

# Agenda Ordinary (Planning) Meeting

Thursday, 9 June 2022



**BYRON**  
SHIRE  
COUNCIL

# Agenda Ordinary (Planning) Meeting

held at Conference Room, Station Street, Mullumbimby  
commencing at 11.00am

Public access relating to items on this agenda can be made between 11:00am and 11:30am 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.

A handwritten signature in black ink, appearing to read "Mark Arnold".

**Mark Arnold**  
**General Manager**

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## 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)

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## RECORDING OF VOTING ON PLANNING MATTERS

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

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

**BYRON SHIRE COUNCIL**  
**BUSINESS OF ORDINARY (PLANNING) 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 (Planning) Meeting held on 12 May 2022
- 7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**
- 8. MAYORAL MINUTE**
- 9. NOTICES OF MOTION**
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- 11. SUBMISSIONS AND GRANTS**
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### 15. CONFIDENTIAL REPORTS

#### Corporate and Community 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 Council submission to NRPP on  
Linnaeus DA 10.2021.170.1**

5 **File No:** I2022/505

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**I move:**

- 10 1. **That Councillors receive, on the day after it is lodged with the Northern  
Regional Planning Panel, a copy of the Assessment Report prepared by  
Council staff for DA 10.2021.170.1 for 27 cabins, 7 other buildings, alterations &  
additions, earthworks, vegetation removal, and change of use of 14 units from  
educational to tourism on the “Linnaeus Estate” at Broken Head.**
- 15 2. **That staff outline a method and timeframe by which Council could make a  
submission to the Panel (on this and in future any other DA going to the Panel)  
in line with the state procedure described in clause 11.12 of the operational  
procedures.**
- 20 3. **That the elected Council note that Council’s submission should not be  
prepared by persons involved in the assessment of the application but could  
be prepared by another council officer, or a consultant.**

**Signed: Cr Duncan Dey**

25 As described in the response to Question with Notice 14.1 in the Council Agenda for 12  
May 2022, PPSNTH-83/DA10.2021.170.1 Mixed Use Development comprising Twenty-  
Seven (27) New Eco Tourist Facility Cabins, Seven (7) Ancillary Buildings including  
Wellness Facility, Refuges, Depot, Addition of Deck to Existing Centre and Associated  
Earthworks and Vegetation Removal, and Change of Use of Fourteen (14) Private  
Education Accommodation Units to Eco Tourist Facility Units is under assessment.

30 Such an Assessment is prepared by Council staff for consideration of the Northern  
Regional Planning Panel so that NRPP can determine the DA. Council determines DA’s  
normally but the state has yielded that role up to other agencies under various  
circumstances. In this case, NRPP determines the DA based on the Byron Shire Council  
staff report and on submissions received.

35 As stated in the response to my Question of 12 May, *the assessment report is not to be  
endorsed or presented to the elected council before being sent to the Panel secretariat.*  
This doesn’t exclude sharing the assessment report with Council once it has been sent to  
the Panel secretariat.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.1

Within the response to my Question is the following procedure under which the state allows a Council to express its opinion to the Panel:

### 11.12 Council representation to the Planning Panel

5 An elected council may make a submission on a DA within their LGA that is to be determined by a Panel up to seven days before the Panel meeting.

10 After the assessment report is sent to the secretariat, it may be given to the elected council to assist in its decision as to whether it will be making a submission to the Panel. The elected council's submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant.

A council submission should not be specifically referenced in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual Councillors may register to address the Panel at the meeting to express the views of council.

15 Councillors who are also Panel members have an independent role because they have been nominated by their council as its nominee to the Panel.

20 This is a controversial DA. There were 2623 submissions made when it was on exhibition, with 42 in support. One of those against was a substantial submission by Tim Robertson SC, as referred to in the *Response to Submissions Report*. That submission indicates that there are legal planning issues that must be resolved prior to the DA being assessed or determined.

25 On-site sewage management (OSM) issues have also been highlighted. When development was approved in 2004 by the Land & Environment Court for the current non-tourist educational usage, that consent included deactivating the existing disposal fields and creating new ones, plus monitoring of their performance. None of this appears to have happened.

The *Record of Briefings* between Council and the JRPP indicates what issues require clarification.

A tentative determination date was scheduled by the Panel for June 2022.



## Staff comments

by Shannon Burt, Director, Sustainable Environment and Economy:

Staff responses below:

- 5      **1. That Councillors receive, on the day after it is lodged with the Northern Regional Planning Panel, a copy of the Assessment Report prepared by Council staff for DA 10.2021.170.1 for 27 cabins, 7 other buildings, alterations & additions, earthworks, vegetation removal, and change of use of 14 units from educational to tourism on the “Linnaeus Estate” at Broken Head.**

10      A copy of the assessment report will be uploaded to the Councillor Hub as per clause 11.12 of the Planning Panel Operational Procedures. The Planning Panel will also publish relevant documents on the development application link on their web page. Any submitters to the development application will be separately notified by the Planning Panel secretariat at that time.

[Planning Panels | Planning Portal - Department of Planning and Environment \(nsw.gov.au\)](#)

- 15      **2. That staff outline a method and timeframe by which Council could make a submission to the Panel (on this and in future any other DA going to the Panel) in line with the state procedure described in clause 11.12 of the operational procedures.**

20      As per clause 11.12 of the Planning Panel Operational Procedures an elected council may make a submission on a DA within their LGA that is to be determined by a Planning Panel up to seven days before the Planning Panel meeting. After the assessment report is sent to the secretariat, it may be given to the elected council to assist in its decision as to whether it will make a submission to the Planning Panel or not. A Council may need to call an extraordinary meeting if it deems necessary for this purpose given the 7 days time  
25      frame.

30      A council at any time prior to the submission of the assessment report to the Planning Panel can also chose to make a submission on the development application as it was submitted and or exhibited. All relevant documents are available on the [NSW Planning Portal](#) -. The decision to do so can be made via a Notice of Motion or Urgency as was previously done for the West Byron development applications (Resolution 17-280).

[Minutes of Ordinary Meeting - 22 June 2017 \(infocouncil.biz\)](#)

[Minutes of Extraordinary Meeting - 6 July 2017 \(infocouncil.biz\)](#)

35      However, it should be noted that relying on the submitted assessment report to the Planning Panel means that a council has the most up to date development application and assessment report to use to make its decision on whether a submission is necessary. Amendments to development applications can occur throughout the assessment process and in response to Planning Panel Briefings and as a result can change the nature or content of a submission.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.1

3. **That the elected Council note that Council's submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant.**

5 As per clause 11.12 of the Planning Panel Operational Procedures the elected council's submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant. A council submission should not be specifically referenced in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual councillors may register to address the Panel at the meeting to  
10 express the views of council.

### **Financial/Resource/Legal Implications:**

Council and staff need to observe the Planning Panel Operational Procedures and Code of Conduct.

15 Should a council or councillor seek to make a submission in their own right to a development application before the Planning Panel, this can generally occur without impacting staff time or incurring staff or consultant costs.

20 However, should a council resolve to have a staff member or consultant prepare a submission on their behalf, this would have a time and budget implication that would need to be considered and provided for at the relevant time. Each development application presents different circumstances so there is not one standard approach for these matters.

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

| <b>CSP Objective</b>  | <b>CSP Strategy</b>  | <b>DP Action</b>   |
|---|--|--|
| <b>Community Objective 5: We have community led decision making which is open and inclusive</b> | 5.2: Create a culture of trust with the community by being open, genuine and transparent | 5.2.4: Support Councillors to carry out their civic duties |

**Notice of Motion No. 9.2 South Golden Beach west side flooding & drainage**

**File No:** I2022/570

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**I move:**

10 That Council receives a report on the following projects whether already under way or not in South Golden Beach west of Capricornia Canal, including how they can be funded and executed in the 2022-23 financial year and noting that more project detail appears in Councillor Dey's report attached to this Notice of Motion:

- 15 a) investigate the sub-catchment of Marshals Creek that drains through South Golden Beach west side into Capricornia Canal, to determine capacities of its sub-surface and overland drainage networks, especially in the downstream area (SGB). That investigation should lead to upgrades in the piped network, to identification of overland flow-paths and to their upgrade.
- b) investigate whether South Golden Beach west of Capricornia Canal could benefit from a flood pump system similar to the one serving the east side.
- 20 c) revitalise and complete the backyard easement project that commenced after the AWC Environmental Assessment of 2015.
- d) create a standing annual task for just prior to each wet season around routine inspection and maintenance of the flood gates in South Golden Beach.
- e) inspect the flood gates in South Golden Beach and carry out maintenance including (i) reinstalling a seal on gate #2 of 4 and (ii) removing mud  
25 accumulated on the concrete apron downstream of gate #4 of 4.
- f) consider in conjunction with the SES appointing a local warden to inspect those flood gates when flood warnings are issued.
- g) repair and restore the displaced concrete cover on the stormwater pit in the  
30 central road reserve of Shara Boulevard near Palmer Avenue, but preferably replace it with a steel grated cover.
- h) investigate and overcome the causes of persistent sewer pump failure at the pump station near #13 Elizabeth Street, South Golden Beach and setup communication with neighbours to monitor success of these measures for a year after their implementation.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.2

- i) **investigate and overcome the causes of persistent stagnant stormwater on the corner of Elizabeth and Clifford Streets, South Golden Beach and setup communication with neighbours to monitor success of these measures for a year after their implementation.**

5

### **Attachments:**

- 1 South Golden Beach west, E2022/47603 

10 **Signed: Cr Duncan Dey**

### **Councillor's supporting information:**

The attached report summarises information I received from a tour of the area at the behest of South Golden Beach residents who attended the OSCA meeting of 26 April. It raises issues particular to the area, some of which are likely to be repeated in other areas.

15 These issues do not trump those raised elsewhere for this floodplain or for all floodplains throughout the Shire. The community who spoke with me are equally interested in measures to reduce flood levels in Marshals Creek and, even if that is not feasible, to adapt to flooding and prepare for future events. Those processes are already underway, for all areas in the Shire.

20 The uniqueness of this area makes its needs simple to articulate, as the report does. The Motion attempts to get action on those unique to the western side of South Golden Beach.

Some of the actions could be implemented early and rapidly. Many should already be budgeted for as maintenance with no reason not to undertake them this financial year. Others mesh with projects articulated in the North Byron Shire Floodplain Plan as adopted in 2020. Still others may be seen as new and thus require allocation in Council's budget.

25

I hope that disaster recovery funding would support some if not all these ideas.

### **Staff comments**

**by Scott Moffett, Flooding and Drainage Engineer, Infrastructure Services:**

30 Staff will provide a more detailed response to the August Council meeting; however, the following is provided to support the Notice of Motion.

- a) Council has submitted a \$250 000, Department of Planning and Environment (DPE) to undertake a shire wide detailed overland flow path assessment. If successful, this assessment would identify problem drainage areas and lead to the prioritisation of drainage network capital upgrades
- 35 b) The above study would also address this area of concern

## BYRON SHIRE COUNCIL

### NOTICES OF MOTION

9.2

- 5 c) Council will revitalise and complete the backyard easement project that commenced after the AWC Environmental Assessment of 2015. This will involve cross Council departmental works including Infrastructure Planning, Works Drainage Maintenance and ultimately Compliance. This project is currently programmed to commence in the 2024/25 financial year. Alternative funding would need to be sought to bring this forward.
- d) This has been actioned and will form a part of the shire wide pre/post wet season drainage health checks.
- e) This has been assessed and is programmed.
- 10 f) This can be discussed with SES.
- g) This will be programmed by Council's Works - Drainage maintenance staff
- h) This has been assigned to Council Utilities section.
- i) This will be investigated by Infrastructure Planning and the Drainage maintenance staff.

### 15 **Financial/Resource/Legal Implications:**

The financial implications will be discussed in more detail when reported to Council in August.

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

| <b>CSP Objective</b>   | <b>CSP Strategy</b>  | <b>DP Action</b>   | <b>Code</b>    | <b>OP Activity</b>   |
|--|--|--|----------------|--|
| <b>Community Objective 1: We have infrastructure, transport and services which meet our expectations</b> | 1.1: Provide a road network which is safe, accessible and maintained to an acceptable level of service | 1.1.6: Provide stormwater infrastructure to manage flood mitigation, social and environmental outcomes | <b>1.1.6.1</b> | Review and update 10 year Stormwater Levy program                            |
|  |  |  | <b>1.1.6.3</b> | Deliver Annual Urban Drainage Maintenance works                              |
|  |  |  | <b>1.1.6.7</b> | Deliver New Brighton / Ocean Shores Overland Flow and Drainage Upgrade Study |
|  |  |  | <b>1.1.6.9</b> | Deliver Stormwater Capital Maintenance Renewal Works Program                 |

STAFF REPORTS - GENERAL MANAGER

**Report No. 13.1 Adoption of a Code of Meeting Practice**

**Directorate:** General Manager

5 **Report Author:** Ralph James, Legal Counsel

**File No:** I2022/492

**Summary:**


10 This report deals with the public submissions received following the exhibition of Council's draft Code of Meeting Practice and recommends the adoption of the Code of Meeting Practice.

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**RECOMMENDATION:**

- 15
1. **That Council changes the name of the “Strategic Planning Workshop” to “Councillor Workshop” and amend the Code of Meeting Practice accordingly.**
  2. **That Council, after consideration of the matters raised in submissions, adopts the Code of Meeting Practice (E2022/12245).**

20 **Attachments:**

- 1 Confidential - Submissions on the draft Code of Meeting Practice, E2022/43253
- 2 Code of Meeting Practice, E2022/12245 

25

**Report**

The Model Code of Meeting Practice for Local Councils in NSW is made under section 360 of the *Local Government Act 1993* and clause 232 of the *Local Government (General) Regulation 2021*.

- 5 Council must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code within 12 months of the local government election. Council’s adopted meeting code must not contain provisions that are inconsistent with the mandatory provisions. Council’s adopted meeting code may also incorporate the non-mandatory provisions of the Model Meeting Code and any other supplementary provisions  
10 adopted by the council.

15 Under section 361 of the *Local Government Act 1993*, before adopting a new code of meeting practice, councils must first exhibit a draft of the code of meeting practice for at least 28 days and provide members of the community at least 42 days in which to comment on the draft Code.

The draft Code was exhibited from 27 March 2022 to 8 May 2022 inclusive.

Four submissions were received. The full submissions are contained in Confidential attachment 1 and are summarised below.

| <b>Attending meetings by audio-visual link</b>  | <b>Comment</b>   |
|---|--|
| <p>The Mayor’s decision that Councillors could not attend the 28 April 2022 meeting by Zoom requires review. Although in-person attendance is desirable the option for a Councillor to attend by virtual means should be available under any reasonable circumstance to ensure as many Councillors attend meetings as possible.</p> | <p>The draft Code of Meeting Practice makes provision for Councillors to attend meetings by audio-visual link. See CI 5.18 to 5.29. This is consistent with the Model Code of Meeting Practice.</p> <p>Councillors may attend and participate in meetings by audio-visual link with the approval of Council.</p> <p>A Councillor may request to attend one or more meetings by audio-visual link.</p> <p>A decision whether to approve a request by a Councillor to attend a meeting of Council by audio-visual link must be made by resolution of Council. Council's resolution must state reasons.</p> |

## BYRON SHIRE COUNCIL

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| <p><b>Change requirements around seconding “for the debate”</b></p>  |   |
| <p>At the moment, motions need to be seconded before debate commences.</p> <p>10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.</p> <p>Add on additional clause:</p> <p>The mover is permitted their three-minute speech to introduce the motion without a seconder, after which a seconder is required to commence the debate.</p> | <p>This suggestion is not without merit. It would enable Councillors to gain an appreciation of what is proposed in the motion or amendment before seconding and before debate commences. It may mean that a Councillor who was inclined to second so that they could hear what the motion was about may decline to do so after the explanation had been given. In that instance all that would be lost would be the 3 minutes of the mover’s speech, whereas significant time may be saved if the motion or amendment fell away for lack of a second after it had been made clear what the motion or amendment was about.</p> <p>The suggestion, if adopted, would slightly expand clause 10.11 of the Draft Code of Meeting Practice which provides that the mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.</p> |
| <p><b>Strategic Planning Workshop</b></p>  |   |
| <p>The Strategic Planning Workshop is not to be used as a source of so-called consensus on any issue.</p>  | <p>The draft Code of Meeting Practice provides that the Strategic Planning Workshop is designed to brief Councillors on business to be considered at a forthcoming ordinary or planning meeting.</p> <p>Councillors must not use Strategic Planning Workshops to make preliminary decisions on items of business they are being briefed on. Decision-making must be left to the formal Council meeting at which the item of business is to be considered.</p> <p>Apart from the title, the words in the draft Code of Meeting Practice mirror those in the Model Code of Meeting Practice.</p>  |
| <p>The SPW is to be restricted to strategic planning issues only.</p>  | <p>The Strategic Planning Workshop is designed to brief Councillors on business to be considered at a forthcoming ordinary or</p>   |



# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

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|   | <p>planning meeting.</p> <p>To limit the scope of the Workshop to strategic planning issues would defeat the pre-meeting briefing purpose of the Workshop.</p>   |
| <p>Council must decline to debate staff recommendations issuing from the SPW.</p>   | <p>Staff recommendations do not issue from a Strategic Planning Workshop. The Workshop may discuss a staff recommendation which already exists in an agenda item.</p> <p>The Workshop may inform a future staff recommendation.</p>  |
| <p>Staff present at Strategic Planning Workshops for the stated purpose of “briefing” Councillors must not offer opinions or recommendations unless specifically asked by a Councillor.</p> | <p>Briefing session means an informal meeting or gathering between Councillors and staff to discuss the business of the Council or any matter on, or proposed to be on, the agenda of a Council meeting.</p> <p>Staff provide information to Councillors. Often that is by way of opinion based on staff expertise on the topic.</p> <p>It is then a matter for informed Councillors to accept or reject any opinion which may have been presented to them.</p> <p>Given the confusion which the name "Strategic Planning Workshop" creates it may be worth considering changing the name of the Workshop to what it really is i.e., a Councillor Workshop</p> |
| <p><b>Changes to the Code of Meeting Practice</b></p>   |  |
| <p>Decisions as to whether a particular proposed change to the Code of Meeting Practice should be publicly exhibited or not, should be made by the elected Council.</p>                     | <p>Decisions as to amendments to the Code of Meeting Practice are made by Council resolution and are exhibited after a resolution to that effect.</p>  |

# BYRON SHIRE COUNCIL

| <p><b>Topic of questions and submissions in Public Access</b></p>   |  |
|---|--|
| <p>Allow questions and submissions from members of the public that pertain to general Council business, whether on the current agenda or not.</p>   | <p><u>Questions</u></p> <p>The purpose of a public access session is to provide an opportunity for members of the public to participate directly in the democratic process through the making of representations to Council about matters on the agenda and thereby influence Council's decision making.</p> <p>Because Council treats the Public Access session as part of the Council meeting it is therefore governed by other relevant provisions of the Code of Meeting Practice. The Model Code of Meeting Practice provides that a question must not be asked at a meeting of the council unless it concerns a matter on the agenda of the meeting or by way of a Councillor question on notice.</p> <p>There is an array of avenues for the community to bring non-agenda matters to Councillor's attention short of it being posed as a question or a submission at a meeting.</p> <p><u>Submissions</u></p> <p>The draft Code of Meeting Practice provides that submissions must be on current issues before Council and not on agenda items.</p> <p>A submission on an agenda item is catered for by the availability of a speech for or against the recommendation in the agenda item.</p> |
| <p>Whether or not a particular public question is to be 'allowed' or 'disallowed' is to be decided on the day by a vote of Council, not secretly by the Mayor or by staff prior to the meeting.</p> | <p>The draft Code of Meeting Practice provides that it is the General Manager who is to receive requests for Public Access and to approve such requests.</p> <p>The Model Code of Meeting Practice provides that the General Manager may refuse an application to speak at a public forum. The general manager must give reasons in writing for a decision to refuse an application.</p> <p>The draft Code of Meeting Practice provides the chairperson with power to deal with disorderly conduct by a speaker. It also</p>   |

## BYRON SHIRE COUNCIL

### STAFF REPORTS - GENERAL MANAGER

13.1

|   |   |
|---|---|
|   | provides the General Manager with power to refuse further applications from such speaker.   |
| A corporate entity that is a ratepayer or is the owner/operator of a business within the Shire, is permitted to protect its interests or the public interest by asking questions in the same way as a member of the public, a corporation being legally a person.   | The draft Code of Meeting Practice does not preclude this. The draft Code contemplates that a person could ask a question on behalf of a corporation provided that the question complies with other aspects of the draft Code.<br><br>That question would count toward the number of times a speaker addresses Council.   |
| In the event that the answer or response to a legitimate question put to Council does not, by evasion or other device, produce the information sought, Council, will upon complaint, vote as to whether the questioner is entitled to ask the same question, (or variant thereof), again at the next meeting in addition to the normally permitted question for that meeting. | A mandatory provision of the Model Code of Meeting Practice (9.19) provides that the chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or Council employee   |
| Wilful failure by a staff member or councillor to answer a legitimate question, by the use of evasion, misdirection, irrelevance, misrepresentation or similar technique is considered an act of disrespect and a breach of the Code of Conduct.  | If a response to a question cannot be the subject of discussion on any reply to, or refusal to reply to, a question put to a councillor or Council employee, it could not become subject to Code of Conduct provisions.   |
| <b>Acts of Disorder</b>   |   |
| In the event of an alleged 'act of disorder' by anyone present, the accused is to be given the opportunity to defend or explain himself/herself prior to any vote for expulsion, for any demand for an apology or for any other sanction.   | The draft Code of Meeting Practice empowers the meeting or the chairperson, if they are delegated to do so, to expel any person, other than a Councillor, from a Council meeting for an act of disorder.<br><br>To enable the meeting or the chairperson to be satisfied that there was an act of disorder and to afford procedural fairness it would be appropriate to allow the person concerned to show cause why disciplinary action should not be taken.<br><br>Any speech by the person concerned should be limited to 3 minutes. |

# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

13.1

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| <b>Notices of Motion</b>  |  |
| Staff will not participate in debate by offering comments upon or analyses of Notices of Motion unless specifically requested by the mover. | <p>The Model Code of Meeting Practice makes provision (albeit non-mandatory) for the General Manager to prepare a report in relation to the Notice of Motion for inclusion with the business papers if the Notice of Motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting.</p> <p>Staff comments are intended to provide information to Councillors when they consider a Notice of Motion. Staff do not include formatted recommendations in Notice of Motion comments.</p> |
| <b>Councillor Questions</b>   |  |
| Councillor Questions with Notice to be moved to the beginning of the meeting, immediately after public access.                              | <p>The Order of Business set out in the draft Code of Meeting Practice is consistent with Council's approach over a number of years. The Order of Business is also generally consistent with that set out in the Model Code of Meeting Practice.</p> <p>The Model Code of Meeting Practice provides that in a Council meeting the chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or Council employee.</p>  |
| Councillor Questions without Notice to be permitted immediately after Councillor Questions with Notice.                                     | <p>Councillor questions without notice generally arise during the debate on agenda items.</p> <p>Questions asked at a Council meeting must relate to a matter on the agenda of the meeting unless the question is asked by way of Question on Notice.</p>  |
| A person is permitted to speak on up to 3 occasions including the asking of a question.   | This is a matter for Councillors to determine.   |
| A Councillor who attempts to enter into a discussion with speaker instead of asking a question will be reprimanded by the Mayor.            | The Model Code of Meeting Practice provides that <i>"a councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without</i>  |

## BYRON SHIRE COUNCIL

### STAFF REPORTS - GENERAL MANAGER

13.1

|   |   |
|---|---|
|   | <p><i>argument.”</i></p> <p>It follows that it is open to the chairperson to disallow a Councillor question if it does not comply with the above requirement.</p> <p>Council could consider imposing the time limit (perhaps 1 minute) on a councillor question.</p>  |
| <b>Submissions in Public Access</b>   |   |
| The Chairpersons decision to accept or reject a submission is subject to a Motion of Dissent.                                   | <p>The draft Code of Meeting Practice provides that it is the General Manager who is to receive requests for Public Access and to approve such requests.</p> <p>The Model Code of Meeting Practice provides that the General Manager may refuse an application to speak at a public forum. The general manager must give reasons in writing for a decision to refuse an application.</p> <p>The draft Code of Meeting Practice provides the chairperson with power to deal with disorderly conduct by a speaker.</p>  |
| A submission as to confidentiality will not count towards the maximum permitted speakings (sic) per person.                     | <p>This is a matter for Councillors to determine</p> <p>Councillors may give greater weight to this submission if the provisions of the Model Code of Meeting Practice are adhered to by speakers. They provide, in respect of a speech as to confidentiality, that <i>"speakers must confine their representations to whether the meeting should be closed to the public. If the speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If the speaker fails to observe a direction from the chairperson, the speaker will not be further heard"</i>.</p> |
| Proposed Clause 4.11 fails to clearly distinguish between a general submission and a speech for or against a particular motion. | <p>The provisions of clause 4.2 of the draft Code of Meeting Practice make the distinction clear.</p>   |

## **Strategic Considerations**

### **Community Strategic Plan and Operational Plan**

| <b>CSP Objective</b>  | <b>CSP Strategy</b>  | <b>DP Action</b>   | <b>Code</b>    | <b>OP Activity</b>   |
|---|--|--|----------------|--|
| <b>Community Objective 5: We have community led decision making which is open and inclusive</b> | 5.2: Create a culture of trust with the community by being open, genuine and transparent | 5.2.4: Support Councillors to carry out their civic duties | <b>5.2.4.3</b> | Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring |

### **Recent Resolutions**

Current Code of Meeting Practice adopted following exhibition per resolution **20-610**

- 5 **22-016** Council deferred consideration of the Code of Meeting Practice.

### **Legal/Statutory/Policy Considerations**

As set out in the body of the Report.

### **Financial Considerations**

Nil.

### **10 Consultation**

Consultation between Legal Counsel and the Corporate Planning and Improvement, and Governance Coordinators developed the Draft Code of Meeting Practice after having considered the 2021 Model Code of Meeting Practice.

- 15 The Director Corporate and Community Services and the Manager Corporate Services were consulted as the Draft Code was developed.

The Executive Team was briefed on the current version of the Draft Code on 1 December 2021.

The Draft Code was reported to Council on 3 February 2022.

- 20 The Draft Code was discussed at a Strategic Planning Workshop on 10 February 2022 and was again reported to Council on 24 March 2022.

The Draft Code was exhibited from 27 March 2022 to 8 May 2022 inclusive.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.2 Rural Land Use Strategy Action Audit**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Sam Tarrant, Planner

5 **File No:** I2022/125

**Summary:**

10 The Byron Shire Rural Land Use Strategy (RLUS) was adopted by Council in 2017 and endorsed by the State government in June 2018. Section 6.2 of the RLUS seeks a comprehensive review of the Strategy to be undertaken at the end of five years, particularly regarding how population growth (demand) has affected the supply of potential rural lifestyle living opportunities identified in the Strategy, as well as to determine if any further additions or deletions should be made to land nominated in the Strategy for rural lifestyle living opportunities.

15 This report provides a summary of actions achieved during the first four years of implementation of the Byron Shire Rural Land Use Strategy. At the time of reporting, 45 of the 49 actions in the Action Plan are either currently in progress or have been completed.

Other actions listed in the Rural Land Use Strategy will be progressed over the life of the strategy, as informed by the review and in accordance with Council's Operational Plan.

20

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**RECOMMENDATION:**

**That Council:**

1. **Notes the substantial progress made to date on the actions contained within the Rural Land Use Strategy (Attachment 1 - E2022/34118).**
- 25 2. **Receives a report before end 2022 that details the scope of works and budget estimate needed to undertake a comprehensive five-year Rural Land Use Strategy review, with this report to inform a forward budget bid for this work to progress.**
- 30 3. **Requests staff to prioritise delivery of Rural Land Use Strategy Action 21 in the 2022/23 financial year, being: Investigate capacity for re-subdivision within existing Large Lot Residential estates.**
- 35 4. **Requests the preparation of an options paper on the potential for additional land to be nominated for rural lifestyle living opportunities and/or other emerging housing types in peri-urban areas e.g. villages as part of the 2022/23 work program.**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

### **Attachments:**

- 1 RLUS action audit to accompany Council Report, E2022/34118 
- 2 Byron Shire Rural Land Use Strategy - DPE 2016 Response to draft RLUS, E2022/47779 

5



## Report

### Background

#### 5 Strategic Planning Context

The [North Coast Regional Plan 2036](#) is a state government document that sets a 20-year framework, vision and direction for strategic planning and land use in the region. The North Coast Regional Plan 2036 was released in March 2017.

10 Regional plans are supplemented by Departmental settlement planning guidelines with a purpose to provide councils with guidance when considering the most appropriate location for future residential and employment land, both infill and new release areas, when preparing or reviewing land use planning strategies. The current [North Coast Settlement Planning Guidelines](#) (NCSP) were released in November 2019.

The regional plan and settlement planning guidelines are used to form Local Growth Management Strategies (LGMS).

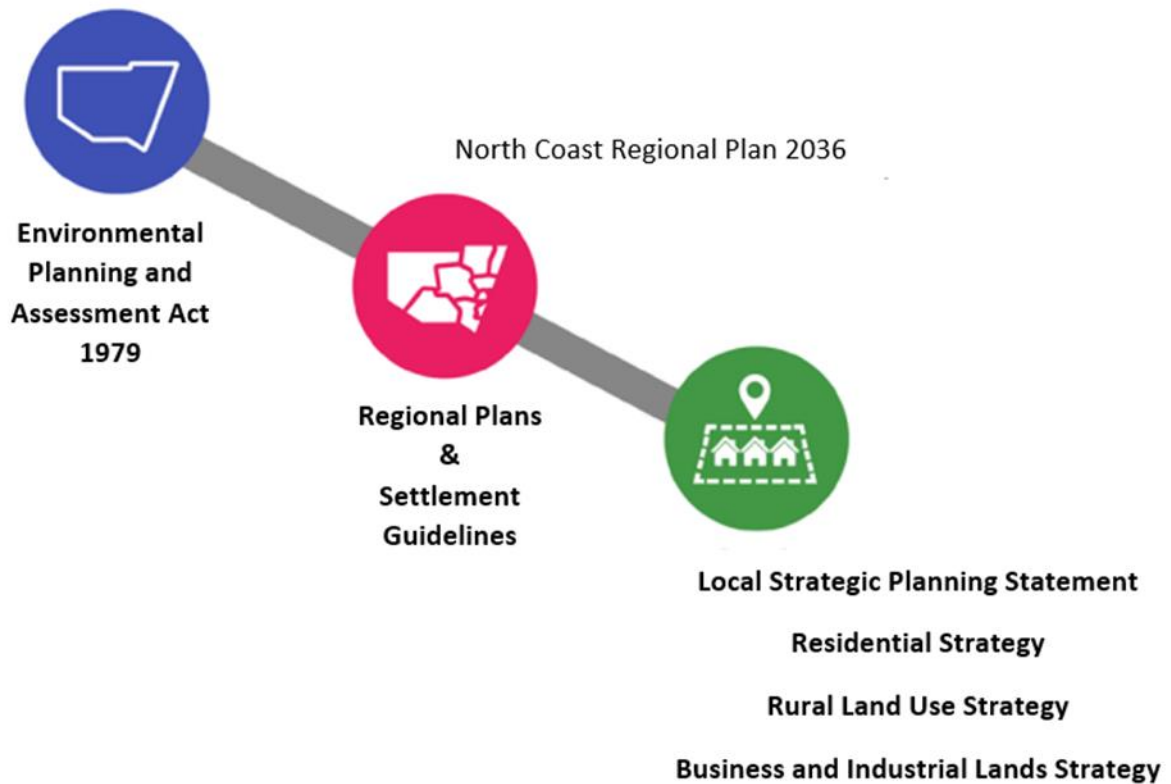
20 Council has three LGMS - [Rural Land Use Strategy](#) (RLUS), [Business and Industrial Lands Strategy](#) (BILS) and draft Residential Strategy. Under the Environmental Planning and Assessment Act 1979 a LGMS must be approved by the State government to be effective. The LGMS have been centred on land use themes to facilitate:

- consideration of the special characteristics that contribute to the distinct Byron Shire communities and their identity
- greater understanding of shared values these communities want to maintain and enhance
- a focus on planning priorities associated with types of land use and how its future growth and change could be managed to support the community's social, environmental and economic land-use needs into the future, including where these are best located and when they will be delivered

35 The Rural Land Use Strategy was set as a priority project in the 2015-16 Operational Plan. A separate report on the Residential Strategy and Lot 22 is tabled to this meeting.

The 2017 amendment to the Environmental Planning and Assessment Act 1979 required Councils to develop a Local Strategic Planning Statement (LSPS). The [Byron LSPS](#) was finalised in September 2020 and is now the primary link between the regional plan priorities and the Local Growth Management Strategies.

40 The connection between the various state, regional and local strategies is demonstrated in the diagram below



**Rural Land Use Strategy process**

A [discussion paper](#) was created in 2015 to outline the need for a new Rural Land Use Strategy (RLUS) and to understand what the community values about rural land and issues they think are important for the natural environment, rural economy, communities and supporting infrastructure.

The feedback helped to develop [Site Suitability Criteria and Mapping Methodology](#) which provided a framework to identify potentially suitable land for rural tourism, rural lifestyle living opportunities and urban investigations.

10 A [Policy Directions Paper](#) was adopted to provide overarching aims and policy directions to guide the development of the Strategy methodology and actions.

The draft RLUS was then developed and exhibited in April 2016 before being adopted by Council in August 2016. A number of amendments were required by the NSW Department of Planning and Environment (DPE) before the strategy could be finalised. To satisfy policy positions of the DPE, changes were required to the strategy including removal of investigation sites for rural residential development on state or regionally significant farmland, removal of any advocating for review of the Departments farmland mapping or changes to the Standard Instrument LEP. Removal of other potential land parcels to be considered at a later date and the ability for variations which could permit additional rural lifestyle opportunities across the Shire. Investigation sites for rural residential development were required to be adequately serviced by existing or committed road infrastructure and

within 5km radius of a town with a high school. Comments provided by the DPE on the draft RLUS are contained within attachment 2.

5 The changes resulted in a more targeted version of the RLUS that was presented to Council in April 2017 and then placed on exhibition in June 2017. Council adopted the amended RLUS in October 2017.

The RLUS was approved by the NSW Department of Planning in June 2018.

### **Rural Land Use Strategy audit**

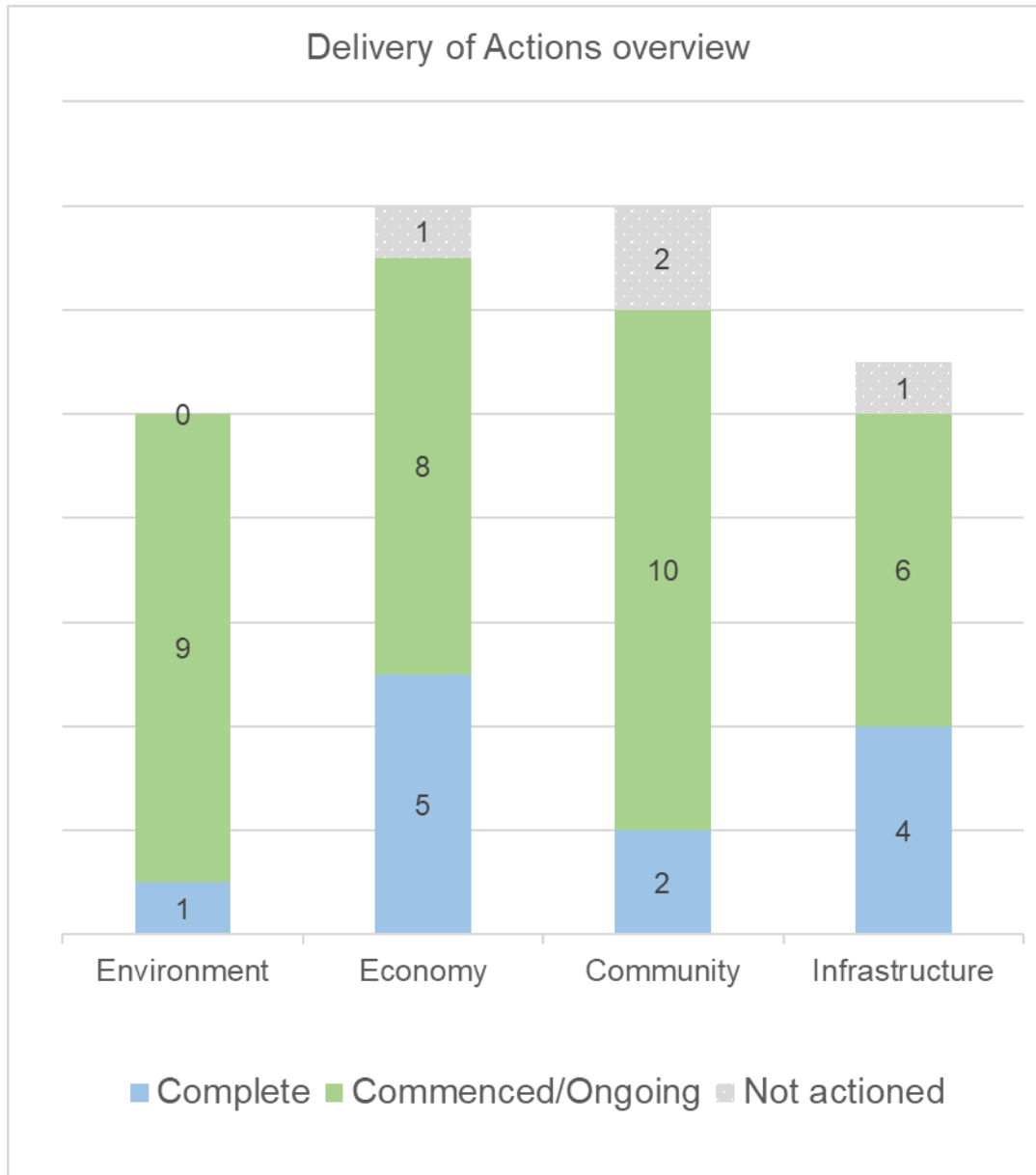
10 The [RLUS](#) was adopted in October 2017 ([Res 17-504](#) , Report No. 13.17), with community and stakeholder support. The RLUS provides a 20-year strategic framework to guide future land zoning and use, protection and/or development within the context of:

- Our Rural Environment
- Our Rural Economy
- Our Rural Community
- Our Rural Infrastructure

15 It includes an Action Plan with a list of 49 actions.

As per Section 6.2 of the RLUS, progress of the Action Plan is to be reported to Council and a five-year comprehensive review scheduled.

This report provides a summary of actions completed and/or in progress to date, during some four years of implementing the Rural Lands Use Strategy (Attachment 1).



### Key milestones

Key milestones supporting actions delivery include:

- Shire wide HEV mapping completed 2018
- 5 • Ongoing support for the Biodiversity Advisory Committee and Brunswick Valley Landcare
- Environmental zone implementation stages 1 and 2 complete, stage 3 currently being finalised and stage 4 commenced (excluding those zones which require agreement with DPE as to an appropriate LEP 2014 zone eg. 7D Scenic Escarpment)
- 10 • Engagement of an agricultural extension officer in 2019 with grant funding up to 2022 financial year
- Strategies for biodiversity conservation and integrated pest management
- Policies and guidelines developed for signs and unauthorised dwellings

- 5
- Some 18 LEP or DCP updates to support the rural economy and community
  - Planning proposals for all 4 rural lifestyle living areas progressed with two now gazetted
  - Numerous submissions to the NSW government on matters effecting our rural land and its use.

Along the way a number of action's delivery has also been effected by State policy direction post adoption of the RLUS. Some of the more significant being:

- 10
- Koala SEPP
  - Bushfire mapping – RFS regulatory update – including upgrading of grasslands risk
  - Short Term Rental Accommodation (STRA) SEPP
  - Planning reforms relating to agriculture & activities on farms

Table 5 (of Attachment 1) lists actions that have not been progressed or still require substantial work. These actions will be the subject of future budget bids and incorporated into future Council Operational Plans during the life of the strategy.

15 **Delivery collaboration**

The Rural Land Use Strategy is a key document for guiding planning, decision-making and activities that impact on our rural environment, economy, and community.

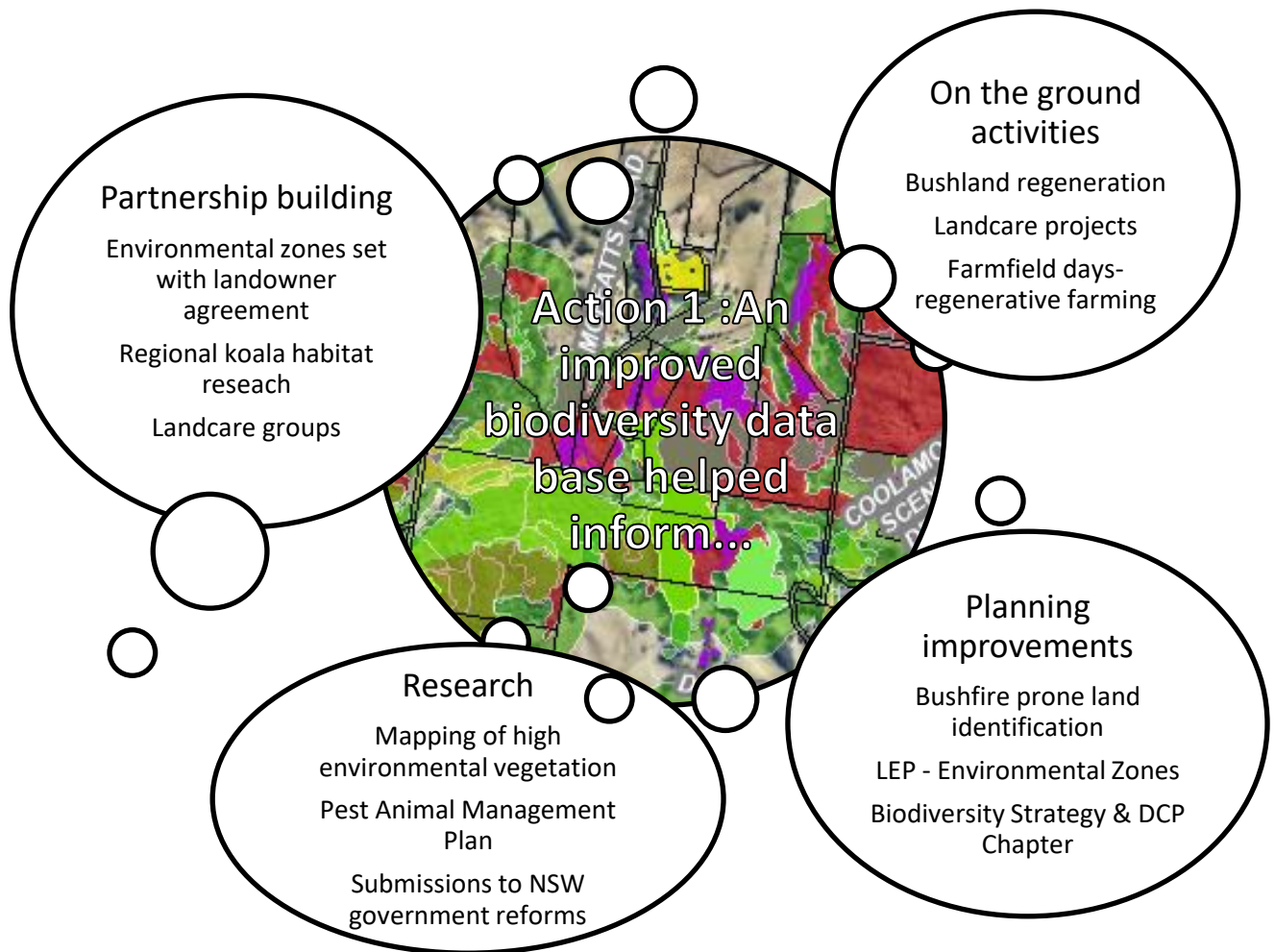
The actions set out in the RLUS Action Plan are presented under the following headings:

- 20
- Research
  - Planning Improvements
  - On-ground Improvements
  - Partnership Building

25

Consequently, many actions are interrelated and require the contribution of other Sustainability Environment and Economy (SEE) teams and Council directorates. The SEE Land Use Planning team want to thank the other staff for their insight, collaboration, and efforts in working together towards delivering successful and improved outcomes.

The following diagram provides an example of the interrelatedness and collaboration focus on the Shire's biodiversity (Action 1).



Implementation of actions also has been assisted by Council committees including the Biodiversity Advisory Committee and Transport and Infrastructure Advisory Committee.

**Key challenges and next steps**

5 Since adoption of the RLUS in 2017 there have been significant changes and challenges impacting our rural land including bushfires, flooding and the COVID-19 pandemic. The NSW Valuer General 2021 [report](#) (p.16) stated that rural land value in Byron Shire increased 70.5% within the 20/21 financial year as the residential market moved into hobby farms and lifestyle properties. This provides another challenge as high land costs act as barrier for commercially viable farming on rural land.

10

The housing crisis is another key challenge facing the region. Although the RLUS is not a key housing document and most housing is to be delivered in our urban areas as part of the Residential Strategy, there is an opportunity to revisit housing opportunities in peri-urban areas as part of the RLUS review. A key part of this is to focus on action 21: investigate capacity for re-subdivision within existing Large Lot Residential estates.

15

5 The rural lifestyle housing planning proposals identified within the RLUS are all underway or have been completed. There is an opportunity for staff to scope the capacity and challenges of other peri-urban sites for additional housing as part of the scoping report to be provided to Council. It is noted the release of rural land for housing is dependent on State level planning policies including significant farmland mapping, the impending review of the North Coast Regional Plan and the implementation of NSW Agriculture Land Use Planning Strategy.

10 Recently, Council had resolved **21-498** to prepare an LEP amendment to enable secondary dwellings and dual occupancy dwellings on Multiple Occupancy and Community Title developments. A Gateway Determination has been received and the proposal is scheduled for public exhibition in June.

15 Staff are aware that the need for a more comprehensive (5 year) review of the RLUS is approaching. This audit provides a means to ‘pause and reflect’ due to everything that is going on locally, nationally, and globally. It is an opportunity for the Council to assess its progress in implementing the RLUS, as well as refine priorities and endorse any changes/updates to adopted actions in between.

## **Strategic Considerations**

### **Community Strategic Plan and Operational Plan**

| <b>CSP Objective</b>  | <b>CSP Strategy</b>   | <b>DP Action</b>   | <b>Code</b>     | <b>OP Activity</b>  |
|---|---|--|-----------------|---|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.1: Support the visions and aspirations of local communities through place-based planning and management | 4.1.3: Manage development through a transparent and efficient assessment process | <b>4.1.3.15</b> | Provide action implementation update on Rural Land Use Strategy |

### **Recent Resolutions**

- 20
- Resolutions related to actions within the RLUS are included within Table 1 (Attachment 1)
  - Council has recently resolved (res 21- 498) to create a planning proposal to enable secondary dwellings and dual occupancies on rural community title and multiple occupancy developments.
- 25
- Support community led masterplan for the village of Federal (res 20 – 689)

**Legal/Statutory/Policy Considerations**

This report presents an audit of the actions within the Rural Land Use Strategy. This will help to provide scope for the upcoming review of this strategy and the Local Strategic Planning Statement.

**5 Financial Considerations**

Actions that have not yet commenced or still require substantial work will progress in accordance with Council's Operational Plan and be subject to budget availability.

As to funding new work, grant opportunities may present through State and Federal programs to support communities to rebuild after the 2022 Flood Events.

**10 Consultation and Engagement**

N/A



**Report No. 13.3 Residential Strategy and Lot 22 Update**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Natalie Hancock, Senior Planner

**File No:** I2022/132

5 **Summary:**

10 The Residential Strategy sets a clear vision and policy framework for the Shire’s urban residential areas for the next 20 years. The strategy was exhibited in 2019, adopted at a Council planning meeting on 10 December 2020 and forwarded together with a supporting background report to Department of Planning and Environment (DPE) for approval in the same month.

15 Lot 22 (DP 1073165) Stuart Street, Mullumbimby is an irregular shaped Council owned lot, located on the south-western edge of Mullumbimby township. In 2017 Council resolved (**Res 17-260**) to progress Lot 22 as a potential pilot site to achieve affordable/diverse housing outcomes for the Shire ahead of the Residential Strategy. Council prepared a planning proposal (PP) to rezone and reclassify part of the Lot 22 to enable this to occur. The reclassification was from 'community' to 'operational' land.

Both projects required assessment by the DPE. In their assessment DPE advised:

- 20 • Residential Strategy – there is a need for further clarification and detail on issues of housing supply capacity, investigation area land impediments, the relationship to regional housing targets in the North Coast Regional Plan 2036 and inconsistency with elements of the state policy framework.
- Lot 22 – the PP should not proceed until Council’s Residential Strategy and Affordable Housing Contribution Scheme are finalised to ensure that there is a strategic evidence base to inform and support the delivery of housing on Lot 22.

25 DPE concerns were not readily resolved and the assessment culminated in two now finalised peer reviews. Leading from this in December 2021 DPE formally advised that should Council choose to proceed with the projects, they would need to be revised in line with the recommendations of the peer reviews (Attachment 1).

This report:

- 30 • outlines the progression of these two projects
- recommends that the [Residential-Strategy Version 4 as adopted by Council](#) be refreshed and brought up to date with census, population and housing projections and community needs
- 35 • recommends that the Lot 22 planning proposal not be progressed due to flooding issues
- clarifies the project relationship to the draft Affordable Housing Contribution Scheme (on exhibition).






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5 **RECOMMENDATION:**

**That Council:**

- 10 1. **Determines to not progress the Planning Proposal for Lot 22 on DP 1073165, Mullumbimby at this time until the implications of the 2022 Flood Events and any further potential natural disasters are understood on the suitability of this land for future development.**
2. **Supports, subject to funds being allocated, the adopted Residential Strategy being updated as per the peer review report Option 1 (Attachment 2 - E2022/2777) and clarified by the Department of Planning and Environment correspondence (Attachment 1 - E2022/40467).**
- 15 3. **Requests a draft of the updated Residential Strategy be reported back to Council.**

**Attachments:**

- 20 1 Peer review Department of Planning final response letter on Residential Strategy and Lot 22 Dec 2021, E2022/40467 
- 2 Peer Review Final Report on Byron Shire Residential Strategy (Revised 15.11.21), E2022/2777 
- 3 Frequently asked questions - affordable housing contribution scheme, E2022/19700 
- 25 4 26.2017.4.1 Lot 22 - DPIE letter to Council - Gateway Alteration - March 2021, E2022/48965 
- 5 5 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 

## Report

### Background

#### State planning context

5 In NSW the umbrella planning legislation is the Environmental Planning and Assessment Act 1979 (the Act). The Act, over the last 40 years has undergone multiple reforms to modernise planning process and outcomes across the state. The biggest overhaul of the Act since the legislation's inception was the passing of the Environmental Planning and Assessment Amendment Act 2017.

10 Relevant to this report are reforms requiring better interplay of legitimate State, regional and local interests at the strategic planning level - to integrate and share a vision for a region. These reforms in practice require local area decision making to be consistent with a 'regional plan'. A regional plan is a state government document that sets a 20-year framework, vision and direction for strategic planning and land use in a region.

15 Regional plans are supplemented by departmental settlement planning guidelines with a purpose to provide councils with guidance when considering the most appropriate location for future residential and employment land, both infill and new release areas, when preparing or reviewing land use planning strategies.

20 In March 2017 the NSW Planning Minister released the North Coast Regional Plan 2036 (NCRP) as this region's strategic planning blueprint for the next 20 years. It was followed by the North Coast Settlement Planning Guidelines (NCSP) in November 2019, replacing earlier versions of the Settlement Planning Guidelines – Mid and Far North Coast Regional Strategies, 2007 and Guidelines for Rural Settlement on the North Coast of NSW.

Below are links to the above-mentioned documents:

[North-coast-regional-plan-20 36 pdf \(nsw.gov.au\)](#)

25 [North Coast Regional Plan Settlement Guidelines 2019](#)

#### Local growth management strategies

Local growth management strategies (LGMS) are a tool for councils use to connect local area strategic priorities with regional plans. A LGMS can be prepared as an all-encompassing document or based on land use themes.

30 In response to activity EN 2.1.1 in the 2013-17 Delivery Plan to "Develop and implement strategic planning studies, strategies and plans" key actions were identified in Council's 2015-16 Operational Plan to prepare LGMS strategies under land use categories for:

- Rural Land Use Strategy as priority project
- Residential Lands Strategy

35 [Agenda - Attachments Included \(infocouncil.biz\)](#)

An approach centred on land use groupings facilitates:

- consideration of the special characteristics that contribute to the distinct Byron Shire communities and their identity
  - 5 • greater understanding of shared values these communities want to maintain and enhance
  - an ability to focus on planning priorities associated with land use groups and how its future growth and change could be managed to support the community's social, environmental and economic land-use needs into the future, including where these are best located and when they will be delivered.
- 10 Council now has three LGMS - Rural Land Use Strategy (RLUS), Business and Industrial Lands Strategy (BILS) and draft Residential Strategy. Each interconnect with the policy direction in one helping to inform the policy direction in another. For example:
- it was necessary to consider long term urban land release areas in the residential strategy prior to the allocation of future rural lifestyle living areas in the RLUS
  - 15 • the outcome of an action in the RLUS to investigate capacity for resubdivision of existing large lot residential estate may lead to reallocation for urban land in the Residential Strategy.

20 The 2017 Act amendment strengthened recognition of the critical role of councils in strategic planning for their local area by introducing a further tool, Local Strategic Planning Statements (LSPS). This amendment made it mandatory for councils to prepare a LSPS as the primary link between the regional plan priorities and the desired future land use planning framework at a local government area level. As the above LGMS were well advanced Council chose to develop a LSPS as a single approach document for the whole council area drawing together the land use policy positions under the themed LGMS. The  
25 LSPS was submitted to DPE in September 2020.

Under the Act a LGMS must be approved by the State government to be effective. The RLUS and BILS LGMSs were approved in 2017 & 2019, respectively. The Residential Strategy is yet to be approved.

Figure 1 outlines the relationship between the Act, regional plans and local strategies.

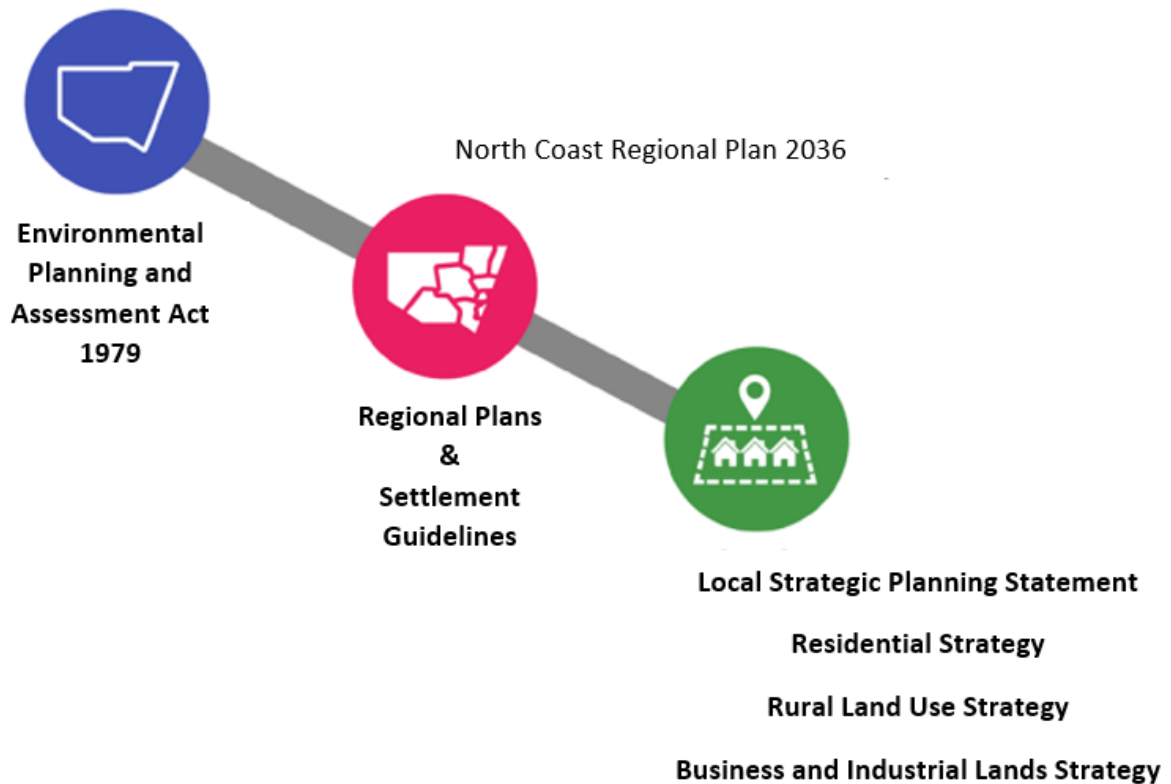


Figure 1 Strategic relationships

**Residential Strategy**

5 The Residential Strategy (the strategy) sets a clear vision and policy framework for the Shire’s urban residential areas for the next 20 years. As a local growth management strategy it connects local area strategic priorities with the NSW government’s North Coast Regional Plan 2036 (NCRP).

10 The process for preparing the strategy commenced in early 2015 in stages, supplemented by several local housing forums along the way and influenced by a plethora of State planning reforms and legislation. The strategy background report [Residential Strategy Background Report \(infocouncil.biz\)](http://infocouncil.biz) provides contextual information to the deliberations on where and how to best deliver new housing in Byron Shire urban areas under the following headings:

- collective strategic thinking
- 15 • planning framework
- residents, households and housing types
- land for housing
- affordable housing contribution scheme analysis – steps 1

This diagram taken from the background report sets out the strategy preparation process up to exhibition.

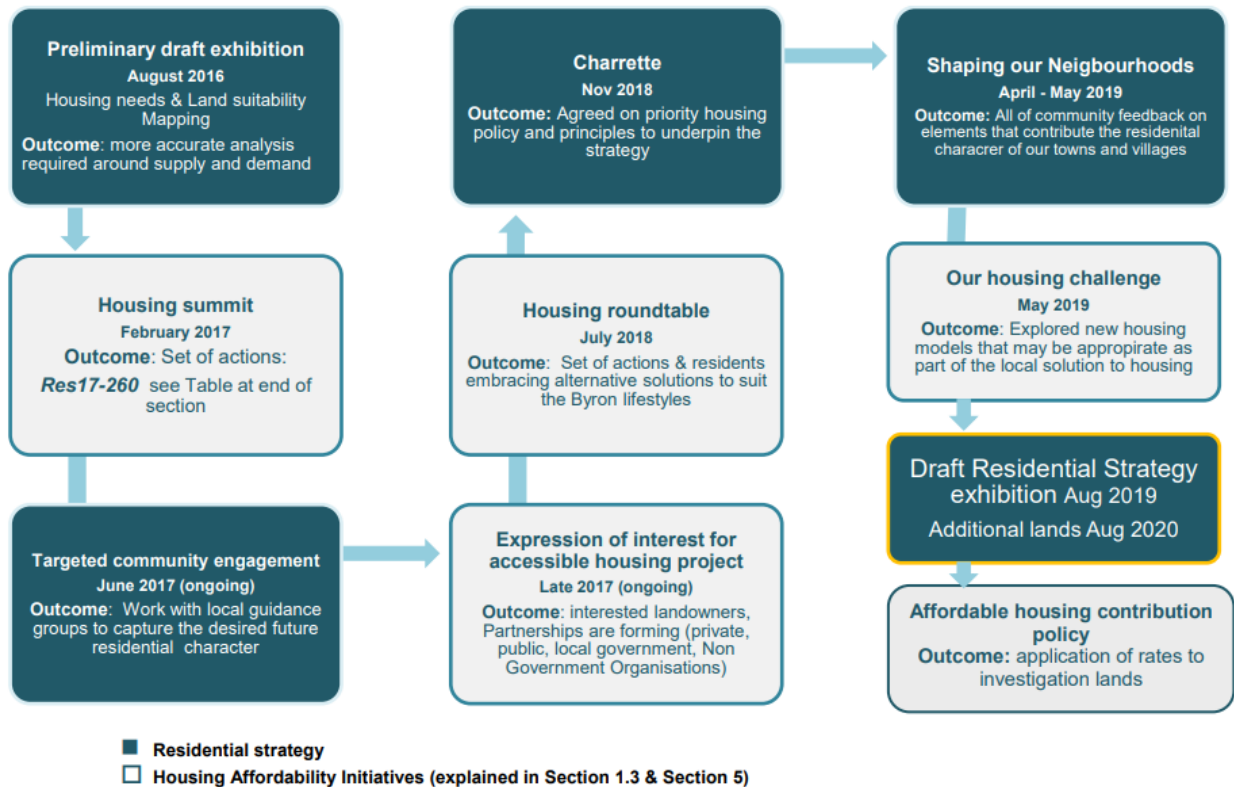


Diagram 1: Strategy Preparation Process

5 The strategy was exhibited in 2019, adopted at a Council planning meeting on 10 December 2020 and forwarded together with a supporting background report to Department of Planning and Environment (DPE) for approval in the same month.

The following sets out the sequence of events that followed.

**Department concerns (March 2021)**

10 In the DPE’s initial review of the strategy concern was expressed as to the reasonableness of the approach on housing supply capacity, impediments, and relationship to regional housing targets in the NCRP. The impediments encompassing:

- short term rental accommodation (STRA) and its impacts on current and future housing
- strong reliance on additional housing in established areas (referred to as infill)
- 15 • inclusion of investigation Areas 8 and 9, Mullumbimby as a potential housing area due to this land’s regionally significant farmland classification

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

- determination of investigation Area 10, Byron Bay as a potential housing area prior to completion of a coastal hazard management study in progress
- investigation Area 14, Suffolk Park: a suitable means to limit the site to two dwellings and protect the environmental values.

5 Furthermore the DPE sought greater clarity of the strategy's relationship to:

- a proposed affordable housing contribution scheme (AHCS) and the housing mix
- the NSW government's Short Term Rental Accommodation (STRA) regulations and Council's STRA planning proposal.

#### **Council staff response (April – June 2021)**

10 From Council's perspective in formulating the strategy, the Shire's housing space was experiencing notable shifts beyond the policy as set out in the NCRP in early 2017. These shifts encompassed expedient growth in the use of houses for holiday letting, rapidly diminishing housing affordability and changed work/live patterns. The strategy's policy position and actions were framed to address emerging shifts.

15 Accordingly, staff responded indicating:

| Aspect of concern            | Staff response  |
|------------------------------|---|
| Dwelling targets             | A strategy can only reliably plan for the short-term noting a range of unknown factors may emerge that can affect the key assumptions made on housing delivery. Hence Strategy Section 4 – Making it happen – subsection Monitoring and Review sets a framework for regular review enabling matters such as global trends, government policy changes or shifts in community views to be considered. Furthermore staff noted the endorsed Rural Land Use Strategy (RLUS) currently allotted to provide around 15% of the future housing, had actions yet to be delivered that may further inform overall housing capacity. A separate report on an audit RLUS action delivery is tabled to this meeting. |
| Investigation Areas<br>8 & 9 | This land's inclusion as investigation areas is consistent with the NCRP Urban Growth Area Variation Principles, the identified land appropriately adjoins the Mullumbimby urban area; has access to services and infrastructure; is generally isolated from other important farmland with limited capacity to support sustainable agricultural production; and was determined using natural cut off points (watercourse and roads) that would prevent incremental creep into other farmland.   |

## BYRON SHIRE COUNCIL

| Aspect of concern                      | Staff response   |
|--|--|
| Investigation Area 10                  | Further clarity would be sought from the NSW government DPE Division of Biodiversity and Conservation Division (BCD) on their preferred approach.  |
| Investigation area 14                  | Means to limit development to two dwellings may be resolved by a R5 Large Lot Residential Zone, minimum lot sizes and a requirement for the environmental areas to be contained within any resulting lots.   |
| Affordable housing contribution scheme | Council's planning proposal was proceeding however a key issue for staff was to how best to adapt the DPE 'Guidelines for an preparing an AHCS', to greenfield area upzoning and hence staff were awaiting departmental feedback. Greenfield is previously undeveloped land. |
| Short term rental accommodation        | Council's planning proposal for non-hosted STRA in Byron Shire under the Ministerial 9.1 Direction issued in February 2019 was proceeding.   |

After this initial response by staff:

- the Biodiversity Conservation Division advised Council on 10 May 2021 of a preference to remove this Area 10 from the strategy until the coastal hazard assessment work had been completed.
- 5
- the Department of Primary Industries advised the DPE on 9 June 2021 that it formally objects to the inclusion of the Areas 8 and 9 and the preference is to increase the housing supply and mix on existing zoned urban land.

### **Residential Strategy Peer Review (mid to late 2021)**

10 Leading from this, as DPE concerns were not readily resolved, was a peer review of the strategy by Locale consultants. At the same time the DPE paused work on the AHCS and the STRA reduced day cap planning proposals based on their connection with the strategy.

15 The peer review report tabled several options moving forward with the strategy. (Attachment 2). The DPE advised in December 2021 (Attachment 1) that it endorsed the peer review Option 1 requiring to Council to make changes to the adopted strategy to:

- revisit the staging/sequencing of the 'investigation areas' to better reflect known constraints



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

- revise the Monitoring & Review section to include an implementation plan
- revise the Actions section of the Residential Strategy to address the ability to be implemented, comply with state policy and better link with the Strategy directions
- 5 • revise any text in the document to ensure it is consistent with State policy (such as Short-Term Rental Accommodation and Action 27)
- 10 • clearly identify that Areas 8, 9 and 10 need to be further investigated and may not be able to be rezoned due to constraints and/or inconsistencies with current state and regional planning frameworks, and that further work with State agencies will be required to determine the suitability of these lands for rezoning and the submission of planning proposals.

Further to this there are current and ongoing reviews and matters that need to be considered:

- 15 • In late 2021 the DPE commenced a review of North Coast Regional Plan to extend its reach to 2041. This Plan once reviewed will inform Council's strategies and plans in relation to population and housing targets and the like. Any review of the RS will need to be consistent with this Plan.
- 20 • Several investigation areas in the RS were impacted by the 2022 flood events. Whilst flooding and stormwater drainage are noted in the adopted strategy as an issue to be resolved for these sites, the implication of these floods necessitates a need for further consideration of the potential for natural disasters like flooding on the suitability of these sites for future residential use. Flood event impact assessments and modelling are currently progressing. There is also the NSW Flood Inquiry that will make specific recommendations before the end of the year planning controls for flood impacted lands.
- 25 • 2020 Census data release due June and will update and inform our planning scenarios and housing needs.

### **AHCS and STRA planning proposals progression**

The two paused planning proposals have since been able to progress in line with Option 1 that also supported their progression as the strategy is finalised.

- 30 The STRA planning proposal as reported to the 23 February Council meeting has been submitted to the DPE in line with Council's resolution.

In February 2022, the DPE granted a gateway for the AHCS planning proposal and agreed to the inclusion of investigation areas 8, 9 and 10 as a potential 'Tier 2' contribution areas.

- 35 The AHCS is on public exhibition until 29 June 2022. A frequently asked question sheet is available with the exhibition that explains the relationship between the strategy and the AHCS (Attachment 3).

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

The inclusion of an affordable housing contribution clause in the Byron LEP 2014 does not enable a planning proposal to upzone land in its own right. This is the function of a Residential Strategy.

- 5 Until a Residential Strategy is approved by the NSW government, the ability for the landowner to seek upzoning to an urban residential zone is not facilitated. Once approved a planning proposal to upzone will then be further assessed on its own merits, with community consultation as part of this process.

All land contributed under the AHCS must be fit/suitable for residential purposes.

#### **Lot 22**

- 10 Lot 22 (DP 1073165) Stuart Street, Mullumbimby is an irregular shaped Council owned lot, located on the south-western edge of Mullumbimby township. In 2017 Council resolved (17-260) to progress Lot 22 as a potential pilot site ahead of the Residential Strategy to achieve affordable/diverse housing outcomes for the Shire.

- 15 The Lot 22 project was premised on using redundant land and resetting the more traditional approached to housing types and densities by introducing a new Residential 1 Zone. As part of the process the land had to be reclassified from 'community' to 'operational' land. Operational land has no special restrictions other than those that may apply to any piece of land. Community land is different with restrictions reflective of an importance of the land to the community because of its use or special features. Generally, it is land intended for  
20 public access and use.

A planning proposal was prepared and submitted to the DPE for a Gateway determination. In May 2018 DPE provided Council an initial gateway determination to proceed to public exhibition following further detailed site investigations and a public hearing to consider reclassification of the site.

- 25 Leading from these requirements, if was necessary to amend the planning proposal and a report was provided to the 19 November 2020 ordinary planning meeting. Council resolved (20-611) to amend the planning proposal and forward to DPE. The DPE provided procedural advice of a need to resubmit due to the department's transition to the Planning Portal system.

- 30 On resubmitting the planning proposal Council received a letter from the DPIE advising that initial 2018 planning proposal had been withdrawn. The letter also advised that the updated planning proposal submitted to the Planning Portal on 22 March 2021 had been returned, and Council was to resubmit the planning proposal for a Gateway determination with the finalised AHCS and Residential Strategy. (Attachment 4)

- 35 There was issue with on the intended housing mix and delivery mechanisms. As with the Residential Strategy, concerns were not readily resolved and resulted in a peer review of the process in mid-2021.

- 40 In the same correspondence on the Residential Strategy peer review, (Attachment 1) DPE indicated that Council needs to attend to a list of items prior to the resubmission of the Lot 22 planning proposal.

Lot 22 was impacted by the 2022 flood events. Whilst flooding and stormwater drainage have always been key issues to be resolved for the site, the implications of the flood events necessitate a review of Lot 22’s long term suitability for residential, the basis for the planning proposal.

**5 Next steps**

10 These two projects were advanced before the Covid 19 pandemic and the recent significant 2022 flood events. Byron Shire, together with surrounding local government areas are in an escalating housing crisis. State, regional and local policy is shifting in an endeavour to address this crisis and to facilitate more resilient planning. This is the subject of a separate report - Discussion Paper, ‘After the 2022 Floods: Working out possibilities together’ also tabled to this meeting.

In the context of this, and DPE requirements in their letter of December 2021, it is recommended that:

- 15 • subject to funding, a refresh and update of the adopted Residential Strategy be undertaken and presented to Council for consideration
- the Lot 22 planning proposal is not progressed at this time until the implications of the 2022 Flood Events and any further potential natural disasters are understood on the suitability of this land for future development.

**Strategic Considerations**

**20 Community Strategic Plan and Operational Plan**

| <b>CSP Objective</b>  | <b>CSP Strategy</b>  | <b>DP Action</b>  | <b>Code</b>    | <b>OP Activity</b>  |
|---|--|---|----------------|---|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 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 | <b>NEW</b>     | <i>The report will relate to a new activity in the 2022/23 Operational Plan activity:</i><br><br>Revise and update Residential Strategy |
|   |  |   | <b>4.2.1.2</b> | Progress future use of Lot 22, Mullumbimby Planning Proposal, Plan of Management and Structure Plan                                     |

## Recent Resolutions

- 22-005 Housing and Affordability Advisory Committee for Byron Shire
- 22-006 Housing summit
- 21-303 Responding to the Housing Crisis
- 5 • 21-264 Update Resolution 21-062 Council's role in Housing Delivery and Resolution
- 21-123 Housing Trust [Minutes of Ordinary \(Planning\) Meeting - Thursday, 8 April 2021 \(infocouncil.biz\)](#)
- 21-065 Byron Shire's Key Workers Issue Paper [Agenda of Ordinary \(Planning\) Meeting - Thursday, 11 March 2021 \(infocouncil.biz\)](#)
- 10 • 21-062 Council's role in Housing Delivery (report link as above – same meeting) [Minutes of Ordinary \(Planning\) Meeting - Thursday, 11 March 2021 \(infocouncil.biz\)](#)
- 20-686 Final Residential Strategy

15 Further information can be found here: [Housing Affordability Initiatives - Byron Shire Council \(nsw.gov.au\)](#)

## Legal/Statutory/Policy Considerations

N/A

## Financial Considerations

20 There is no current budget allocation for the updating of Residential Strategy in the 2022-23 draft Operational Plan. It is estimated an allocation would need to be provided for this work in the order of \$80,000.

25 As to funding this work, an opportunity may present itself through state and federal government grants as a result the 2022 flood events and to support communities to rebuild. The potential \$2 million Council funding allocation for climate risk reduction and community resilience, is one such example. The guidelines to this funding were not available at the time of preparing this report.

## Consultation and Engagement

N/A.

**Report No. 13.4 PLANNING - Quarter 4 SEPP Variations  
October to December 2021**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Chris Larkin, Manager Sustainable Development  
Noreen Scott, EA Sustainable Environment and Economy

**File No:** I2021/1937

**Summary:**

10 This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

NOTE TO COUNCILLORS:

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

---

20 **RECOMMENDATION:**

**That Council adopts the report on exceptions to development standards for the period October to December 2021.**

25

## Report

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under Clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

- 5 SEPP 1 applies to development applications submitted under Byron Local Environmental Plan 1988. Clause 4.6 applies to development applications submitted under Byron LEP 2014.
- 10 The period of reporting is for the October to December 2021 Quarter for the following DAs:

### Quarter 4 – October to December 2021

|                                    |  |
|------------------------------------|--|
| <b>DA No.</b>                      | <b>10.2020.616.1</b>   |
| Development                        | Demolition of Existing Dwelling and Construct New Dwelling House   |
| Property:                          | 154 Lighthouse Road BYRON BAY  |
| Lot and DP:                        | LOT: 4 DP: 246401  |
| Zoning:                            | R2 Low Density Residential   |
| Development Standard being varied: | <b>building height</b>   |
| Justification Summary              | small area of roof 1.5m <sup>2</sup> exceeds the 9m height - minimal impacts on views, privacy and visual impacts. |
| Extent of variation                | ~8.5%  |
| Concurrence                        | Council  |
| Determined Date                    | 12/10/2021   |
| Determined By                      | Director SEE   |

## Strategic Considerations

### 15 Community Strategic Plan and Operational Plan

| CSP Objective   | CSP Strategy  | DP Action  | Code           | OP Activity                                   |
|---|---|--|----------------|---|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.1: Support the visions and aspirations of local communities through place-based planning and management | 4.1.3: Manage development through a transparent and efficient assessment process | <b>4.1.3.1</b> | Assess and determine development applications |

## Legal/Statutory/Policy Considerations

The report is provided as a requirement of [NSW Department of Planning circular PS 17-006](#).

**Report No. 13.5 PLANNING - Quarter 1 SEPP Variations  
January to March 2022**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Chris Larkin, Manager Sustainable Development  
Noreen Scott, EA Sustainable Environment and Economy

**File No:** I2022/452

**Summary:**

10 This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

NOTE TO COUNCILLORS:

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

---

20 **RECOMMENDATION:**

**That Council adopts the report on exceptions to development standards for the period January to March 2022.**

25

## Report

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under Clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

5 SEPP 1 applies to development applications submitted under Byron Local Environmental Plan 1988. Clause 4.6 applies to development applications submitted under Byron LEP 2014.

10 The period of reporting is for the January to March 2022 Quarter for the following DAs:

|                                    |  |
|------------------------------------|--|
| <b>DA No.</b>                      | <b>10.2021.628.1</b>   |
| Development                        | Dwelling House, Swimming Pool and Shed   |
| Property:                          | 150 Whian Road EUREKA  |
| Lot and DP:                        | LOT: 4 DP: 286964  |
| Zoning:                            | R2 Low Density Residential   |
| Development Standard being varied: | <b>building height</b>   |
| Justification Summary              | Variation is for a small portion of the roof set at a maximum of 9.75m due to the sloping nature of the land. The variation will not impact the rural amenity of the area. |
| Extent of variation                | 8.3%   |
| Concurrence                        | Council  |
| Determined Date                    | 1/02/2022  |
| Determined By                      | Director SEE   |

## Strategic Considerations

### Community Strategic Plan and Operational Plan

| CSP Objective   | CSP Strategy  | DP Action  | Code           | OP Activity                                   |
|---|---|--|----------------|---|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.1: Support the visions and aspirations of local communities through place-based planning and management | 4.1.3: Manage development through a transparent and efficient assessment process | <b>4.1.3.1</b> | Assess and determine development applications |

## Legal/Statutory/Policy Considerations

15 The report is provided as a requirement of [NSW Department of Planning circular PS 17-006](#).



**Report No. 13.6 Proposal for a Discussion Paper - After the 2022 Floods: Working Out Possibilities Together**

**Directorate:** Sustainable Environment and Economy

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

**File No:** I2022/578

**Summary:**

The February/March 2022 Flood events were unprecedented. Their impact has been felt across all communities within the Byron Shire.

10 A key next step for Council is to review its existing 'settlement strategies' on the back of these flood events, and to respond to the wider consideration of climate change and natural disaster management.

The draft Operational Plan for 2022/23 on exhibition, already provides for a review of the Council adopted 'settlement strategies'.

15 To inform and assist these strategy reviews and compliment other work plans and programs of Council, it is now proposed to prepare a high-level discussion paper to set out a framework for a land use and planning response to 2022 Flood Events - and identify principles/actions that could apply across the Council's strategies, plans and programs more broadly as a result.

20 The proposal for a Discussion Paper - *After the 2022 Floods: Working Out Possibilities Together* is to be based on 4 pillars:

Pillar 1 – Build back Better

Pillar 2 – Build Different

Pillar 3 – Build Elsewhere

25 Pillar 4 – Build back Infrastructure and services appropriate for our local circumstances

It is anticipated that the discussion paper will be presented to Council second half of the year. Following this, community feedback will be sought through a range of engagement activities.

**RECOMMENDATION:**

5 That Council notes that staff will be preparing a high-level discussion paper *After the Floods – Working Out Possibilities Together* for presentation to Council and community engagement later in 2022.

10

## Report

In February/March 2022 the Northern Rivers region was devastated by two significant flood events.

- 5 In response, the NSW Government established an independent expert inquiry into the preparation for, causes of, response to and recovery from these events.

Council resolved (**Res 22-156**) to prepare a submission to the Flood Inquiry and hold a Community Roundtable Meeting on same held 10 May 2022.

Council endorsed a submission to the Flood Inquiry at the extra ordinary meeting 19 May meeting (**Res 22-134**). This submission has now been lodged with the Flood Inquiry Panel.

- 10 In response to a request from Council, the NSW Flood Inquiry is now holding a Byron Shire Community meeting 6 June 2022, following meetings held in Lismore and Tumbulgum.

Further, the local community has started their own discussions about these flood events with meetings and conversations being held in Mullumbimby and Ocean Shores recently.

- 15 Discussions through the Housing Taskforce, on which Council staff sit, have also commenced with the impacted Northern Rivers councils. The taskforce is inter alia responsible for: delivering an overarching conceptual strategy for approval by Government that covers the transition from immediate responses for emergency accommodation, through short term temporary accommodation through to the resolution of how to 'Build  
20 Back Better', including potential relocation of settlements.

- As such, to be informed, and inform the Housing Taskforce and the soon to be promulgated Northern Rivers Reconstruction Cooperation, a key next step is for Council to review its existing 'settlement strategies' on the back of these flood events. We also need to factor into our work the wider consideration of climate change and natural disaster  
25 management.

Lismore Council has started this work through exhibition and community engagement on: [Starting the Discussion: Building Back Better | Your Say Lismore \(nsw.gov.au\)](https://www.nsw.gov.au/starting-the-discussion-building-back-better-your-say-lismore)

To this aim the draft Operational Plan for 2022/23 on exhibition, already provides for a review of Council adopted 'settlement strategies. See extract from OP below:

### Operational Plan Activities

| DP Action                                    | OP      | Operational Plan Activity   | Measure   | Due     |
|--|---------|---|---|---------|
| Implement Local Growth Management Strategies | 4.1.2.1 | Review Rural Land Use Strategy  | Report on scope of review<br>Commence Review  | Jun -23 |
|  | 4.1.2.2 | Investigate capacity for resubdivision within existing Large Lot Residential estates (Action 21). | Report on investigation   | Jun -23 |
|  | 4.1.2.3 | Review of Local Strategic Planning Statement priority actions                                     | Scope of works prepared   | Jun -23 |
|  | 4.1.2.4 | Actively participate in 5-year review of the North Coast Regional Plan                            | Participate in meetings and provide State government with Council response to matters relevant to Byron Shire | Jun -23 |
|  | 4.1.2.5 | Revise and update Residential Strategy  | Scope determined and review commenced   | Jun -23 |

Any work that staff undertake on these strategy reviews needs to include:

- 5 • 2021 census data updates expected post June otherwise our population and other statistics are outdated and no longer fit for purpose; and
- 10 • the North Coast Regional Plan (NCRP) review by the DPE due for exhibition soon. The NCRP dictates the framework and targets that we as a LGA must work within for population and housing and business/industrial planning. It will also provide for other planning considerations for how and where we plan for our future settlement needs; and
- the outcomes from the staff assessment of the flood events, the NSW flood inquiry recommendations given planning is the first tranche of reports to go to the Minister.

Notwithstanding the above, it is possible to progress background and preparatory work now to inform these reviews.

- 15 To this end, staff propose to prepare a high-level discussion paper *After the 2022 Floods: Working Out Possibilities Together* to set out a framework for our response to 2022 Flood Events more generally - and identify principle/actions that could apply across the Council's strategies, plans and programs the result.

The discussion paper is proposed to be based on 4 pillars:

- 20 Pillar 1 – Build back Better: meaning to rebuild/reconstruct in a way that is more resilient to future floods and the new weather extremes expected from climate change.

Pillar 2 – Build Different: meaning a rethink of our planning and building controls such as height and density, typology, form and materials to response to our changing climate and new weather pattern paradigm.

5 Pillar 3 – Build Elsewhere: meaning future proofing settlement location through potential new greenfield areas to support local housing and business needs.

Pillar 4 – Build back infrastructure and services appropriate for our local circumstances: meaning infrastructure proportionate to community need and available funding.

A discussion paper is to be prepared and presented to Council in the second half of the year. An community engagement program will be included in this report.

10 **Strategic Considerations**

**Community Strategic Plan and Operational Plan**

| <b>CSP Objective</b>  | <b>CSP Strategy</b>   | <b>DP Action</b>  |
|---|---|---|
| <b>Community Objective 4:<br/>We manage growth and change responsibly</b> | 4.5: Work to improve community resilience in our changing environment | 4.5.1: Develop and implement strategies for our community's needs |

**Recent Resolutions**

- 22-156
- 22-134

15 **Legal/Statutory/Policy Considerations**

N/A

**Financial Considerations**

N/A

**Consultation and Engagement**

20 N/A

**Question with Notice No. 14.1 Permanent Sites at Council Operated Caravan Parks**

5 **File No:** I2022/576

---

Cr Dey asks the following questions:

- 10 1. *Given that the occupant of a permanent site at a Caravan Park like at Suffolk Park does not actually own the site, by what method or arguments is the right to a site recognised?*
2. *In the case of a site being 'on-sold' how is the new owner's right to occupy established?*
- 15 3. *In the case of the passing of an occupier, how is the new owner's right to occupy established?*
4. *In cases where such transfers are contested, how does Council examine and determine the validity of each claim?*

**Response Director Infrastructure Services:**

- 20 1. The Residential Community (Land Lease) Act 2013 (the RCLL Act) regulates sites in caravan parks that are leased for residential purposes. It does this by creating a statutory 'site agreement' between the caravan park operator and a person who has a moveable dwelling on a site within a caravan park. The site agreement gives the dwelling owner the right to occupy a space within the caravan park via their dwelling,
- 25 in exchange for the payment of site fees to the park operator.
2. The RCLL Act requires a park operator to enter a new site agreement with the purchaser of a moveable dwelling, unless:
- the operator declines to enter the proposed agreement on reasonable grounds (what counts as reasonable grounds are not set out under the Act), or
- 30 • the operator and purchaser cannot agree on the terms of the proposed agreement.
3. The RCLL broadly defines a dwelling 'owner'. The meaning of owner includes a person:

## BYRON SHIRE COUNCIL

### QUESTIONS WITH NOTICE

14.1

- who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate, of a deceased individual who owned a dwelling subject to a site agreement immediately before they died, or
- another successor in title of a person who owned a dwelling subject to a site agreement immediately before they died.

5

4. Council relies on people claiming to be a beneficiary of a deceased's person estate to act in good faith and not mislead Council.

Estate law is complex and there isn't a duty on Council to decide estate disputes. Within these limits, where a dwelling owner with a site agreement in a Council caravan park dies, Council asks for evidence of an incoming person's role as an estate representative or claim to title for a dwelling. But there are some estate claims Council can't verify (for instance, a person claiming that they were verbally promised certain things from a deceased person's estate).

10

15

**Report No. 15.1 CONFIDENTIAL - Emergency Procurement - Flood Event 2022**

5 **Directorate:** Corporate and Community Services

**Report Author:** Evan Elford, Manager Works

**File No:** I2022/484

**Summary:**

10 On 28 February 2022, the Byron Shire experienced serious floods. The extent and impact of the floods, particularly to hinterland communities, has resulted in some communities remaining isolated 10 weeks after the event.

15 The flood event impacted the region including Lismore, Tweed, Ballina, Clarence Valley and Richmond Valley, and up to the Gold Coast in Queensland. The floods were declared a Natural Disaster (AGRN 1012 – linked [here](#)), and subject to a three month National Emergency Declaration made by the Governor-General on 11 March 2022 until 11 June 2022 (Attachment 2).

---

**RECOMMENDATION:**

- 20 1. That pursuant to Section 10A(2)(c), (d)i and (g) of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Emergency Procurement - Flood Event 2022.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
  - 25 a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
  - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
  - 30 c) advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
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 it contains commercial information and legal advice.



## BYRON SHIRE COUNCIL

CONFIDENTIAL REPORTS - CORPORATE AND COMMUNITY SERVICES

15.1

**OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:**

### **RECOMMENDATION:**

- 5 1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Emergency Procurement - Flood Event 2022 are to be treated as confidential as they relate to matters specified in s10A(2)(c), s10A(2)(d)i and s10A(2)(g) of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

### **Attachments:**

10

- 1 Confidential - Procurement Works Undertaken During February 2022 Flood Event, E2022/45037
- 2 National Emergency Declaration 2022, E2022/45079
- 3 Confidential - 954363363\_1\_HWLE Advice to Byron Shire Council re Emergency

15

Procurement 26.05.22, E2022/49300