similarly, Broken Head Reserve Road resident's group, particularly within the village precinct, have been invited to meetings and email exchanges at different stages of the design process and to submit comments associated with public exhibition of plans on Your Say.

15 Residents of both roads have requested to remain a part of the design process and to continue receiving updates so they can continue to provide design feedback. It is very difficult for Council to please everyone involved and staff believe the current designs have reached a stage that they meet the general desires of the local resident's groups, wider community and Councils needs to manage liability and risk. Therefore, it is proposed that
20 the designs be finalised to issue for construction stage in accordance with attachments 1 and 2.

It is noted that neither design's prevent Council from implementing future parking technology as detailed below.

25 To close out the consultation process the final issue for construction designs will be published on Council's website. Local residents' groups will be formally advised via email and the wider community via a media release.

PARKING TECHNOLOGY

The role of the parking technology on Broken Head Reserve Road is considered different to that required for Seven Mile Beach Road.

30 For Broken Head Reserve Road, the purpose of the parking technology is to support enforcement, improved parking management and lay the foundation to introduce pay parking subject to approval.

35 For Seven Mile Beach Road the purpose is to also support enforcement, parking management, lay the foundations to introduce pay parking (if approved) and to also help reduce traffic volumes and congestion in the parking area.

Both require good mobile phone reception or alternatively a wired link, with small Wi-Fi networks are each parking area maybe an option.

Both options can be operated with or without the use of paid parking.

Seven Mile Beach Road

5 A number of ideas have been investigated to manage parking and traffic through technology in this area, with two options being preferred. Both options require the parking areas to be sealed first. Of these two options, option 1 is preferred as it is simpler and more cost effective.

Option 1

Option 1 is based around the use of in ground parking sensors, solar powered digital wayfinding signage, PayStay phone app for pay parking payments and parking meters.

10 Inground sensors can be deployed across the 66 spaces along Seven Mile Beach Road. Data from these sensors can be relayed back to a digital sign at the entrance of Seven Mile Beach Rd to let people know how many spaces are free at each car park along the road. The purpose is to help reduce traffic volumes along the road if people can see all the car parks are full when they reach the Seven Mile Beach Road intersection.

15 One challenge, that can be overcome through a few options, is that the road is 4.5km long requiring consideration on how to relay the in-ground sensor data back to the road entrance.



20 If time limits and pay parking are introduced, then sensor data can be monitored via an online dashboard to see occupancy rates and any cars that have over stayed time limits.

Sensors can also be placed in areas prone to illegal parking to alert staff.

In addition, one cashless parking meter may be deployed at each car park in combination with the PayStay phone payment app. A cashless meter is recommended due to the isolated nature of the area and potential for vandalism with people trying to steal money.

25 The image below shows what the 1.5m high cashless meter would typically look like.



Refer to the table after Broken Head Reserve Road for a summary of cost estimates.

Option 2

5 Option 2 is based around “smart” speed humps, solar powered wayfinding signage, PayStay phone app and cashless parking meters.

Smart speed humps act like traffic counters. When a car hits one side of the hump it counts the car and registers what direction it is going. When a car turns around and hits the other side of the hump it again counts the car and registers the car is travelling in the other direction.

10 The smart speed humps could then be placed at the entrance to Kings Beach Car Park and at either end of Brays Beach, Whites Beach and Seven Mile Beach car parks. As cars enter and leave Kings beach the smart speed hump can count how many cars remain in the car park. As a car enters the Brays Beach car park it hits the speed hump and is registered as being in the car park. If the car continues through the car park and hits the
15 smart hump on the other side, it is registered as leaving the car park. A similar system can be established for Whites car park and Seven Mile Beach car parks.

In addition, one cashless parking meter may be deployed at each car park in combination with the PayStay phone payment app. A cashless meter is recommended due to the isolated nature of the area and potential for vandalism with people trying to steal money.

20 Refer to the table after Broken Head Reserve Road for a summary of cost estimates.

Community Feedback

At a recent meeting with Seven Mile Beach Road residents’ group, the group reinforced a strong desire to instead adopt a License Plate Recognition (LPR) camera at the entrance to Seven Mile Beach Road with cars billed if they do not leave after approximately ½ hour.
25 Such as the systems used in a shopping centre car parks or highway toll road.

Staff do not support this request for the following reasons:

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- There are no redundancies in the system as it relies on one camera located at the entrance to seven Mile Beach Road. If the camera is covered in dust, goes offline, or is vandalised the whole system fails.
 - Remote location makes such a prominent feature prone to vandalism.
- 5
- No ability to combine with digital signs to monitor the occupancy of each car park
 - This option will not reduce traffic volumes due to the point above.
 - Persons visiting resident on the road would be charged.
 - Staff would need to manage a resident number plate database to ensure residents are not charged.
- 10
- Introduces a totally new system and process into Council that would need to be administered differently to the current paid parking system.

Broken Head Reserve Road

- 15
- It is recommended to install parking technology in the Broken Head Reserve Road area when pay parking is to be introduced. The proposed system would include in ground sensors to help support compliance monitoring, used in combination with the PayStay app and one cashless parking meter for stage 1 and another cashless meter for stage 2.

Digital wayfinding signage is not proposed for the Broken Head Reserve Rd parking area as it is not considered required.

The preliminary cost estimate for stages 1 and 2 are shown in the table below.

20 Parking Technology Cost Summary

	FIRST YEAR COSTS		ONGOING COSTS	
	Council Land	NPWS Land	Council Land	NPWS Land
7MB Option 1 - Sensors	\$140,000	\$26,500	\$13,500	\$3,800
7MB Option 2 – Bumps	\$178,000	\$20,000	\$13,500	\$1,600
BHRR	\$56,000	N/A	\$9,200	N/A

Next steps

Finalise construction issue drawings for stage 1 works.

Provide final designs to community groups and also online for the wider community.

Prepare media release to ensure wider community are aware designs are available.

- 5 Finalise the survey of property boundaries in key locations to allow stage 2 design to be completed to issue for construction stage.

Construct stage 1 works in accordance with available budgets.

Seek funding for stage 2 works. Stage 2 works to be included in the list of projects to be undertaken when funding is sourced for Grants

- 10 Seek formal support from NPWS to construct the Kings Beach Car Park so Council can approach local members and ministers for funding to build works on NPWS land.

Continue data collection and prepare further reporting to Council with respect to Pay Parking.

Strategic Considerations

- 15 **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	1.6: Manage traffic and parking in an efficient manner	1.6.1 : Implement review of parking management	1.6.1.2	Complete Seven Mile Beach Road and Broken Head Road Traffic Management Improvements Investigation

Recent Resolutions

- Council Resolution **21-161**

Council staff have been progressing works along Seven Mile Beach Rd and Broken Head Reserve Rd in accordance with Council resolution 21-161:

- 20 1. *Notes the report and endorse the following actions based on it:*

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- 5 a) *The design of Seven Mile Beach Road be progressed generally in accordance with Option 1 to seal the entire length of road and carparks, Attachment 4 (E2021/51923).*
- b) *The detailed design of Broken Head Reserve Road be progressed with the principal of maximising safety of visitors and residents, including consideration of reverse in parking and prioritise*
- 10 i) *implementation of the approved speed reduction to 40km with adequate signage as a matter of urgency*
- ii) *finalisation of the Locality Plan (Resolution 18-544) that includes a road rebuild, pedestrian path, safe turning for vehicles to exit, drainage works (based on Water Sensitive Urban Design), entrance design and roadside treatments, including provision of costings*
- 15 iii) *a report on funding available including State and Federal Government funding and the status of local developer contribution funds (S94 & S7.11) and Election Commitment funds noting that \$240,000 was identified in Agenda 27.8.20*

Legal/Statutory/Policy Considerations

Installation of Pay Parking subject to the final adopted designs and support from TfNSW and NPWS.

20 Financial Considerations

Funding allocation for stage 1 works is discussed in the main body. Funding for stage 2 works will be sought in the 2022/23 budget process and via grant applications.

Consultation and Engagement

25 As discussed in the main body of the report substantial community consultation has been an ongoing component of these projects with both local residents and the wider Shire community being engaged.

Report No. 13.15 Bewilderness Unsolicited Proposal

Directorate: Infrastructure Services

Report Author: Malcolm Robertson, Team Leader Open Space
Shannon McKelvey, Executive Officer

5 **File No:** I2021/1489

Summary:

10 An Unsolicited Proposal has been lodged with Council for to lease an area of public land in the southern carpark of the Cavanbah Centre for a commercial activity for six months. The proposal has been assessed against Council’s adopted Supporting Partnership Policy and Partnership Guidelines.

15 The assessment has identified that the proposal is not unique and that there are other commercial operators, including local businesses, that could similarly benefit from an opportunity to lease space for six months at the Cavanbah Centre. In addition, the assessment has concluded that, based on specifics of the proposal (eg scale, size, nature, timing etc) it would not be in the best interests of the community or Council at this time.

As Council resolved to grant consent to the proponent lodging a development application, the Unsolicited Proposal application is also being reported to Council for determination.

20

RECOMMENDATION:

1. **That the “Bewilderness” Unsolicited Proposal be declined as it is not unique, does not meet the principles of the Policy and Guidelines and is not in the bests interests of community or Council at this time.**
- 25 2. **The proponents be advised of the outcome and advised not to lodge a development application.**
3. **That it be noted:**
 - 30 (a) **The Cavanbah Centre strategic management plan is currently under review and any potential for additional commercial leases at the site will be considered as part of that review.**
 - (b) **If any opportunities for commercial leases are identified in the review, they can be the subject of future competitive processes so that any interested local businesses can equally compete for the opportunities.**

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Attachments:

- 1 Preliminary Assessment Report - Bewilderness Unsolicited Proposal, E2021/125167 
- 5 2 Confidential - Confidential - Unsolicited Proposal, E2021/125168
- 3 Confidential - Confidential - Legal Advice, E2021/125825

Report

5 Staff were approached by proponent of “Bewilderness” in July 2021. Their proposal is to directly negotiate a contract for the use of an area of Council-owned Community Land for a commercial activity for six months from late 2021 to mid 2022. The area is located on the southern carpark of the Cavanbah Centre and the proposal is described as a ‘temporary space, consisting of geodesic dome and ancillary structures, which will house 360-degree immersive film experiences and possibly other wellness activities such as yoga, talks and fundraising events’. Confidential attachment 2 provides more information on the proposal and is confidential (like tender submissions are) in accordance with s10(2) of the Local Government Act because it contains commercial-in-confidence information.

15 In August 2021 Council resolved (Res **21-301**) to note that the proposal would be assessed through Council’s adopted Supporting Partnerships Policy and Partnership Proposal Guidelines and this is the report back to Council following that assessment. Council also resolved to grant landowners consent to lodgement of a development application for the proposal. At the date of writing this report no development application has been lodged.

20 A staff panel reviewed the Unsolicited Proposal against the requirements and criteria of the Council Policy and Guidelines and the process was overseen from a probity perspective. Assessment of the proposal against its potential to deliver environmental, social, economic and governance outcomes for the Byron Shire community and Council has been undertaken. A copy of the assessment report without commercial-in-confidence and personal information is provided at Attachment 1.

25 The proposal was assessed on the basis of the information provided which was very high-level and lacked details in a number of important respects, for example there was no operations or risk management plans. However, further information was not sought as the proposal was assessed as not meeting fundamental requirements.

30 The Unsolicited Proposal process is designed to support products or services that Council would not generally seek out as part of its normal operations, that are unique and innovative. This proposal seeks exclusive use of public land for a business venture and the assessment concluded that it is not a unique proposal because more than one business could deliver comparative products in the market and a number of local businesses could similarly lease the space for business ventures. Council’s Policy and Guidelines state any proposal that is not unique should not proceed to a competitive process so that is the recommendation of this report.

35 In addition, the Assessment concluded that the proposal was not in the community’s or the Council’s best interests at this time, for reasons set out in the assessment report, for example:

1. The proposal does not satisfy the questions or criteria set out in Council’s adopted Guidelines.
- 40 2. The proposed project timeline is insufficient to accommodate normal development assessment, Tender/EOI and community consultation processes. (NB designing and running a Tender/EOI for an additional commercial lease at the Cavanbah

Centre is not an action in the Operational Plan and adding this as a new project would mean other work would have to be delayed or removed from the Operational Plan.)

- 5 3. While the proposal would generate some revenue for the Cavanbah Centre, it would have a negative impact on the Centre operations. For example, the income from the proposal would be partly offset by reductions in other revenues as the proposal would compete with existing business and impact users of the space for six months.
- 10 4. The Cavanbah Centre is available for use by NSW Health as required for COVID-19 pandemic responses and it is a designated emergency evacuation centre for natural disasters. The proposal to erect structures, fence and exclusively use an area of the carpark could negatively impact these essential public services. Council also has existing contractual obligations with the Farmers Markets and 'Return and Earn' recycling services.
- 15 The assessment also considered five historical proposals similar to this one and whether they proceeded or not. Based on the size, scale and length of this proposal, refusal is consistent with similar unsuccessful proposals. If Council were to consider supporting the Bewilderness proposal, that would then become a consideration and influence decisions on future proposals.

20 **Key Procurement Issue**

The Independent Commission Against Corruption (ICAC) Guidelines identify that risks associated with direct negotiations are significantly higher than those associated with open processes such as tendering and other forms of market testing. Direct negotiations have potential to be detrimental to the public interest; for example, by undermining the potential for government to realise the full value of public assets.

25

Only competitive market-based processes would ensure that proponents do not receive an unfair advantage compared to other businesses. If direct negotiations are to be considered instead, it will be critical any process follows the ICAC guidelines and for example obtaining an independent valuation could assist to mitigate against some of the risks associated with direct negotiations.

30

Options

The assessment recommends that the proposal be declined at this time. However, should Council want to further explore the proposal, options include:

- 35 (a) If Council resolve to support the broad principle of use of The Cavanbah Centre for medium-term commercial activities, staff recommend a competitive process (EOI) be called for use of an area (to be determined taking into account operational needs) in 2022/2023 Summer Season. This would provide the community with equitable access to opportunities to lease public land, comply with ICAC Guidelines on Direct Negotiations and ensure timeframes for approvals and consultation processes are realistic.
- 40

(b) If Council wants to further consider directly negotiating with the current Bewilderness proponents:

i. Council would need to require the proponent to provide currently missing information to enable a detailed assessment of the proposal including for example information about:

- business plan
- details of the intended 'other commercial activities'
- economic impact statement
- Charitable giving plan/agreement (noting part of the proposal is to give an as yet undetermined amount to charity)
- Zero net emissions and waste strategies
- detailed Risk Management Plan
- detailed operational land (addressing things like water and electricity connection and metering, toilet facilities provision and management, COVID-safety, complaint management etc).

These supporting documents would provide the assessment panel a more detailed picture of the potential benefit to Byron Shire when measuring against the potential impact on council assets such as the Cavanbah Centre and the impacts on the broader community.

These are operational matters Council needs to consider as a manager of public land, and not planning matters that would be considered as part of assessment of a DA.

ii. Council would need to resolve to allocate a budget of \$5,000 to meet the costs of obtaining an independent valuation of the commercial rent.

iii. The further detail and valuation information could then be reported back to Council for consideration.

Strategic Considerations

Community Strategic Plan and Operational Plan

This unsolicited proposal is not an activity in the 2021/2022 Operational Plan.

Recent Resolutions

- Resolution **21-301** - Council (Planning) Meeting of 5 August 2021

Legal/Statutory/Policy Considerations

Confidential legal advice is attached for Councillors information.

The Assessment Report identifies that some staff involved in the assessment identified a potential perceived (not actual) non-significant non-pecuniary conflict of interest and disclosed and managed it in accordance with the requirements of the Code of Conduct for Council staff. It is a matter for Councillors to individually consider the corresponding requirements under the Code of Conduct for Councillors.

In addition to the Codes of Conduct other relevant policy considerations arise under:

- BSC Supporting Partnerships Policy
- BSC Guidelines Partnership Proposals
- BSC Procurement and Purchasing Policy
- 5 • BSC Risk Management Policy
(all of the above are available on Council's website)
- Guidelines on Direct Negotiations, The Independent Commission Against Corruption

Financial Considerations

- 10 Should Council wish to further consider direct negotiation with the proponent, Council would need to resolve to allocate a budget of \$5,000 to meet the costs of obtaining an independent valuation of commercial rent.

Consultation and Engagement

Relevant teams within council were asked to consider the elements of the current Bewilderness proposal as they related to their respective operations.

- 15 The proponents will be advised of the timing of the reporting of this matter to Council.

Report No. 13.16 Remediation Mullumbimby Hospital Site

Directorate: Infrastructure Services

Report Author: Phil Warner, Manager Assets and Major Projects

File No: I2021/1524

5 **Summary:**

The purpose of this report is to provide an update on the current status of the remediation of contamination on the site of the old Mullumbimby Hospital and to seek approval for funding to complete the work.

10 It is estimated the remaining remediation works and ancillary processes will be completed by August 2022 for a cost of \$1.15M.

RECOMMENDATION:

15 **That Council:**

1. **Increases the 2021/2022 budget for the remediation of the Mullumbimby Hospital Site by \$1,500,000 with funding provided through a new external loan on an interest only basis repayable by 30 June 2024.**
- 20 2. **Increases its loan borrowing requirement for the 2021/2022 financial year by \$1,500,000 and authorise the borrowing of \$1,500,000 to finance the finalisation of the remediation of the Mullumbimby Hospital Site.**
3. **Authorises the General Manager to accept loan borrowing terms offered to Council that represents the best financial outcome amongst other loan offers received.**
- 25 4. **Authorises the affixing of the Council Seal (if required) to any documents to execute the loan borrowings outlined in this report.**

30

Report

The purpose of this report is to provide an update on the current status of the remediation of contamination on the site of the old Mullumbimby Hospital and to seek approval for funding to complete the work.

- 5 Following the demolition and removal of the asbestos contaminated hospital buildings, additional contamination was discovered on the site. Council engaged a registered auditor (Ben Wackett Cavvanba Consulting) to progress remediation under the provisions of the NSW Contaminated Land Management Act 1997.

- 10 Melaleuca Consulting completed the detailed site investigation (DIS) under the direction of specialist consultant, Tim Fitzroy & Associates.

The site remediation action plan (RAP) is now being finalized.

It is estimated the remediation works and ancillary processes will be completed by August 2022 for a cost of \$1.15M.

Current Status:

- 15 Melaleuca Consulting completed a detailed site investigation and the DIS report was accepted by the auditor as forming the basis for the preparation of a RAP.

Preparation of the RAP has involved additional investigation and sampling both on the site and the adjoining residential property fronting Left Bank Road.

- 20 Melaleuca Consulting have prepared the RAP in association with specialists Green Tec Consulting. The auditor has asked for further groundwater investigations following the unexpected discovery of Toluene contamination.

- 25 Following the investigation of outlying toluene contamination, it is anticipated the RAP will be finalized and endorsed by the auditor for implementation. The primary aspect of the RAP is the capping of a significant area of the property primarily where the former hospital buildings were located as indicated by the blue line in the plan below.

The RAP also requires the removal of trees within the capped area which must be done in a prescribed way to ensure containment of asbestos contamination.

Implications for future use:

- 30 The auditor has indicated that residential use of the site will be possible in a managed form that does not allow any possibility of private excavation.

The future use of the site must be compatible with the requirements of the EMP.

- 35 Council will progress the land use planning for the site over the next 6 months and it is anticipated that this will be reported to Council in early 2022. This planning work will be based on the previously established recommendations for the best use of the site developed by the Mullumbimby Site Project Reference Group (refer resolution **18-721** from

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Council Meeting 22 November 2018). This work will be reviewed in consideration of the full extent of the remediation works now known. Further community consultation and engagement will be undertaken as part of this land use planning process

Estimated Cost and Time to completion:

- 5 It is important to note that completion of the RAP works is not the end of the remediation process.

The remediation process is directed and ultimately concluded by the Auditor. The cost and time to complete remediation is heavily dependent on the direction of the Auditor. Council cannot control the level of work or timeframes required by the Auditor to complete requirements.

10 The validation of the RAP will comprise a site survey to confirm compliance with the technical specifications of the capping containment structure and the outcomes of RAP process will be addressed in an environmental management plan (EMP) for the future management of the site.

- 15 The EMP will ensure the integrity of the encapsulation of the underlying asbestos contamination.

Following endorsement of the EMP, the auditor concludes the remediation process with a formal site audit statement.

20 Based on available information, an estimate to complete the remediation works and ancillary processes is \$1.15M

-	Remediation Works Contract	800K
-	Contract Management	80K
-	Specialist Project Management	25K
-	Side Validation and Audit	50K
25	- Contingency	195K

The cost of the remediation works will be dependent on tender outcomes and whether any cost saving measures such as clean fill from roadworks can be deployed.

An estimate of the program to complete the remediation works and ancillary processes is as follows and noting that audit requirements could significantly add to the timeframes:

30	- Finalize RAP	29 October 2021
	- Secure funding	28 October 2021 (Council meeting)
	- Prepare contract documents	26 November 2021
	- Tender	29 November – 17 December 2021
	- Tender award	February 2022 (Council meeting)
35	- Works	March – April 2022
	- Validation report	May – June 2022
	- EMP	June – July 2022
	- Audit Report	August 2022

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.1: Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.9	Amend Local Environmental Plan and Development Control Plan in accordance with Mullumbimby Hospital Precinct Plan

Recent Resolutions

- 5
- 20-260
 - 19-636
 - 18-721
 - 18-048

Legal/Statutory/Policy Considerations

10 Remediation of the old Mullumbimby hospital site is being conducted under the provisions of the NSW Contaminated Land Management Act 1997.

In respect of loan borrowings, Section 377 of the Local Government Act 1993 outlines the general power of Council to delegate.

15 Section 377(1)(f) concerns the delegation power in respect of loan borrowings:

- (1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following:
- (f) the borrowing of money,

Financial Considerations

Comment by Manager Finance

Since Council acquired the former Mullumbimby Hospital Site to the date of this report it has expended a total of \$3,568,171 as follows:

- Demolition/Remediation \$3,299,817

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- Peer Review \$69,261
- Loan Interest \$186,036
- Other Costs \$13,057

5 On 27 June 2019, Council borrowed \$3,334,000 for a period of 5 years on an interest only basis with this loan borrowing requiring full principal repayment of \$3,334,000 on 27 June 2024. Between now and 30 June 2024, Council will also be required to pay a further \$124,000 in loan interest.

10 This report outlines the additional cost required to finalise the remediation of the former Mullumbimby Hospital Site. Whilst it indicates a cost estimated at a further \$1,150,000, it may be prudent upon Council to authorise additional budget above the \$1,150,000 in case there are any other unforeseen costs. Council does not have available funding to finalise the remediation cost to which it has no option other than to complete so it is suggested Council consider further loan borrowings of \$1,500,000 as a funding source.

15 The intent of the additional loan borrowings would be on the basis of a short term interest only loan with full repayment of the additional \$1,500,000 be made at the same time the original loan borrowings are due to be repaid being 30 June 2024. In other words Council would be borrowing for a term approximately of 2.5 years.

20 If the additional \$1,500,000 borrowings if approved are eventually not all required to complete the remediation works, they will be retained in reserve as an unexpended loan with any remaining balance used to assist in the repayment of loan principal at the end of June 2024. At the end of June 2024, Council will be required to make a loan principal repayment \$4,834,000 associated with the remediation of the former Mullumbimby Hospital site.

25 The understanding is that outcomes on the former Mullumbimby Hospital site will generate sufficient return to Council to recover all of the costs Council has invested. The proposed time frame for finalisation of the remediation works will then give near two years to Council to generate that return to recover its costs before the loans have to be fully repaid. The interest rate environment for loan borrowings is still very favourable and the loan will provide Council the funding needed to complete the remediation works.

30 The additional loan borrowing requirement outlined in this report is in addition to the \$13.5million Council has included in the 2021/2022 budget for new external loan borrowings. There is also a further report to this Ordinary Meeting of Council regarding additional loan borrowings for the Bio-Energy Facility that Council will also need to consider.

35 **Consultation and Engagement**

The subject of this report was presented to the 2 September 2021 Strategic Planning Workshop of Council. The contents of this report reflects that presentation.

Council will progress the land use planning for the site over the next 6 months and it is anticipated that this will be reported to Council in early 2022. This planning work will be

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5 based on the previously established recommendations for the best use of the site developed by the Mullumbimby Site Project Reference Group (refer resolution 18-721 from Council Meeting 22 November 2018). This work will be reviewed in consideration of the full extent of the remediation works now known. Further community consultation and engagement will be undertaken as part of this land use planning process

Report No. 13.17 Tender 2021-0008 Supply of Ready-Mix Concrete

Directorate: Infrastructure Services

Report Author: Henry Spangler, Works Coordinator

5 **File No:** I2021/1588

Summary:

The General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2021-0008, Supply of Ready-Mix Concrete.

10 The Request for Tender was advertised from 31 August 2021 and closed at 10.00am on Tuesday 21 September 2021.

The Request for Tender was advertised on Tenderlink by Peter Salafia of Regional Procurement.

Four (4) tenders were received from the following organisations:

- Boral Limited
- 15 • Graham's Concrete Pty Ltd
- Hanson Construction Materials Pty Ltd
- Holcim Australia Pty Ltd

20 Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2021-0008.

RECOMMENDATION:

- 25 1. **That Council awards Tender 2021-0008 – Supply of Ready-Mix Concrete to the list of suppliers confidentially listed in Attachment 1 – Final Recommendation Report and be appointed to the tender as Panel Source suppliers Byron Shire Council for the initial period of 29 months from 1 November 2021 to 31 March 2024.**
- 30 2. **That the provision be allowed with one (1) x twelve (12) month extension to extend the contract subject to performance, which may take this contract through to 31 March 2025.**
3. **That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005.**

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Attachments:

- 5 1 Confidential - Final Recommendation Report - RFT 2021-0008 Supply of Ready Mix
Concrete Rev1, E2021/121752 

Report

The General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract 2021-0008 – Supply of Ready-Mix Concrete.

- 5 Council will procure more than \$250,000 of concrete between 1 November 2021 to 31 March 2024, therefore in accordance with the Local Government (General) Regulation 2005 – Part 7 Tendering, where expenditure on a tender exceeds \$250,000 over the term of the contract a council must, by resolution, adopt a report accepting the tender recommendation. Furthermore, tenders which have been accepted by Council will form part of a panel of suppliers referred to as the ‘Approved Suppliers List’.
- 10 The Request for Tender sought responses from proponents requiring to provide:
- A valid Australian Business Number (ABN)
 - Substantial conformance to Conditions of Contract and Statement of Requirements (Technical Specifications)
 - Workers compensation insurance for all employees
 - 15 • Hold insurances as specified in the Statement of Requirements
 - Satisfactory Work Health and Safe practices
 - Commitment to ethical business practice principles. Please note that Council will not contract with any organisation that gains a financial benefit from Australia’s offshore detention centres or that has any involvement in contracting for the development and
 - 20 operation of the Carmichael mine or otherwise has ties to the Bravus Mining Company previously known as Adani Group.
 - Provision of pricing (schedule of rates)

25 The Contract is expected to commence 1 November 2021 for a period of 29 months with the provision that the contract be allowed one (1) x twelve (12) months option to extend the contract subject to performance, which may take this contract through to 31 March 2025.

The Contract will be managed by Hank Spangler – Works Coordinator.

Tenderers were advised via Tenderlink by Regional Procurement on 31 August 2021.

There was no requirement for a site meeting in this Tender.

- 30 An Evaluation Panel comprising three (3) Council staff members was formed.

Name	Position	Role of Panel
Hank Spangler	Works Coordinator (BSC)	Member
Anthony Boyle	Operations Coordinator (BSC)	Member
Fernanda Garcia	Strategic Procurement Coordinator (BSC)	Member

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Tenders closed on 10:00AM Tuesday September 2021 and tenders were received from the following proponents:-

- Boral Limited
- Graham's Concrete Pty Ltd
- 5 • Hanson Construction Materials Pty Ltd
- Holcim Australia Pty Ltd

Tenders were evaluated by the Evaluation Panel in accordance with the following evaluation criteria:

Mandatory criteria:

- 10 a) Tenderer must have a valid Australian Business Number.
- b) Substantial conformance to Conditions of Contract and Statement of Requirements.
- c) Workers compensation insurance for all employees.
- d) Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements.
- 15 e) Satisfactory Work Health and Safety practices.
- f) Commitment to ethical business practice principles.
- g) Provision of pricing (schedule of rates).

Qualitative criteria:

Criteria	Elements
Tender Price	Tenderer profile
	Previous relevant experience
Quality and availability of resources	Proposed key personnel
	Proposed staff
	Use of subcontractors
	Vehicles, plant and equipment
Quality Assurance and Delivery Plan	Goods/services standards and methodology
	Implementation plan
	Product sustainability
	Supporting local business, social enterprise and Indigenous business

- 20 Following the evaluation, the Evaluation Panel conducted referee and financial checks on the preferred tenderer. The results of these checks were deemed by the Evaluation Panel to be satisfactory as detailed in the attached Evaluation Report.

Financial Considerations

The price basis for the contract is a schedule of rates.

Council spends over \$250,000 per year on Ready-Mix Concrete.

There is sufficient funding for the proposed contract in the current budget.

5 Statutory and Policy Compliance Considerations

The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2005.

10 The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.

Local Government (General) Regulation 2005 - Reg 178

Acceptance of tenders

178 Acceptance of tenders

- 15 (1) *After considering the tenders submitted for a proposed contract, the council must either:*
- (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
 - (b) *decline to accept any of the tenders.*
- 20 (2) *A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*
- 25 (3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*
- (a) *postpone or cancel the proposal for the contract,*
 - (b) *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the*
30 *same or different details,*
 - (c) *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
 - (d) *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*

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- (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
 - (f) *carry out the requirements of the proposed contract itself.*
- 5 (4) *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*
- (a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*
 - (b) *the council's reasons for determining to enter into negotiations with the person*
- 10 *or persons referred to in subclause (3) (e).*

Council's endorsement of the recommendation to award the tender as recommended in the attached Evaluation Report is sought.

Report No. 13.18 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: I2021/1597

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 

Report

Information/Background:

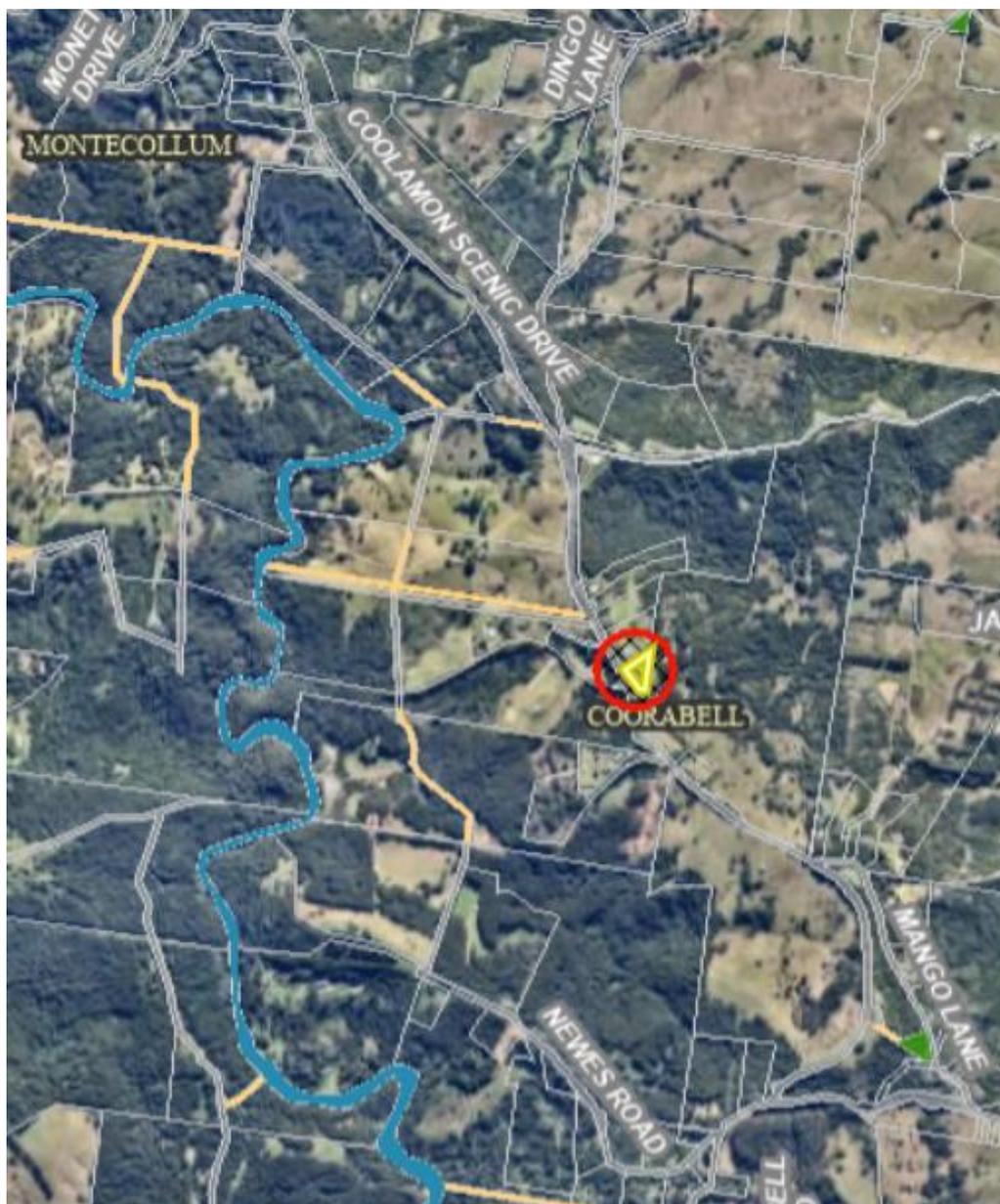
Council was approached by the owner of Lot 1 DP 557721 874 Coolamon Scenic Drive Coorabell highlighted yellow **Image 1** below, to discuss encroachment issues on Council's road reserve. Coolamon Scenic Drive is represented by the brown line in **Image 1** and there is a large road reserve or verge that leads to the boundary of the property. The small blue section is the potential part road reserve closure.

Image 1



10 **Image 2** below shows the location in relation to surrounding areas. The potential road closure is indicated by a red circle.

Image 2



The section for closure is a 43m² section of road reserve/verge.

Table 1 below provides a summary of likely impacts from the closure of this section of Council road reserve.

Table 1

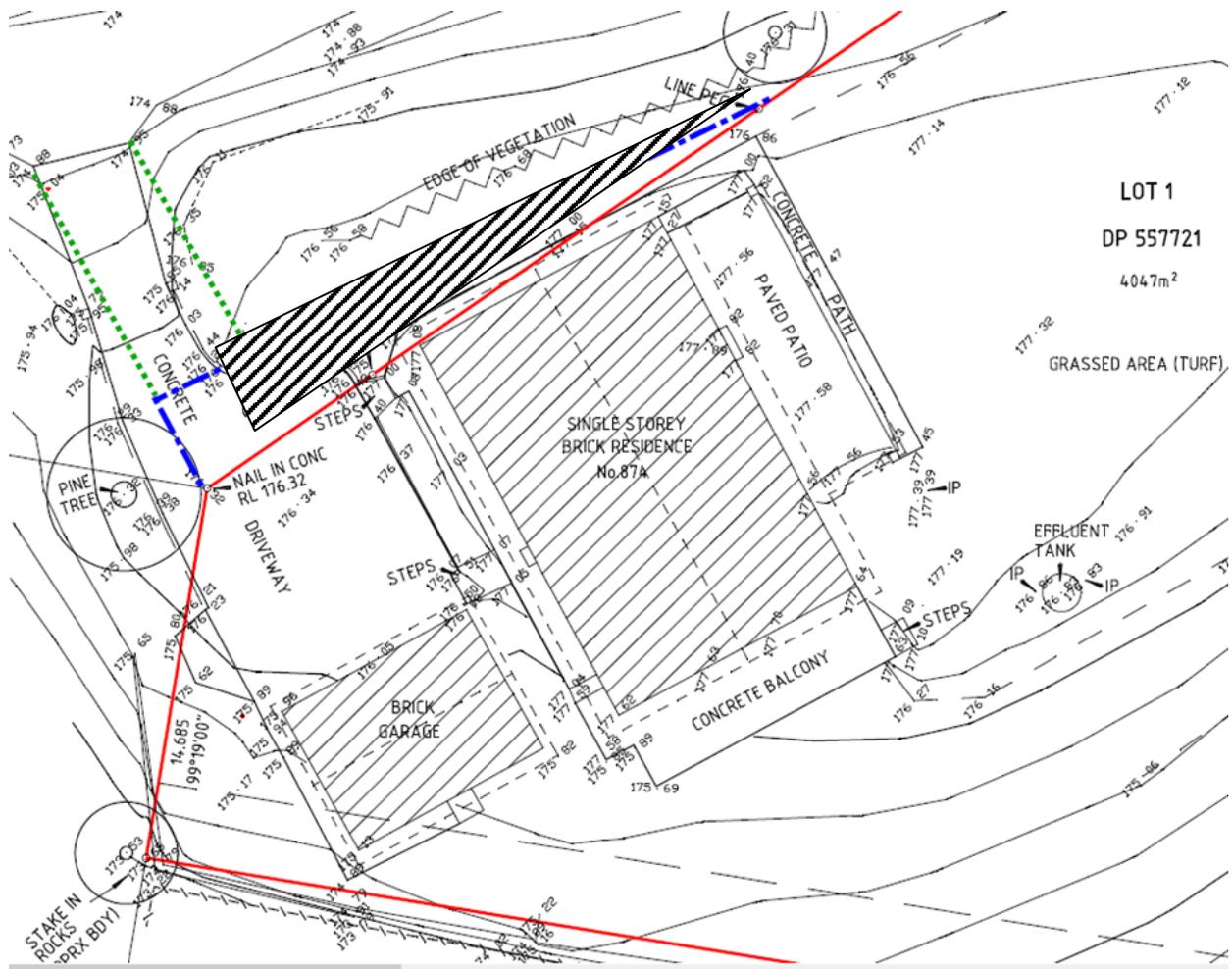
Typical Risk Area	Likely Impacts
Waste Collection	None
Road Assets (e.g. kerb, gutter, roadside barriers, etc)	None
Stormwater Drainage	None
Water Supply Assets	None
Sewer Assets	None
Public Transport (e.g. bus stops, pedestrian crossings, school buses, etc)	None
Community / Operational Land	None
Services (e.g. Rural Fire Service, power, water, Crown lands)	None
Future Infrastructure upgrades	Unlikely
Future Council needs in general	Unlikely
Non Council utilities	None
Emergency services	None

5 Why is this required?

Council's Development Engineers have been assessing a development application 10.2020.346.1 submitted by the owner of Lot 1 DP 557721, and a part road closure of Council's road reserve was agreed as the best method to resolve the encroachment issues on site. The cross hatched section of the survey below **Image 3** shows the section of road reserve that would be closed and sold to the adjoining land owner in order to resolve encroachment issues.

10

Image 3



What options are available to Council?

Council has three options:

- 5 1 Do nothing and allow private assets to be within Council land.
- 2 Require the encroaching assets to be removed from Councils road reserve.
- 3 Complete a part road closure.

10 Option 1 carries liabilities that are not supported by staff. The encroachment issue is minor and therefore option 2 could be seen as being unreasonable, especially when a very small part road closure would resolve this issue. Therefore option 3 has been recommended.

Road Closure Process:

- 15 Council identified as per the **Roads Act 1993 (Part 4 Division 3 Closing of council public roads by council 38A When council may close council public road)**, that this part road area would not be reasonably required as a road for public use (whether for present or future

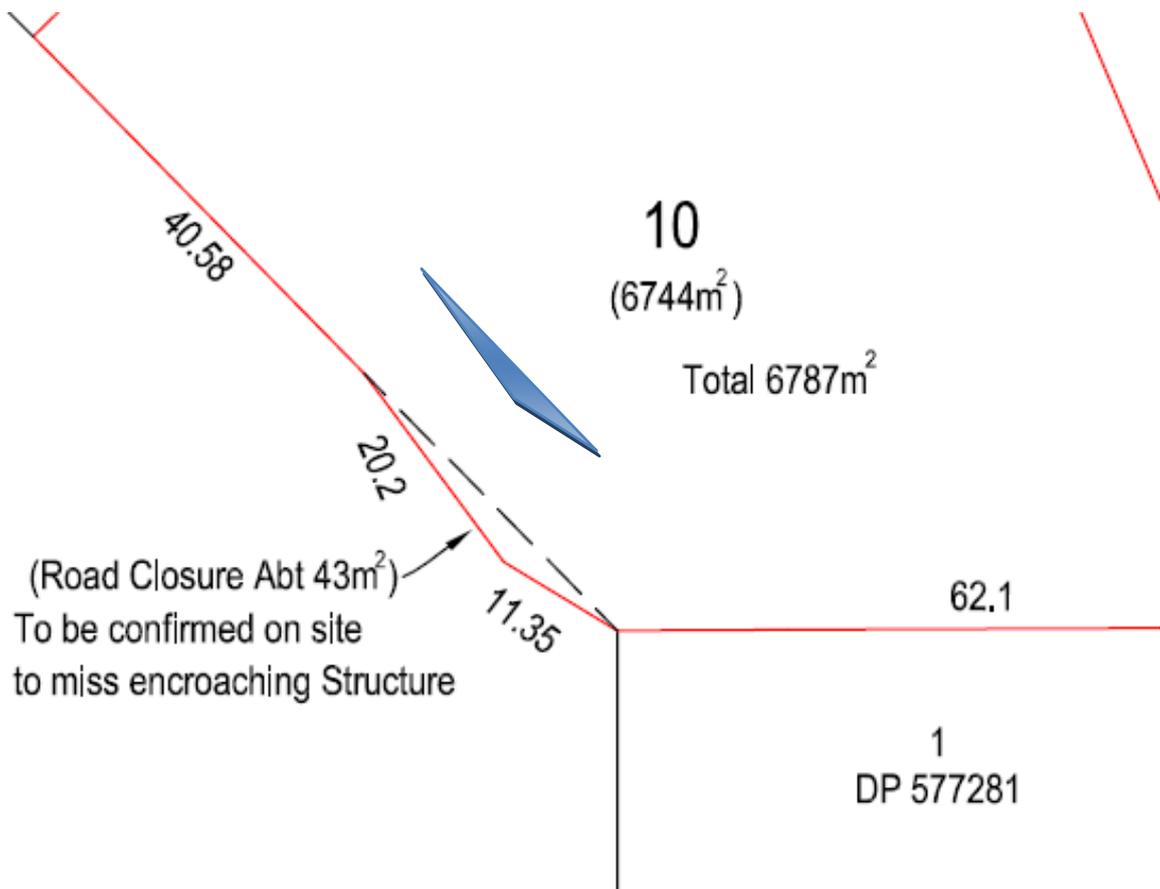
BYRON SHIRE COUNCIL

needs). This part road area is not required to provide continuity for an existing road network, and the part road does not impede vehicular access to a particular land.

5 A Notice was placed in The Byron Echo on 7 July 2021 and on Council's website and notifications went out to adjoining landowners and all authorities advising the closure of part Coolamon Scenic Drive identified in **Image 1** 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.**

10 There was a 28-day submission period with one submission of objection by an adjoining landowner *Attachment 2 E2021/106600*. The objection refers to a parcel of land the applicant is purchasing which has no bearing on this road closure. The objection also states that the landowner utilises this road reserve as access to his property. This is the case however the section being closed off highlighted blue **Image 4** below will not close the landowner's access to his property being Lot 1 DP 577281. He will still have full access to his property even when this small section of road reserve is closed. Council
15 therefore feels this should not be a cause to reject this road closure.

Image 4



There were no submissions of objection by authorities as per *Attachment 3 E2021/106631*.

A resolution of Council is required to finalise the road closure process. The final plans, plan of subdivision 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

5 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

Part 4 Closing of public roads

Division 3 Closing of council public roads by councils

10 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:

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

38B Notification of proposal to close council public road

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

- (a) to be published in a local newspaper, and
- (b) to be given to:
 - (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:

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- (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.

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:

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

38E Effect of notice of closure

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

- (a) the road ceases to be a public road, and
- (b) the rights of passage and access that previously existed in relation to the road are extinguished.

40 (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.

5

38F Appeals to Land and Environment Court against closure decision

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

10

15 **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 by any of the services.

A Notice was placed in The Byron Echo on 7 July 2021 and on Council's website and notifications went out to adjoining landowners and all authorities advising the closure of part Coolamon Scenic Drive

25

The services that direct advice was requested from includes, Rural Fire Service, Crown lands, Power and Water Utilities, as per Attachment 3 E2021/106631

Report No. 13.19 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: I2021/1598

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.

Attachments:

- 1 Crown Response 11629 - Council road closure proposal - Lot 3 DP 707295 Booyong Road
Response, E2021/108762 
- 5 2 1st Plan of road formalisation Adrian Zakaras Newton Deny Chapelle re encroachment 336
Booyong Road Lot 3 DP 707295, E2020/24632 
- 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 All submissions for part road closure Booyong adjoining Lot 3 DP 707295, E2021/108812

- 15

Report

Information/Background:

20 Council was approached by the owners of Lot 3 DP 707295 336 Booyong Road Nashua
to discuss encroachment issues on Council's road reserve. The survey plan (*Attachment
2 E2020/24632*) shows building encroachments and the existing formed road lying within
adjoining part Lot 4 DP 707295 as well as the road closure section. This road closure is
purely to rectify encroachment issues.

25 This is an historical issue as the existing footprint of the property and Booyong Road
have been like this for many decades.

Image 1 below shows the existing public road in white, Booyong Road with Council's
road reserve shown hatched.

Image 1



Image 2 below is an extract from Attachment 2 E2020/24632 showing the encroachments within the road reserve and Council's road being within private land.

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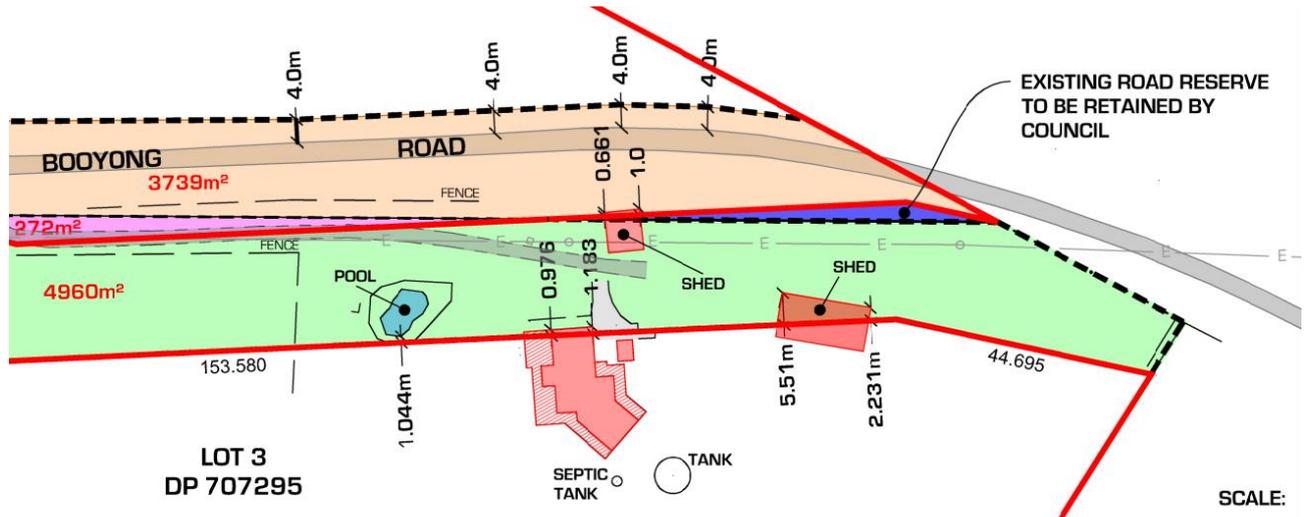
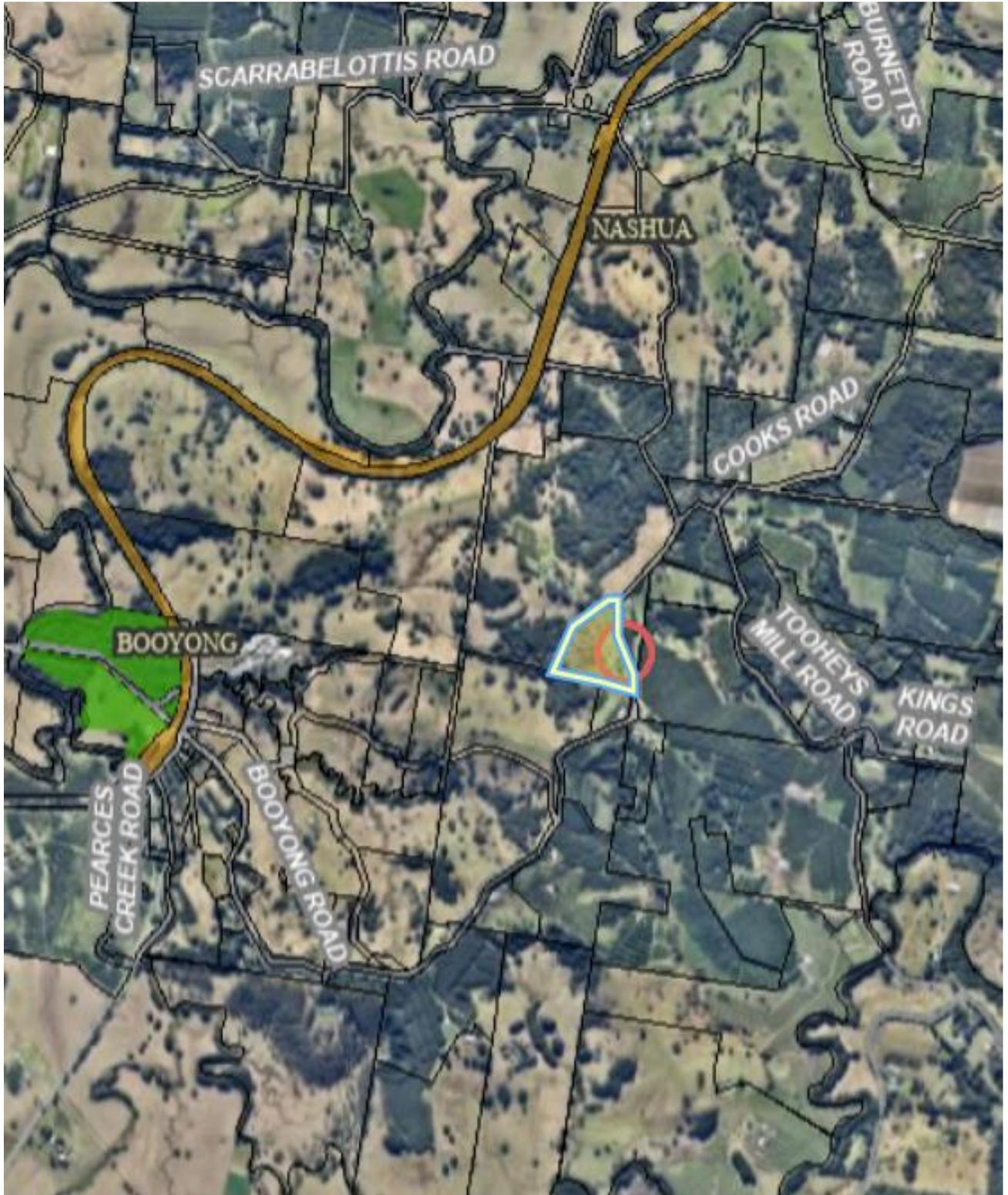


Image 3 below shows the location of the potential road closure (indicated by a red circle) in relation to surrounding areas.



The section for closure is a 4,960m² section of road reserve.

Table 1 below gives a clear indication of any likely impacts from the closure of this section of Council road reserve.

Table 1

Typical Risk Area	Likely Impacts
Waste Collection	None
Road Assets (e.g. kerb, gutter, roadside barriers, etc)	None
Stormwater Drainage	None
Water Supply Assets	None
Sewer Assets	None
Public Transport (e.g. bus stops, pedestrian crossings, school buses, etc)	None
Community / Operational Land	None
Services (e.g. Rural Fire Service, power, water, Crown lands)	None
Future Infrastructure upgrades	Unlikely
Future Council needs in general	Unlikely
Non Council utilities	None
Emergency services	None

Why is this required?

5 This part road closure is required to resolve encroachment issues within Council road reserve. Currently private assets including structures and a swimming pool are within Council road reserve.

10 The closure is linked to Council Resolution **20-227**. This resolution approves Councils to purchase the private land which Booyung Road actually sits within. Council will have insufficient funds to complete this purchase if the sale of land recommended by this report is not supported.

What options are available to Council?

Council has three (3) options:

1. Do nothing and allow private assets to be within Council land.
2. Require the encroaching assets to be removed from Councils Road reserve.
- 15 3. Complete a part road closure.

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STAFF REPORTS - INFRASTRUCTURE SERVICES

13.19

- 5 Option 1 carries liabilities that are not supported by staff. The encroachment issue is small and the land is not required by Council because the road is outside the road reserve as per Resolution 20-227. For these reasons option 2 could be seen as being unreasonable. Therefore option 3 is recommended option particularly when it creates an opportunity for Council to resolve our own encroachment issues.

Road Closure Process:

- 10 A Notice was placed in The Byron Echo on 7 July 2021 and could be viewed on Councils website. Notifications went out to adjoining landowners and all authorities advising the closure of a section of part Booyong Road 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.*

- 15 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

20 **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.

Recent Resolutions

- Res 20-227

Legal/Statutory/Policy Considerations

Roads Act 1993

Part 4 Closing of public roads

Division 3 Closing of council public roads by councils

5 **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:

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

38B Notification of proposal to close council public road

15 (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:
 - 20 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
- 25 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

30 (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
35 formally objects to the closing of the road. The authority may withdraw the objection any time by written notice given to the council.

Note:

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

- (3) The council may appeal to the Land and Environment Court against a formal objection made by a notifiable authority against the closing of the road.
- (4) On any such appeal, the Land and Environment Court may:
- 5 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

- 10 (1) After considering any submissions that have been duly made with respect to the proposal, the council may, by notice published in the Gazette, close the public road concerned.
- (2) However, a council public road may not be closed:
- 15 (a) in the case of a classified road—unless RMS consents to the closure of the road, or
(b) in the case where a notifiable authority has formally objected under section 38C to the closing of the road—until the objection is withdrawn by the authority or set aside by the Land and Environment Court under that section.

20 **38E Effect of notice of closure**

- (1) On publication of the notice closing the council public road concerned:
- (a) the road ceases to be a public road, and
(b) the rights of passage and access that previously existed in relation to the road are extinguished.
- 25 (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)
30 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.
- 35 (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.
- (4) To avoid doubt, an appeal under section 38C does not prevent an appeal under this
40 section.

Financial Considerations

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

5 A valuation was carried out (*Attachment 3 E2021/108820*) prior to the commencement of the road closure process 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*)

Consultation and Engagement

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

A Notice was placed in The Byron Echo on 7 July 2021 and could be viewed on Councils website. Notifications went out to adjoining landowners and all authorities advising the closure of a section of part Booyong Road.

15 The services that direct advice was requested from includes, Rural Fire Service, Crown lands, Power and Water Utilities

There were no submissions of objection by any of the Services i.e. Rural Fire Service, power or water, Crown lands. Attachment 5 E2021/108812.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.1 Report of the Water, Waste and Sewer
Advisory Committee Meeting held on 30
September 2021**

5

Directorate: Infrastructure Services

Report Author: Dominika Tomanek, Executive Assistant Infrastructure Services

File No: I2021/1599

10 **Summary:**

The attachment to this report provides the minutes of the Extraordinary Water, Waste and Sewer Advisory Committee Meeting of 30 September 2021 for determination by Council

15 **RECOMMENDATION:**

1. That Council notes the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 30 September 2021.

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

Report No. 3.1 Adoption of Minutes from Previous Meeting

File No: I2021/1528

Committee Recommendation 3.1.1

That the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 19 August 2021 be confirmed.

3. That Council does not adopt Committee Recommendation(s) 4.1 as shown in the attachment to this report, but instead adopts the Management Recommendation(s) as follows:

Report No. 4.1 Workshop - Ocean Shores to Brunswick Valley STP Transfer

File No: I2021/1495

Committee Recommendation 4.1.1

That Council, in relation to Ocean Shores and Brunswick Valley STP's:

- 1. Notes the status report.**
- 2. Recommits to reducing I/I in all sewer catchments.**
- 3. Proceeds to detailed design for infrastructure to transfer sewage flows from Ocean Shores STP to Brunswick Valley STP for:**
 - a) All current and projected flows to Ocean Shores STP (for the purpose of temporary closure for repairs and flows in excess of wet weather capacity), and,**
 - b) With facility to continue to discharge an adjustable proportion of the flows to Ocean Shores STP (up to ~100% of current sewage flows) on an ongoing basis.**
- 4. Investigates options for upgrades to Ocean Shores STP to rectify its prevailing condition, configuration, and redundancy issues, and to improve its efficiency and reliability. The capacity of the upgraded plant would not be required to be increased through the upgrades, and may be marginally reduced where cost effective to do so.**
- 5. Investigates options (including options with no Balancing Pond) for upgrades to Brunswick STP to rectify any prevailing issues (particularly in UV disinfection), and as required to accommodate the fraction of loads which cannot be reliably treated at the upgraded Ocean Shores STP.**
- 6. Receives a forward expenditure strategy based on timing of upgrades in Parts 2 & 3 above, and on growth estimated in Council's planning strategies.**
- 7. Receives a briefing at its next Strategic Planning Workshop.**

Management Recommendation

That Council, in relation to Ocean Shores and Brunswick Valley STP's:

- 1. Proceed to design phase for Option 4 (staged) of an upgraded plant at Brunswick Valley STP and associated transfer infrastructure.**
- 2. Include in the design of the Brunswick Valley STP options to consider the provision of the STP with or without a balancing pond.**

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REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

14.1

3. **Investigate options for upgrades to Ocean Shores STP to rectify its prevailing condition, configuration, and redundancy issues, and to improve its efficiency and reliability to meet revised EPA licence requirements.**

4. **Council to respond to EPA as per option 4 staged approach strategy.**

Attachments:

- 5 1  Minutes 30/09/2021 Water, Waste and Sewer Advisory Committee Extraordinary, I2021/1560

Report

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 30 September 2021 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Extraordinary Water, Waste and Sewer Advisory Committee Meeting - Thursday, 30 September 2021 \(infocouncil.biz\)](https://www.infocouncil.biz/Agenda-of-Extraordinary-Water-Waste-and-Sewer-Advisory-Committee-Meeting-Thursday-30-September-2021)

Committee Recommendation

Committee recommendation 4.1 is not supported by management.

Management Comments

- 10 Management do not agree with the Committee recommendation 4.1 for the reasons given below and alternatively recommend that Council:

That Council, in relation to Ocean Shores and Brunswick Valley STP's:

- 15 **1) Proceed to design phase for Option 4 (staged) of an upgraded plant at Brunswick Valley STP and associated transfer infrastructure.**
- 2) Include in the design of the Brunswick Valley STP options to consider the provision of the STP with or without a balancing pond.**
- 20 **3) Investigate options for upgrades to Ocean Shores STP to rectify its prevailing condition, configuration, and redundancy issues, and to improve its efficiency and reliability to meet revised EPA licence requirements.**
- 4) Council to respond to EPA as per option 4 staged approach strategy.**

25

The reason given for not supporting committee recommendations:-

In relation to the original WW&SAC recommendation from the 30 September 2021 meeting, staff provided a briefing to Council's SPW meeting held on 7 October 2021 where the proposed Management recommendation was discussed.

- 30 NSW EPA have notified formally notified Council that Ocean Shores STP has gone from medium to high risk through their risk management assessment criteria. NSW EPA have requested Council to respond by notifying EPA of Councils strategy relating to Ocean Shores STP.

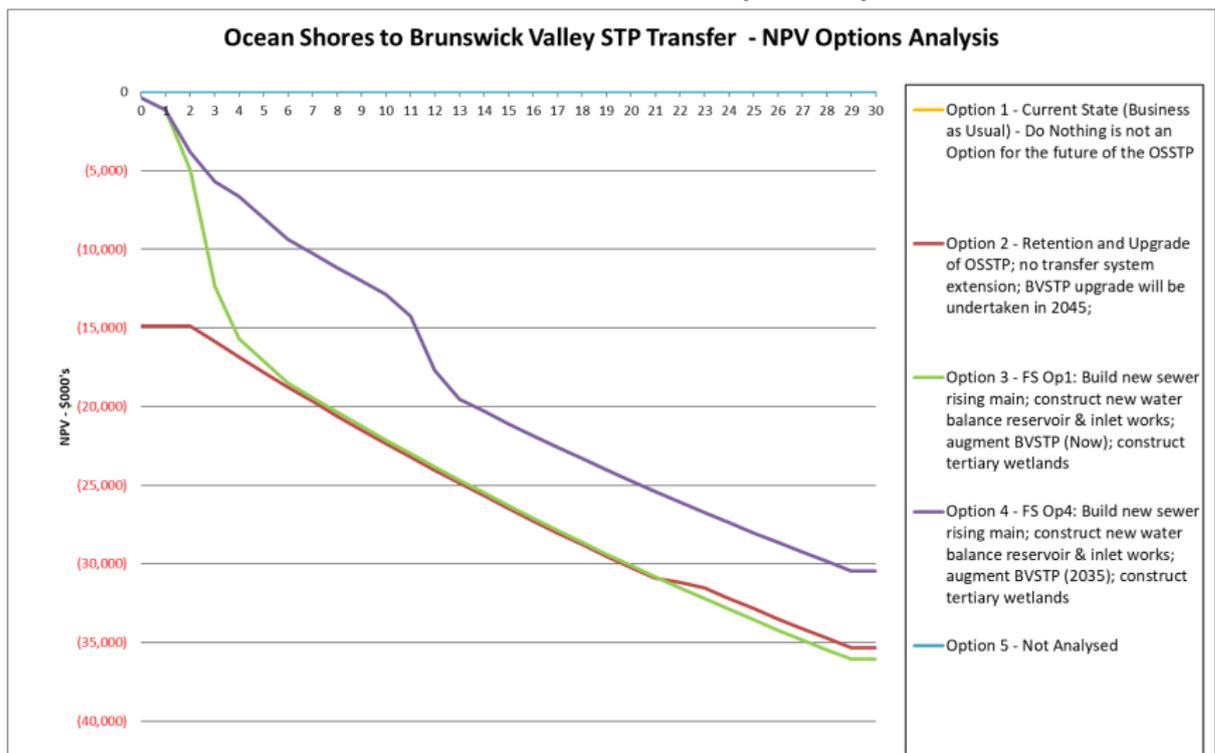
- 35 The EPA have indicated they will attach the strategy to the Ocean Shores STP licence. It should be noted that the current Ocean Shores STP licence is an older licence where the

criteria is less stringent than the current EPA criteria that other STP's have in the area, considering the close proximity to environmental and public receptors such as Brunswick Heads River.

5 Ocean Shores STP overall is in poor condition and currently at process capacity in average dry weather. The STP does not perform well in moderate to large wet weather events. It does not disinfect wet weather flows (by-passing from effluent maturation ponds/wetlands direct to river). This is the main reason EPA's risk assessment tool has deemed the STP 'high risk'. In addition, during wet weather there are significant exceedances of water quality criteria (reportable to the EPA). If the EPA brought the licence up to current licence standards, the exceedances would significantly increase.

15 The cost benefit analysis does not support the upgrading and operations of two STP's. This may have significant impact on the sewer fund in relation to 30year business plan. The \$5M (NPV) savings from Option 4 (staged) may be used to increase the I&I budget reducing inflows to the STP from wet weather. This supports the decrease in STP operational cost into the future.

Net Present Value (NPV)



Option 4 (staged) supports integration to the following Council strategies.

- 1) Zero Net Emissions Strategy
- 2) Recycled Water Strategy
- 20 3) Safe and Secure Yield Water Supply (demand management)
- 4) Climate Change Adaptation

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REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

14.1

Committee recommendation does not align with zero net emissions strategy. Ocean Shores STP approximately uses twice as much electricity as Brunswick Valley STP. Therefore, putting the zero net emissions strategy at risk through with additional cost of capital projects to offset energy use.

Source/ Plant	Emissions - All Scopes (tonnes CO ₂ -e)	Volume Treated 2021 (ML)	Emissions per ML (tonnes CO ₂ -e per ML)
Vehicle Fleet	1,296		
Byron Bay STP	946	2115	0.45
Unmetered Street Lighting	657		
Ocean Shores STP	480	760	0.63
Brunswick Valley STP	395	1032	0.38
Council Administration Centre, Mullumbimby	327		
SPS Kiah Close (Sewage Pumping Station)	211		
First Sun Caravan Park	193		
Bangalow STP	168	188	0.89

5

The additional load from the OSSTP transfer to Brunswick Valley STP allows capacity for recycled water. The potable water supply for Mullumbimby is currently at capacity in relation to recent climate change modelling. Recycled water is key to managing potable water demand (long term) which aligns with the safe and secure yield supply strategy and recycled water strategy (draft). The research has identified more opportunities for recycled water within the current proximity of the Brunswick Valley STP.

10

The proposed balancing pond allows for future climate adaptation within design. This aligns with climate change strategy through future proofing for climate change risk. It also provides contingency for operational shut down requirements. Further concept design is required to allow for costings for a no balance pond option where one or two new clarifiers and a reactor (mixed liquor) bypass facility will be required.

15

The revised management recommendation includes the option with and without balancing pond. It must be noted, that the 5 year I&I program will reduce inflow from rain events, therefore, the balance pond will be used less as the performance of I&I program progresses.

20

5 Consolidation of assets (less operational STP's) drives operational efficiencies through aligning Asset Management to Operational requirements. It is critical to undertake key internal stakeholder engagement to get a better understanding of key barriers, challenges or realities faced by the end user, in this case the STP Operators when undertaking strategic direction and associated design. The Ocean Shores STP is on a SCADA system, however, is less automated than the other STP's, therefore, causes significant labour-intensive challenges with operations of the plant, including WH&S risks.

10 It will take approximately 3 to 5 years to go through D&C for option 4 (staged), therefore, it was discussed in the SPW that while that is occurring, Council will Investigate options for upgrades to Ocean Shores STP to rectify its prevailing condition, configuration, and redundancy issues, and to improve its efficiency and reliability to meet revised EPA licence requirements.

This will ensure for best, environmental, social, and economic outcomes are achieved while ensuring relevant Council strategies are aligned.

15 **Financial Implications**

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 30 September 2021.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 30 September 2021.

Report No. 14.2 Report of the Local Traffic Committee Meeting held on 5 October 2021

Directorate: Infrastructure Services

Report Author: Michelle Wilcox, Traffic & Parking Systems Officer

5 **File No:** I2021/1628

Summary:

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 05 October 2021 for determination by Council.

10

RECOMMENDATION:

1. That Council notes the minutes of the Local Traffic Committee Meeting held on 5 October 2021.

15

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

Report No. 6.1 No Parking Area and No Stopping Requests - Various Locations
File No: I2021/1458

Committee Recommendation 6.1.1

That Council supports the installation of:

1. "No Parking Area 1am – 7am" sign(s) at the entrance to Scarabeloti's Lookout on Coolamon Scenic Drive, Coorabell.
2. "No Parking Area 1am to 6am" sign(s) at the entrance to the Byron Street netball courts car park in Mullumbimby.
3. "No Stopping Tuesdays" sign(s) in the cul-de-sac of Hazelwood Close, Suffolk Park.

Attachments:

1 Minutes 05/10/2021 Local Traffic Committee, I2021/1521 

Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 5 October 2021 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Local Traffic Committee Meeting - Tuesday, 5 October 2021 \(infocouncil.biz\)](https://infocouncil.biz)

This report contains the recommendations of the Local Traffic Committee (LTC) meeting held on 5 October 2021.

Council's action on the LTC advice will be:

- 10 a) If Council is in agreement with the LTC unanimous support then the proposal may be approved. In these cases there is no conflict between Council and the advice of the LTC, consequently there is no need for Council to inform the RMS or the NSW Police representatives of the decision.
- b) If Council is in agreement with the LTC unanimous support, but no longer wants to proceed, the proposal may still be rejected.
- 15 c) If Council is in agreement with the LTC unanimous decline then the proposal may be rejected. Again there is no conflict between Council and the advice of the LTC. Consequently there is no need for Council to inform the RMS or the NSW Police representatives of the decision.
- 20 d) If Council decides to proceed with a proposal where the advice of the LTC is not unanimous support, then the Council must first advise the RMS and the NSW Police representatives in writing of their intention to approve the proposal. The RMS or the NSW Police may then lodge an appeal to the Regional Traffic Committee (RTC).
- 25 e) If Council decides to proceed with a proposal where the advice of the LTC is a unanimous decline, then the Council must first advise the RMS and NSW Police representatives in writing of their intention to approve the proposal. The RMS or the NSW Police may then lodge an appeal to the RTC.

Due to the fact that the RMS and the NSW Police have the power to appeal certain decisions of the Council, the LTC cannot provide its advice to Council until both the RMS and the NSW Police have provided their vote on the issue.

30 Financial Implications

As per the Reports listed within the Local Traffic Committee Meeting of 5 October 2021.

Statutory and Policy Compliance Implications

As per the Reports listed within the Local Traffic Committee Meeting of 5 October 2021.

CONFIDENTIAL REPORTS - GENERAL MANAGER

Report No. 16.1 CONFIDENTIAL - Annual Review of GM's Performance

5 **Directorate:** General Manager

Report Author: Renae Fegent, Acting Manager People and Culture

File No: I2021/1587

Summary:

10 On 20 August 2021, the General Manager's annual performance review for the 2020/2021 financial year was conducted by a performance review panel, in accordance with the Guidelines for the Appointment and Oversight of General Managers issued by the Division of Local Government, Department of Premier and Cabinet (the 'Guidelines').

15 The performance review panel consisted of the Mayor Cr Michael Lyon, Cr Basil Cameron and Cr Alan Hunter, assisted by an external facilitator Ms Sandra Wood from Sandra Wood Consulting.

 A performance agreement for the 2021/2022 financial year has been developed by the General Manager and Mayor Cr Michael Lyon, with the input from the other review panel members.

20 **RECOMMENDATION:**

1. **That pursuant to Section 10A(2)(a) of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Annual Review of GM's Performance.**

 2. **That the reasons for closing the meeting to the public to consider this item be that the report contains:**
 - a) **personnel matters concerning particular individuals (other than councillors)**

 3. **That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:**
- 30 **GM's performance review report contains confidential information about performance.**

Attachments:

- 5
- 1 Confidential - Mark Arnold General Manager Performance Review Report August 2021, E2021/123061
 - 2 Confidential - Performance Review Agreement - General Manager Mark Arnold - 01 July 2021 to 30 June 2022, E2021/112480

RECOMMENDATION:

- 5
1. That pursuant to Section 10A(2)(d)i and (d)ii of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Byron Shire Bioenergy Facility - Project Update.
 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - 10 a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
 - b) information that would, if disclosed, confer a commercial advantage on a competitor of the council
 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

15 Council is still in direct commercial negotiations with its preferred Contractor and disclosing the total project costs could disadvantage Council's negotiating position. The Australian Renewable Energy Agency does not permit public discussion of its contemplated grants during the grant application process and requires that the application information remain confidential.

Attachments:

- 20
- 1 Confidential - HWLE Procurement Probity Advice 30 August 2021, E2021/126048