

Agenda Ordinary (Planning) Meeting

Thursday, 9 March 2023



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 that reads "Mark Arnold". The signature is written in a cursive style with a horizontal line at the end.

Mark Arnold
General Manager

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Code of Conduct for Councillors (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:

- (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

OATH AND AFFIRMATION FOR COUNCILLORS

Councillors are reminded of the oath of office or affirmation of office made at or before their first meeting of the council in accordance with Clause 233A of the Local Government Act 1993. This includes undertaking the duties of the office of councillor in the best interests of the people of Byron Shire and the Byron Shire Council and faithfully and impartially carrying out the functions, powers, authorities and discretions vested under the Act or any other Act to the best of one's ability and judgment.

BYRON SHIRE COUNCIL

BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. ATTENDANCE BY AUDIO-VISUAL LINK / REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.14 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 6.1 Ordinary (Planning) Meeting held on 9 February 2023
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
9. NOTICES OF MOTION
 - 9.1 Funding to future proof all flood impacted premises 8
 - 9.2 Recognising the effort and contribution of Kim Rosen 11
 - 9.3 Short Term Rental Accommodation Consent Conditions..... 14
10. PETITIONS
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
13. STAFF REPORTS
 - General Manager**
 - 13.1 Byron Community Market Parking Assistance..... 19
 - Sustainable Environment and Economy**
 - 13.2 PLANNING - Report of the Planning Review Committee held 2 February 2023..... 22
 - Infrastructure Services**
 - 13.3 Bangalow Sportsfields Plan of Management 24

No table of contents entries found.
14. QUESTIONS WITH NOTICE
 - 14.1 Drainage in Lawson Street 27

BYRON SHIRE COUNCIL

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

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

NOTICES OF MOTION

Notice of Motion No. 9.1 Funding to future proof all flood impacted premises

5 **File No:** I2023/232

I move that Council:

- 10 1. **Once again writes to Premier Dominic Perrottet, to Opposition Leader Chris Minns and to our Member of Parliament for Ballina Tamara Smith asking them:**
- 15 a) **to recognise the opportunities as expressed in the Shire's various Floodplain Risk Management Plans to make all existing flood-prone buildings safer against future flood risks, using actions for individual premises as listed in those Floodplain Plans (buy-back, house-raising and wet-proofing);**
- 20 b) **to acknowledge the legacy role of the State in having approved buildings in flood-prone areas, many of which are the subject of Floodplain Plans;**
- c) **to consider estimates of the numbers of buildings that were flooded in 2022 and that could therefore benefit from those actions, ie 1,454 in Byron Shire of 8,364 total across the seven Shires impacted (data source: SES Built Impact Data, April 2022);**
- 25 d) **to also consider that many of Byron Shire's premises can be returned to habitable use by these actions (especially house raising) because peak flood levels on this Shire's floodplains are not as deep as on some other heavily-impacted floodplains in the region;**
- e) **to accept the region's gratitude for the government's commitment of \$800m towards buy-back, house-raising and wet-proofing;**
- 30 f) **to recognise that this funding will not meet the region's needs, that it may not reach Byron Shire at all, and that its roll out is painfully slow; and**
- g) **to consider further funding of \$180m to make premises within Byron Shire more resilient, noting this amount is estimated at an indicative average of \$100,000 per building = \$145m plus buy backs at an additional \$35m.**
2. **Sends the above letters on Monday 13 March 2023, well prior to election day.**
- 35 3. **Writes again in early April to the new Premier of NSW with the same appeal.**

Attachments:

- 1 Letter from General Manager to Premier Perrottet regarding Flood Impacted Homes and
Businesses Res 22-526, E2023/15728 

5

Signed: Cr Duncan Dey

Councillor's supporting information:

10 It is now over twelve months since the worst known flood (28 February 2022) in the north of the Shire. It is over eleven months since a second flood devastated coastal areas like Byron Bay (March 2022).

We still do not have property by property data adequate to quantify the needs of landholders to future-proof residential and commercial premises against repeat floods of the magnitude of those in 2022.

15 Future floods of the same rarity as 2022 will be higher under climate change, because rainfalls are increasing. And, although ocean was not a significant driver for the 2022 floods, its influence will raise flood levels under climate change sea levels are rising.

20 Some flood victims have recovered financially, mostly because they could afford to make their own arrangements, but many residents of Byron Shire are still sitting in a shell of what was once their *forever home*, or in a Pod waiting for their claims to be processed or in other forms of accommodation sometimes a long distance away from the community of which they are part.

Council wrote to the NSW Premier, under Resolution **22-526** of 29 September, seeking funding of the same amount as sought in Part 1(g) of this Motion. The letter (copy attached) was unfortunately not sent until February 2023.

25 In October 2022 the NSW Government announced the \$800m package that deals with these actions across seven Council areas. The roll out of that funding is slow and it appears so far that the criteria for that funding will see it allocated to the Richmond River valley, where it is sorely needed.

30 The eligibility criteria could have been simpler, with support to future proof going to any premises flooded above an approved floor level. For buildings built prior to the setting of floor levels under Government planning rules, a retrospective approach could be used. If the floor was above the 100-year flood level, it becomes eligible. There are many such building in this Shire – they were not deemed flood-prone under the Floodplain Plan for their area but they flooded. Under present criteria, these premises cannot apply.

35 Flood mapping is one of the problems here, as well as the nature of Byron Shire's floodplains. In many places, the floodplains mapped in our various Floodplain Studies are smaller than the 2022 flood areas. For example, houses that flooded in 2022 in Jubilee Avenue Mullumbimby and need raising are not eligible for state funding because out-of-date Floodplain Plan maps show them as not flooding.

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.1

5 Our floodplains do not flood as deep as say Lismore's, nor does water flow out of our waterways onto our floodplains as "early" in the passing of the flood hydrograph. Our 20-year flood peak levels are thus lower than the approved floor levels of most premises in the Shire. It is the 50-year and 100-year peaks that enter our buildings. Once they do, the numbers of buildings are huge. This accounts for seemingly high numbers in Part 1(c) above, 1,454 out of 8,364 ie. 17% of the premises flooded in seven LGA's. That percentage of the \$800m funding is \$140m.

Staff comments

10 **by Phillip Holloway, Director Infrastructure Services:**

Council staff have written to the NSW Premier in February 2023 and have investigated other matter relating to data on flood impacted homes and businesses. The following comments are provided.

- 15 1. Letter prepared and sent to the NSW Premier covering all aspects of 1) (E2023/15728).
2. Following a planned report to the May 2023 Floodplain Advisory Committee, Council staff will prepare a further report based on a summary of actions for 3) below.
- 20 3. Council staff have discussed with IS, SEE Director and Cr Dey. Staff will be sending a formal invite to the Northern Rivers Reconstruction Corporation to attend the next Floodplain Advisory Committee to provide an overall summary of their new Resilient Homes Program whereby the Floodplain Advisory Committee can ask focused questions. These will address subpoints of 3) and allow a Council report to be submitted by the Floodplain Advisory Committee.
- 25 4. Council's flooding and drainage staff consistently liaise with neighbouring Councils and this is assisted formally by the Department of Planning and Environment (DPE) representative that sits on all neighbouring Councils Flood Plain Advisory Committees.

Notice of Motion No. 9.2 Recognising the effort and contribution of Kim Rosen

File No: I2023/233

5

I move:

- 10
- 1. That Council assist the Brunswick community with support in permitting a plaque recognising the long time efforts of Kim Rosen, to be placed on the street chair outside the Visitor Centre in Park St.**
 - 2. That the chair be restored to the satisfaction of and at no cost to Council, permitting a plaque to be placed in the centre of the back rest and be of a size no greater than 210 x 300 mm.**

15

Signed: Cr Alan Hunter

Councillor's supporting information:

20 Council where appropriate should always assist the community to recognise, in a tangible and appropriate way, individuals who over a lengthy time have contributed their personal time and effort to the health and wellbeing of our community.

Kim is such a person contributing her time and effort for the Brunswick Heads and beyond community in many projects since 1999 and is now no longer living locally.

Kim and her team were instrumental in developing and delivering many projects such as;

- 25
- Kites and Bikes Festival
 - Skate Park project to the opening in 2010
 - Bruns CBD Street scaping masterplan
 - Old and Gold Rotary and others support winning a tourism award in 2018
 - Simple Pleasures branding and photo competition
 - Visitor Centre established in 2006
 - 30 • Mullum to Bruns paddle fundraiser with the Surf Club Marine Rescue and Visitor centre
 - Initiated the 10 seat project recognising important locals and town areas
 - Bushfire R&R providing care for victims of the fires in 2019

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.2

- Walk a mile in my shoes for cancer fund raiser
- Fly a Kite for the food affected fund raiser
- Awarded Byron Shire Citizen of the year 2014

5 The northern Shire residents are better off having had Kim's enthusiasm and driven energy contributing to the many tasks she embraced over the 20+ active years.

We will miss Kim's contribution.



Staff comments

by Malcolm Robertson, Manager Open Space and Facilities, Infrastructure Services:

10 Requests are often received by Byron Shire Council from individuals and organisations for permission to place memorials or plaques to an individual, organisation or event within public spaces within the Council area. To ensure these are appropriately managed, Council, in October 2012, adopted Policy for Memorials and plaques in Open Spaces.

15 This Policy sets the direction for Byron Shire Council's approach to the management of requests for the installation of commemorative plaques, memorials, and monuments in public spaces in the Byron Shire region, outside of cemeteries. This Policy specifically covers plaques on a bench seat or similar furniture, established in memory of any person,
20 organisation or event.

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.2

The intention of Council's Policy - Memorials and Plaques in Public Spaces Policy was not to allow plaques, memorials or monuments to be established to recognise a living person, but rather to allow commemoration of a person who has passed.

5 In this instance, rather than a memorial, it has been suggested that it may be more appropriate to install a plaque within the Visitor's Centre in appreciation of the service that Kim has provided. This could potentially be expanded over time to create a "Hall of Fame" type recognition of service for other volunteers and if for any reason the Visitor's Centre
10 relocated, the plaque could also be moved as part of the fabric of the establishment.

15 It is, however, noted that the seat installed outside the Brunswick Heads Visitor Centre is not listed as a Council asset and is not typical of a Council installation. It is believed that this seat may have been installed as a community initiative.

20 It is suggested that rather than provide approval to place a memorial plaque, Council provides approval for the Brunswick Heads Visitor Centre to supply and maintain the existing bench seat on the public footpath immediately adjacent adjoining the facility. The seat would remain the property of the Brunswick Heads Visitor Centre, and as such could be adorned with a plaque as the owners saw fit.

25 This can be approved under Policy Planting and landscaping on footpath zones and nature strips within road reserves and drainage easements and would be conditioned that Council reserves the right to remove the seat should it present a safety problem, maintenance problem or where necessary to provide new infrastructure such as paved footpaths and the like.

Financial/Resource/Legal Implications:

30 Should Council determine that a standard Council seat should be provided at this location, this would be at a cost of around \$2,200 for a commercial grade stainless steel frame seat with Australian Spotted Gum battens.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.4: Provide accessible community facilities and open spaces	5.4.2: Parks and open spaces - Provide and maintain active and passive recreational community space that is accessible and inclusive for all	5.4.2.6	Provide programmed maintenance and asset renewal programs to towns and villages streetscapes across the shire

Notice of Motion No. 9.3 Short Term Rental Accommodation Consent Conditions

File No: I2023/250

5

I move that Council:

1. **Requests staff to enforce existing consent conditions which prohibit the use of a property as short term rental accommodation.**
- 10 2. **Continues to prohibit the use of short-term rental of housing in new approvals (secondary dwellings, standard homes in the residential areas and business zones of the Shire).**
3. **Receives a report back every 6 months on the status of 1 and 2.**

15

Signed: Cr Michael Lyon

Councillor's supporting information:

20 We have previously sought to ensure that secondary dwellings approved under the contributions waiver are not being holiday let in contravention of their consent conditions. It is becoming clearer that pre-existing consent conditions are enforceable and that we may still be able to impose enforceable consent conditions on new approvals. We should begin maintaining our own register, without delay, of properties that are prohibited from STRA, with the date the condition was imposed, i.e., pre-, or post- 31 January 2022 and determine each property's current use to ensure compliance. I believe another letter may
25 be in order too, given we didn't receive responses from all property owners the last time we communicated.

30 This could be some low-hanging fruit in the battle to return short-term lets to the long-term pool. I think we may need to be creative in future about our evidence-gathering and how we can utilise information to encourage compliance. The absence of rental bond data or a lease agreement covering each premises would be a good start. While we await the judgement of the IPC and new Government on our 90-day/365-day STRA precinct proposal we can send a clear signal of our intention to protect our residential communities.

Staff comments

by Shannon Burt, Director Sustainable Environment and Economy:

5 There have been several reports on Short Term Rental Accommodation (STRA) Enforcement Options over the years. The most recent being: Council resolution **22-152** (4) [Minutes of Ordinary Meeting - Thursday, 28 April 2022 \(infocouncil.biz\)](#) which asked staff to prepare a report on Council's ability to enforce consent conditions existing or in the future which limit the use of short term rental use of residential accommodation.

10 Currently, there are existing consent conditions imposed on some residential properties within the Shire that plainly prohibits use of the accommodation as holiday or tourist and visitor accommodation. Whilst not specifically incorporated under the definition of "tourist and visitor accommodation" under the *Byron Local Environmental Plan 2014* ("Byron LEP 2014"), short term rental accommodation ("STRA") would fit under that definition (it is "short term accommodation on a commercial basis").

15 As a result of the introduction of *State Environmental Planning Policy (Housing) 2021 – Part 6 – Short Term Rental Accommodation* ("SEPP Housing"), Council must also consider the enforceability of future consent conditions to prohibit use of residential properties as STRA.

Pre-existing consent conditions

20 The SEPP Housing permits STRA in Byron Shire (being a prescribed area) for up to 180 days in a 365-day period, as exempt development (section 112).

Section 4.2 of the Environmental Planning and Assessment Act ("EP&A") provides:

4.2 Development that needs consent (cf previous s 76A)

25 (1) *General* If an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless—

(a) *such a consent has been obtained and is in force, and*

(b) ***the development is carried out in accordance with the consent and the instrument.***

30 *Maximum penalty—Tier 1 monetary penalty.*

[Emphasis added]

35 The carrying out of STRA at a residential property that has an existing consent condition prohibiting holiday or tourist and visitor accommodation is contrary to section 4.2 of the EP&AA. However, section 112 of the SEPP Housing makes STRA permissible without development consent. There is a conflict between the existing conditions of consent and the provisions of the Housing SEPP in these terms.

Section 113(i) of the SEPP Housing states (together with a “Note”) that:

- (i) *the use of the dwelling for the purposes of short-term rental accommodation must **otherwise be lawful**.*

Note—

5 *In addition to the requirements set out in this Part, adjoining owners’ property rights, the applicable common law and other legislative requirements for approvals, licences, permits and authorities still apply. For example—*

10 (a) *the Strata Schemes Management Act 2015, section 137A provides that a by-law may prohibit a lot being used for the purposes of a short-term rental accommodation arrangement, and*

(b) *conditions of development consent, or a lease, may impose additional restrictions.*

[Emphasis added]

15 As a consequence of the operation of section 4.2 of the EP&AA, it is not lawful to operate a residence with the existing condition as STRA, as it is contrary to a condition of development consent.

20 Furthermore, the notation reference to section 137A *Strata Management Act 2015*, suggests that the intention of section 113(i) of the SEPP Housing is to exclude other Acts or provisions that effect the operation of section 112 of SEPP Housing and prohibit a STRA arrangement. Subsection (b) of the notation is more likely to be directed towards a condition of consent that imposes an additional restriction on the operation of STRA (rather than prohibiting it).

Schedule 7A of the SEPP Housing, section 2(2)(d) provides that:

2 General savings provision

25 (1) *This Policy does not apply to the following matters—*

(a),

(d) *a development consent granted on or before the commencement date,*

30 This means that the provisions under Part 6 of the Housing SEPP (the Policy) do not apply to the consent conditions, so there is no conflict with a pre-existing condition of consent that prohibits STRA.

Considering the above, Council would be able to enforce a pre-existing consent condition if an applicable residential property is used as STRA. The SEPP Housing would not apply.

Future consent conditions

35 There remains a question as to whether, because of the operation of section 113(i) of the Housing SEPP, Council can continue to impose conditions of consent that prohibit STRA.

5 If a consent including such a condition after the commencement of the Housing SEPP, the conflict between the Housing SEPP, permitting STRA, and the condition of consent would be apparent. In those circumstances it might be possible for a landowner to defend any enforcement action with a defence that the use of land for STRA is lawful, having regard to section 4.1 of the EP&AA, and section 112 of the Housing SEPP.

10 There is currently no case law on the interpretation of these provisions. It seems there are considerable conflicts as between the EP&AA, and provisions under the Housing SEPP. The meaning of “*must otherwise be lawful*” is unclear, and the examples given in the Note in section 113 do not assist in clarifying the meaning having regard to development consent conditions that are imposed in the future prohibiting STRA.

Clause 6.7 in Byron LEP 2014 states:

6.7 Affordable housing in residential and business zones

(1) *The objectives of this clause are as follows—*

15 (a) *to increase the supply of affordable housing for very low, low and moderate income earning households,*

(b) *to provide accommodation to support a diverse residential population inclusive of all income groups within Byron,*

(c) *to ensure a housing mix and tenure choice including affordable housing,*

20 (d) *to ensure that affordable housing is identified by the Council as in demand and located close to transport and services appropriate to the intended households.*

25 (2) *Development consent must not be granted for the purposes of residential accommodation or to the subdivision of any land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone B2 Local Centre or Zone B4 Mixed Use unless the consent authority has considered—*

(a) *the need for providing, maintaining or retaining affordable housing, and*

(b) ***the need for imposing conditions relating to providing, maintaining or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.***

30 (3) *For the purposes of this clause, affordable housing means housing for very low income households, low income households or moderate income households.*

[Emphasis added]

Next steps

It seems likely that Council could continue to impose conditions to prohibit STRA for certain housing e.g., secondary dwellings, standard homes in the residential areas and business zones of the Shire under clause 6.7 of the Byron LEP.

- 5 Given the above, it is likely that Council’s pre-existing consent conditions are enforceable.

As a result, enforcement action should be taken if appropriate evidence exists that an applicable property is being used as STRA.

- 10 Despite the lack of case law to assist in the interpretation of the new provisions, it also seems likely that Council can continue to impose and enforce future consent conditions prohibiting STRA for certain housing that is consistent with clause 6.7 of the Byron LEP.

- 15 Given the current STRA Planning Proposal process (ongoing over the last 4 years) and need to meet evidence standards for the purpose of enforcement action under our Enforcement Policy, proactive enforcement of these types of conditions of consent has not been clear cut or a priority until now. With the finalisation of our Planning Proposal imminent the need to establish an enforcement regime around this use, is timely and necessary.

Financial/Resource/Legal Implications:

Finance/ resource and legal implications will need to be considered on a case-by-case basis as they are unknown at this time.

- 20 **Is the proposal consistent with any Delivery Program tasks?**

CSP Objective	CSP Strategy	DP Action
<p>2: Inclusive Community We have an inclusive and active community where diversity is embraced, and everyone is valued</p>	<p>2.2: Enhance safety and contribute to the physical, mental, and spiritual health and wellbeing of our people</p>	<p>2.2.3: Regulatory controls and compliance - Enhance public safety, health, and liveability through the use of Council's regulatory controls and services</p>

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 Byron Community Market Parking Assistance

5 **Directorate:** General Manager
Report Author: Ralph James, Legal Counsel
File No: I2023/247

Summary:

10 This report proposes an extension of permissive and pay parking exemptions for nominated Byron Community Market stallholders in Cowper St, north of Carlyle St, for the remainder of the 2023 calendar year.

15

RECOMMENDATION:

That Byron Community Market stallholders be exempt from permissive and paid parking requirements in Cowper St, north of Carlyle St, for the remainder of the 2023 calendar year.

20

Report

Council resolved (**19-062**) that Butler Street Reserve be closed after the 7 July 2019 community markets. Closure was expected to be 6-months.

5 Council resolved (**19-252**) to grant a short-term licence to the BBKA for community markets on Denning Park Reserve R82000.

At its 13 October 2022 Ordinary (Planning) Meeting Council unanimously resolved (**22-562**) as follows:

- 10
1. *That Byron Community Market stallholders be exempt from permissive and paid parking requirements in Cowper St, north of Carlyle St, for the remainder of their tenure on the Byron foreshore (Reserve 82000).*
 2. *Request staff to facilitate the appropriate permits and approvals to enable point 1.*

15 The Resolution has been implemented and has drawn no complaints to Council.

The background to the Mayoral Minute on 13 October 2022 was in the following terms:

20 *The Byron Community Markets were relocated from Butler Street Reserve to the Byron foreshore in 2019 and will be relocating to the town centre in March 2023.*

There are up to 250 stallholders at each market, and the market licence restricts the number of vehicles on the foreshore reserve to 50 in order to manage impacts on the surface of the reserve and the adjacent dune system. The remaining stallholders park in surrounding streets or Butler Street Reserve, which both present challenges in terms of:

- 25
1. *Distance from market site*
 2. *Timed parking requiring relocation of cars during the market's operating periods*
 3. *Paid parking*

30 *Until recently, market stallholders were given permission to park on Sandhills Reserve in order to have their vehicles nearby the market site, however recent construction of the skate park has meant this stallholder parking is no longer available.*

35 Development consent 10.2021.872.1 has been granted for the relocation of the community markets to part of Jonson Street, South Lawson Street carpark, Railway Park, and the Rail Corridor. The development consent allows for 300 stalls.

The consent provides for one community market per month with an option of two community markets in December and January. The first community market to be held on the relocated site is Sunday 5 March 2023.

40 Council has licensed the Byron Bay Community Association Incorporated the right to manage and operate a community market in accordance with development consent. The licence permits market stall holders to park in a small area of the Butler Street Reserve.

45 However, the Licensee requests the previous parking arrangement on Cowper Street north of Carlyle Street is extended for the relocated community market.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.5: Empower community leadership through collaboration, capacity building, and cultivating community driven initiatives	1.5.2: Collaboration and capacity building - Collaborate with stakeholders to build community capacity	1.5.2.3	Establish and maintain leasing and licensing arrangements to ensure the tenure of Council owned and controlled assets

Recent Resolutions

5 22-562

Legal/Statutory/Policy Considerations

As outlined in the report.

Financial Considerations

Not applicable.

10 Consultation and Engagement

Acting Place Manager

Manager OS&F

Traffic and Transport Engineer

Leasing Coordinator

15

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.2 PLANNING - Report of the Planning Review Committee held 2 February 2023

5 **Directorate:** Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
File No: I2023/152

Summary:

10 This report provides the outcome of the Planning Review Committee (PRC) held on 2 February 2023.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

20 **That Council endorses the outcomes of the Planning Review Committee meeting held on 2 February 2023.**

BYRON SHIRE COUNCIL

Report

The Planning Review Committee meeting was held on 2 February 2023. The meeting commenced at 4:00pm and concluded at 4:15pm.

Councillors: Mayor Cr Lyon, Cr Pugh, Cr P Westheimer, Cr A Hunter, Cr D Dey.

5 **Apologies:** Cr C Coorey, Cr M Swivel, Cr S Ndiaye

Staff: Chris Larkin (Manager Sustainable Development)

Conflict of Interest: None declared

The following development applications were reviewed with the outcome shown in the final column.

10 Council determined the following original development applications. The S.4.55 applications to modify those consents were referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority with the outcome shown in the final column.

DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
10.2019.576.3 Planners North	7 Marvell Street BYRON BAY Modification - Alterations to the Floor Plan Configuration and Building Design including 100m2 of Retail Relocated from Fletcher Lane to Marvell Street, Hotel Lobby Relocated from Marvell Street to Fletcher Lane, Removal of 2 Rooms from Ground Floor, at First Floor Increase from 14 to 16 Rooms and Reduction from 19 to 16 Beds and at Second Floor Increase from 13 to 16 Rooms and Reduction from 17 to 16 Beds	Level 2 11/1/23-24/1/23 No submissions	Staff Delegation
10.2021.212.2 Newton Denny Chapelle	36 Keys Road COORABELL S4.55 (1A) Modification to change condition 14 to remove reference to the number of minibus seats and reference to weekends	Level 0	Staff Delegation

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.3 Bangalow Sportsfields Plan of Management

Directorate: Infrastructure Services

5 **Report Author:** Malcolm Robertson, Manager Open Space and Facilities

File No: I2022/887

Summary:

10 A revised Draft Plan of Management (PoM) Review of Bangalow Sports Fields and associated Landscape Masterplan has been prepared in consultation with internal key internal and external stakeholders.

This report seeks Council's endorsement to publicly exhibit the Draft PoM in accordance with the requirements of the Act.

15

RECOMMENDATION:

- 20
1. **That Council approves public exhibition of the Draft Plan of Management and associated Landscape Masterplan for Bangalow Sports Fields in accordance with the Local Government Act of 1993, including an independently chaired public hearing after the conclusion of the exhibition period.**
 2. **A post exhibition report be brought to Council, including conclusions and recommendations from the public hearing**

Attachments:

- 25
- 1 @Leisure Bangalow Draft Landscape Masterplan 70223, E2023/14243 
 - 2 @leisure Revised Bangalow Draft Plan of Management 070223, E2023/14244 

Report

The Bangalow Sports Fields are Council owned community land. It is a requirement under the Local Government Act that a POM is prepared for the land that will;

- 5 • specify the purposes for which the land, and any buildings or improvements, will be permitted to be used
- specify purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise, and
- specify and describe the scale and intensity of any such permitted use or development.

10 Council’s goal is to ensure residents and visitors to Bangalow can enjoy attractive and accessible sports fields that include sport and recreation facilities that are inclusive, safe, comfortable, and enjoyable to be in and around.

15 Community have expressed desire to see the Bangalow Sports Fields developed to better accommodate sport and recreation activities. There is potential to enhance or upgrade existing facilities within the Sports Fields precinct to improve accessibility and inclusivity and to better accommodate passive recreation.

20 Communities desired changes are not reflected within the 2005 Plan of Management for the Bangalow Sports Fields so review and update is required. To allow for considered development of the site and prevent ad-hoc development an overall Landscape Masterplan is also required to provide direction.

Engagement with community is an essential part of this process. The vision and ideas of the community and core stakeholders, combined with innovative design, will help shape the Bangalow Sports Fields. Input from key stakeholder groups has been utilised in developing a Draft Plan of Management and associated Landscape Masterplan.

25 The next step is to place the draft Plan of Management on Public Exhibition. Following Public Exhibition an independently chaired public Hearing will be held, with findings to be reported back to Council.

Strategic Considerations

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.4: Provide accessible community facilities and open spaces	5.4.4: Sporting facilities and swimming pools - Ensure ongoing maintenance and upgrade of inclusive sporting facilities and swimming pools	5.4.4.3	Complete review of Plan of Management and associated Landscape Masterplan for Bangalow Sportsfields and seek funding opportunities for implementation

Legal/Statutory/Policy Considerations

5 The Local Government Act and Regulations prescribe the process, and minimum content, for preparing Plans of Management. The prescribed process governing development of, and consultation on, a Plan of Management is being followed by Council.

Consultation and Engagement

Feedback from the community and stakeholders on the draft review has been sought to date via:

- Workshop with the sports club's user groups (online)
- 10 • Telephone interviews of clubs, sports associations, schools, peak bodies, staff and other informants
- Telephone interviews with community organisations and members of the local community
- Community survey on Councils 'Your say' Byron page
- 15 • Site walk around with the Sports Fields user groups
- User group and general community consultation session August 18, 2022
- Councillor Workshop December 1, 2022
- Internal Stakeholder Workshop December 8, 2022

20

QUESTIONS WITH NOTICE

Question with Notice No. 14.1 Drainage in Lawson Street

File No: 12023/223

5

Cr Dey asks the following question:

10 *The following photos were taken at about 7pm on 14 February 2023 in Lawson Street Byron Bay. They show a significant body of water ponding in excess of the capacity of the piped drainage system (assuming there is one). Water appears to be entering commercial premises via their front doors, exacerbated by vehicles creating 'bow waves'. I imagine the premises would have been damaged.*





Water was also likely high enough to have damaged this parked car.



BYRON SHIRE COUNCIL

QUESTIONS WITH NOTICE

14.1

1. *Was this drainage system blocked by something unusual at that time?*
2. *If not, was it blocked at all or is it simply under capacity?*
3. *If not under capacity, what is the capacity of the piped system to whatever 'choke point' applies here, and what is that chokepoint?*
- 5 4. *What were the rainfall intensities for the most intense periods over durations of 10 minutes, 20 minutes and 30 minutes, between 6pm and 7pm on 14 February 2023?*
5. *If answering this question is onerous, could you please list 5-minute or 6-minute rainfalls for that period?*
- 10 6. *What are the design 2-year, 5-year and 10-year intensities for the durations in my Question 4?*
7. *Would Council be liable for damage sustained, if there was any?*

Response Director Infrastructure Services:

Council staff have investigated, and Infrastructure Services provides the following:

- 15 1. Council staff are not aware of any unusual blockage of the system. The Byron Bay drainage system undergoes regular drainage maintenance in accordance with Council works operations programs
- 20 2. The event has not been assessed in detail at this time. The rainfall was an intense storm cell that would have exceeded the capacity of the sub surface drainage system. Council is currently undertaking the Byron Drainage Strategy Upgrade project which will look at drainage capacity in this area.
3. The event has not been assessed in detail at this time. Rainfall totals are available and will be reviewed as part of the Byron Drainage Strategy Upgrade project.
- 25 4. The event has not been assessed in detail at this time. Rainfall totals are available and will be reviewed as part of the Byron Drainage Strategy Upgrade project.
5. The event has not been assessed in detail at this time. Rainfall totals are available and will be reviewed as part of the Byron Drainage Strategy Upgrade project.
6. It is unlikely that Council would be liable for any damage that occurred to private infrastructure.
- 30 7. It is not possible to advise whether or not Council would be legally liable for damage to third party property in the situation outlined. It would be a matter for a claim against Council to be lodged, assessed and legal liability determined. This would involve reviewing the circumstances, and then considering whether or not a legal liability applies.