

# Agenda Ordinary Meeting

Thursday, 23 November 2023



**BYRON**  
SHIRE  
COUNCIL

# Agenda Ordinary Meeting

held at Council Chambers, Station Street, Mullumbimby  
commencing at 9:00am

Public access relating to items on this agenda can be made between 9:00 and 10:30 am 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.

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## 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

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4. REQUESTS FOR LEAVE OF ABSENCE
5. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
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*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](http://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 Water & sewer capacities and future needs**

5 **File No:** I2023/1757

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**I move that Council:**

- 10 1. **Places on the agenda of the next meeting of Council’s Water and Sewer Advisory Committee, the review of July 2023 which assessed the water and sewer infrastructure required to support future housing supply in and around Mullumbimby and Brunswick Heads;**
- 15 2. **Places on the Agenda for a future Water and Sewer Advisory Committee meeting a discussion item about the health of the Brunswick River Estuary and its capacity to receive STP effluent above that already approved when the Brunswick Valley STP was approved two decades ago; and**
- 20 3. **Include with that item a description of what triggers an investigation of the Estuary’s capacity to receive extra effluent, and a description of what factors (eg liquid loading, nutrients, pharmaceuticals, endocrine disruptors, other contaminants) would be considered in such an investigation.**

**Signed: Cr Duncan Dey**

25 **Councillor’s supporting information:**

The Housing Options Paper on public exhibition for four weeks from 9 October 2023 is a prelude to a formal *Residential Strategy* which will lead to rezoning ie ‘upzoning’ land so that it can be subdivided for new housing. The Paper states at Page 14 that:

- 30 “in July 2023, Council completed an infrastructure capacity review for Mullumbimby and Brunswick Heads to assess the water and sewer infrastructure required to support future housing supply”.

35 Responses in the Agenda for our Council meeting 26 October (item 15.1 Question with Notice) are that the Infrastructure review is for internal use only and will not be shared, even with Council’s Water & Sewer Advisory Committee.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.1

A further response was that the Brunswick Valley STP does have capacity for the increases in urban populations proposed in the Housing Options Paper and for the addition of sewer loads from Ocean Shores.

5 This of course does not mean that the Brunswick River Estuary necessarily has extra capacity to received treated sewage effluent.

10 It appears we have no date or other trigger for investigations to commence on the capacity of the Estuary to accept the increased loading to it of liquid, nutrients, contaminants, pharmaceuticals, and other factors. The response is that such investigations commence “only when required”. The question remains, who decides when the investigations are required and on what basis is that decision made?

## **Staff comments**

**by Cameron Clark, Manager Utilities, Infrastructure Services:**

15 The Constitution of the Water & Sewer Advisory Committee defines that *“It is the responsibility of the chairperson to prepare the agenda in consultation with the relevant Director, setting out the terms of business to be considered.”* This is not ordinarily a matter for Council, through a Notice of Motion.

The individual points of the Notice are addressed below:

20 **1. Places on the agenda of the next meeting of Council’s Water and Sewer Advisory Committee, the review of July 2023 which assessed the water and sewer infrastructure required to support future housing supply in and around Mullumbimby and Brunswick Heads.**

25 Point 1 is requesting presentation of a document to the Committee that staff have provided previous advice on. A question on Notice was responded to in the agenda of the 26 October 2023 Council meeting.

Question with Notice No. 15.1 Infrastructure Capacities

[Agenda of Ordinary Meeting - Thursday, 26 October 2023 \(infocouncil.biz\)](https://www.infocouncil.biz)

The staff advice remains the same in relation to this document.

30 *‘Technical review documents to support strategy work are for internal use only, and not available to the public.’*

The term public includes committees given their agenda is public and the membership is in part community.

35 Notwithstanding the above, the Housing Options Paper will be presented to Council in December including commentary about infrastructure capacity (and future contributions plan reviews) to support the delivery of housing across the Byron Shire to meet our 20-year housing target set by the State Government.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.1

5 A report following Council's consideration and adoption of the Housing Options Paper in December, could then be placed on a future Agenda for the Water & Sewer Advisory Committee to talk to the *water and sewer infrastructure required to support future housing supply in and around Mullumbimby and Brunswick Heads* as per the adopted position of Council.

- 10 **2. Places on the Agenda for a future Water and Sewer Advisory Committee meeting a discussion item about the health of the Brunswick River Estuary and its capacity to receive STP effluent above that already approved when the Brunswick Valley STP was approved two decades ago.**

15 Council staff can place an Agenda item for the Water & Sewer Advisory Committee as requested subject to resourcing and priority. Investigations regarding the forecast estuary capacity would commence only when required, as its currently not a requirement under NSW DPE, EPA, or Department of Health.

- 20 **3. Include with that item a description of what triggers an investigation of the Estuary's capacity to receive extra effluent, and a description of what factors (eg liquid loading, nutrients, pharmaceuticals, endocrine disruptors, other contaminants) would be considered in such an investigation.**

25 Council staff can place an Agenda item for the Water & Sewer Advisory Committee as requested subject to resourcing and priority. Investigations regarding the forecast estuary capacity would commence only when required, as its currently not a requirement under NSW DPE, EPA, or Department of Health.

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

Not a legal requirement and has significant financial and resource implications for undertaking additional sampling and analysis.

There are currently no reporting requirements to regulators.

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

30 No

## Notice of Motion No. 9.2 Belongil Creek

File No: I2023/1762

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### I move that Council:

1. **Receives an update on any current resolutions relating to the opening strategy for Belongil Creek and their progress.**
- 10 2. **Receives a report on any changes to the opening strategy recently and the effect, legitimacy and merits of these changes.**
3. **Receives a report on whether we can scrape the berm to a level which facilitates a natural opening in a rainfall event.**

### Attachments:

- 15
- 1 Attachment 1 - NoM - Recent Council Resolutions related to CMPs and Belongil Estuary, E2023/117592 

**Signed: Cr Michael Lyon**

### 20 Councillor's supporting information:

Recently we had substantial flooding of streets and properties caused by the level of the Belongil rising to 1.5m AHD, well past the trigger level. Thankfully the Belongil opened naturally following rainfall, however it appears we were caught a little off-guard due to failed telemetry and staff absences. Earlier in the term I tried to address perceived failures with the current opening strategy and sought to initiate a review to see if improvements could be made. I also understand that changes have been made to some of the pre-conditions for an artificial opening however I am unsure how these changes came about, whether they needed our agreement and whether this was run by the elected Council in the case that it did require our assent.

30 I am also curious as to whether we are able to within current licence conditions maintain the berm at a level that, while not causing an opening, may more readily lead the entrance to open by itself when a rainfall event occurs.

**Staff comments by Chloe Dowsett, Coast and Biodiversity Coordinator (SEE) & James Flockton, Infrastructure Planning Coordinator (IS):**

Brief Background - Belongil Creek ICOLL

5 Council has historically adopted responsibility for managing the coastal entrance to Belongil Creek being a small, intermittently opening estuary, commonly referred to as an “ICOLL” (Intermittently Closed or Open Lakes or Lagoons) in NSW. The artificial opening of Belongil Creek entrance undertaken by Council is to mitigate or reduce the excessive impacts of flooding.

10 Belongil Creek has an adopted Entrance Opening Strategy (EOS) in effect and is supported by detailed catchment studies. The adopted EOS (Alluvium, 2019) was updated in 2021 during a 2-year review of the EOS which documents the key changes to the EOS (Alluvium, 2021).

15 The EOS provides for a long-term balanced approach to guide entrance management at the creek entrance for the purpose of managing flood risk in the catchment. The entrance management process adopted by Council is relatively recent and was considered in the recently completed Coastal Management Program (CMP) Stage 1 Scoping Study for the Southern Shire (Rhelm, 2021) to be *“in line with current best practice ICOLL entrance management”*.

The EOS outlines a summary of management actions:

- 20
1. Monitoring and assessment of triggers in relation to artificial openings
  2. A decision support framework and recommended approach to opening
  3. Review of EOS and Environmental Management Plan at regular intervals (~2 yearly)
  4. Environment management associated with artificial opening (required as part of approvals)

25

  5. Construction management during artificial openings
  6. Actions for catchment management to be implemented as part of the CMP

For at least the last two decades, there has been tendency to move away from artificial entrance opening in NSW where possible, although it is commonly recognised that this needs to be balanced against flooding issues with low lying development.

30 A formal internal decision-making process has been established within Council (i.e. Team ICOLL) led by the Director of Infrastructure Services. The decision-making also includes consultation with relevant agencies and stakeholders as per associated approval conditions.

Team ICOLL is an Internal Working Group which includes:

- 35
1. Director Infrastructure Services

2. Works Operations Coordinator
3. Infrastructure Planning Coordinator
4. Coast and Biodiversity Coordinator
5. Coast and Estuary Officer
- 5 6. Flood and Drainage Engineer
7. Surveyors (as required)
8. COMS Team (as required).

10 Team ICOLL oversee the management of flooding risk, stormwater/drainage and estuary, coastal and biodiversity management related to the Tallow and Belongil ICOLLs and wider catchments.

15 Team ICOLL monitor water levels and rainfall forecasts through Council's Integrated Management System (IMS) which provides real time data and flood forecasts. Staff were monitoring the high-water levels during the event (Friday 10 to Monday 13 November) and there were uncertainties with the rainfall predictions. However, the primary constraint for staff in relation to mobilising for an opening of the creek is approval notification requirements and meeting of licence conditions.

Items in the Notice of Motion and staff response:

**Receives a report on any changes to the opening strategy recently and the effect, legitimacy and merits of these changes.**

20 Council is presently preparing Coastal Management Programs (CMPs) for its coastline in accordance with the NSW Coastal Management Framework and staged process. Council is progressing through Stage 2 of the CMP preparation to fill key information gaps on threats, issues and opportunities in the coastal zone.

25 Stage 2 technical studies confirm current knowledge on key issues and concerns and fill information gaps that are critical to the development of management strategies and actions that will occur in the next stage (Stage 3).

30 'Review of the Entrance Opening Strategies for Belongil and Tallow Creek Estuaries' is a key stage 2 CMP project currently underway. Regular updates on the status of this project are made to the Coast and ICOLL Advisory Committee. The project/study is nearing completion with stakeholder consultation completed and the draft report in progress (*'Entrance Management Strategy Review for Tallow and Belongil Creeks Summary and Recommendations Report, by Salients Pty Ltd in prep*). A presentation is being provided the Coast and ICOLL Committee on 21 November 2023 on the project outcomes and recommendations.

35 If Council is to effectively administer an entrance management strategy for Belongil Creek, clarity and confidence around roles and responsibilities, strategies for management and monitoring is required, as far as practicable, noting the highly variable nature of ICOLLs and ICOLL entrance processes (Salients, in prep).

This project aims to provide this clarity to Council and other stakeholders and is based on a detailed review and understanding of the system (Belongil Creek), scientific literature, policy and guidance.

- 5 The main outcomes of this report will be key recommendations relating to the adopted EOS for Belongil Creek (Alluvium, 2021) for consideration at the next two yearly review (end 2023/early 2024). As such, the effect, legitimacy and merits for any changes to the adopted EOS will be provided in the report.

The final report is expected to be provided to Council in early 2024 after stakeholder review.

- 10 **Receives a report on whether we can scrape the berm to a level which facilitates a natural opening in a rainfall event.**

15 The adopted EOS was updated during the two-year review in 2021, based on Council's experience with the strategy (Alluvium, 2021). Berm scraping, which was included in the 2019 version, was ineffective, largely due to the Creek's extremely low opening level (1.1m AHD, which is close to the highest astronomical tide). Alongside the removal of berm scraping from the strategy after the 2019 review, the depth of pilot channel excavation during artificial opening was increased from 0.2 to 0.5m below the water level, and a trigger which enabled opening if water levels remained elevated for 14 days was also removed.

- 20 Berm scraping has been successful in the past at Tallow Creek likely because it has over a metre higher head difference behind the sand bar (beach berm).

Revisiting the option of scraping the berm has not been recommended during current investigation due to having poor success at Belongil and would only further constrain entrance management with minimal outcomes.

- 25 Entrance management at Belongil Creek appears to be mostly constrained by prescriptive licensing/permit conditions including the need to provide advance notice and two days of water quality data before acting. Given the small and flashy runoff nature of the catchment and the inability of current weather forecasting technology to always reliably predict rainfall events accurately over the Belongil Creek catchment 2-3 days in advance, it is often not  
30 practical to provide such advance notice in a way that would enable the prompt entrance opening operations (Salients in prep).

On-going consultation and discussion with agencies in this space is advocated as the best approach moving forward. More practical permit conditions would make entrance management easier and more successful.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.2

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

An annual budget of \$55,000 has been allocated for management of Belongil Creek 2023/24. In comparison to last year's costs this budget is likely going to be exhausted.

### **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>
3: Nurtured Environment	3.3: Protect the health of coastline, estuaries, waterways, and catchments	3.3.2: Floodplain management - Mitigate the impact of flooding on private and public property	3.3.2.2	Review entrance management activities and arrangements for Belongil Creek

5



PETITIONS

**Petition No. 11.1    Petition to extend the 2 hour parking limit at 124 to 128 Dalley St Mullumbimby and provide a disabled parking spot**

**Directorate:** Infrastructure Services  
**Report Author:** Judd Cornwall, Traffic & Transport Engineer  
**File No:** I2023/1645

Council is in receipt of a Petition containing 166 signatures (Attachment 1 - E2023/110253) from Dr Richard Gregory which states:

*“To extend the 2-hour parking limit to 128 Dalley St Mullumbimby and provide a disabled parking spot to create a more accessible vet clinic. The current all-day parking out the front of 124 Dalley St allows these limited spots to be occupied the whole day. A 2-hour time limit on these parks will increase the turnover of their use and ensure availability to patrons of surrounding shops and businesses. As a Veterinary clinic it is essential for our clients to have easy access to the clinic as they are often accompanied by sick or injured animals. We request that a 2-hour parking limit is extended to the driveway of 128 Dalley St, Mullumbimby 2482.”*

**Comments from Director Infrastructure Services:**

Council staff have met with Dr Richard Gregory and arrangements have been made to extend the current two-hour parking restrictions up to the first residential property (boundary of properties 124 (Mullum Vet) and 126), subject to Local Traffic Committee approval.

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**RECOMMENDATION:**


- 1. That the petition at Attachment 1 (E2023/110253) regarding extending the 2-hour parking limit on 124 Dalley Street to 128 Dalley Street and providing a disabled parking spot be noted.**
- 2. That the petition be referred to the Director Infrastructure Services.**

# BYRON SHIRE COUNCIL

## PETITIONS

11.1

### **Attachments:**

- 1 Petition - for parking allowance on 124 Dalley to 128 Dalley St Street REDACTED, E2023/110253 
- 5 2 Confidential - Petition - for parking allowance on 124 Dalley Street to 128 Dalley Street, E2023/110340

STAFF REPORTS - GENERAL MANAGER

**Report No. 13.1 Sub-licence to Zephyr Equine Pty Ltd (A.C.N 638 961 850) for access through Crown Land.**

5

**Directorate:** General Manager  
**Report Author:** Paula Telford, Leasing and Licensing Coordinator  
**File No:** I2023/1387

**Summary:**

10 Zephyr Equine Pty Ltd (A.C.N. 638 961 850) (**Zephyr**) seeks to renew its sub-licence for access through Crown Land to conduct guided horse-riding tours on Tyagarah Beach on a commercial basis.

15 This report recommends that Council grant a new twelve-month sub-licence to Zephyr Equine Pty Ltd in accordance with previous Council resolution (**22-529**).

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**RECOMMENDATION:**

20 That Council authorises the General Manager, under delegation, to grant a sub-licence to Zephyr Equine Pty Ltd (A.C.N. 638 961 850) on the following conditions:

- a) term of 12-months,
- b) rent to be set by Councils Fees and Charges,
- c) access through Lot 407 DP 729057 being Crown Reserve R755695,
- 25 d) the sub- licensee to hold a concurrent permit with Cape Byron Marine Park for the term of the sub-licence,
- e) the sub- licensee must take all steps necessary to ensure that all horse droppings are removed from the sub- licenced area during and at the end of each access session,
- 30 f) the sub- licensee to hold public liability insurance cover for a minimum value of \$20million,
- g) the sub- licensee to handle all horse in a public area in a safe manner,
- h) the sub- licensee not to exceed the number of horses permitted by the Cape Byron Marine Park Permit in any guided horse tour, and

# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

13.1

- i) **the sub-licensee must comply with recommendations in the Report to the General Manager dated 24 October 2023, subject 'Monitoring Report of Access track at North Beach under temporary sub-licence (under RI564194) -13 and 23 October 2023.**

### 5 **Attachments:**

- 1 Monitoring Report October 2023: Zephyr Equine Pty Ltd sub-licence beach access erosion monitoring. (Attachment 1)., E2023/107313 

10

## Report

Council resolved (**22-529**) at its 29 September 2022 meeting:

5 *That Council authorises the General Manager, under delegation, to grant a sub-licence to Zephyr Equine Pty Ltd (A.C.N. 638 961 850) for a term of 12 -months for the purpose of access through Lot 407 DP 729057 being Crown Reserve R755695 on condition that Zephyr Equine Pty Ltd must:*

- 10 a) *hold a current permit with Cape Byron Marine Park for the term of the sub-licence, and*
- b) *take all steps necessary to ensure that all horse droppings are removed from the sub-licenced area during and at the end of each access session, and*
- c) *access Lot 407 DP 729057 via the Sub-Licensor approved access track as an essential clause of the sub-licence, and*
- d) *hold valid public liability insurance cover for a minimum value of \$20million, and*
- e) *handle all horse in a public area in a safe manner, and*
- 15 f) *not exceed the number of horses permitted by the Cape Byron Marine Park Permit in any guided horse tour.*

Zephyr requests a new twelve-month sub-licence for access through Lot 407 DP729057 located at the northern end of Belongil Beach, to conduct guided horse tours on a commercial basis below the mean high tide on Tyagarah Beach.

20 The renewed sub-licence will commence on 2 January 2024.

### **Authority to sub-licence:**

Council holds Crown licence RI 564194 for the purpose of low impact commercial recreational activities on Lot 407 DP729057.

25 Native Title Holders rights and interests in Lot 407 DP729057 were considered by the Department of Planning and Environment - Crown lands prior to grant of the licence RI 564194 to Council.

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

**Inspection of access track**

5 The proposed sub-licence licence is for access through Lot 407 DP729057 via an existing access track. The access track passes over a large dune and through dune vegetation of grasses, banksia, and casuarinas to the ocean. The track goes up a slow incline on the landward side and then down a sand track on the seaward side. Zephyr Equine Pty Ltd undertook stabilisation repairs to the access track in 2017 to both the satisfaction of Council and Crown Lands.

10 Council recently inspected the access track with a report to the General Manager dated 24 October 2023, being prepared ('Monitoring Report of Access track at North Beach under temporary sub-licence (under RI564194) -13 and 23 October 2023) (Attachment 1). The report recommends that the sub-licensee comply with recommendations in this report to:

1. provide information to Council regarding maintenance and replacement of sandbags undertaken on the track – works/materials and dates.
  2. remove all failed sandbags from the site and waste.
  - 15 3. consider construction of pine timber logs steps on the seaward track to stabilise.
  4. notify Council for authorisation of any proposed works including replacement or addition of sandbags. Staff will subsequently advise if the works are necessary depending on conditions at the site.
- 20 Council will continue to monitor the condition of the access track on a regular basis, and should the Licensee not adhere to all conditions of the Sub-Licence, then Council terminate the Licence.

**Proposed sub-licence:**

25 Council is proposing to grant a sub-licence in accordance with head licence RI 564194 to Zephyr on the following conditions:

1. term of 12-months,
2. rent to be set by Councils Fees and Charges,
3. access through Lot 407 DP 729057 being Crown Reserve R755695,
- 30 4. the sub-licensee to hold a concurrent permit with Cape Byron Marine Park for the term of the sub-licence,
5. the sub-licensee must take all steps necessary to ensure that all horse droppings are removed from the sub-licenced area during and at the end of each access session,
6. the sub-licensee to hold public liability insurance cover for a minimum value of \$20million,
- 35 7. the sub-licensee to handle all horse in a public area in a safe manner,
8. the sub-licensee not to exceed the number of horses permitted by the Cape Byron Marine Park Permit in any guided horse tour, and
9. the sub-licensee must comply with recommendations in the Report to the General Manager dated 24 October 2023, subject 'Monitoring Report of Access track at North
- 40 Beach under temporary sub-licence (under RI564194) -13 and 23 October 2023

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.6	Meet Crown Lands reporting and funding requirements

### Recent Resolutions

- Resolutions (18-443), (19-224), (19-612), (20-696), (21-512), and (22-529).

## 5 Legal/Statutory/Policy Considerations

### Zone No 7 (f1) (Coastal Land Zone)

#### 1. Objectives of zone

*The objectives of the zone are:*

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

#### 2. Without development consent

*Nil.*

#### 3. Only with development consent

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

**4. Temporary use of certain land**

5 *Despite any provision of this plan, a person may, without the consent of the Council, carry out development on land for any purpose (not being designated development) within Zone No 6 (a) or 7 (f1) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if:*

(a) *such land is vested in the Crown, a Minister of the Crown, or the Council, and*

(b) *the development does not involve the erection of permanent structures ancillary to the use of that land.*

10 *Despite any other provision of this plan, a person may, but only with the consent of the Council, carry out development on the following land for any purpose (not being designated development) for a maximum period of 7 days on any one occasion up to a maximum of 60 days in a calendar year if the development does not involve the erection of permanent structures ancillary to the use of that land:*

15 *Lot 1, DP 201626 and Lot 2, DP 542178, Ewingsdale Road, Ewingsdale  
Lot 358, DP 704247, Bangalow Road, Byron Bay.*

**Financial Considerations**

Rent payable under sub-licence must be set by Councils' adopted fees and charges.

20 Rent is currently set at \$1,862 (inc. GST) per annum.

**Consultation and Engagement**

No requirements to consult or engage the public regarding the proposed new sub-licences.



**Report No. 13.2 Lease for treehouse artwork on Massinger Street Byron Bay**

**Directorate:** General Manager

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

5 **File No:** I2023/1641

**Summary:**

The leaseholder holds a 12-month lease that will end on 16 December 2023 over the road reserve adjoining 77 Massinger Street Byron Bay for a treehouse artwork.

10 One eucalyptus species tree central to the structural integrity of the treehouse has now died.


This report recommends that no future lease is offered for the treehouse.

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15 **RECOMMENDATION:**

1. **That Council does not offer a future lease in accordance with s153(1) of the Roads Act 1993 over the treehouse artwork on the public road reserve adjoining 77 Massinger Street Byron Bay.**
  2. **That Council directs the leaseholder to remove from the treehouse artwork from the road reserve (adjoining 77 Massinger Street Byron Bay) on or before 16 December 2023.**
- 20

**Attachments:**

- 25
- 1 Confidential - Executed lease children's treehouse artwork, E2023/7742
  - 2 Photograph depicting dead tree and building waste, E2023/113199 

## Report

Since 2018 the leaseholder has held multiple 12-month leases over the road reserve adjoining 77 Massinger Street Byron Bay for the purpose of a treehouse artwork. The leaseholder is identified in the copy of the current lease (Confidential Attachment 1).

- 5 The current lease held by the leaseholder for the treehouse artwork will expire on 16 December 2023. The current lease was granted in accordance with Council resolution (**22-695/2**):
2. *That Council delegates the General Manager authority to enter into a lease with (the leaseholder) over an unused section of Massinger Street adjoining the property at 77*  
10 *Massinger Street, Byron Bay in accordance with Resolution (22-546).*

Resolution (**22-546**) provided that the lease terms were:

- i) *term of twelve months with no holding over,*
- ii) *annual rent of \$1 (excluding GST),*
- iii) *purpose of a Children's Treehouse Artwork, and*
- 15 iv) *public liability cover to a minimum of \$20 million noting Byron Shire Council as an interested party.*
- v) *not preclude public traversal through the road reserve*

The treehouse artwork is suspended between two eucalyptus species trees immediately below the tree canopy. A recent Council inspection of the treehouse artwork identified that:

- 20 1. the eucalyptus species tree central to the structural integrity of the treehouse artwork had died with the second tree appearing to be healthy, and
2. building waste was found stored at the base of both trees on the road reserve, and
3. the site of the building waste likely contributed to the death of the eucalyptus species tree.

25 See photograph attachment 2.

### **Health of eucalyptus species trees supporting treehouse artwork:**

By Resolution (**18-271**) item 1(b) and (c) the leaseholder is required to provide Council, prior to the granting of a new lease, evidence of:

- 1. an engineering certificate attesting to the structural integrity of the structure, and
- 30 2. an arborist report attesting to the health of the trees where the structure is located.

Terms of the resulting lease required the leaseholder to maintain the treehouse and both eucalyptus species trees in accordance with the arborists report.

Both eucalyptus species trees were last assessed on 21 July 2022 by a qualified certificate V arborist as being in good health. Remedial pruning and root plate injections to improve tree health were carried out at that time.

The arborist also recommended:

- 5 1. routine mulching under both trees with organic mulch such leaf and chipped wood material from a tree contractor,
2. the regular loosening of chains wrapped around the trees to allow for trunk expansion,
- 10 3. nuts attached to the threaded rod should be loosened and joists will need to be moved away from the trunk to allow for trunk expansion to prevent snapping of joists, and
4. floorboards and roof should be cut to allow a gap of approximately 25mm or more to allow for trunk expansion.

15 The leaseholder failed to maintain the health of both eucalyptus species trees in accordance with the lease by not following arborists recommendations designed to ensure the health and longevity of both trees.

20 The leaseholder was further advised by Council in September 2019 that the area of road reserve around and under both eucalyptus species trees was to remain free for public use and that no additional plantings or other obstructions designed to hinder public access would be permitted. As a result, the leaseholder should have removed building waste from the base of the trees or notify Council that building waste had been dumped under the trees.

### **Private structures on public roads:**

25 In response to Council's obligation under the *Roads Act 1993* (NSW), Council supports only minimal use of public roads for private encroachments that are limited to driveway access.

30 Limiting private encroachment on public roads serves to mitigate Council's liability for private encroachments that fall into disrepair requiring Council to fund repairs or remove the offending structure. Council holds the opinion that a public road is used by the public and not available for leasing in accordance with s153(1) of the *Roads Act 1993*.

Although Council has previously supported leases over the road reserve adjoining 77 Massinger Street Byron Bay for the treehouse artwork, a lease for this purpose is no longer supported by Council Staff.

35 This report recommends that Council not offer any future lease to for a treehouse artwork on the public road adjacent to 77 Massinger Street Byron Bay in accordance with s153(1) of the *Roads Act 1993*.

The building waste on the road reserve abutting the treehouse artwork has been referred to the Community Enforcement team for action.

If Council resolves not to offer a further lease the removal of the treehouse artwork will also be referred to the Community Enforcement team for action.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

- 5 There are no activities in the Operational Plan that support the provision of this lease.

### Recent Resolutions

- Resolution (18-271), (19-224), (19-423), (22-546), and (22-695).

### Legal/Statutory/Policy Considerations

#### *Roads Act 1993 (NSW)*

10 **153 Short-term leases of unused public roads**

(1) *A roads authority may lease land comprising a public road (other than a Crown road) to the owner or lessee of land adjoining the public road if, in its opinion, the road is not being used by the public.*

15 (2) *However, a lease may not be granted under this Division with respect to land that has been acquired by RMS under Division 3 of Part 12 (being land that forms part of a classified road) except by RMS.*

(3) *A lease granted under this Division may be terminated by the roads authority at any time and for any reason.*

#### **154 Public notice to be given of proposed lease**

20 (1) *Before granting a lease under this Division, the roads authority must cause notice of the proposed lease:*

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

(b) *to be served on the owner of each parcel of land adjoining the length of public road concerned.*

25 (2) *The notice:*

(a) *must identify the public road concerned, and*

(b) *must state that any person is entitled to make submissions to the roads authority with respect to the proposed lease, and*

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

**156 Decision on proposed lease**

(1) *After considering any submissions that have been duly made with respect to the proposed lease, the roads authority may grant the lease, either with or without alteration, or may refuse to grant the lease.*

5 (2) *If the roads authority grants a lease, the roads authority must cause notice of that fact to be published in a local newspaper.*

**157 Special provisions with respect to short-term leases**

(1) *The term of a lease, together with any option to renew, must not exceed:*

(a) *except as provided by paragraph (b), 5 years, or*

10 (b) *in the case of a lease of land that has been acquired by the roads authority under Division 3 of Part 12, 10 years.*

(2) *A person must not erect any structure on land the subject of a lease under this Division otherwise than in accordance with the consent of the roads authority.*

*Maximum penalty: 10 penalty units.*

15 (3) *Such a consent may not be given unless the roads authority is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can easily be demolished or removed.*

**Financial Considerations**

Nil.

20 **Consultation and Engagement**

Nil.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 13.3 Meeting Schedule 2024 - Council Meetings, Committee Meetings, and Councillor Workshops**

5

**Directorate:** Corporate and Community Services  
**Report Author:** Jessica Cutter, Governance Support Officer  
**File No:** I2023/1073

**Summary:**

- 10 This report seeks to determine the schedule of Ordinary and Planning Council Meetings, as well as Councillor Workshops for the 2024 calendar year. A proposed schedule of dates and times for the 2024 meetings is attached (Attachment 1) and recommended for adoption. Following Council endorsement, the meeting schedule will be publicly available to view on Council’s website.
- 15 The schedule has been prepared with consideration of the 14 September 2024 Local Government Election and associated Caretaker period. Committee meetings after September 2024 have not been included as these are subject to change post-Election.

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**RECOMMENDATION:**

1. That Council endorses the meeting frequency and cycle to generally follow the monthly pattern of:
- 25      1st Thursday – Councillor Workshop & Planning Review Committee  
         2nd Thursday - Planning Meeting  
         3rd Tuesday – Committee meetings  
         3rd Thursday - Committee meetings  
         4th Thursday - Ordinary Meeting  
30      5th Thursday (where applicable) – Committee meetings or Councillor Workshop
2. That Council supports a recess from mid-August to the end of September where no meetings are scheduled, to account for the 14 September 2024 Local Government Election and associated Caretaker period.

35

# BYRON SHIRE COUNCIL

3. That Council adopts the 2024 Meeting Schedule (Attachment 1, E2023/111478) with Ordinary and Planning Council Meetings to be held on the following dates:

Date	Meeting
8-Feb-24	Planning
22-Feb-24	Ordinary
14-Mar-24	Planning
28-Mar-24	Ordinary
11-Apr-24	Planning
18-Apr-24	Ordinary
09-May-24	Planning
23-May-24	Ordinary
13-Jun-24	Planning
27-Jun-24	Ordinary
11-Jul-24	Planning
25-Jul-24	Ordinary
15-Aug-24	Ordinary
14-Sep-24	ELECTION
10-Oct-24	Extraordinary
24-Oct-24	Ordinary
14-Nov-24	Planning
28-Nov-24	Ordinary
5-Dec-24	Planning
12-Dec-24	Ordinary

4. That Ordinary Council Meetings commence at 9.00am, and Planning Council Meetings commence at 11.00am.

5. That Ordinary and Planning Council Meetings are held in the Council Chambers.

## Attachments:

- 1 Council Meeting Matrix 2024, E2023/111478 

10

## Report

The proposed meeting schedule is based on the current structure of Ordinary and Planning Council Meetings, Councillor Workshops, and Committee meetings.

Council meetings are generally held each Thursday, and Committee meetings on Tuesdays and Thursdays. Meetings following an general monthly pattern of:

- 1st Thursday – Councillor Workshop and Planning Review Committee
- 5 • 2nd Thursday - Planning Meeting
- 3rd Tuesday – Committee Meeting
- 3rd Thursday - Committee meetings
- 4th Thursday - Ordinary Meeting
- 10 • 5th Thursday (where applicable) – Committee meetings or Councillor Workshop

It is recommended that Ordinary Meetings commence at 9.00am. while Planning Meetings commence at 11.00am, to allow time for site inspections to be scheduled from 9.00am on the same day.

15 **Other considerations**

The meeting schedule deviates from the usual pattern to account for the 14 September 2024 Local Government Election. The Caretaker period, defined by the *Local Government Regulation 2021* as the period of 4 weeks preceding the date of an ordinary election, commences on 17 August. An adjustment to the regular recess timing has therefore been suggested to avoid meetings being held during this period and to allow for meetings to be held during the normal July recess period.

A margin following election day will also allow time for postal votes to close and the progressive declaration of results, which is expected to conclude on 3 October 2024, as outlined in the [key dates for the NSW Local Government Elections](#). The schedule for October includes provisioning for Councillor Induction and an Extraordinary Meeting of Council to enable the newly elected Council to take the oath or affirmation.

Meetings of Advisory Committees following the September 2024 election have not been included in the schedule as the newly elected Council will consider the establishment of Advisory Committees following the election, after which a suitable schedule will be prepared. The exception to this is the Audit Risk and Improvement Committee (ARIC) and the Local Traffic Committee (LTC) given they are prescribed committees that will continue to meet on a fixed basis.

Events such as public holidays and conferences have also been considered, including ANZAC day which falls on the usual Ordinary Meeting Thursday in April 2024. The April Ordinary Meeting has been brought forward by one week, to 18 April 2024. Council may wish to consider combining the 11 April Planning Meeting and 18 April Ordinary Meeting.

Dates are yet to be announced for the following key events:

- 2024 National General Assembly of Local Government
- Local Government NSW (LGNSW) Annual Conference

40



# BYRON SHIRE COUNCIL

## Alternate schedule

Should Council prefer to maintain the usual pattern of meetings and retain the July Recess, an alternate schedule has been prepared. To accommodate the July recess this version of the schedule includes Council meetings during the Caretaker period (17 August 2024-13 September 2024).

The table below outlines the alternate schedule of Ordinary and Planning Council Meetings.

Date	Meeting
8-Feb-24	Planning
22-Feb-24	Ordinary
14-Mar-24	Planning
28-Mar-24	Ordinary
11-Apr-24	Planning
18-Apr-24	Ordinary
09-May-24	Planning
23-May-24	Ordinary
13-Jun-24	Planning
27-Jun-24	Ordinary
<b>July Recess</b>	
08-Aug-24	Planning
22-Aug-24	Ordinary (Caretaker)
12-Sept-24	Planning (Caretaker)
14-Sep-24	ELECTION
10-Oct-24	Extraordinary
24-Oct-24	Ordinary
14-Nov-24	Planning
28-Nov-24	Ordinary
5-Dec-24	Planning
12-Dec-24	Ordinary

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.4	Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring

### Legal/Statutory/Policy Considerations

5 Clause 3.2 of Council’s *Code of Meeting Practice* states that “*The council shall, by resolution, set the frequency, time, date and place of its Ordinary meetings.*”

The setting of the 2024 meeting schedule complies with Council’s obligations under the various sections of the *Local Government Act 1993* that apply to meeting dates, namely:

- [Section 9](#) notes that a council must give notice to the public of the times and places of its meetings.
- 10 • [Section 365](#) notes that Council is required to meet at least 10 times each year, each in a different month.
- [Section 367](#) outlines the required notice period of business papers for Councillors.

15 Caretaker period provisions are outlined in the *Local Government Regulations 2021* [Section 393B](#) which outlines the functions of a council that must not be exercised by the council, or the general manager or any other delegate of the council during a caretaker period, summarised below:

- (a) entering a contract or expenditure greater than 1% of Council’s revenue from rates
- (b) determining a controversial development application
- 20 (c) the appointment or reappointment of a person as the council’s general manager (or the removal of a person from that position)

### Financial Considerations

There are no financial implications with this meeting schedule.

### Consultation and Engagement

25 Public notice of the 2024 meeting schedule will be given on Council’s website.

**Report No. 13.4 Delegation to the General Manager - Tender Submissions**

**Directorate:** Corporate and Community Services

**Report Author:** Mila Jones, Governance and Internal Audit Coordinator

5 **File No:** I2023/1561

**Summary:**

Due to a review of recent amendments to section 178 of the *Local Government (General) Regulation 2021*, this report proposes a minor update to the General Manager's delegation relating to tender submissions.

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**RECOMMENDATION:**

15 **That Council endorses an amendment to the General Manager's delegation DEG002a to include the decline of tenders so that it reads as follows:**

***DEG002a - Acceptance or decline of tenders other than to provide services currently provided by members of staff of the council (s377(1)i of LGA)***

*Acceptance or declinature of tenders is limited to:*

- 20
- a) *Capital works specifically itemised in a budget approved by Council (as long as the tendered amount falls within the approved budget); or*
  - b) *Renewal of existing contracts; or*
  - c) *Tenders less than \$500,000 (ex GST) in value; and*
  - d) *Compliance with LG Regulation*

25

**Report**

Due to recent review of amendments made to s178 of the *Local Government (General) Regulation 2021* (Regulation) where s178(3) removed the requirement for a council resolution to decline tender submissions (except for s178(3)(e)), it has come to the attention of staff that the General Manager’s delegation is silent on declining tender submissions. There is no legislative requirement for such a delegation to the General Manager, however it can be a policy matter for Council whether to provide such a delegation.

This report does not intend to revoke the General Manager’s current instrument of delegations, it only proposes to update the wording of the existing tender delegation to provide clarity on this matter. Amendments are as shown in yellow highlighted and strikethrough text below.

***DEG002a - Acceptance or decline of tenders other than to provide services currently provided by members of staff of the council (s377(1)i of LGA)***

Acceptance or declinature of tenders is limited to:

- a) Capital works specifically itemised in a budget approved by Council (as long as the tendered amount falls within the approved budget); or
- b) Renewal of existing contracts; or
- c) ~~Contracts~~ tenders less than \$500,000 (ex GST) in value; and
- d) compliance with LG Regulation

**Strategic Considerations**

**Community Strategic Plan and Operational Plan**

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.2	Maintain, publish and report on relevant registers including delegations, Councillors and designated staff disclosures of interests, Councillor and staff gifts and benefits, and staff secondary employment

**Recent Resolutions**

Not applicable

**Legal/Statutory/Policy Considerations**

[Section 178\(3\) of the \*Local Government \(General\) Regulation 2021\*](#)

[Section 377 of the \*Local Government Act 1993\*](#)

**Financial Considerations**

- 5 There are no financial considerations related to amending the wording of the delegation.

**Consultation and Engagement**

Consultation was held with the Executive Team on 30 August 2023.

**Report No. 13.5 Submission to Local Government Remuneration Tribunal - Mayor and Councillor Remuneration - 2024/25 Fees**

**Directorate:** Corporate and Community Services

5 **Report Author:** Heather Sills, Manager Corporate Services

**File No:** I2023/1653

**Summary:**

10 This report seeks Council endorsement to provide a submission to the Local Government Remuneration Tribunal (the Tribunal) on the fees payable to Mayors and Councillors in 2024/25.

It is proposed that Council make a submission to the Tribunal seeking:

- the maximum allowable increase to the fees payable
- recognition of Deputy Mayors as a distinct category within the local government remuneration framework




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**RECOMMENDATION:**

20 **That Council endorses the submission to the Local Government Remuneration Tribunal on the fees payable to Mayors and Councillors in 2024/25 as provided in Attachment 3 (E2023/111132).**

**Attachments:**

- 25 1 Local Government Remuneration Tribunal - 2024 Annual Review - Invitation Letter to Councils seeking submissions, E2023/111130 
- 2 Local Government Remuneration Tribunal - 2023 Annual Determination Mayor and Councillor Remuneration, E2023/111131 
- 30 3 Submission to Local Government Remuneration Tribunal - Mayor and Councillor Remuneration and Categories - 2024/25 Fees, E2023/111132 

**Report**

Pursuant to s241 of the *Local Government Act 1993* (LG Act), the Tribunal is required to make an annual determination, by no later than 1 May 2023, on the fees payable to Councillors and Mayors to take effect from 1 July 2024.

- 5 The Tribunal is responsible for the review of the minimum and maximum fee levels for each category. The Tribunal has commenced its review for the 2024 annual determination and has written to councils seeking submissions (Attachment 1). Submissions should be received no later than 21 December 2023.

- 10 In 2023 the Tribunal undertook a review of the categories and the allocation of councils into each of the categories as required under the LG Act. The Tribunal is only required to determine categories at least once every three years and will next consider the model, the criteria applicable to each category and the allocation of councils in detail in the 2026 review.

- 15 Byron Shire Council was reclassified to Regional Centre, as a result of the submission it made to the 2023 review. A copy of the Tribunal’s 2023 Annual Determination can be found [here](#) (Attachment 2).

It is proposed that Council make a submission to the Tribunal seeking the maximum allowable increase to the fees payable (4%) and for recognition of Deputy Mayors as a distinct category within the local government remuneration framework.

- 20 It is expected that submissions are endorsed by their respective council. The proposed submission is provided in Attachment 3.

**Strategic Considerations**

**Community Strategic Plan and Operational Plan**

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.3	Provide administrative support to Councillors to carry out their civic duties

**Legal/Statutory/Policy Considerations**

- 25 [s241 of the Local Government Act 1993](#)

**Financial Considerations**

Council will have a further opportunity determine their fees from within the range set by the Tribunal, prior to finalisation of the 2024/25 budget.

**Consultation and Engagement**

- 5 Not applicable.



**Report No. 13.6      Presentation of 2022-2023 Financial Statements**

**Directorate:** Corporate and Community Services

**Report Author:** James Brickley, Manager Finance

5 **File No:** I2023/1664

**Summary:**

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

15 The Financial Statements for the financial year ended 30 June 2023 were reported to the Ordinary Meeting on 26 October 2023, where Council adopted the 2022-2023 Financial Statements through Resolution **23-469**. This same Resolution resolved to present the 2021-2022 Financial Statements and Auditor's Reports to the public at this Ordinary Meeting of Council.

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

25 Mr Adam Bradfield, from Thomas Noble and Russell is expected to make a presentation to Council at the Public Access session as part of this Ordinary Meeting of Council on the 2022-2023 Financial Statements on behalf of the Audit Office of NSW.

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**RECOMMENDATION:**

30 **That the Audited Financial Statements and Auditors Report for the 2022-2023 financial year be presented to the public in accordance with Section 419(1) of the Local Government Act 1993.**

## Report

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

At the Ordinary Meeting of Council on 26 October 2023, Council resolved:

### Resolution 23-469:

- 10 1. *That Council adopts the Draft 2022/2023 Financial Statements incorporating the General Purpose Financial Statements (#E2023/106411) and Special Purpose Financial Statements (#E2023/106410).*
- 15 2. *That Council approves the signing of the "Statement by Councillors and Management" in accordance with Section 413(2)(c) of the Local Government Act 1993 and Section 215 of the Local Government (General) Regulation 2021 in relation to the 2022/2023 Draft Financial Statements.*
- 20 3. *That the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 23 November 2023 in accordance with Section 418(1) of the Local Government Act 1993.*

In accordance with Council's Resolution above, this report is provided to present the 2022-2023 Financial Statements and Auditor's Reports to the public.

25 Council's published 2022-2023 Financial Statements can be found at the following link:

[Our progress - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/our-progress)

30 Mr Adam Bradfield, from Thomas Noble and Russell is expected to make a presentation to Council at the Public Access session as part of this Ordinary Meeting of Council on the 2022-2023 Financial Statements on behalf of the Audit Office of NSW.

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

40 The Financial Statements and Auditor's Reports have been placed on public exhibition and advertised in accordance with Section 418(1) of the *Local Government Act 1993* with a closing date for submissions of 1 December 2023. Should any submissions be received they are required to be forwarded to Council's Auditor and will be advised to Councillors via memo.

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

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.3	Provide completion of Council's statutory annual financial statements for 2022/2023.

5

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

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

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

20

### **Financial Considerations**

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

25

### **Consultation and Engagement**

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

35

**Report No. 13.7 Council Resolutions Quarterly Review - Q1 -  
1 July to 30 September 2023**

**Directorate:** Corporate and Community Services

5 **Report Author:** Amber Evans Crane, Corporate Planning and Improvement  
Coordinator

**File No:** I2023/1666

**Summary:**

This report provides an update on the status of Council resolutions as at 30 September 2023.

10 43 resolutions were completed during the period 1 July to 30 September 2022.

89 resolutions remain active.



**RECOMMENDATION:**

15 **That Council:**

1. **Notes the information provided in this report on active Council Resolutions in Attachment 1 (#E2023/103371).**
2. **Notes the completed Resolutions in Attachment 2 (#E2023/103361).**

**Attachments:**

20

- 1 Active Resolutions - as at 30 September 2023, E2023/103371 
- 2 Completed resolutions - as at 30 September 2023, E2023/103361 

25

**Report**

Each quarter, Council is updated on the status of Council resolutions; identifying those resolutions completed within the reporting period, those proposed to be closed, and those resolutions that remain 'Active'.

**5 Quarterly Report – 1 July to 30 September 2022**

**Active Resolutions**

10 The *Active Resolutions Report* (E2023/103371) provides an update to Council on all active resolutions up to 30 September 2023, with relevant commentary regarding the status of each resolution as at this date. There were 89 active resolutions at the time of preparing this report.

37 of the active resolutions were overdue by more than 60 days at the time the report was prepared. Resolutions could be overdue due to budget constraints, staff resourcing, extended negotiations with stakeholders, or other reasons.

**Completed Resolutions**

15 The *Completed Resolutions Report* (#E2023/103361) provides details of those resolutions that were completed during the period 1 July to 30 September 2023. 43 resolutions were completed during this period.

**Resolutions for closure**

There were no actions identified as needing to be 'closed with no action.'

**20 Strategic Considerations**

**Community Strategic Plan and Operational Plan**

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties	1.1.2.4	Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring

**Recent Resolutions**

This report has been prepared in accordance with requirements prescribed by Council resolution **20-513**.

**Legal/Statutory/Policy Considerations**

- 5 Implementation of Council Resolutions in accordance with the *Local Government Act 1993*.

**Financial Considerations**

A number of resolutions note that resource constraints limit completion of action required.

**Consultation and Engagement**

- 10 Not applicable.

**Report No. 13.8 2023/24 Operational Plan Report - Q1 - September 2023**

**Directorate:** Corporate and Community Services

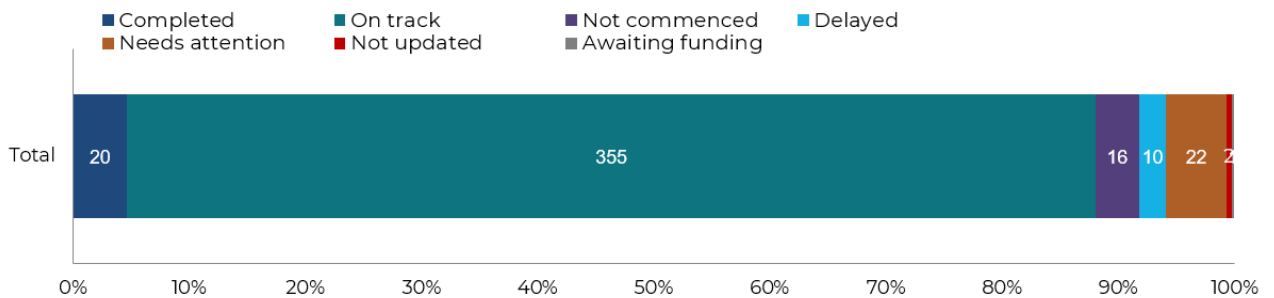
**Report Author:** Amber Evans Crane, Corporate Planning and Improvement Coordinator

**File No:** I2023/1675

**Summary:**

Council’s Operational Plan outlines its projects and activities to achieve the commitments in its four-year Delivery Program. In accordance with the *Local Government Act 1993* progress reports must be provided at least every six months.

This report represents the progress toward the activities in the 2023/24 Operational Plan at the end of the first quarter, being 30 September 2023. A summary of the status is provided in the graph below:



15

**RECOMMENDATION:**



1. That Council notes the 2023/24 Operational Plan Quarter 1 Report for the period ending 30 September 2023 (Attachment 1 #E2023/113915).
2. That Council adopts the proposed amendments to the Operational Plan 2023/24 outlined in Attachment 2 (#E2023/84864).

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

### **Attachments:**

- 1 Operational Plan 2023/24 - Quarterly Report - Q1 - 1 July to 30 September 2023, E2023/113915 
- 5 2 Quarter 1 Report - Q1 - Proposed Amendments to Operational Plan 2023/24, E2023/84864 



## Report

5 The Delivery Program and Operational Plan are two key corporate documents that establish Council's goals and priorities for the term of the Council and the current financial year. The Delivery Program is supported by the annual Operational Plan, which identifies the individual projects and activities that will be undertaken for the year to achieve the commitments made in the Delivery Program.

The General Manager is required to provide six monthly progress reports to the Council on the progress toward the delivery program, in accordance with the *Local Government Act 1993* s404 which states:

10 *"The general manager must ensure that regular progress reports are provided to the council reporting as to its **progress with respect to the principal activities detailed in its delivery program**. Progress reports must be provided at least **every six months**"*

15 While the requirement is six monthly reporting, the Council is provided with a Quarterly Report on the activities in the Operational Plan, to promote effective and efficient reporting and decision making.

## Strategic Objectives

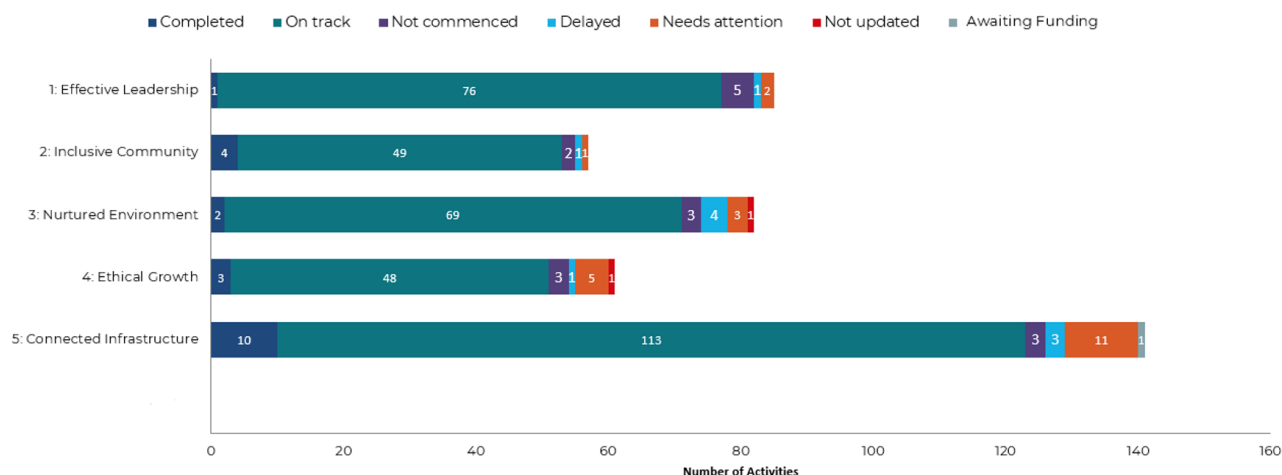
20 The report (#E2023/113915) is structured by the five Community Objectives in the Byron Shire Community Strategic Plan:

- Effective Leadership: We have effective decision making and community leadership that is open and informed
- 25 • Inclusive Community: We have an inclusive and active community where diversity is embraced and everyone is valued
- Nurtured Environment: We nurture and enhance the natural environment
- 30 • Ethical Growth: We manage growth and change responsibly
- Connected Infrastructure: We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable

35

40

### Q1 Status by Community Objective:



### Report Details

- 5 The report details Council's progress toward the activities in the 2023/24 Operational Plan. It includes a status update on progress and commentary on the activities undertaken during the reporting period.

Each section notes the progress against the activities including:

- Activity
- Measure
- Timeframe
- Comments
- Status:
  - ✓ **Completed:** the activity has been completed in accordance with the prescribed measures
  - ▶ **On Track:** progressing and on track, in accordance with the timeframe, measures, and budget
  - ⊗ **Needs Attention:** indicates that the scope of the activity may need to be reviewed in line with constraints such as timeframe/budget
  - || **Delayed** - progressing but not currently on track with the timeframe, measures, or budget
  - **Not Commenced** – not yet commenced or due to commence

As at 30 September 2023 there are:

- 20 activities completed
- 365 activities on track
- 16 activities not commenced
- 10 activities delayed
- 22 activities need attention
- 2 activities not updated
- 1 activity awaiting funding

**Proposed Amendments**

This is the first quarterly report of the 2023/24 Operational Plan. A number of required amendments have been identified and 19 new activities proposed. These are provided in Attachment 2 (E2023/84864) for Council’s endorsement.

**5 Strategic Considerations**

**Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.1: Leadership - Enhance leadership effectiveness, capacity, and ethical behaviour

**Legal/Statutory/Policy Considerations**

10 The General Manager is required under Section 404 (5) of the *Local Government Act 1993* to provide regular progress reports as to the Council’s progress with respect to the principal activities detailed in the Delivery Program/Operational Plan. Progress reports must be provided at least every six months.

**Financial Considerations**

Council’s financial performance for the reporting period is addressed in the Quarterly Budget Review, which is subject to a separate report included in this business paper.

**15 Consultation and Engagement**

The progress reports on the Operational Plan and Delivery Program are published on Council’s website as a way of ensuring transparency around how Council is progressing activities and actions.

**Report No. 13.9      Budget Review - 1 July 2023 to 30  
September 2023**

**Directorate:** Corporate and Community Services

**Report Author:** James Brickley, Manager Finance

5 **File No:** I2023/1718

**Summary:**

10 This report has been prepared to comply with Section 203 of the *Local Government (General) Regulation 2021* and to inform Council and the community of Council's estimated financial position for the 2023/2024 financial year, reviewed as at 30 September 2023.

This report contains an overview of the proposed budget variations for the General Fund, Water Fund and Sewerage Fund. The specific details of these proposed variations are included in Attachment 1 and 2 for Council's consideration and authorisation.

15 Attachment 3 contains the Integrated Planning and Reporting Framework (IP&R) Quarterly Budget Review Statement (QBRS) as outlined by the Office of Local Government in circular 10-32.

This report was considered by the Finance Advisory Committee at its Meeting held on 16 November 2023.

20

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**RECOMMENDATION:**




- 25 **1. That Council authorises the itemised budget variations as shown in Attachment 2 (#E2023/115792) which include the following results in the 30 September 2023 Quarterly Review of the 2023/2024 Budget:**
- a) **General Fund – \$0 movement to the Estimated Unrestricted Cash Result**
  - b) **General Fund - \$1,701,000 decrease in reserves**
  - c) **Water Fund - \$1,083,200 increase in reserves**
  - d) **Sewerage Fund - \$473,300 decrease in reserves**
- 30 **2. That Council adopts the revised General Fund Estimated Unrestricted Cash Deficit of \$250,000 for the 2023/2024 financial year as at 30 September 2023.**

**Attachments:**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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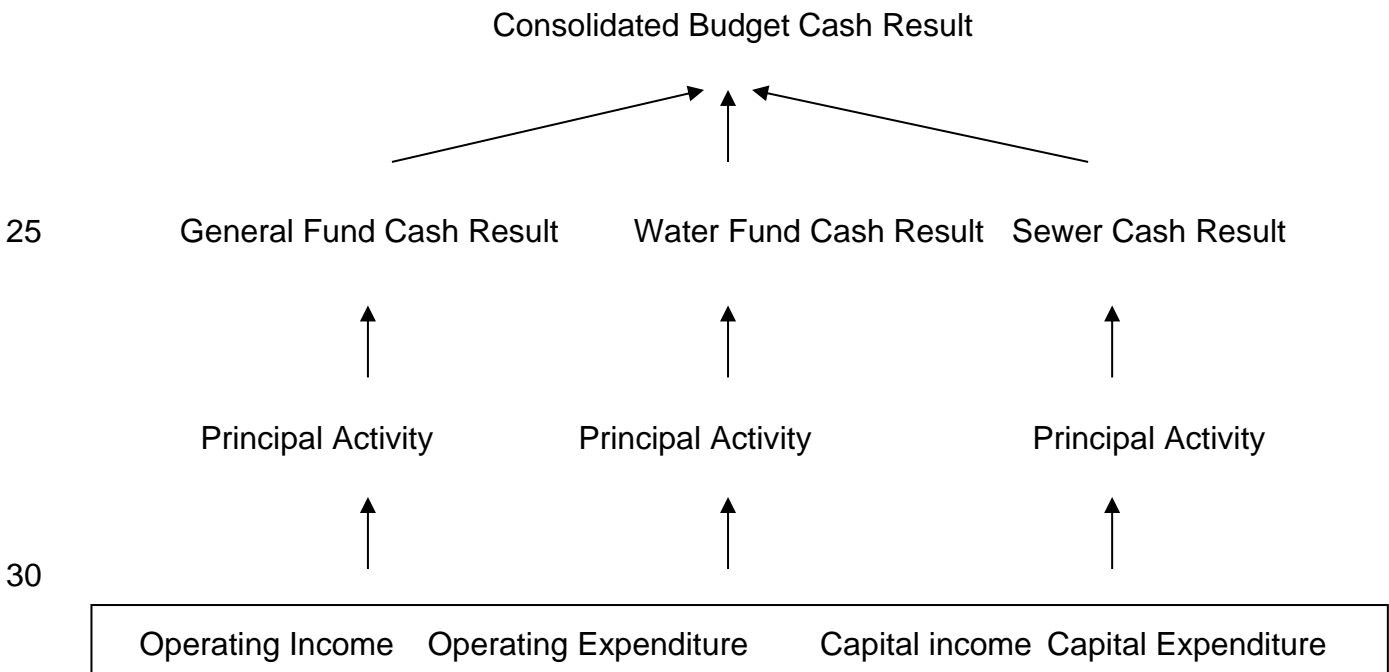
- 1 Budget Variations for General, Water and Sewerage Funds, E2023/115791 
- 2 Itemised Listing of Budget Variations for General, Water and Sewerage Funds, E2023/115792 
- 3 Integrated Planning and Reporting Framework (IP&R) required Quarterly Review Statements, E2023/115794 

### Report

Council adopted the 2023/2024 budget on 22 June 2023 via Resolution **23-280**. Council also considered and adopted the budget carryovers from the 2022/2023 financial year, to be incorporated into the 2023/2024 budget at its Ordinary Meeting held on 24 August 2023 via Resolution **23-414**. Since that date, Council has reviewed the budget taking into consideration the unaudited 2022/2023 Financial Statement results and progress through the first quarter of the 2023/2024 financial year. This report considers the September 2023 Quarter Budget Review.

The details of the budget review for the Consolidated, General, Water and Sewer Funds are included in Attachment 1, with an itemised listing in Attachment 2. This aims to show the consolidated budget position of Council, as well as a breakdown by Fund and Principal Activity. The document in Attachment 1 is also effectively a publication outlining a review of the budget and is intended to provide Councillors with more detailed information to assist with decision making regarding Council's finances.

Contained in the document at Attachment 1 is the following reporting hierarchy:



The pages within Attachment 1 are presented (from left to right) by showing the original budget as adopted by Council on 30 June 2023 plus the adopted carryover budgets from

2022/2023 followed by the resolutions between July and September and the revote (or adjustment for this review) and then the revised position projected for 30 June 2024 as at 30 September 2023.

5 On the far right of the Principal Activity, there is a column titled "Note". If this is populated by a number, it indicates there has been an adjustment in the quarterly review. This number then corresponds to the notes at the end of the Attachment 1 which provides an explanation of the variation.

There is also information detailing restricted assets (reserves) to show Council's estimated balances as at 30 June 2024 for all Council's reserves.

10 A summary of Capital Works is also included by Fund and Principal Activity.

### **Office of Local Government Budget Review Guidelines:**

15 The Office of Local Government on 10 December 2010 issued the new Quarterly Budget Review Guidelines via Circular 10-32, with the reporting requirements to apply from 1 July 2011. This report includes a Quarterly Budget Review Statement (refer Attachment 3) prepared by Council in accordance with the guidelines.

The Quarterly Budget Review Guidelines set a minimum standard of disclosure, with these standards being included in the Local Government Code of Accounting Practice and Financial Reporting as mandatory requirements for Councils to address.

20 Since the introduction of the new planning and reporting framework for NSW Local Government, it is now a requirement for Councils to provide the following components when submitting a Quarterly Budget Review Statement (QBRs):

- A signed statement by the Responsible Accounting Officer on Council's financial position at the end of the year based on the information in the QBRs
- Budget review income and expenses statement in one of the following formats:
  - 25 ○ Consolidated
  - By fund (e.g. General, Water, Sewer)
  - By function, activity, program etc. to align with the management plan/operational plan
- Budget Review Capital Budget
- Budget Review Cash and Investments Position
- 30 • Budget Review Key performance indicators
- Budget Review Contracts and Other Expenses

The above components are included in Attachment 3 and outlined below:

### **Income and Expenditure Budget Review Statement by Type**

35 This shows Council's income and Expenditure by type. This has been split by Fund. Adjustments are shown, looking from left to right. These adjustments are commented on through the last 13 pages of Attachment 1.

**Capital Budget Review Statement**

5 This statement identifies in summary Council's capital works program on a consolidated basis and then split by Fund. It also identifies how the capital works program is funded. As this is the first quarterly review for the reporting period, the Statement may not necessarily indicate the total progress achieved on the delivery of the capital works program.

**Cash and Investments Budget Review Statement**

10 This statement reconciles Council's restricted funds (reserves) against available cash and investments. Council has attempted to indicate an actual position as at 30 September 2023 of each reserve to show a total cash position of reserves with any difference between that position and total cash and investments held as available cash and investments. It should be recognised that the figure is at a point in time and may vary greatly in future quarterly reviews depending on cash flow movements.

**Key Performance Indicators (KPIs)**

At this stage, the KPIs within this report are:

- 15 ○ **Debt Service Ratio** - This assesses the impact of loan principal and interest repayments on the discretionary revenue of Council.
- **Rates and Annual Charges Outstanding Ratio** – This assesses the impact of uncollected rates and annual charges on Councils liquidity and the adequacy of recovery efforts.
- 20 ○ **Asset Renewals Ratio** – This assesses the rate at which assets are being renewed relative to the rate at which they are depreciating.

These may be expanded in future to accommodate any additional KPIs that Council may adopt to use in the future.

25 Contracts and Other Expenses - This report highlights any contracts Council entered into during the July to September quarter that are greater than \$50,000.

**CONSOLIDATED RESULT**

The following table provides a summary of the overall Council budget on a consolidated basis inclusive of all Funds' budget movements for the 2023/2024 financial year projected to 30 June 2024 but revised as at 30 September 2023.

<b>2023/2024 Budget Review Statement as at 30 September 2023</b>	<b>Original Estimate (Including Carryovers) 1/7/2023</b>	<b>Adjustments to 30 Sept 2023 including Resolutions*</b>	<b>Proposed 30 Sept 2023 Review Revotes</b>	<b>Revised Estimate 30/6/2024 at 30/9/2023</b>
Operating Revenue	117,955,300	371,900	(9,592,500)	108,734,700
Operating Expenditure	127,753,000	0	(6,003,800)	121,749,200

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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2023/2024 Budget Review Statement as at 30 September 2023	Original Estimate (Including Carryovers) 1/7/2023	Adjustments to 30 Sept 2023 including Resolutions*	Proposed 30 Sept 2023 Review Revotes	Revised Estimate 30/6/2024 at 30/9/2023
<b>Operating Result – Surplus/Deficit</b>	<b>(9,797,700)</b>	<b>371,900</b>	<b>(3,588,700)</b>	<b>(13,014,500)</b>
Add: Capital Revenue	155,394,600	410,000	(103,307,000)	52,497,600
<b>Change in Net Assets</b>	<b>145,596,900</b>	<b>781,900</b>	<b>(106,895,700)</b>	<b>39,483,100</b>
Add: Non Cash Expenses	20,523,000	0	0	20,523,000
Add: Non-Operating Funds Employed	10,487,100	0	1,350,000	11,837,100
Subtract: Funds Deployed for Non-Operating Purposes	(204,353,500)	(3,706,900)	104,454,600	(103,605,800)
<b>Cash Surplus/(Deficit)</b>	<b>(27,746,500)</b>	<b>(2,925,000)</b>	<b>(1,091,100)</b>	<b>(31,762,600)</b>
Restricted Funds – Increase / (Decrease)	(27,311,500)	(3,110,000)	(1,091,100)	(31,512,600)
<b>Forecast Result for the Year – Surplus/(Deficit) – Unrestricted Cash Result</b>	<b>(435,000)</b>	<b>185,000</b>	<b>0</b>	<b>(250,000)</b>

### GENERAL FUND

In terms of the General Fund projected Unrestricted Cash Result the following table provides a reconciliation of the estimated position as at 30 September 2023:

<b>Opening Balance – 1 July 2022</b>	<b>\$0</b>
Plus original budget movement and carryovers	(435,000)
Council Resolutions July – September Quarter	185,000
Recommendations within this Review – increase/(decrease)	0
<b>Estimated Unrestricted Cash Result Closing Balance – 30 June 2024</b>	<b>(\$250,000)</b>

5 The General Fund financial position overall has not moved as a result of this budget review, leaving the forecast cash result for the year at an estimated deficit of \$250,000. The proposed budget changes are detailed in Attachment 1 and summarised further in this report below.



# BYRON SHIRE COUNCIL

## Council Resolutions

5 Resolution **23-409** relating to the Financial Assistance Grant part 2 states “that part of the additional 2023-2024 Financial Assistance Grant allocation to reduce the 2023-2024 Budget Deficit from \$435,000 to \$250,000 and transfer \$186,900 to the Financial Assistance Grant Reserve”.

## Budget Adjustments

The budget adjustments identified in Attachments 1 and 2 for the General Fund have been summarised by Budget Directorate in the following table:

Budget Directorate	Revenue Increase/ (Decrease) \$	Expenditure Increase/ (Decrease) \$	Accumulated Surplus (Working Funds) Increase/ (Decrease) \$
General Manager	0	0	0
Corporate & Community Services	3,200	(7,100)	10,300
Infrastructure Services	(108,562,300)	(108,521,400)	(40,900)
Sustainable Environment & Economy	194,400	163,800	30,600
<b>Total Budget Movements</b>	<b>(108,364,700)</b>	<b>(108,364,700)</b>	<b>0</b>

## Budget Adjustment Comments

10 Within each of the Budget Directorates of the General Fund, are a series of budget adjustments identified in detail at Attachment 1 and 2. More detailed notes on these are provided in Attachment 1 but in summary the major additional items included are summarised below by Directorate and are included in the overall budget adjustments table above.

### 15 Corporate and Community Services

20 • In the General Purpose Revenue program, it is proposed to decrease operating income due to the full amount of the 2023/24 Financial Assistance Grant (FAG) being paid in the 2023 financial year. This was restricted in the OLG Financial Assistance Grant reserve at the June 2023 Quarterly Budget Review (QBR), to be transferred from the reserve at the 30 September 2023 QBR.

25 • In the Corporate Services program, it is proposed to decrease operating expenditure due to the insurance premiums Council paid for various classes being less than the budget. Although there is a decrease within these insurance premiums, the property insurance premium is split out across various budget programs within Council. Various adjustments are required and are commented on within the respective programs.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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- In the Community Development program, it is proposed to increase the budget against 2437.3 – Discussion Paper – After the Floods due to \$30,000 of this ledger being expended against this incorrectly in the 2023 financial year (part of the DPI Local Govt Support Package grant). This meant that the budget carried over from 2023 was not sufficient. This incorrect expenditure should have been costed against the Flood Response Planning grant in the Development and Certification program where there is an offsetting adjustment.

### **Infrastructure Services**

- In the Projects and Commercial Development Program, it is proposed to increase capital income by \$1,200,000 as a loan needs to be borrowed for the Lot 12 development. This was originally budgeted to be drawn down in 2023 but the expenditure against the capital works in 2023 was funded through \$500,000 of the ELE reserve and \$208,400 of the IRR Byron reserve. When this \$1,200,000 loan is drawn down, \$708,400 can be transferred to the above reserves to reimburse them from the 2023 financial year, with the additional \$491,600 being allocated to capital expenditure for construction costs this financial year.
- In the Emergency Services program, it is proposed to increase operating income and expenditure by \$162,000 due to a grant being approved for a river flood level warning system funded by the Department of Regional NSW, NSW Public Works
- In the Local Roads and Drainage program, there are a number of adjustments outlined under Note 10 on pages 53 to 57 in the Budget Variations explanations section of Attachment 1. Further disclosure is included in the second and third pages of Attachment 2 under the budget program heading Local Roads and Drainage.
- In the Transport for New South Wales program (TfNSW), it is proposed to increase operating income and expenditure due to the Block grant due from Transport for New South Wales (TfNSW) being more than the original 2023/24 budget (\$34,000). Council have also been advised that the capital REPAIR project funded by TfNSW will not occur in 2023/24. The budget for this project is \$310,000, with \$155,000 funded from the block grant. The block grant portion has been redistributed across the regional road expenditure.
- In the Infrastructure Recovery program, it is proposed to decrease income and expenditure due to a number of Natural Disaster affected projects within the program not having a written funding agreement in place. These budgets will be added back at future Quarterly Budget Reviews when funding agreements are in place. A breakdown of these can be seen on page 3 of attachment 2.
- In the Open Space and Recreation program, there are a number of adjustments outlined under Note 13 on pages 58 and 60 in the Budget Variations explanations section of Attachment 1. Further disclosure is included on the third and fourth pages of Attachment 2 under the budget program heading Open Space & Recreation.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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- In the Facilities Management program, it is proposed to increase operating income due to a budget being added for the lease and licence fees to be received from TAFE NSW for the site at Lot 12 Bayshore Drive. It is proposed to increase operating expenditure due to a budget required for a fire services audit of Councils buildings (\$35,000) and an adjustment to the property insurance premium (\$30,100). It is also proposed to redirect \$125,000 from Durrumbul hall flooring to the Mullumbimby Civic Hall. Durrumbul hall already has \$160,000 allocated for works which is anticipated to be sufficient. A budget is required for the Mullumbimby Civic Hall to fix major structural issues that have been identified. It is proposed to increase capital expenditure by \$363,200 due to the additional grant funding to be recognised for the Byron Community Hub. This adjustment will bring the overall construction budget for the project to \$6,887,000.

### **Sustainable Environment and Economy**

- In the Planning Policy & Natural Environment program, it is proposed to increase operating income and expenditure by \$95,900 due to a grant received for CMP for Byron Bay Embayment (\$75,900) and the Addressing Priority Flood Impacts in BSC project (\$20,000). Operating expenditure decreased by \$10,900 due to the NSW Koala Monitoring Framework project expending \$10,900 in 2022/23 that was made after the carryovers were completed. This adjustment brings the project budget back to the funding that is available. It is proposed to further decrease operating expenditure by \$30,000 due to expenditure for the Flood Response Planning grant being incorrectly costed against 2437.3 – Discussion Paper – After the Floods, in the Community Development program in the 2023 financial year (part of the DPI Local Govt Support Package grant). This meant that the budget carried over from 2023 was too high and needs to be lower. There is an offsetting adjustment against 2437.3 in the Community Development program.
- In the Environment & Compliance program, it is proposed to increase operating expenditure against 2785.31 - Environment Enforcement Levy expenditure and fund this from the Environment Enforcement Levy reserve. This reserve will not receive any further income. The original budgeted transfer from this reserve of \$62,300 was to fund part of the position of Development Investigation Lead so the reserve balance remained zero. After the June 2023 QBR and finalisation of the 2023 financial statements, it became apparent that the reserve had an additional \$31,300 that could be utilised to further fund this position and continue to leave the balance of the reserve at zero.
- In the Economic Development program, it is proposed to increase operating income and expenditure by \$78,200 due to a grant being approved for 'Unsung Heroes', a NSW Social Cohesion Grant.

### **WATER FUND**

After completion of the 2022/2023 Financial Statements the Water Fund as at 30 June 2023 has a capital works reserve of \$5,702,300 and held \$1,720,900 in section 64 developer contributions.

The estimated Water Fund reserve balances as at 30 June 2024, and forecast in this Quarter Budget Review, are derived as follows:

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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#### Capital Works Reserve

<b>Opening Reserve Balance at 1 July 2023</b>	<b>\$5,702,300</b>
Plus original budget reserve movement	(3,254,300)
Resolutions July - September Quarter – increase / (decrease)	(690,700)
September Quarterly Review Adjustments – increase / (decrease)	(1,208,600)
<b>Forecast Reserve Movement for 2023/2024 – Increase / (Decrease)</b>	<b>(5,153,600)</b>
<b>Estimated Reserve Balance at 30 June 2024</b>	<b>\$548,700</b>

#### Section 64 Developer Contributions

<b>Opening Reserve Balance at 1 July 2023</b>	<b>\$1,720,900</b>
Plus original budget reserve movement	(2,199,600)
Resolutions July - September Quarter – increase / (decrease)	(917,900)
September Quarterly Review Adjustments – increase / (decrease)	2,291,800
<b>Forecast Reserve Movement for 2023/2024 – Increase / (Decrease)</b>	<b>(825,700)</b>
<b>Estimated Reserve Balance at 30 June 2024</b>	<b>\$895,200</b>

5 Movements for Water Fund can be seen in Attachment 1 with a proposed estimated increase to reserves (including S64 Contributions) overall of \$1,083,200 from the 30 September 2023 Quarter Budget Review.

### **SEWERAGE FUND**

After completion of the 2022/2023 Financial Statements the Sewer Fund as at 30 June 2023 has a capital works reserve of \$3,935,300 and plant reserve of \$896,200. It also held \$5,448,900 in section 64 developer contributions and a \$272,500 unexpended grant.

#### 10 Capital Works Reserve

<b>Opening Reserve Balance at 1 July 2023</b>	<b>\$3,935,500</b>
Plus original budget reserve movement	(504,300)
Resolutions July - September Quarter – increase / (decrease)	(1,613,600)
September Quarterly Review Adjustments – increase / (decrease)	(666,600)
<b>Forecast Reserve Movement for 2023/2024 – Increase / (Decrease)</b>	<b>(2,784,500)</b>
<b>Estimated Reserve Balance at 30 June 2024</b>	<b>\$1,151,000</b>

## BYRON SHIRE COUNCIL

### Plant Reserve

<b>Opening Reserve Balance at 1 July 2023</b>	<b>\$896,200</b>
Plus original budget reserve movement	0
Resolutions July - September Quarter – increase / (decrease)	0
September Quarterly Review Adjustments – increase / (decrease)	0
<b>Forecast Reserve Movement for 2023/2024 – Increase / (Decrease)</b>	<b>0</b>
<b>Estimated Reserve Balance at 30 June 2024</b>	<b>\$896,200</b>

It is proposed to create a reserve for Property Development -Temporary Housing funded from income received for temporary housing on Sewer Fund land.

### Property Development Reserve – Temporary Housing

<b>Opening Reserve Balance at 1 July 2023</b>	<b>\$0</b>
Plus original budget reserve movement	136,200
Resolutions July - September Quarter – increase / (decrease)	0
September Quarterly Review Adjustments – increase / (decrease)	0
<b>Forecast Reserve Movement for 2023/2024 – Increase / (Decrease)</b>	<b>136,200</b>
<b>Estimated Reserve Balance at 30 June 2024</b>	<b>\$136,200</b>

### 5 Section 64 Developer Contributions

<b>Opening Reserve Balance at 1 July 2023</b>	<b>\$5,448,900</b>
Plus original budget reserve movement	(610,000)
Resolutions July - September Quarter – increase / (decrease)	(865,700)
September Quarterly Review Adjustments – increase / (decrease)	193,300
<b>Forecast Reserve Movement for 2023/2024 – Increase / (Decrease)</b>	<b>(1,282,400)</b>
<b>Estimated Reserve Balance at 30 June 2024</b>	<b>\$4,166,500</b>

Movements for the Sewerage Fund can be seen in Attachment 1 with a proposed estimated overall increase to reserves (including S64 Contributions) of \$473,300 from the 30 September 2023 Quarter Budget Review.

### **Legal Expenses**

- 10 One of the major financial concerns for Council over previous years has been legal expenses. Not only does this item represent a large expenditure item funded by general revenue, but can also be susceptible to large fluctuations.

## BYRON SHIRE COUNCIL

The table that follows indicates the allocated budget and actual legal expenditure within Council on a fund basis as at 30 September 2023.

### Total Legal Income & Expenditure as at 30 September 2023

Program	2023/2024 Budget (\$)	Actual (\$)	Percentage To Revised Budget
<b>Income</b>			
Legal Expenses Recovered	0	0	0%
<b>Total Income</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Expenditure</b>			
General Legal Expenses	210,000	54,468.79	25.94%
<b>Total Expenditure General Fund</b>	<b>210,000</b>	<b>54,468.79</b>	<b>25.94%</b>

5 Note: This should continue to be monitored to ensure there is enough funding for future expenses.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.2	Provide Quarterly Budget Reviews to Council for adoption.

## Legal/Statutory/Policy Considerations

10 In accordance with Section 203 of the Local Government (General) Regulation 2021 the Responsible Accounting Officer of a Council must:

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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- 5 (1) *Not later than 2 months after the end of each quarter (except the June quarter), the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the statement of the council's revenue policy included in the operational plan for the relevant year, a revised estimate of the income and expenditure for that year.*
- 10 (2) *A budget review statement must include or be accompanied by:*
- (a) *a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and*
- (b) *if that position is unsatisfactory, recommendations for remedial action.*
- (3) *A budget review statement must also include any information required by the Code to be included in such a statement.*

### **Financial Considerations**

- 15 The 30 September 2023 Quarter Budget Review of the 2023/2024 Budget has left the overall estimated budget result at a \$250,000 deficit. This leaves the movement against the unrestricted cash balance attributable to the General Fund to an estimated deficit of \$250,000 for the year, leaving the unrestricted cash balance attributable to the General Fund at an estimated \$250,000 deficit at 30 June 2024.
- 20 It is the view of the Responsible Accounting Officer that the short term financial position of the Council is still satisfactory for the 2023/2024 financial year, having consideration of the original estimate of income and expenditure at the 30 September 2023 Quarter Budget Review.
- 25 This opinion is based on the estimated General Fund Unrestricted Cash Result position and that the current indicative budget position for 2023/2024 outlined in this Budget Review is further improved through the remaining quarterly budget reviews for the 2023/2024 financial year. Council must remember it has a short term financial goal of maintaining \$1,000,000 in unrestricted cash.
- 30 Council must also be mindful of its cash flow position as the financial year progresses given the ongoing expenditure on restoration of infrastructure from the February/May 2022 flood events whilst experiencing significant delays in claims approvals, processing and payments from the NSW State Government. This position will need continual close monitoring as Council is delivering business as usual plus the flood recovery.
- 35 It is essential that the Quarterly Budget Reviews for the December 2023 and March 2024 Quarters are carefully considered in terms of delivery capacity and Council's financial position.

**Report No. 13.10 Mandatory Notification Data Breach Scheme and Associated Policy**

**Directorate:** Corporate and Community Services

**Report Author:** Colin Baker, Manager Business Systems and Technology

5 **File No:** I2023/1736

**Summary:**

10 The Mandatory Notification of Data Breach (MDNB) Scheme will come into effect on 28 November 2023. This report introduces Council to the new obligations required of Council under the Mandatory Notification of Data Breach Scheme. The report also provides a new draft Data Breach Policy for endorsement by Council.

---

**RECOMMENDATION:**

15 **That Council adopts the draft Data Breach Policy at Attachment 1 (E2023/108480).**

**Attachments:**

20 1 Policy document - Data Breach, E2023/108480 



## Report

5 Amendments to the *Privacy and Personal Information Protection Act 1998* (PPIP Act) will come into effect on 28 November 2023. The amendments impact the responsibilities of government agencies under the PPIP Act, and require Council to provide notifications to affected individuals in the event of an eligible data breach of their personal or health information. Known as the Mandatory Notification of Data Breach Scheme (MNDB), it will require Council to notify affected individuals of data breaches likely to result in serious harm.

10 Under section 59ZD of the amended PPIP Act, agencies (Council) are to prepare and publish a data breach policy in compliance with the Act. The data breach policy (draft at Attachment 1) is to set out how the Council will respond to a data breach and the steps it will follow if a breach occurs.

15 A data breach occurs when information held by Council (whether held in digital or hard copy) is subject to unauthorised access, unauthorised disclosure or is lost in circumstances where the loss is likely to result in unauthorised access or unauthorised disclosure.

Serious harm occurs where the harm arising from the eligible data breach has, or may, result in a real and substantial detrimental effect to the individual.

Under the MNDB Scheme Council has an obligation to:

- 20
- immediately make all reasonable efforts to contain a data breach.
  - undertake an assessment within 30 days where there are reasonable grounds to suspect there may have been an eligible data breach.
  - during the assessment period, make all reasonable attempts to mitigate the harm done by the suspected breach.
- 25
- decide whether a breach is an eligible data breach or there are reasonable grounds to believe the breach is an eligible data breach.
  - notify the Information Privacy Commission and affected individuals of the eligible data breach.
  - comply with other data management requirements.

30 External sources used in development of the Data Breach Policy

The Information and Privacy Commission (IPC) have developed the Guide to Preparing a Data Breach Policy. This Guide was consulted in developing Council's draft Data Breach Policy, along with the following additional sources:

- 35
- IPC's own Data Breach Policy (E2023/114570)
  - Tweed Shire Council's draft Data Breach Policy (currently on public exhibition)

## **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>
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.1: Leadership - Enhance leadership effectiveness, capacity, and ethical behaviour	1.1.1.1	Coordinate Council's annual policy review program, update and publish adopted policies

### **Recent Resolutions**

Nil, new initiative.

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

Statutory consideration: Amendments to the PPIP Act from 28 November 2023

10 An amendment will be required to Council’s Privacy Management Plan to include provisions relating to the procedures and practices used by Council to ensure compliance with the obligations and responsibilities set out in Part 6A for the mandatory notification of data breach scheme. Council will be required to include reference in the Plan to our Data Breach Policy.

### **Financial Considerations**

Nil, policy development was developed with internal resources.

### **Consultation and Engagement**

15 Consultation has occurred with relevant staff, the Executive Team and NOROC member councils.

20 Public exhibition of the policy is not required given that it is a policy in accordance with the Information and Privacy Commissions Guide and that the reporting of data breaches is by Council officials and contractors, and not by members of the community. Although it is a policy for raising the awareness in the community of the actions that will be taken by Council in response to a data breach.

**Report No. 13.11 Council Investments - 1 October to 31 October 2023**

**Directorate:** Corporate and Community Services

**Report Author:** James Brickley, Manager Finance

5 **File No:** I2023/1746

**Summary:**

This Report includes a list of investments and identifies Council's overall cash position for the period 1 October 2023 to 31 October 2023 for information.

10 This Report is prepared to comply with Section 212 of the *Local Government (General) Regulation 2021*.

---

**RECOMMENDATION:**

15 **That Council notes the Report listing Council's investments and overall cash position as of 31 October 2023.**

# BYRON SHIRE COUNCIL

## Report

Council has continued to maintain a diversified portfolio of investments. As of 31 October 2023, the average 90-day bank bill rate (BBSW) for the month was 4.20%. Council's performance for October 2023 was 4.27%.

- 5 Interest rates have been steady over recent months. Due to investments made when rates were higher, Council is performing above the average BBSW. The table below identifies the investments held by Council as at 31 October 2023.

### Schedule of Investments held as at 31 October 2023

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Fossil Fuel	Type	Int. Rate	Current Value (\$)
15/11/18	1,000,000.00	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	N	B	3.00%	946,740.00
20/11/18	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	22/03/24	N	B	1.78%	995,077.00
28/03/19	1,000,000.00	National Housing Finance & Investment Corporation	Y	AAA	28/03/29	N	B	2.38%	900,690.00
21/11/19	1,000,000.00	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	N	B	1.25%	956,230.00
27/11/19	500,000.00	National Housing Finance & Investment Corp	Y	AAA	27/05/30	N	B	1.52%	418,511.50
15/06/21	500,000.00	National Housing Finance & Investment Corp	Y	AAA	01/07/31	N	B	1.99%	500,691.64
06/09/21	1,000,000.00	Northern Territory TCorp	N	Aa3	15/12/26	N	B	1.40%	1,000,000.00
16/09/21	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	02/03/32	N	B	1.83%	772,360.00

## BYRON SHIRE COUNCIL

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Fossil Fuel	Type	Int. Rate	Current Value (\$)
30/10/23	850,000.00	Bank Australia Ltd	P	BBB	30/10/26	N	FRN	5.72%	850,000.00
04/07/23	1,000,000.00	NAB	N	AA-	01/11/23	Y	TD	5.00%	1,000,000.00
27/07/23	1,000,000.00	AMP Bank	N	BBB	27/11/23	Y	TD	5.25%	1,000,000.00
09/08/23	1,000,000.00	Auswide Bank	N	BBB	08/11/23	N	TD	5.15%	1,000,000.00
23/08/23	1,000,000.00	NAB	N	AA-	20/11/23	Y	TD	4.90%	1,000,000.00
31/08/23	1,000,000.00	NAB	N	AA-	29/11/23	Y	TD	4.90%	1,000,000.00
01/09/23	2,000,000.00	NAB	P	AA-	01/04/24	Y	TD	5.00%	2,000,000.00
04/09/23	2,000,000.00	NAB	N	AA-	04/12/23	Y	TD	4.95%	2,000,000.00
04/09/23	2,000,000.00	NAB	N	AA-	04/12/23	Y	TD	4.95%	2,000,000.00
05/09/23	2,000,000.00	Beyond Bank	P	BBB	06/12/23	N	TD	4.95%	2,000,000.00
14/09/23	1,000,000.00	NAB	N	AA-	12/01/24	Y	TD	4.90%	1,000,000.00
12/09/23	2,000,000.00	NAB	N	AA-	12/12/23	Y	TD	4.85%	2,000,000.00
19/09/23	2,000,000.00	NAB	N	AA-	19/12/23	Y	TD	4.90%	2,000,000.00
20/09/23	1,000,000.00	Bank of QLD	N	BBB	22/01/24	Y	TD	4.75%	1,000,000.00
25/09/23	2,000,000.00	Bank of QLD	P	BBB+	24/01/24	Y	TD	4.85%	2,000,000.00
26/09/23	2,000,000.00	NAB	N	AA-	22/12/23	Y	TD	4.90%	2,000,000.00
28/09/23	1,000,000.00	Judo Bank	P	BBB-	04/01/24	N	TD	4.85%	1,000,000.00
04/10/23	2,000,000.00	Judo Bank	P	BBB-	03/01/24	N	TD	4.90%	2,000,000.00
09/10/23	2,000,000.00	NAB	N	AA-	08/01/24	Y	TD	4.85%	2,000,000.00
19/10/23	1,000,000.00	AMP Bank	P	BBB	18/01/24	Y	TD	4.85%	1,000,000.00
25/10/23	1,000,000.00	Police Bank	P	BBB	22/02/24	N	TD	5.00%	1,000,000.00
25/10/23	1,000,000.00	Police Credit Union	P	BBB	22/02/24	N	TD	5.00%	1,000,000.00
N/A	22,517,434.51	CBA Business Saver	P	AA-	N/A	Y	CALL	4.20%	22,517,434.51

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Fossil Fuel	Type	Int. Rate	Current Value (\$)
N/A	3,158,926.56	CBA Business Saver – Tourism Infrastructure Grant	N	AA-	N/A	Y	CALL	4.20%	3,158,926.56
N/A	10,498,693.90	Macquarie Accelerator Call	N	A	N/A	Y	CALL	3.95%	10,498,693.90
<b>Total</b>	<b>75,025,054.97</b>						<b>AVG</b>	4.26%	<b>74,515,355.11</b>

**Note 1.** CP = Capital protection on maturity

N = No Capital Protection

Y = Fully covered by Government Guarantee

P = Partial Government Guarantee of \$250,000 (Financial Claims Scheme)

**Note 2. Fossil Fuel ADI**

N = No investment in Fossil Fuels

Y = Investment in Fossil Fuels

U = Unknown Status

**Note 3.**

**Type**

**Description**

B

Bonds

Principal can vary based on valuation, interest payable via a fixed interest, payable usually each quarter.

FRN

Floating Rate Note

Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.

TD

Term Deposit

Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.

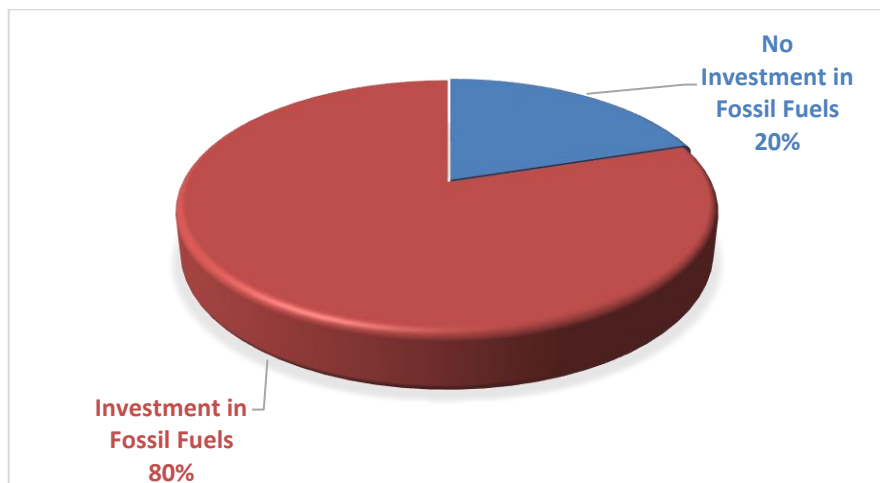
CALL

Call Account

Principal varies due to cash flow demands from deposits/withdrawals. Interest is payable on the daily balance.

### Environmental and Socially Responsible Investing (ESRI)

5 An additional column has been added to the schedule of Investments to identify if the financial institution holding the Council investment has been assessed as a 'Fossil Fuel' investing institution. This information has been sourced through [www.marketforces.org.au](http://www.marketforces.org.au) and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below highlights the percentage of each classification across Council's total investment portfolio in respect of fossil fuels only.



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

Council may from time to time have an investment with a financial institution that invests in fossil fuels but is nevertheless aligned with the broader definition of Environmental and Socially Responsible investments. When this occurs, the investment will be marked as no fossil fuels given the investment purpose.

10 With the lifting of the NSW Treasury Corporation loan borrowing covenant on Council's investments, growth has recommenced in acquiring investments not aligned with fossil fuels. Council's portfolio reached its lowest point in August 2023 at 15% but as at 31 October 2023, the portfolio has already increased to 20%.

**Investment Policy Compliance**

15 The below table identifies compliance with Council's Investment Policy by the proportion of the investment portfolio invested with financial institutions, along with their associated credit ratings compared to parameters in the Investment Policy. The parameters are designed to support prudent short and long-term management of credit risk and ensure diversification of the investment portfolio. Note that the financial institutions currently offering investments in the 'ethical' area are still mainly those with lower credit ratings (being either BBB or not rated at all i.e., credit unions).

20

Investment policy compliance % should not exceed the following			ACTUAL	
AAA to AA	A1+	100%	68%	Meets policy
A+ to A-	A1	60%	14%	Meets policy
BBB to NR	A2,NR	40%	18%	Meets policy

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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The investment portfolio is outlined in the table below by investment type for the period 1 October 2023 to 31 October 2023:

#### Dissection of Council Investment Portfolio as at 31 October 2023

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
33,000,000.00	Term Deposits	33,000,000.00	0.00
22,517,434.51	CBA Business Saver	22,517,434.51	0.00
3,158,926.56	CBA Business Saver – Tourism Infrastructure Grant	3,158,926.56	0.00
10,498,693.90	Macquarie Accelerator	10,498,693.90	0.00
7,850,000.00	Bonds/Floating Rate Notes	7,340,300.14	(509,699.86)
<b>77,025,054.97</b>	<b>Total</b>	<b>76,515,355.11</b>	<b>(509,699.86)</b>

5 Council's overall 'cash position' is not only measured by funds invested but also by the funds retained in its consolidated fund or bank account for operational purposes. The table below identifies Council's overall cash position for the month of October 2023 as follows:

#### Dissection of Council's Cash Position as at 31 October 2023

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
<b>Investments Portfolio</b>			
Term Deposits	33,000,000.00	33,000,000.00	0.00
CBA Business Saver	22,517,434.51	22,517,434.51	0.00
CBA Business Saver – Tourism Infrastructure Grant	3,158,926.56	3,158,926.56	0.00
Macquarie Accelerator	10,498,693.90	10,498,693.90	0.00



# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Bonds	7,850,000.00	7,340,300.14	(509,699.86)
<b>Total Investment Portfolio</b>	<b>77,025,054.97</b>	<b>76,515,355.11</b>	<b>(509,699.86)</b>
<b>Cash at Bank</b>			
Consolidated Fund	1,883,335.39	1,883,335.39	0.00
<b>Total Cash at Bank</b>	<b>1,883,335.39</b>	<b>1,883,335.39</b>	<b>0.00</b>
<b>Total Cash Position</b>	<b>78,908,390.36</b>	<b>78,398,690.50</b>	<b>(509,699.86)</b>

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.6	Maintain Council's cash flow

## Legal/Statutory/Policy Considerations

5 In accordance with Section 212 of the *Local Government (General) Regulation 2021*, the Responsible Accounting Officer of Council must provide Council with a monthly report detailing all monies it has invested under section 625 of the *Local Government Act 1993*.

10 The Report must be presented at the next Ordinary Meeting of Council after the end of the month being reported. The current Council Meeting cycle does not always allow this to occur, especially as investment valuations required for the preparation of the report are often received after the deadline for the submission of reports. Endeavours are being made to achieve a better alignment and for some months this will require reporting for one or more months.

Council's investments are made in accordance with section 625(2) of the *Local Government Act 1993* and Council's Investment Policy. The *Local Government Act 1993*

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allows Council to invest money as per the Minister's Order – Forms of Investment, last published in the Government Gazette on 11 March 2011.

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

### 5 **Financial Considerations**

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

10

**Report No. 13.12 Recommendation for award of Tender for Event Management Services Soul Street New Year's Eve 2024-2026**

**Directorate:** Corporate and Community Services

5 **Report Author:** Richard Bradbury, Soul Street Coordinator

**File No:** I2023/1774

**Summary:**

On 7 June 2023 the General Manager approved the use of the Open Tender method to call for tenders for Contract 2023-1789 Event Management: Soul Street New Years Eve.

10 The total contract value is \$300,000 (ex GST) over the three-year period.

The Request for Tender was advertised from 5 to 26 September 2023 and tenders were received from the following organisations:

- Byron Community Centre Ltd
- Event Society
- 15 • Experience Rova Pty Ltd
- Our Friends Electric Pty Ltd
- Sold Out Events
- The Rigging Shop Pty Ltd

20 Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2021.

This report summarises the background and assessment of the tenders and provides a recommendation to accept a successful tenderer.

25

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**RECOMMENDATION:**

**That Council:**

- 30 1. **Awards the tender to the preferred supplier identified by the Evaluation Panel contained in the confidential Tender Evaluation Report (E2023/110723) at Attachment 1.**
2. **Publicises the decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2021.**

# BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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## **Attachments:**

- 1 Confidential - Evaluation Report - Soul Street Tender Contract 2023-1789, E2023/110723

5

## **Report**

On 7 June 2023, the General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract 2023-1789 Soul Street New Year's Eve (NYE) Event.

- 5 Soul Street NYE is a family-friendly and accessible event utilising place activation, performance and participation strategies through art, food, play, and music activities commencing in the late afternoon on 31 December. Soul Street involves a series of place activations in popular locations across the Byron Bay CBD footprint, including roads and carparks in central Byron Bay, focused on Railway Park, Jonson Street, Denning Park, and Bay Lane.
- 10

The Request for Tender sought responses from proponents to provide Event Management services to plan and deliver the event on behalf of Byron Shire Council.

- The Contract is expected to commence in July 2024 for a period of 12 months, with the inclusion of two x one year contract extensions conditional on Council's performance review undertaken after each event. The Contract will be managed by the Manager Social and Cultural Planning.
- 15

Tenders were advertised for 28 days from the 5 September 2023 as follows:

- VendorPanel Online
- Council website
- 20 • Promotion through the Byron Bay Chamber of Commerce

An Evaluation Panel comprising of four Council staff members was formed representing experience in Waste Management, Events and Social and Cultural Planning.

Tenders closed on 29 October 2023 and tenders were received from the following proponents:

- 25
- Byron Community Centre Ltd
  - Event Society
  - Experience Rova Pty Ltd
  - Our Friends Electric Pty Ltd
  - Sold Out Events
  - 30 • The Rigging Shop Pty Ltd

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

- a) Tenderer must have a valid Australian Business Number.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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- b) Substantial conformance to Conditions of Contract and Statement of Requirements.
- c) Workers compensation insurance for all employees.
- d) Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements.
- 5 e) Satisfactory Work Health and Safety practices.
- f) Commitment to ethical business practice principles.

#### Qualitative Criteria

Criteria	Elements	Weighting
Profile & Relevant Experience	Tender Profile	15%
	Previous relevant experience	
Quality and Availability of Resources	Proposed Key Personnel	25%
	Proposed Staff	
	Use of subcontractors	
Delivery Plan	Goods/services standards and methodology	40%
	Implementation Plan	
Social Procurement	Opportunities for people experience disadvantage	5%
	Employment opportunities	
	Social Enterprises and Indigenous Businesses	
Sustainable Practices	Environmental Practices	10%
Local Industry	Commitment to purchase supplies/services from NRJO business.	5%
	Supporting local business	

Following the evaluation, the Panel conducted referee and financial checks on the preferred tenderer. The results of these checks were deemed by the Evaluation Panel to be satisfactory as detailed in the attached Evaluation Report (E2023/110723) at Attachment 1.

## 5 Financial Considerations

The price basis for the contract is a staged payment over the course of the contract when key milestones are met.

10 Council has budgeted \$100,000 ex GST for this contract. In addition, Council allocates a budget towards additional traffic management and control measures over the Christmas and New Year Period in central Byron Bay.

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

## Statutory and Policy Compliance Considerations

15 The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2021.

The Local Government (General) Regulations 2021 define the options available to Council. An extract is provided below.

### Local Government (General) Regulation 2021 - Reg 178

#### [Acceptance of tenders](#)

20 178 *Acceptance of tenders*

(1) *After considering the tender submissions for a proposed contract, the council must either—*

(a) *accept the tender submission that, having regard to all the circumstances, appears to it to be the most advantageous, or*

25 (b) *decline to accept any of the tender submissions.*

30 (1A) *Without limiting subsection (1), in considering the tender submissions for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of section 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender submissions.*

35 (2) *A council must ensure that every contract it enters into as a result of a tender submission accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under section 176). However, if the successful tender submission was made by the council (as provided for in*

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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*section 55(2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*

- 5 (3) *A council that decides not to accept any of the tender submissions for a proposed contract or receives no tender submissions for the proposed contract must do one of the following—*
- (a) *postpone or cancel the proposal for the contract,*
- (b) *invite, in accordance with section 167, 168 or 169, fresh tender submissions based on the same or different details,*
- 10 (c) *invite, in accordance with section 168, fresh applications from persons interested in making a tender submission for the proposed contract,*
- (d) *invite, in accordance with section 169, fresh applications from persons interested in making a tender submission for contracts of the same kind as the proposed contract,*
- 15 (e) *by resolution of the council, enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
- (f) *carry out the requirements of the proposed contract itself.*
- (4) *If a council resolves to enter into negotiations as referred to in subsection (3)(e), the resolution must state the following—*
- 20 (a) *the council's reasons for declining to invite fresh tender submissions or applications as referred to in subsection (3)(b)–(d),*
- (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).*

25 Council's endorsement to award the tender as recommended in the Evaluation Report (E2023/110723) at Attachment 1 is sought.



**Report No. 13.13 Grants October 2023**

**Directorate:** Corporate and Community Services

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

**File No:** I2023/1800

5 **Summary:**

Council is waiting on determination of eight Grant applications which, if successful, would provide funding to enable the delivery of identified projects. This report provides an update on Grant applications.


10

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**RECOMMENDATION:**

**That Council notes the grant submissions report for the month of October 2023 (Attachment 1 #E2023/118262).**

15 **Attachments:**

1 Grant submissions as at 30 October 2023, E2023/118262 

# BYRON SHIRE COUNCIL

## Report

Currently Council has eight grant applications awaiting determination (refer to Grants Submissions as of 30 October 2023 - Attachment 1, E2023/118262.

### Successful applications

- 5 No grants announced.

### Unsuccessful applications

Funding body	Funding scheme	Project name	Total project value \$	Amount requested \$	Council \$
Department of Planning and Environment	Floodplain Management 2023	Saltwater Creek - Mullumbimby upgrade assessment and mitigation options	\$120,000	\$79,998	\$40,002
Feedback: Application was of high standard. Program was oversubscribed; project has been included on the reserve funding list					
Create NSW	Community Local Infrastructure Recovery Package - Arts and Cultural Assets Program	Iconic Byron Bay Public Art Betterment Project - Lawson Street roundabouts	\$270,408	270,408	0
Feedback: Feedback session requested. Funding awarded for Kohinur Hall.					
Department of Planning and Environment	2022-23 NSW Flood Recovery and Resilience Grant Program	Coogera Circuit Detention Upgrade - design	\$100,000	\$100,000	0

Feedback: Funding awarded under Tranche 2 [The Northern Rivers Recovery and Resilience Program | National Emergency Management Agency \(nema.gov.au\)](#)

**Unsuccessful applications**

**Upcoming Grant opportunities**

[Get NSW Active 2024/2025 | Transport for NSW](#)

5 For this year’s program, there is \$60 million in total grant funding available to local councils to deliver projects that enable more people to walk or bike ride. Of the \$60 million funding, \$10 million is for projects that enable walking or bike riding to school, with the remaining funding for broader active transport projects.

Projects under consideration include:

- 10 • Middleton Street (Byron Bay) footpath link to beach – design
- Market Street (Bangalow) footpath – design
- Beach Avenue (South Golden Beach) shared footpath - design

**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>
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.9	Coordinate grant applications to support the delivery of Council projects and services within management plans, masterplans, strategic plans, council resolutions and high priority actions from feasibility studies; and support the management of successful grants

**Legal/Statutory/Policy Considerations**

15 Under section 409 3(c) of the *Local Government Act 1993* Council is required to ensure that ‘money that has been received from the Government or from a public authority by way of a specific purpose advance or Grant, may not, except with the consent of the

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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Government or public authority, be used otherwise than for that specific purpose'. This legislative requirement governs Council's administration of Grants.

**Financial Considerations**

5 If Council is successful in obtaining the identified Grants, this would bring funding sought to approximately \$25 million which would provide significant funding for Council projects. Some of the Grants require a contribution from Council (either cash or in-kind) and others do not. Council’s contribution is funded.

The potential funding is detailed below:

	<b>Funding applications submitted and awaiting notification (total value)</b>	<b>\$25,256,683</b>
10	Requested funds from funding bodies	\$12,805,110
	Council contribution cash	\$12,453,573
	Council co-contribution in-kind	\$4,500
	Other contributions	\$0

Funding determined in October 2023:

15	Successful applications	\$0 (total project value)
	Unsuccessful/withdrawn applications	\$490,408 (total project value)

**Consultation and Engagement**

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

## Report No. 13.14 Bypassed Town Signage- Bangalow and Brunswick Heads

5 **Directorate:** Sustainable Environment and Economy  
**Report Author:** Lisa Richards, Business and Visitor Economy Officer  
**File No:** I2023/1379

### Summary:

10 Roads and Maritime Services (now Transport for NSW) identified Bangalow, Brunswick Heads and Mullumbimby as towns bypassed by the Pacific Highway that qualify for a new type of image-based road sign. The signs aim to promote bypassed towns in rural and regional NSW.

15 From 14 December 2020 to 31 January 2021, Council conducted online consultation for proposed bypassed town signage for Bangalow, Brunswick Heads and Mullumbimby. Approximately 180 community members provided feedback on whether the signs should be implemented, as well as proposed types of images and service symbols.

20 Proposed bypassed town signage for Bangalow and Brunswick Heads is attached to this report (Attachment 2), based on above consultation. This report is to seek Council endorsement of the signage artwork provided by Transport for NSW. The artwork is in line with Attachment 1 Outcomes from Bypassed Town Signage Consultation January 2021 report.

A separate report will be prepared for Mullumbimby bypassed town signage once proposed signage is received in line with consultation.

25 Once endorsed by Council, Transport for NSW's North Region Director's approval is required, then they will then send to the local member for concurrence. Once the local member has endorsed, Transport for NSW will finalise the signs, manufacture and install. Transport for NSW will issue a media release when the signs are installed.



30

**RECOMMENDATION:**

**That Council:**

- 5 1. **Notes the Bypassed Town Signage Consultation report, January 2021 (Attachment 1 E2021/27467).**
2. **Endorses the attached proposed Bangalow and Brunswick Heads Bypassed Town Signage Images (Attachment 2 E2023/112930).**
3. **Notes that a separate report will be prepared for the Mullumbimby Bypassed Town Signage Image.**
- 10 4. **Informs Transport for NSW of its decision.**

**Attachments:**

- 1 Outcomes from Bypassed Town Signage Consultation January 2021, E2021/27467 
- 15 2 Proposed Bypassed Town Signage for Bangalow and Brunswick Heads October 2023, E2023/112930 

## Report

The NSW Government has introduced an initiative for a new type of image-based road sign which aims to promote bypassed towns in rural and regional NSW.

5 These signs are positioned close to the exit of a motorway and use colour images to show key features of the bypassed towns to encourage visitation. Bypassed town signage also displays service symbols to highlight available services and facilities to assist travellers on their journeys and encourage rest breaks. The NSW Government have prepared a [Bypassed Town Signage Fact Sheet](#).

10 Bangalow, Brunswick Heads and Mullumbimby were identified by the Roads and Maritime Services (now Transport for NSW) as towns bypassed by the Pacific Highway that qualify for these signs.

15 Council was responsible for engaging community on the photographic images and symbol selection deemed appropriate for use on the signs for their bypassed town/s.

20 At the 25 June 2020 Council meeting it was resolved that staff consult with key community stakeholders of Bangalow, Brunswick Heads and Mullumbimby to assist with the selection of proposed images and service symbols for each of the bypassed town signs in accordance with the guidelines from Roads and Maritime Service and advise the Roads and Maritime Services of the outcome of the consultation (refer to resolution 20-303).

25 From 14 December 2020 to 31 January 2021, Council conducted online consultation regarding proposed bypassed town signage for Bangalow, Brunswick Heads and Mullumbimby.

30 Approximately 180 community members provided feedback on whether the signs should be implemented, as well as proposed types of images and service symbols. A selection of proposed images for the online survey were identified in consultation with local Chambers of Commerce.

35 Consultation was promoted via Council's social media platforms, a media release, email to key stakeholders and Council's Business e-newsletter.

Local Chambers of Commerce expressed interest in identifying local photographers for taking the final imagery. This information was passed on to Roads and Maritime Services.

40 The outcomes report was provided to Roads and Maritime Services on Thursday 25 February 2021 and is attached (Attachment 1 E2021/27467).

Bypassed town signage artwork, provided by Transport for NSW (formerly Roads and Maritime Services) and in line with consultation in the attached Outcomes from Bypassed Town Signage Consultation January 2021 report is attached for review and endorsement.



**Key issues**

Council conducted online community consultation in December 2020/January 2021 and provided an outcomes report to Roads and Maritime Services (now Transport for NSW) and the local member on Thursday 25 February 2021.

**5 Next steps**

- Council endorsement is sought for the Bangalow and Brunswick Heads bypassed town signage, which include selected images and service symbols in line with Council’s consultation report.
- 10 • Council endorsement to be provided to Transport for NSW, with an outline of consultation carried out to determine images and service symbols.
- Approval from Transport for NSW’s North Region Director and sent to local member for concurrence.
- Once endorsed by local member, Transport for NSW will finalise the signs and send for manufacture and installation.
- 15 • Transport for NSW to issue a media release when signs are installed.

**Strategic Considerations**

**Community Strategic Plan and Operational Plan**

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth	4.4: Foster sustainable visitation and manage the impacts of tourism on the Shire	4.4.3: Sustainable visitation - Investigate opportunities to mitigate peak tourist demands on local amenity and infrastructure	4.4.3.1	Continue to liaise with our business and tourism industry

**Recent Resolutions**

- Res 20-303

**20 Legal/Statutory/Policy Considerations**

N/A

**Financial Considerations**

N/A

**Consultation and Engagement**

Link to the Transport for NSW Bypass Town Signage web page [Bypassed Town signage initiative - Town bypasses - Roads - Roads and Waterways – Transport for NSW](#)

- 5 From 14 December 2020 to 31 January 2021, Council conducted online consultation regarding proposed bypassed town signage for Bangalow, Brunswick Heads and Mullumbimby.

**Report No. 13.15 PLANNING - DA 10.2021.291.4 - Modification  
Demolition of the existing backpackers  
hostel and construction of Mixed Use  
development comprising Retail Premises  
and Serviced Apartments at 116 Jonson  
Street Byron Bay**

5

**Directorate:** Sustainable Environment and Economy

**Report Author:** Greg Yopp, Planner

**File No:** I2023/1651

10

<b>Proposed modification:</b>	Minor design amendments and minor modifications to conditions
<b>Original Development:</b>	Demolition of the existing backpackers hostel and construction of Mixed-Use development comprising Retail Premises and Serviced Apartments
<b>Type of modification sought:</b>	4.55(2) Other modifications
<b>Property description:</b>	LOT: 1 DP: 258385, LOT: 2 DP: 258385 116 Jonson Street BYRON BAY, 118 Jonson Street BYRON BAY
<b>Parcel No/s:</b>	34830, 34820
<b>Applicant:</b>	Planners North
<b>Owner:</b>	Aidop No 6 Pty Ltd & Aidop No 5 Pty Ltd
<b>Zoning:</b>	E1 Local Centre
<b>Date received:</b>	18 July 2023
<b>Original DA determination date:</b>	Deferred Approval 27/05/2021
<b>Integrated Development:</b>	Yes
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>- Level 2 advertising under the Byron Shire Council Community Participation Plan.</li> <li>- Exhibition period: 28 July 2023 to 10 August 2023</li> <li>- Submissions received: 1</li> </ul>
<b>Delegation to determination:</b>	Council
<b>Issues:</b>	<ul style="list-style-type: none"> <li>• Additional minor breach of maximum height (11.5m)</li> <li>• Car parking</li> </ul>

**Summary**

5 A S4.55 application has been received for minor design amendments and minor modifications to approved mixed use development comprising service apartments and ground floor retail commercial uses at 116-118 Jonson Street Byron Bay. The amendments of interest relate to an increased in building height and a reduction in car parking. There is an additional breach of building height standard involving 3 roof top building elements increasing 11cm, 6cm, and 10cm comprising changes to the pool balustrade, pool deck and mechanical ventilation respectively. Having regards to the minor increase in height, it is considered the impact is negligible and the variation is supported in this instance.

10 The proposal as amended also results in a shortage of car parking by three spaces overall. This is in part a result of the applicant's desire to incorporate dual key apartments throughout the complex, seven of which generate further parking, and the addition of basement storage areas This is not supported in it entirety and conditions of consent are recommended to provide for a third car share space to service tourists staying within the serviced apartments. Other minor changes to the development are also proposed and in general the amendments are acceptable subject to conditions of consent. The S4.55 application is recommended for approval.

**NOTE TO COUNCILLORS:**

20 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.





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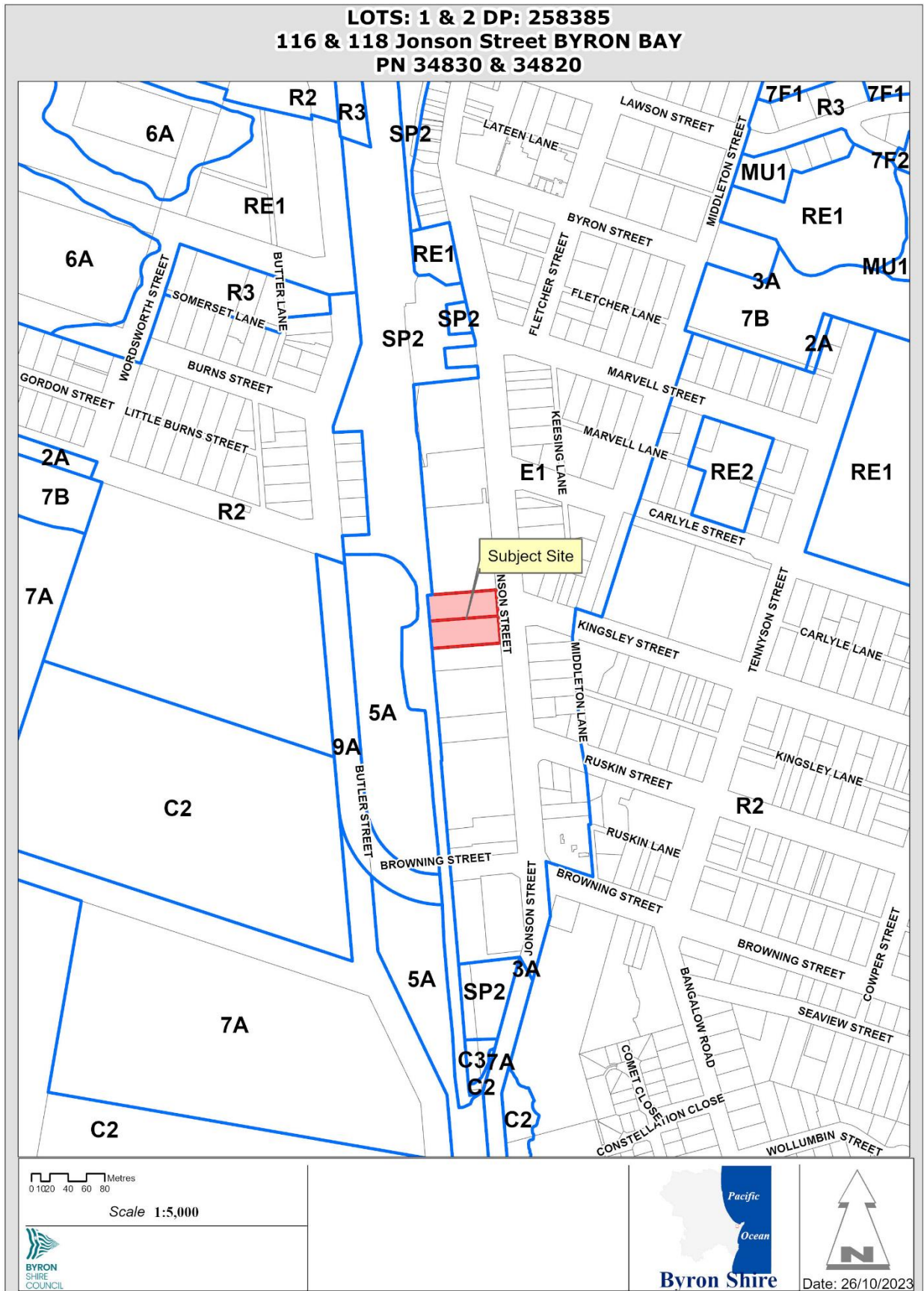
**RECOMMENDATION:**

30 **That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2021.291.4, for Modification - Demolition of the existing backpackers hostel and construction of Mixed-Use development comprising Retail Premises and Serviced Apartments, be approved by modifying Development consent number 10.2021.291.2 as indicated at Attachment 2 of this Report.1.**

35 **Attachments:**

- 1 DA 10.2021.291.4 Architectural Plans, E2023/81028 
- 2 DA 10.2021.291.4 Modified conditions of consent, E2023/113649 
- 3 DA 10.2021.291.4 Clause 4.6 Objection to Height of Buildings development standard, E2023/112404 
- 40 4 DA 10.2021.291.4 Redacted submission, E2023/11243 

# BYRON SHIRE COUNCIL



## Assessment:

### 1. INTRODUCTION

#### 5 1.1. History/Background

Council has a record of the following approvals for the subject allotments.

Application No.	Description	Outcome
DA 10.2021.291.1	Demolition of the existing backpacker's hostel and construction of mixed use development comprising retail premises and serviced apartments.	Deferred Commencement Consent (Stormwater Management) – 04/11/2021
S4.55 10.2021.291.3	Delete Deferred Commencement Condition in relation to Stormwater Management and Amend Condition 27 in relation to Stormwater Management.	Approved – 30/05/2022
S4.55 10.2021.291.2	Internal changes to floor plans, amendments to roof top area and introduction of dual key apartments.	Approved – 25/08/2022 <b>Note.</b> This is the most recent consent for the development

#### 10 1.2. Description of the proposed development

This application seeks approval for a Modification of development consent 10.2021.291.1 as amended by 10.2023.291.3 and most recently by 10.2023.291.2 (Demolition of the existing backpackers hostel and construction of Mixed-Use development comprising Retail Premises and Serviced Apartments).

Consent is sought for minor design amendments and minor modifications to conditions. Design changes are listed as “Track Changes” on the architectural plans (Refer to Attachment 1 for architectural plans and Attachment 2 for recommended modified conditions). A summarised description of the proposal is provided in Table 1, including staff recommended amendments.

**Table 1 – Description of proposal**

No.	Modification sought																
1.	Basement Minor change to basement car parking allocation. It is proposed to amend car parking conditions as follows: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Car parking</th> <th>Existing approval</th> <th>Proposed amended</th> <th>Staff recommendation</th> </tr> </thead> <tbody> <tr> <td>Std car park</td> <td align="center">111</td> <td align="center">106</td> <td align="center">106</td> </tr> <tr> <td>Accessible car park</td> <td align="center">8</td> <td align="center">6</td> <td align="center">6</td> </tr> <tr> <td>Share car provided</td> <td align="center">0</td> <td align="center">2</td> <td align="center">3</td> </tr> </tbody> </table>	Car parking	Existing approval	Proposed amended	Staff recommendation	Std car park	111	106	106	Accessible car park	8	6	6	Share car provided	0	2	3
Car parking	Existing approval	Proposed amended	Staff recommendation														
Std car park	111	106	106														
Accessible car park	8	6	6														
Share car provided	0	2	3														
2.	Basement New services/storage areas comprising additional back of house kitchen services and store on northern side of basement. <p><b>Staff Amendment</b>                      Amendment to plans required prior to CC.</p> <ul style="list-style-type: none"> <li>Wall and column of retail store to be moved 1m to the east.</li> </ul>																

# BYRON SHIRE COUNCIL

No.	Modification sought
	<ul style="list-style-type: none"> <li>Kitchen services not permitted in proposed basement kitchen/store area. To be used only for storage</li> </ul>
3.	Basement Relocate bicycle parking
4.	New service lift
5.	Ground floor Minor change to lobby/amenities/retail layout
6.	Ground floor Addition of plunge pool to gardens of western serviced apartments
7.	Level 1 & 2 Change to common walkway voids and/or dual key glazing entry door configuration
8.	Level 2 Change to level 2 balcony stairs
9.	Roof Additional landscaped planter boxes to roof terrace areas
10.	Roof Minor change to mechanical plant to improve visual amenity
11.	Roof Minor change to roof top pool service area
12.	Condition 1 – Approved plans to be amended to reflect minor design modifications. Staff amendment including as annotations on plans. Refer to Items 1 & 2 of this table.
13.	Condition 4 - BASIX requirements. Remove reference to BASIX as EP&A Regulation 2021 amended to state class 3 building are BASIX excluded.
14.	Condition 31 & 92 car parking – The car parking conditions are proposed to be amended in accordance with Item 1 of this table. Staff amendments included.
15.	Condition 88 – General hours of operation. It is proposed to extend the hours of operation of the roof top recreational facilities (swimming pool and surrounds) from the existing 8.00am to 8.00pm to 6.00am to 8.00pm.

In Summary the proposed changes are supported and subject to additional conditions of consent including:

- 5
  - Prior to CC - Condition 40a - amended plans to relocate a wall and column 1m to the east for the proposed basement retail store area. Amended plans restricting use of the proposed back of house kitchen area to storage area only.
  - Prior to CC – Condition 40b – Car share management plan.
  - Prior to OC – Condition 82a – Car share vehicles in place.
- 10
  - Prior to OC – Condition 82b – S88E Conveyancing Act 1919 – car share in perpetuity.
  - At all times – Condition 102a – Car share.
  - At all times - Condition 102b – Proposed back of house kitchen and storage to be used for storage only.

15 **1.3. Description of the site**

Land is legally described	Lots 1 & 2 DP 258385
Property address	116- 118 Jonson Street BYRON BAY
Land is zoned:	E1 Local Centre

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Land area is:	4,282m <sup>2</sup>
Buildings on site	Demolition has been undertaken
Adjoining land	West – railway corridor; North – Woolworths/Mercato on Byron; East – Jonson Street Road reserve; and South – Strata mixed use development office/residential.

### 2. SUMMARY OF REFERRALS

Referral	Comments
Development Engineer	Council's Development Engineer has recommended an additional car share space in terms of shortfall, Conditions also to apply also in relation to basement level storage areas to be used solely for storage purposes only and some changes to one of the storeroom areas to ensure sufficient maneuvering area is available for adjacent loading bay.
Byron Design Excellence Panel	The proposal when originally lodged with Council included an awning as required by Condition 36 of the development consent. Upon review by Council's Design Excellence Panel, including protracted discussions with the proponent, this element of the proposal was withdrawn and will be addressed at a later stage.

5

### 3. SECTION 4.46 – INTEGRATED DEVELOPMENT

Referral	Comments
Rural Fire Service	Section 100B Rural Fires Act 1997 – Tourist accommodation – Special Fire Protection Purpose. Bush Fire Safety Authority issued by RFS. Amendment to existing Bush Fire Safety Authority. Conditions included in Attachment 2 (Recommended modified conditions) to reflect amended plans
Water NSW	Section 89, 90 & 91 Water Management Act 2000 – De-Watering. General Terms of Approval (Amendment to existing GTA's) included in Attachment 2. (Recommended modified conditions) to reflect amended plans

10

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

15 Having regard for the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.



**4.1. State/Regional Planning Policies, Instruments, EPA Regulations 2021**

	<b>Agree or No (add comments as required)</b>
Proposed amendments raise no issues under the relevant SEPPs, Policies or clauses of the EPA Regulations 2021	<p>Agree. The modified development is consistent with all relevant SEPP's, Council policies and the Regulations.</p> <p>The following SEPPs are considered in more detail.</p> <p><b><u>BASIX SEPP</u></b></p> <p>It is proposed to modify the existing Condition 4 – Design Excellence Sustainable Design Principles. It is proposed to delete the word 'BASIX' in two locations and substitute with 'Section J / JV3' (part of the National Construction Code - NCC).</p> <p><b>Justification:</b> At the time of the approval of the development application (04/11/2021) and subsequent modifications, there was a Land and Environment Court decision which determined that tourist accommodation in Class 3 buildings comprised 'dwellings' and required BASIX compliance. This has subsequently been rectified with the amendments to the Environmental Planning and Assessment Regulation 2021, which states that Class 3 buildings are not BASIX affected. The proposed modification rectifies this issue. The building is still required to achieve the same standard of energy &amp; water efficiency under WELLS Certification and National Construction Code.</p>

**4.2. Byron Local Environmental Plan 2014**

5

**Clause 4.3 Height of Buildings – non-compliance supported**

The Development Application as originally approved included the variation the height limit of 11.5m. The proposal as revised also contains elements exceeding the maximum permissible height of 11.5m. Refer to the Table 2 below for detail of the proposed height exceedance.

10

**Table 2 – Clause 4.3 Height of Building exceedance**

<b>Building elements</b>	<b>Height approved (m)</b>	<b>Height proposed (m)</b>	<b>Increase from approved (m)</b>
Pool balustrade	13.18	13.29	0.11
Terrace roof fencing	12.65	12.65	0.0 – no change
Solar array	13.75	13.75	0.0 – no change
Pool deck	12.18	12.24	0.06
Pool plant	13.18	13.18	0.0 – no change
Lift overrun	14.48	14.48	0.0 – no change
Mechanical ventilation	13.50	13.60	0.1

15

The proposed additional height exceedance includes the pool balustrade, the pool deck and mechanical ventilation. Notwithstanding that case law establishes that modification applications may be in breach of a development standard without requiring a Clause 4.6 objection to be

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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submitted as a pre-condition of granting Development consent, a variation pursuant to the provisions of Clause 4.6 was submitted as part of the s4.55 application to provide an appropriate framework for the assessment of the proposal. The applicants detailed Clause 4.6 Objection to the Height of Buildings is located at Attachment 3 to this report.

- 5 The proposed minor Height of Building exceedances, comprising of 11cm, 6cm and 10cm for various roof top elements described in Table 2, are supported for the following reasons:
- The proposed height of building is consistent with that of the existing surrounding development in the locality.
  - 10 • The proposed variation to the height limit does not result in a materially different presentation to the Jonson Street (eastern elevation) or western elevation of the building.
  - The proposed variation does not impact on the bulk or scale of the proposed built form.
  - The proposed development will not adversely impact on existing or future surrounding development in terms of view, privacy or solar access.
  - 15 • The proposed variations satisfy the tests and considerations established in case law (Wehbe v Pittwater Council [2007] NSW LEC 82 and Winten Developments Pty Ltd v North Sydney Council [2001] NSW LEC 46.

20 It is considered strict compliance with the height limit provisions in this instance is unreasonable having regard to the minor variations being sought to the elements listed above, and the development standard can be varied in this instance.

### **Clause 4.4 Floor Space Ratio - complies**

25 The proposed amendments do not result in non-compliance with the floor space ratio development standard of 1.3:1. The total GFA proposed is 5519m<sup>2</sup> resulting in a FSR of 1.29:1.

### **Clause 6.6 Essential Services - complies**

30 The modified proposal will have access to all necessary services. Access and manoeuvring to the site will not be affected by modifications, subject to conditions.

### **Clause 6.13 Design Excellence – Byron Bay Town Centre - complies**

35 The proposal when originally lodged with Council included an awning as required by Condition 36 of the development consent. Upon review by Council's Design Excellence Panel, including protracted discussions with the proponent, this element of the proposal was withdrawn and will be addressed at a later stage.

### **40 4.3. Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues**

No draft EPIs affect the proposal.

### **45 4.4. Development Control Plans**

#### **Chapter B4 - Traffic Planning, Vehicle Parking, Circulation and Access**

50 The applicants are now proposing a reconfigured car parking basement with 112 spaces, two of which are share car spaces. This amounts to an equivalent total of 116 spaces as every car share space provided as per Chapter E10 Byron Town centre is worth 3 spaces. The basement nominates 73 spaces for the serviced apartments plus 4 visitor spaces plus 2 concierge (car share spaces) with 33 spaces for the commercial retail component of the development.

5 The proposal as amended demands 87 spaces for the serviced apartment (83 + 4 visitors) component of the development and 32 spaces for the commercial retail component giving a total of 119 spaces. The shortfall in parking is in part a result of 7 dual key units generating an additional 7 spaces and additional storage areas in the basement at the expense of parking spaces.

10 The applicants have submitted a traffic report from McLaren Traffic Engineering which argues that the basement car parking proposed is sufficient for the development noting that the 4 visitor and retail spaces are likely to be shared between the different users, with retail parking likely to be in high demand on Thursday evenings and weekend middays, whilst the tourist visitors will likely peak Friday and Saturday evenings.

15 To further overcome this numerical shortfall it is recommended that a third car share vehicle be provided within the basement at the expense of one of the retail commercial spaces, noting that not all guests staying at the facility will have a vehicle especially those flying into Ballina and or Gold Coast Airport. Conditions of consent are to apply.

B13 – Access and Mobility

20 The applicants have sought to reduce the number of accessible spaces from 8 to 6 spaces. In this regard 4 spaces are nominated as accessible in response to the four accessible apartments proposed and one accessible space is required for the commercial retail component of the development. The applicant has nominated a total of 6 spaces on the plan whilst car parking space 71 could also be used as a further accessible parking spaces. Amended conditions to apply.

25

D3 – Tourist Accommodation

The proposed minor modifications remain consistent with the provisions of this chapter. The proposed amendment of Condition 88 to extend the hours of operation of the roof top recreation facilities (swimming pool and surrounds) from 8.00am – 8.00pm to 6.00am – 8.00pm is considered reasonable in this instance and is supported for the following reasons.

- Unlikely to negatively impact on surrounding land uses. The land use zone is E1 Local Centre adjoining to the north, south and east and the rail corridor adjoins to the west.
- Anecdotal observations suggest that early morning pool users do so for exercise more so than recreation and consequently the risk of additional noise within these extended hours would be minimal.
- No Music (amplified or otherwise) between 6am and 8am

D4 – Commercial and Retail Development

The proposed minor modifications remain consistent with the provisions of this chapter.

E10 – Byron Bay Town Centre

The proposed minor modifications remain consistent with the provisions of this chapter. Car share spaces are now proposed and conditions of consent to apply.

The proposal when originally lodged with Council included an awning as required by Condition 36 of the development consent. Upon review by Council’s Design Excellence Panel, including protracted discussions with the proponent, this element of the proposal was withdrawn and will be addressed at a later stage.

**4.5. The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Proposed amendments do not generate any impacts that have not been previously considered.

**4.6. The suitability of the site for the development**

Proposed amendments do not affect the Sites Suitability. The site is a serviced allotment with Zone E1 Local Centre and is suitable for the modified development.

**2.7. Submissions made in accordance with this Act or the regulations**

One submission was received raising the following issues.

<b>Issues</b>	<b>Analysis</b>
Height limit breach	The proposed additional height breaches of the 11.5m development standard involve 3 roof top building elements. <ul style="list-style-type: none"> <li>• Pool balustrade approved 13.18m, proposed 13.29m (11cm increase);</li> <li>• Pool deck approved 12.18m, proposed 12.24m (6cm increase);</li> <li>• Mechanical ventilation approved 13.5m, proposed 13.6m (10cm increase).</li> </ul> Refer to Section 4.2 of this report for discussion of LEP Height of Buildings. Refer to Attachment 4 for Clause 4.6 Objection for Height of Buildings.
Concern regarding removing affordable accommodation and replacing with luxury accommodation.	The demolition of the backpacker’s hostel and the new mixed use development comprising retail premises and serviced apartments was issued development consent on 04/11/2021. This proposed modification is for minor design and condition changes only and this issue is not a matter for consideration.

**2.8. Public interest**

The modification will not set an undesirable precedent or compromise the public interest.

**2.9. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES**

There is no nexus to levy additional contributions.

**5. CONCLUSION**

The proposed development as approved is considered to be substantially same the development as approved having regards to the provisions under Section 4.55 of the EPA Act 1979. The changes to the building as proposed are minor and have minimal impact on the built or natural environment and raise no issues in terms of the relevant planning controls applying to the site. The Section 4.55 application is recommended for approval subject to amended conditions of consent.

STAFF REPORTS - INFRASTRUCTURE SERVICES

**Report No. 13.16 Part Road Reserve Closure and sale adjoining Lot 4 & 5 DP 246401, 154 & 156 Lighthouse Road, Byron Bay NSW**

5

**Directorate:** Infrastructure Services

**Report Author:** Tracy Armstrong, Roads & Property Officer

**File No:** I2023/1451

**Summary:**

10 This report is being presented to Council to endorse the closure of Council's road reserve adjoining Lot 4 & 5 DP 246401.

As per Crown Land determination the road/land will vest in Council upon closure, and it is proposed to sell the land to the adjoining landowners of Lot 4 and Lot 5 DP 246401.

Land size is approximately 108m<sup>2</sup> (Lot 4), 100 m<sup>2</sup> (Lot 5)

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**RECOMMENDATION:**

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1. That Council endorses the closure of part road reserve adjoining Lot 4 & 5 DP 246401 as detailed in the report.

2. That Council accepts the valuation as per *Attachment 1 E2023/99644* and *Attachment 2 E2023/99646*, that has been agreed upon by the landowners.

25

3. That the applicant pays all remaining costs associated with the part road closure and consolidation.

- a) Council application fees
- b) Council's surveyor's fees and survey, valuation, and legal costs
- c) All registration fees
- d) Legal costs

30

4. The allotments created by the part road closure to be consolidated into existing Parcel No 44960 Lot 4 DP 246401 and Parcel No 44970 Lot 5 DP 246401.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.16

**5. That Council authorises the General Manager to execute all documents necessary to affect the road closure, sale, transfer, and consolidation of the part closed road.**

### **Attachments:**

- 5
- 1 Confidential - Page Extraction Current Market Valuation Asset Advisory Valuers, Proposed Road Closure 156 Lighthouse Road Byron Bay Lot 5 DP 246401, E2023/99644
  - 2 Confidential - Page Extraction Current Market Valuation Asset Advisory Valuers, Proposed Road Closure 154 Lighthouse Road Byron Bay Lot 4 DP 246401, E2023/99646
  - 10 3 Plan of Proposed Road Closure Adjoining 154 & 156 Lighthouse Road Byron Bay Lots 4 & 5 DP 246401, E2023/97556 
  - 4 Authorities Responses & Submissions for Proposed Road Closure Adjoining 156 Lighthouse Road Byron Bay Lot 5 DP 246401, E2023/108003 

15

## Report

5 Council was approached by the owners of Lot 4 & 5 DP 246401 154 & 156 Lighthouse Road Byron Bay to discuss encroachment issues on Council's road reserve. The survey plan (*Attachment 3 E2023/97556*) shows the existing formed road lying within adjoining part Lot 4 & 5 DP246401. This road closure is purely to rectify access encroachment issues.

10 A road closure of Council's Road reserve was discussed to resolve the encroachment issues as per **Image 1** below, and a valuation was carried out (*Attachment 1 E2023/99644 and Attachment 2 E2023/99646*) with the current owners. **Image 2** Red arrow highlights fork to the left of No Name Road to access Lot 4 & 5 DP 246401



**Blue** indicates section of road proposed to be closed

**Brown** indicates actual road

### Image 1

**Image 1** Highlights the location of the proposed road closure, alongside a marked line which shows the actual road.

15





**Image 2**

**Image 2** Red arrow highlights fork to the left of No Name Road to access Lot 4 & 5 DP 246401.

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**Image 3**

**Image 3** Shows section of road reserve that would be closed and sold to the adjoining landowners to resolve encroachment issues.

5

An easement will be created in favour of Lot 5 DP 246401 to formalise access to their property.

10

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.16

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

**Table 1**

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

### 5 Road Closure Process:

Council identified as per the **Roads Act 1993** (*Part 4 Division 3 Closing of council public roads by council 38A When council may close council public road*), that this part road area would not be reasonably required as a road for public use. This part road area is not required to provide continuity for an existing road network, and the part road does not  
 10 impede vehicular access to a particular land.

A Notice was placed in The Byron Echo on 13 September 2023 and could be viewed on Council website. Notifications went out to adjoining landowners and all authorities advising closure of the section of Lighthouse Road outlined in Image 1 highlighted blue as  
 15 per **Roads Act 1993** *Part 4 Division 3 Closing of council public roads by council 38B Notification of proposal to close council public road.*

There was a 28-day submission period with five submissions of objection by adjoining landowners and no submissions for objection by authorities. The points raised in the five submissions had no bearing on the partial road reserve closure. All submissions  
*Attachment 4 E2023/108003.*

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

## Strategic Considerations

### 10 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.3: Asset Management - Maximise asset service delivery potential and take a proactive approach to lifetime asset maintenance	1.3.3.8	Provide ongoing detailed road assessment and valuation for the purposes of purchase, closure and land sale as required

## Legal/Statutory/Policy Considerations

### **Roads Act 1993**

#### **Part 4 Closing of public roads**

#### 15 **Division 3 Closing of council public roads by councils**

#### **38A When council may close council public road**

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

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

#### 25 **38B Notification of proposal to close council public road**

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

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

- (i) all owners of land adjoining the road, and
- (ii) all notifiable authorities, and
- (iii) any other person (or class of person) prescribed by the regulations.

(2) The notice:

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

10

**38C Public submissions and formal objections**

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

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

**Note.**

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

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

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

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

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

30

**38D Decision of proposal**

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

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

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

40 **38E Effect of notice of closure**

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

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

- 45 (2) The land comprising a former road:

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

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

***38F Appeals to Land and Environment Court against closure decision***

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

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

(a) affirm the closure, or

(b) set aside the closure.

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

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

15 **Financial Considerations**

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

**Consultation and Engagement**

As per the Roads Act 1993 requirements, the necessary notices and submissions period was undertaken, and two objections were received.

20

**Report No. 13.17 Part Road Reserve Closure and sale adjoining Lot 2 DP 1003768, 55 Coolamon Scenic Drive, Coorabell NSW**

**Directorate:** Infrastructure Services

5 **Report Author:** Tracy Armstrong, Roads & Property Officer

**File No:** I2023/1468

**Summary:**

This report is being presented to Council to endorse the closure of Council's Road reserve adjoining Lot 2 DP 1003768.

10 As per Crown Land determination the road/land will vest in Council upon closure, and it is proposed to sell the land to the adjoining landowner of Lot 2 DP 1003768.

Land size is approximately 1.074Ha

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**RECOMMENDATION:**



1. That Council endorses the closure of part road reserve adjoining Lot 2 DP 1003768 as detailed in the report.
- 20 2. That Council accepts the valuation as per *Attachment 1 E2023/108893*, that has been agreed upon by the landowner.
3. That the applicant pays all remaining costs associated with the part road closure and consolidation.
  - 25 a) Council application fees
  - b) Council's surveyor's fees and survey, valuation, and legal costs
  - c) All registration fees
  - d) Legal costs
4. The allotments created by the part road closure to be consolidated into existing Parcel No 227640 Lot 2 DP 1003768.
- 30 5. That Council authorises the General Manager to execute all documents necessary to affect the road closure, sale, transfer, and consolidation of the part closed road.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.17

### **Attachments:**

- 1 Confidential - Valuation for Part Coolamon Scenic Drive closure adjoining 55 Coolamon Scenic Drive Lot 2 DP 1003768, E2023/108893
  - 5 2 Survey of both sides of Coolamon Scenic Drive for proposed road closure 55 Coolamon Scenic Drive Lot 2 DP 1003768, E2023/99818 
  - 3 Authorities Responses & Submissions RE\_Proposed part road closure namely Part 55 Coolamon Scenic Drive adjoining Lot 2 DP 1003768, E2023/106711 
- 10

## Report

Council was approached by the owner of Lot 2 DP 1003768 55 Coolamon Scenic Drive, Coorabell to discuss encroachment issues on Council's road reserve.

- 5 Council's Development Engineers have been assessing a development application 10.2012.507.1 and subdivision certificate 15.2012.507.1 submitted by the owner of Lot 2 DP 1003768, and the possibility of a part road closure of Council's road reserve was discussed to resolve encroachment issues as per **Image 1** below highlighted blue.



- 10 **Blue** indicates section of road reserve proposed to be closed.

### Image 1

*Image1 highlights the location of the proposed road closure, alongside actual road.*

- 15 An application was received from the owner of Lot 2 DP 1003768, in January 2022, requesting the closure and purchase of part of Council road reserve, highlighted in blue, **Image 1** above. **Image 2** below highlights the location from an aerial view.

The survey plan (*Attachment 2 E2023/99818*) and below in **Image 3** shows the existing formed road lying within adjoining part Lot 2 DP1003768.

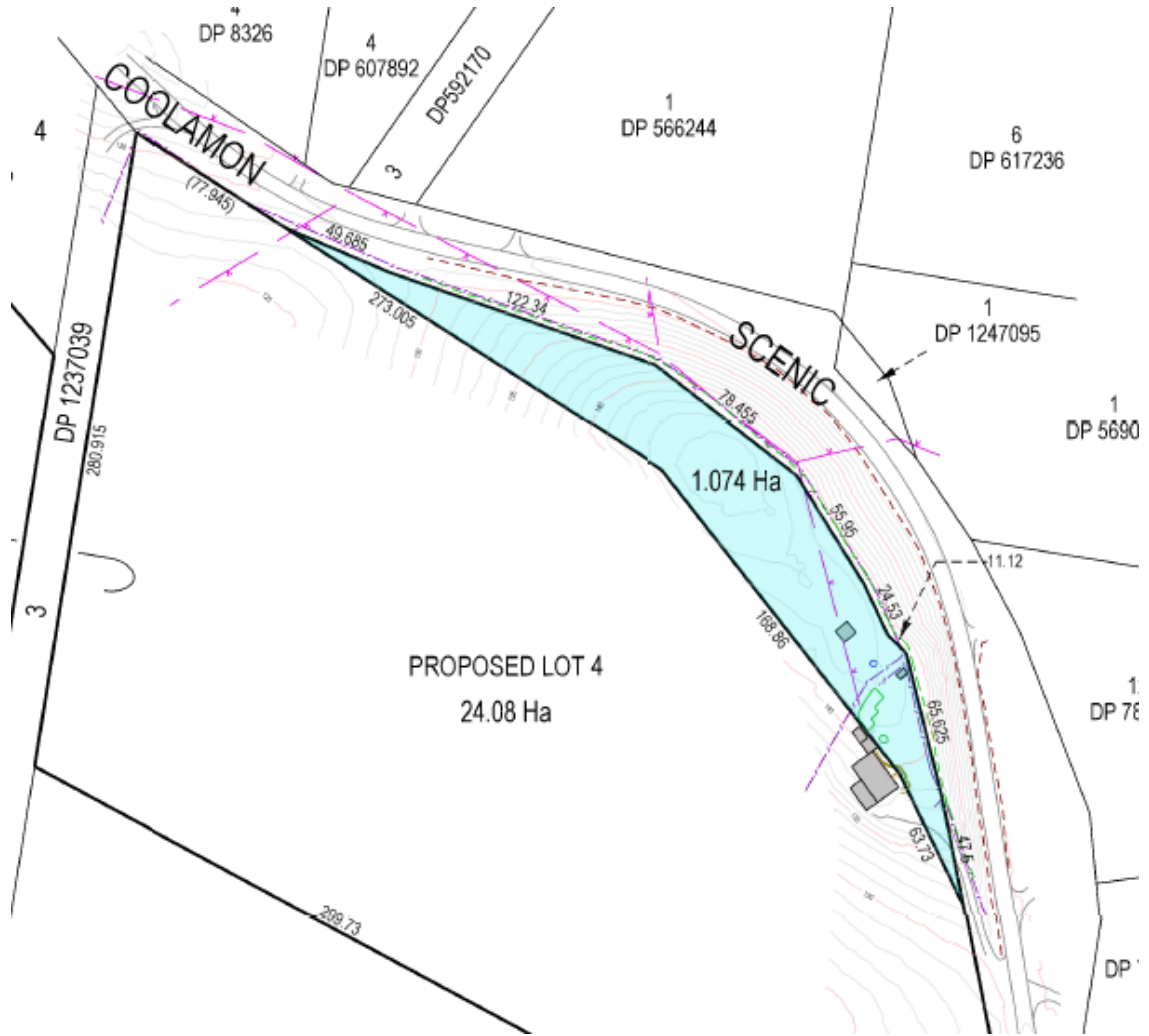




**Image 2**

Image 2 highlights aerial view Lot 2 DP 1003768

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Blue indicates section of road reserve proposed to be closed.

**Image 3**

- 5 *Image 3 highlights the surveyed section of proposed road reserve Lot 2 DP 1003768.*

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

**Table 1**

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

**5 Road Closure Process:**

Council identified as per the **Roads Act 1993** (*Part 4 Division 3 Closing of council public roads by council 38A When council may close council public road*), that this part road area would not be reasonably required as a road for public use. This part road area is not required to provide continuity for an existing road network, and the part road does not impede vehicular access to a particular land.

10

A Notice was placed in The Byron Echo on 13 September 2023 and could be viewed on Council website. Notifications went out to adjoining landowners and all authorities advising closure of the section of Coolamon Scenic Drive outlined in **Image 1** highlighted blue as per **Roads Act 1993 Part 4 Division 3 Closing of council public roads by council 38B Notification of proposal to close council public road**.

15

There was a 28-day submission period with no submissions of objection given by either adjoining landowners or authorities. All submissions *Attachment 3 E2023/106711*.

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

## Strategic Considerations

### 5 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.3: Asset Management - Maximise asset service delivery potential and take a proactive approach to lifetime asset maintenance	1.3.3.8	Provide ongoing detailed road assessment and valuation for the purposes of purchase, closure and land sale as required

## Legal/Statutory/Policy Considerations

### **Roads Act 1993**

#### **Part 4 Closing of public roads**

#### 10 **Division 3 Closing of council public roads by councils**

#### **38A When council may close council public road**

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

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

#### 20 **38B Notification of proposal to close council public road**

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

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

(2) The notice:

- 30 (a) must identify the road that is proposed to be closed, and
- (b) must state that any person is entitled to make submissions to the council with respect to the closing of the road, and

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

**38C Public submissions and formal objections**

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

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

**Note.**

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

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

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

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

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

**38D Decision of proposal**

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

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

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

**38E Effect of notice of closure**

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

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

(2) The land comprising a former road:

- 40 (a) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place)—remains vested in the council, and
- (b) in any other case—becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

45

***38F Appeals to Land and Environment Court against closure decision***

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

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

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

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

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

**Financial Considerations**

- 10   The costs associated with this road closure be paid for by the adjoining landowners.

**Consultation and Engagement**

As per the Roads Act 1993 requirements, the necessary notices and submissions period was undertaken, and two objections were received.

**Report No. 13.18 Part Road Reserve Closure and sale adjoining Lot 8 DP 840653, 865 Broken Head Road, Broken Head NSW**

**Directorate:** Infrastructure Services

5 **Report Author:** Tracy Armstrong, Roads & Property Officer

**File No:** I2023/1479

**Summary:**

This report is being presented to Council to endorse the closure of Council's road reserve adjoining Lot 8 DP 840653.

10 As per Crown Land determination the road/land will vest in Council upon closure, and it is proposed to sell the land to the adjoining landowners of Lot 8 DP 840653.

Land size is approximately 1,572m<sup>2</sup>

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**RECOMMENDATION:**



1. That Council endorses the closure of part road reserve adjoining Lot 8 DP 840653 as detailed in the report.
- 20 2. That Council accepts the valuation as per *Attachment 1 E2023/112021*, that has been agreed upon by the landowners.
3. That the applicant pays all remaining costs associated with the part road closure and consolidation.
  - 25 a) Council application fees
  - b) Council's surveyor's fees and survey, valuation, and legal costs
  - c) All registration fees
  - d) Legal costs
4. The allotments created by the part road closure to be consolidated into existing Parcel No 200460 Lot 8 DP 840653.
- 30 5. That Council authorises the General Manager to execute all documents necessary to affect the road closure, sale, transfer, and consolidation of the part closed road.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.18

### **Attachments:**

- 1 Confidential - Pages from VA1473-RC23 - Valuation for Road Closure adjoining 865 Broken Head Rd Lot 8 DP840653, E2023/112021
  - 5 2 Survey Plan\_Part Broken Head Road closure adjoining 865 Broken Head Rd Lot 8 DP840653, E2023/106698 
  - 3 Authorities Responses & Submissions RE\_ Proposed part road closure namely Part 865 Broken Head Road Lot 8 DP840653, E2023/106682 
- 10



## Report

Council was approached by the owner of Lot 8 DP 840653, 865 Broken Head Road Broken Head to discuss encroachment issues on Council's road reserve.

- 5 Council's Development Engineers have been assessing a development application 10.2021.511.2 submitted by the owner of Lot 8 DP 840653, and the possibility of a part road closure of Council's road reserve was discussed to resolve encroachment issues as per **Image 1** below highlighted blue.



- 10 **Blue** indicates section of road proposed to be closed.  
**Brown** indicates actual road.

### Image 1

**Image1** highlights the location of the proposed road closure, alongside a marked line which shows the actual road.

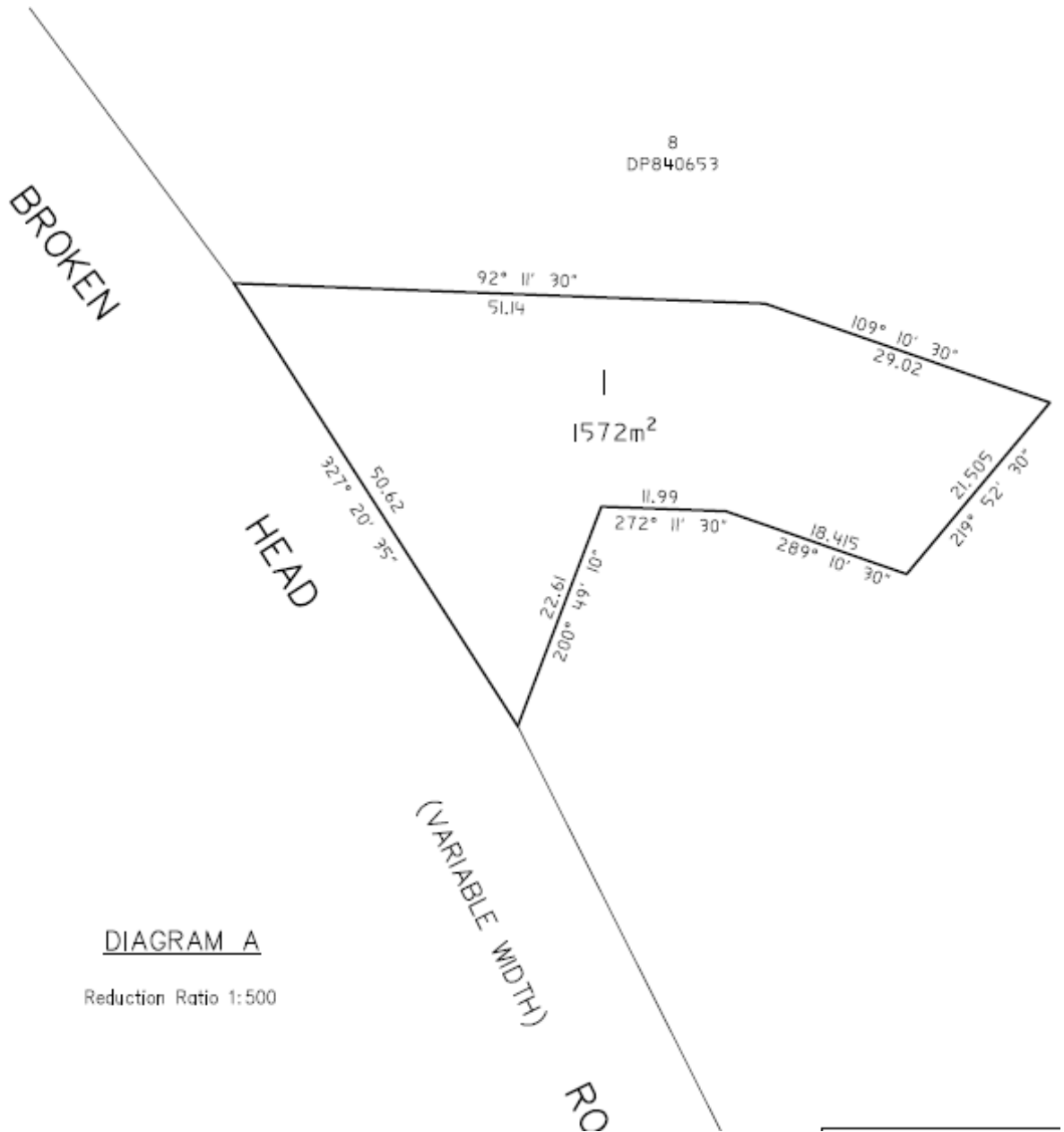
- 15 An application was received from the owner of Lot 8 DP 840653, in June 2022, requesting the closure and purchase of part of Council road reserve, highlighted in blue, **Image 1** above. **Image 2** below highlights the location from an aerial view.

The survey plan (*Attachment 2 E2023/106698*) and below in **Image 3** highlights the proposed road closure adjoining Lot 8 DP 840653.



**Image 2**

*Image 2 highlights aerial view Lot 8 DP 840653*



**Image 3** highlights the survey section of proposed road closure adjoining Lot 8 DP 840653

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

**Table 1**

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

**5 Road Closure Process:**

Council identified as per the **Roads Act 1993** (*Part 4 Division 3 Closing of council public roads by council 38A When council may close council public road*), that this part road area would not be reasonably required as a road for public use (whether for present or future needs). This part road area is not required to provide continuity for an existing road network, and the part road does not impede vehicular access to a particular land.

A Notice was placed in The Byron Echo on 13 September 2023 and could be viewed on Council website. Notifications went out to adjoining landowners and all authorities advising closure of the section of 865 Broken Head Road identified in **Image 1** as per **Roads Act 1993 Part 4 Division 3 Closing of council public roads by council 38B Notification of proposal to close council public road**.



There was a 28-day submission period with no submissions of objection by adjoining landowners and no submissions of objection by authorities. All submissions *Attachment 3 E2023/106682*.

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

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.3: Asset Management - Maximise asset service delivery potential and take a proactive approach to lifetime asset maintenance	1.3.3.8	Provide ongoing detailed road assessment and valuation for the purposes of purchase, closure and land sale as required

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

### ***Roads Act 1993***

#### ***Part 4 Closing of public roads***

#### ***Division 3 Closing of council public roads by councils***

15

#### ***38A When council may close council public road***

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

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

#### ***38B Notification of proposal to close council public road***

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

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

(2) The notice:

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

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

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

**38C Public submissions and formal objections**

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

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

15 **Note.**

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

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

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

(a) affirm the objection, or

(b) set aside the objection.

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

**38D Decision of proposal**

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

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

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

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

35 Land and Environment Court under that section.

**38E Effect of notice of closure**

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

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

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

(2) The land comprising a former road:

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

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

***38F Appeals to Land and Environment Court against closure decision***

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

**Financial Considerations**

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

**Consultation and Engagement**

- 15 As per the Roads Act 1993 requirements, the necessary notices and submissions period was undertaken, and two objections were received.

**Report No. 13.19 Part Road Reserve Closure and sale adjoining Lot 7 DP 548466 and Lot 1 DP 44807, 89 Massinger Street, Byron Bay NSW**

**Directorate:** Infrastructure Services

5 **Report Author:** Tracy Armstrong, Roads & Property Officer

**File No:** I2023/1481

**Summary:**

This report is being presented to Council to endorse the closure of Council's road reserve adjoining Lot 7 DP 548466 & Lot 1 DP 44807.

10 As per Crown Land determination the road/land will vest in Council upon closure, and it is proposed to sell the land to the adjoining landowner of Lot 7 DP 548466 & Lot 1 DP 44807.

Land size is approximately 65.9m<sup>2</sup>

15

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**RECOMMENDATION:**

1. That Council endorses the closure of part road reserve adjoining Lot 7 DP 548466 & Lot 1 DP 44807 as detailed in the report.
- 20 2. That Council accepts the valuation as per *Attachment 1 E2023/108560*, that has been agreed upon by the landowner.
3. That the applicant pays all remaining costs associated with the part road closure and consolidation.
  - 25 a) Council application fees
  - b) Council's surveyor's fees and survey, valuation, and legal costs
  - c) All registration fees
  - d) Legal costs
4. The allotments created by the part road closure to be consolidated into existing Parcel No 120610 Lot 7 DP 548466 and Parcel No 120620 Lot 1 DP 30 44807.





# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.19

**5. That Council authorises the General Manager to execute all documents necessary to affect the road closure, sale, transfer, and consolidation of the part closed road.**

### **Attachments:**

- 5
- 1 Confidential - Valuation extract of Land Adjoining 89 Massinger Street Byron Bay for part road closure adjoining Lot 7 DP 548466 and Lot 1 DP 44807, E2023/108560
  - 2 Survey for 89 Massinger Street Byron for part road closure adjoining Lot 7 DP 548466 and Lot 1 DP 44807, E2023/108327 
  - 10 3 Authorities Responses & Submissions RE\_Proposed part road closure adjoining 89 Massinger St Lot 7 DP 548466 and Lot 1 DP 44807, E2023/106722 

Report

5 Council was approached by the owner of Lot 7 DP 548466 & Lot 1 DP 44807, 89 Massinger Street Byron Bay requesting the closure and purchase of Council's road reserve. The survey plan (*Attachment 2 E2023/108327*) shows the existing formed road lying within adjoining part Lot 7 DP 548466 & Lot 1 DP 44807.

A road closure of Council's Road reserve was discussed to increase the current frontage as per **Image 1 & 2** below, and a valuation was carried out (*Attachment 1 E2023/108560*). **Image 3** Survey shows existing formed road lying within adjoining part Lot 7 DP 548466 & Lot 1 DP 44807



10

**Blue** indicates section of road proposed to be closed.

**Brown** indicates actual road.

**Image 1**

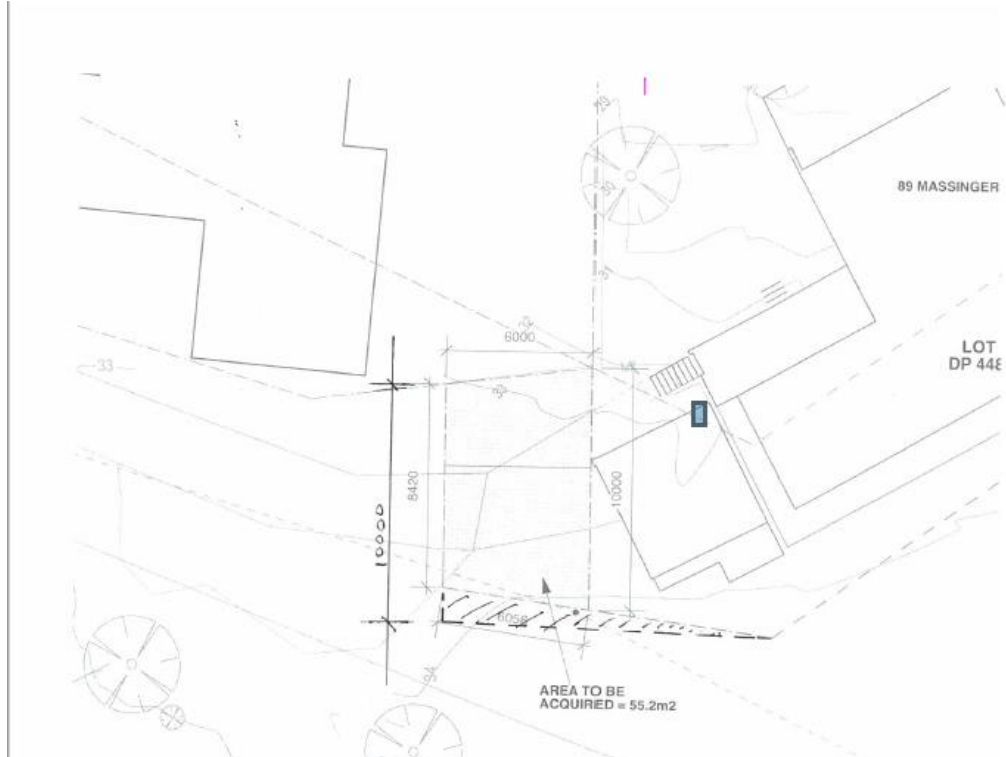
15

*Image1 highlights the location of the proposed road closure, alongside actual road.*



**Image 2**

*Image 2 Blue line hatching highlights proposed extension to Lot 7 DP 548466 & Lot 1 DP 44807*



5

**Image 3**

Survey plan shows existing formed road lying within adjoining part Lot 7 DP 548466 & Lot 1 DP 44807.

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

**Table 1**

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

**5 Road Closure Process:**

Council identified as per the **Roads Act 1993** (*Part 4 Division 3 Closing of council public roads by council 38A When council may close council public road*), that this part road area would not be reasonably required as a road for public use (whether for present or future needs). This part road area is not required to provide continuity for an existing road network, and the part road does not impede vehicular access to a particular land.

A Notice was placed in The Byron Echo on 13 September 2023 and could be viewed on Council website. Notifications went out to adjoining landowners and all authorities advising closure of the section of 89 Massinger Street outlined in Image 1 highlighted blue as per **Roads Act 1993 Part 4 Division 3 Closing of council public roads by council 38B** *Notification of proposal to close council public road*.



There was a 28-day submission period with no submissions of objection by adjoining landowners and no submissions for objection by authorities. All submissions *Attachment 3 E2023/106722*.

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

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
<b>1: Effective Leadership</b>	1.3: Ethical and efficient management of resources	1.3.3: Asset Management - Maximise asset service delivery potential and take a proactive approach to lifetime asset maintenance	<b>1.3.3.8</b>	Provide ongoing detailed road assessment and valuation for the purposes of purchase, closure and land sale as required

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

#### ***Roads Act 1993***

#### ***Part 4 Closing of public roads***

#### ***Division 3 Closing of council public roads by councils***

15

#### ***38A When council may close council public road***

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

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

#### ***38B Notification of proposal to close council public road***

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

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

(2) The notice:

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

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

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

**38C Public submissions and formal objections**

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

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

15 **Note.**

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

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

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

(a) affirm the objection, or

(b) set aside the objection.

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

**38D Decision of proposal**

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

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

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

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

35 Land and Environment Court under that section.

**38E Effect of notice of closure**

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

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

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

(2) The land comprising a former road:

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

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

***38F Appeals to Land and Environment Court against closure decision.***

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

**Financial Considerations**

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

**Consultation and Engagement**

- 15 As per the Roads Act 1993 requirements, the necessary notices and submissions period was undertaken, and two objections were received.

**Report No. 13.20 Part Road Reserve Closure and sale adjoining 198 & 200 Middle Rocket Rd being Lot 1 DP 1059516, and Lots 1 & 2 DP 1258568 and Lot 10 DP 717102.**

5 **Directorate:** Infrastructure Services  
**Report Author:** Tracy Armstrong, Roads & Property Officer  
**File No:** I2023/1482

**Summary:**

10 This report is being presented to Council to endorse the closure of Council's road reserve adjoining Lot 1 DP 1059516, and Lots 1 & 2 DP 1258568 and Lot 10 DP 717102.

As per Crown Land determination the road/land will vest in Council upon closure, and it is proposed to sell the land to the adjoining landowner of Lot 1 DP 1059516, and Lots 1 & 2 DP 1258568 and Lot 10 DP 717102.

15 Land size is approximately 2.854ha

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**RECOMMENDATION:**

- 20 1. That Council endorses the closure of part road reserve adjoining Lot 1 DP 1059516, and Lots 1 & 2 DP 1258568 and Lot 10 DP 717102 as detailed in the report.
2. That Council accepts the valuation as per *Attachment 1 E2023/101401*, that has been agreed upon by the landowner.
- 25 3. That the applicant pays all remaining costs associated with the part road closure and consolidation.  
a) Council application fees  
b) Council's surveyor's fees and survey, valuation, and legal costs  
c) All registration fees  
d) Legal costs
- 30 4. The allotments created by the part road closure to be consolidated into existing Parcel No 239069 Lot 1 DP 1059516, Parcel No 270023 & 270024 Lot 1 & 2 DP 1258568, Parcel No 4300 Lot 10 DP 717102.





# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.20

**5. That Council authorises the General Manager to execute all documents necessary to affect the road closure, sale, transfer, and consolidation of the part closed road.**

### **Attachments:**

- 5
- 1 Confidential - Opteon Valuation report road closure council road reserve running through 198 200 Middle Pocket Road, Middle Pocket, E2023/101401
  - 2 Survey Map\_200 Middle Pocket Road Middle Pocket Lot 1 DP 1059516, and Lots 1 & 2 DP 1258568 and Lot 10 DP 717102. \_pdf, E2023/105631 
  - 10 3 Authorities Responses & Submissions for Proposed Road Closure Adjoining Lot 1 DP 1059516, Lot 1 & 2 DP 1258568, Lot 10 DP 717102, E2023/107664 

## Report

Council was approached by the owner of Lot 1 DP 1059516, and Lots 1 & 2 DP 1258568 and Lot 10 DP 717102 Middle Pocket Road Middle Pocket to purchase Council's adjoining road reserve. The survey plan (*Attachment 2 E2023/105631*) shows the existing formed road lying within adjoining Lot 1 DP 1059516, and Lots 1 & 2 DP 1258568 and Lot 10 DP 717102. **Image 2** shows the survey of the proposed road closure.

A road closure of Council's road reserve to adjoining lots as per **Image 1** below has commenced, and a valuation was carried out (*Attachment 1 E2023/101401*).



10

**Blue** indicates section of road proposed to be closed.

### Image 1

*Image 1 highlights the location of the proposed road closure.*

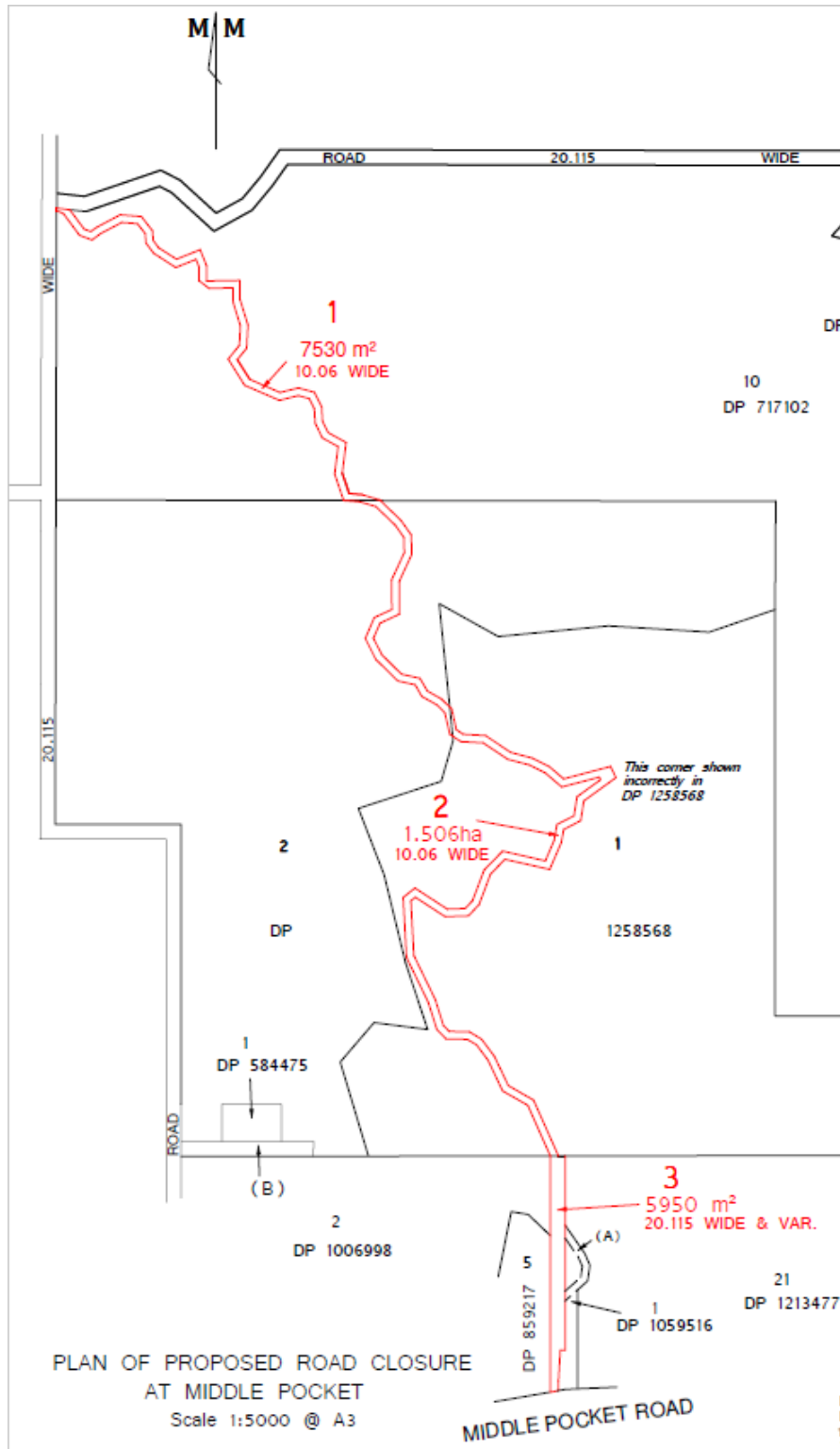


Image 2

Image 2 Survey of road reserve closure Lot 1 DP 1059516, and Lots 1 & 2 DP 1258568 and Lot 10 DP 717102.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.20

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

**Table 1**

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

### 5 Road Closure Process:

Council identified as per the **Roads Act 1993** (*Part 4 Division 3 Closing of council public roads by council 38A When council may close council public road*), that this part road area would not be reasonably required as a road for public use (whether for present or future needs). This part road area is not required to provide continuity for an existing road network, and the part road does not impede vehicular access to a particular land.

A Notice was placed in The Byron Echo on 13 September 2023 and could be viewed on Council website. Notifications went out to adjoining landowners and all authorities advising closure of the section of Road outlined in Image 1 highlighted blue as per **Roads Act 1993** *Part 4 Division 3 Closing of council public roads by council 38B Notification of proposal to close council public road*.

There was a 28-day submission period with no submissions of objection by adjoining landowners and no submissions for objection by authorities. All submissions *Attachment 3 E2023/107664*.

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

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
<b>1: Effective Leadership</b>	1.3: Ethical and efficient management of resources	1.3.3: Asset Management - Maximise asset service delivery potential and take a proactive approach to lifetime asset maintenance	<b>1.3.3.8</b>	Provide ongoing detailed road assessment and valuation for the purposes of purchase, closure and land sale as required

10 **Legal/Statutory/Policy Considerations**

***Roads Act 1993***

***Part 4 Closing of public roads***

***Division 3 Closing of council public roads by councils***

15

***38A When council may close council public road***

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

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

***38B Notification of proposal to close council public road***

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

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

(2) The notice:

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

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

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

**38C Public submissions and formal objections**

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

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

15 **Note.**

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

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

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

(a) affirm the objection, or

(b) set aside the objection.

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

**38D Decision of proposal**

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

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

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

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

35 Land and Environment Court under that section.

**38E Effect of notice of closure**

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

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

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

(2) The land comprising a former road:

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

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

***38F Appeals to Land and Environment Court against closure decision***

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

**Financial Considerations**

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

**Consultation and Engagement**

- 15 As per the Roads Act 1993 requirements, the necessary notices and submissions period was undertaken, and two objections were received.

**Report No. 13.21 Selective Tender Assessment on Expression of Interest to Construct Sandhills Wetlands**

**Directorate:** Infrastructure Services

**Report Author:** Christopher Soulsby, A/ Manager Assets & Major Projects

5 **File No:** I2023/1622

**Summary:**

On 24 August 2023, the General Manager, under delegated authority, approved the use of the open tender method to call for expressions of interest (EOI) in a selective tender process for Contract **2023-1904 Sandhills Wetland Construction**.

10 The Request for Tender was advertised from 11 September 2023 to 20 October 2023. EOIs were received from the following organisations:

- Durack Civil
- Rugendyke & Bashforth
- Synergy Resource Management
- 15 • Winslow iLH Australia

The EOIs have been assessed in accordance with the provisions of the Local Government (General) Regulations 2021. This report summarises the background and assessment of the EOIs and provides a recommendation to invite the following organisations to participate in the second phase of the tender process.

20

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**RECOMMENDATION:**

- 25 1. **That Council move into confidential session to discuss the evaluation report. The matter should be confidential under the provisions of section 10A (2) (d) (i) of the Local Government Act 1993 as it may prejudice the commercial position of the person who supplied the information.**
- 30 2. **That Council invite the following entities to tender for Contract 2023-1904 Sandhills Wetland Construction:**
  - Durack Civil
  - Rugendyke & Bashforth
  - Synergy Resource Management
  - Winslow iLH Australia



# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

### **Attachments:**

- 5      1      Confidential - EOI Evaluation Report - Sandhills Wetland Construction (CS RB MB Signed)(3), E2023/114722

## Report

On 24 August 2023, the General Manager, under delegated authority, approved the use of the open tendering method to call for expressions of interest via open tender for Contract **2023-1904 Sandhills Wetland Construction**.

- 5 The Request for Tender sought responses from proponents to provide civil construction and spoil disposal service to Council.

### Project Overview

10 The Sandhills reserve is a vegetated reserve located behind Clarkes beach at the parcel of land identified as Lot 383 DP728202 and Lot 457 DP 1087879. Byron Shire Council seeks to upgrade the stormwater management system including reinstatement of wetlands on the eastern portion of the site to achieve a range of environmental objectives including, improving the site's environmental and cultural values, mitigating flood impacts, stormwater treatment, integration with catchment water cycle management objectives, provide education and recreation opportunities and creating pedestrian connectivity  
15 between key sites in and around the town centre.

The objectives for the Sandhills Wetland Project are:

- Protect and enhance Aboriginal cultural values of the area
- Allow access to water and sewer infrastructure for maintenance and emergency purposes
- 20 • Showcase best practice water sensitive urban design
- Improve water quality including at the stormwater outlet to Clarkes beach
- Maximise flood storage to mitigate flooding
- Improve visual and environmental amenity of the site
- 25 • Ensure acid sulfate soils (actual and potential) are appropriately accounted for and managed
- Protect and enhance environmental values at the site
- Provide an accessible pedestrian link to the Arakwal Cultural Heritage Centre site
- Provide an accessible open space recreational area that supports passive activation, social connection and community well being
- 30 • Support delivery of the key actions from the Belongil Creek Floodplain Risk Management Plan (WBM BMT, 2015), Byron Bay Town Centre Masterplan (Macgregor Coxall, 2015) and Byron Shire Council and Arakwal Memorandum of Understanding.

### Scope

35 The scope of works for the Project includes:

- Three connected artificial wetlands, including permanent open water zones, for stormwater management and water quality improvement; and
- A series of circulation pathways, for pedestrian and bicycle access.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

- The establishment of the wetlands and pathways will require the excavation, treatment, and removal of approximately 15,000m<sup>3</sup> of ASS material and associated vegetation removal.

5 The AS4000 Construct Only Contract will include all works shown on the Detailed Design Drawings (AWC) including compliance with the Environmental Impact Statement (Planit Consulting) and associated Management Plans. Summary of works below.

- Clear and Grub and disposal of surplus off site
- Topsoil trip and disposal surplus off site.
- 10 • Basin Earthworks – approx. 15,000m<sup>3</sup> cut including treatment and testing of ASS material.
- Installation of Geofabric and HDPE Liner
- Basin filter layer
- Drainage pipes, pits and headwalls
- Concrete spillways
- 15 • Rock lined swale drains and inlets/outlets of drainage pipes
- Batter rock scour protection
- Access paths (concrete and granular) and landscape furniture
- Detailed landscaping/planting
- Landscape Maintenance for a period of 12 months

20

The Contract is expected to commence in February 2024 after the completion of the seconds phase of the selective tender process.

The Contract will be managed by the Acting Manager Assets and Major Projects/

Tenders were advertised as follows:

25 VendorPanel Online: Byron Shire Council issued a Request for Expressions of Interest for the Construction of Sandhills Wetland 2023-1904 on 07 September 2023 which closed on 20 October 2023.

An optional briefing/site inspection was held at the site of Sandhills Wetland 21 September 2024

30 The following organisations attended the briefing/site inspection:

- Rugendyke and Bashforth Contracting
- Winslow
- Synergy Resource Management
- CMC

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

- ENV
- Australian Wetlands

5 The purpose of the briefing was to brief Contractors on the overall project scope, timing of construction and to carry out an inspection of the site. Contractors had the opportunity to ask several project related questions throughout the briefing session and during the walkthrough.

10 An Evaluation Panel comprising of one Council staff member and two consulting engineers was formed. Following the identification of a perceived conflict of interest the consultants were replaced on the panel with two Council staff. To further insure the integrity of the assessment process a probity officer independent of the panel was appointed to oversee the process.

15 Should Council wish to discuss the perceived conflict of interest it is recommended that Council go into closed session under section 10A of the Local Government Act 1993 as the matter to be discussed may pertain to “personnel matters concerning particular individuals” [s10A (2) (a)] and “alleged contraventions of any code of conduct requirements applicable under section 440 [s10A (2) (i)].

The Request for Tender was advertised from 11 September 2023 to 20 October 2023. EOIs were received from the following organisations:

- Durack Civil
- 20 • Rugendyke & Bashforth
- Synergy Resource Management
- Winslow iLH Australia

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

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

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

The qualitative criteria assessment was carried out by the evaluation panel. Each member of the evaluation panel independently reviewed each EOI in its entirety and scored each submission based on the following qualitative criteria:

- (a) Profile and relevant experience
  - 5 (b) Quality and availability of resources
  - (c) Delivery plan
  - (d) Social Procurement
  - (e) Sustainable Practices
  - (f) Local Industry
- 10 Each of the criteria was scored out of ten according to the following rating scale:

Score	Rating
0-1	No answer provided or does not meet Council's requirements in any way.
2-3	Poor offer, many deficiencies. High risk to Council.
4-5	Fair offer with some deficiencies. Offer presents moderate-high risk to Council.
6 – 7	Meets Council's basic requirements. Offer is adequate and low risk to Council.
8 – 9	Very good offer that meets Council's requirements. Low risk to Council
10	Excellent offer that is fully substantiated. Completely meets all of Council's requirements. Presents little or no risk to Council.

The attached confidential tender evaluation report contains the qualitative and quantitative assessment of the four EOI submissions.

There was significant price variation in the EOIs and there was differing standards of documentation provided by each entity.

- 15 Two of the four EOIs present an excellent offer that is fully substantiated. The offer completely meets all of Council's requirements and presents little or no risk to Council. should the contract be awarded to them.

One is a very good offer that meets Council's requirements it is of low risk to Council.

One offer meets Council's basic requirements.

One offer is adequate and low risk to Council.

There is significant variation on price and value of money between the offers.

- 5 It is recommended that all four contractors who submitted an EOI be invited to the next stage of the tender process.

No financial checks have been completed at this stage however all Contractors have completed similar projects for Local and State Organisations in the past 5 years. The financial checks will be undertaken at the final tender phase.

## 10 **Options**

The following options are available to Council:

1. Council may resolve to not proceed further with the selective tender process; or
2. Council may select one or more of the EOI submissions to proceed to the next phase in the tender process.

## 15 **Financial Considerations**

Council has sufficient financial capacity to proceed to tender. A final budget will be resolved at the award of tender.

## **Statutory and Policy Compliance Considerations**

- 20 The EOI process is complete and subject to Council resolution the tendering process will now be undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2021.

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

**Report No. 13.22 Tender 2023-1897 EPAR04 Bridge Guardrail and Fences**

**Directorate:** Infrastructure Services

**Report Author:** Samuel Frumpui, Manager Works

5 **File No:** I2023/1734

**Summary:**

On 28 August 2023, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2023-1897 EPAR04 Bridge Guardrail and Fences

10 The Request for Tender was advertised from 22/09/2023 to 6/10/2023. Tenders were received from the following organisations:

- Roadside Services and Services Pty Ltd

15 Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2021. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2023-1897 EPAR04 Bridge Guardrail and Fences.

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**RECOMMENDATION:**

- 20 1. **That Council award Tender Contract 2023-1897 EPAR04 Bridge Guardrail and Fences to the preferred supplier identified in the tender evaluation report (Attachment 1) for the sum of \$316,592.32 (incl. GST) and grants the General Manager delegated authority to approve variations.**
- 25 2. **That Council authorise the Mayor and General Manager to affix the Council Seal to the relevant documents.**
3. **That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2021.**

30 **Attachments:**

- 1 Confidential - EPAR04 Evaluation Report (signed), E2023/114742

## Report

On 28 August 2023, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2023-1897 EPAR04 Bridge Guardrail and Fences.

- 5 Tenders were called to deliver works required for Flood Restoration works under EPAR04 Bridge Guardrail and Fences.

The Request for Tender sought responses from proponents to construct guardrail and repair fences on the following flood impacted bridges:

- Booyong Bridge, Booyong Road, Booyong
- 10 • Donaghy's Bride, Goonengerry Road, Goonengerry
- Jubilee Avenue, Mullumbimby
- Keys Bridge, Coorabell Road, Federal
- Palmwoods Bridge, Main Arm Road, Main Arm
- Repentance Creek Bridge, Repentance Creek Road, Goonengerry

- 15 The Contract is expected to commence in March 2024 for a period of 2 months.

The Contract will be managed by Craig Murphy, Project Engineer, IS Asset & Major Projects.

Selected Tenderers were invited from Prescribed Entity Local Government Procurement's (LGP) existing contract supplier lists.

- 20 An Evaluation Panel comprising one Council staff member and two consultants from Latsyrc Pty Ltd was formed. (Latsyrc Pty Ltd are engaged to project manage Flood Event AGRN1012 recovery works).

Tenders closed on Friday, 6 October 2023 and tenders were received from the following proponents:

- 25 • Road Safety Barriers Pty Ltd

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

- a) Tenderer must have a valid Australian Business Number.
- b) Substantial conformance to Conditions of Contract and Statement of Requirements.
- 30 c) Workers compensation insurance for all employees.



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- d) Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements.
- e) Satisfactory Work Health and Safety practices.
- f) Commitment to ethical business practice principles.

5 *Qualitative criteria:*

Criteria	Elements
Profile and relevant experience	Tenderer profile
	Previous relevant experience
Quality and availability of resources	Proposed key personnel
	Proposed staff
	Use of subcontractors
Delivery Plan	Goods/services standards and methodology and timeframe
	Implementation plan
Social Procurement	Opportunities for people experiencing disadvantage
	Employment opportunities, Aboriginal and Torres Strait Islander business
	Product sustainability
Sustainable Practices	Environmental Practices
Local Industry	Supporting local business
Price	Total contract price

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

## Financial Considerations

The price basis for the contract is a lump sum.

5 Council has obtained sufficient funding under the “Australian Government Disaster Recover Funding Arrangements 2018” and ‘NSW Essential Public Asset Reconstruction Works Guidelines’ as part of the Flood Recovery works associated with the March 2022 Flood event AGRN1012. The funding amount is detailed in the confidential evaluation report.

## Statutory and Policy Compliance Considerations

10 The tendering process has been undertaken in accordance with Council’s Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2021.

The Local Government (General) Regulations 2021 define the options available to Council. An extract is provided below.

### Local Government (General) Regulation 2021 - Reg 178

15 [Acceptance of tenders](#)

*178 Acceptance of tenders*

(1) *After considering the tender submissions for a proposed contract, the council must either—*

20 (a) *accept the tender submission that, having regard to all the circumstances, appears to it to be the most advantageous, or*

(b) *decline to accept any of the tender submissions.*

25 (1A) *Without limiting subsection (1), in considering the tender submissions for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of section 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender submissions.*

30 (2) *A council must ensure that every contract it enters into as a result of a tender submission accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under section 176). However, if the successful tender submission was made by the council (as provided for in section 55(2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*

35 (3) *A council that decides not to accept any of the tender submissions for a proposed contract or receives no tender submissions for the proposed contract must do one of the following—*

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- 5 (a) *postpone or cancel the proposal for the contract,*
- (b) *invite, in accordance with section 167, 168 or 169, fresh tender submissions based on the same or different details,*
- (c) *invite, in accordance with section 168, fresh applications from persons interested in making a tender submission for the proposed contract,*
- (d) *invite, in accordance with section 169, fresh applications from persons interested in making a tender submission for contracts of the same kind as the proposed contract,*
- 10 (e) *by resolution of the council, enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
- (f) *carry out the requirements of the proposed contract itself.*
- (4) *If a council resolves to enter into negotiations as referred to in subsection (3)(e), the resolution must state the following—*
- 15 (a) *the council's reasons for declining to invite fresh tender submissions or applications as referred to in subsection (3)(b)–(d),*
- (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).*

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

**Report No. 13.23 Possible change of road name Hottentot  
Crescent, Mullumbimby**

**Directorate:** Infrastructure Services

**Report Author:** Phillip Holloway, Director Infrastructure Services

5 **File No:** I2023/1755

**Summary:**

Council has received a request from a member of the community to rename Hottentot Crescent, Mullumbimby.



10

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**RECOMMENDATION:**

15 **That Council commences the name change process for Hottentot Crescent,  
Mullumbimby.**

**Attachments:**

- 1 Confidential - Email from Community Member with copy of letter sent to the Echo\_Hottentot Must Fall, E2023/107744
- 20 2 Letters to residents re Potential renaming of Hottentot Crescent, E2023/107754, E2023/107754 
- 3 Submissions received\_Hottentot Crescent Mullumbimby\_ name change proposal\_ October 2023, E2023/107787 

25

## Report

Council has been approached by a resident arguing that Hottentot Crescent, Mullumbimby, be renamed.

5

Hottentot Crescent has been so named since the relevant subdivision commenced in 1993, as part of the broader Tallowood Estate. The road was named Hottentot Crescent after plantings of hottentot fig trees from lots 10 to 38. Roads in the area have generally been named after flora names i.e., Tuckeroo Avenue, Golden Penda Place and Azalea Street.

10

The argument for renaming centres on use of the word “hottentot” as a racial slur in South Africa (Confidential Attachment 1 E2023/103764).

15

In response to the approach, Council sent letters to the 23 residences on Hottentot Crescent asking for their views on potentially changing the road’s name (Attachment 2 E2023/107754).

20

The renaming proposal was also advertised on Council website from September 13 for six weeks requesting feedback and submissions. In total seventeen submissions were received (Attachment 3 E2023/107787).

Twelve submissions were received from past and present residents, and all expressed similar concerns / suggestions including:

25

1. Strongly object to the road name changing.
2. Strongly agree Hottentot Crescent was named after trees planted along the road reserve.
3. Strongly believe the name is part of the local identity.
4. Strongly agree if the renaming process is considered to include Australian flora.

30

Five submissions were received from members of the community, and all expressed similar concerns / suggestions which include:

35

1. Strongly agree to the road name change proposal from Hottentot.
2. Strongly agree the current name is offensive and racist.
3. Agree a proposed name change that follows Australian flora or Indigenous name.

40

Generally speaking, the submission arguments for retaining the current street name were based on the name referring solely to a tree species. Doubtless there are many residents in the area and within the Byron Shire more broadly who are unaware of the name containing any other meaning beyond naming the relevant tree.

45

Against this, the resident opposing the name argues that the tree name itself is racially loaded (whether this is broadly understood or not), because it is linked to the South African first nations people group the subject of the slur – the Khoisan people – who used the tree for food during South Africa’s colonisation.

50

The resident started a petition in late June. At the time of writing, it has 370 signatures supporting a renaming. It isn’t possible to determine where the petition supporters live. The lack of information about who has signed the petition should be weighed along with the number of signatures.

The proposed name change will come at an administrative and convenience cost to residents of Hottentot Crescent in the short term. Those costs will likely be acute in some cases. There is also

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## STAFF REPORTS - INFRASTRUCTURE SERVICES

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a regulatory cost to Council in following the proper process to change the street name if that course is chosen.

5 These costs should be balanced against the hurt caused to people impacted by racially loaded language; even in an instance like this where the difficulties associated with the name have their origin some way from 2023 Mullumbimby, where the road name doesn't "speak" directly to anyone, and where people use the name in good faith only for the purpose of naming a tree.

10 Equally, it is acknowledged that in a culture where much communication happens online, there is arguably a higher risk of someone discovering the street name's existence and feeling the weight of its alternative meaning than in years gone by. The potential audience for the harm is located both within and beyond the Byron Shire.

15 Unfortunately, none of the costs above can be quantified. It means the proposed name change is an evaluative judgement for the elected Council. It is a decision on which reasonable minds can differ. The choices to either rename or retain the current road name are also mutually exclusive. There isn't a decision that can satisfy both the people who support a name change and those who support its retention.

20 While acknowledging the above, this report errs on the side of recommending name replacement. It does this on the basis that there is more lasting value (however difficult to measure) in trying to minimise the type of hurt this particular name could cause some people over the long term, over the value in avoiding the (largely short run) costs to Hottentot Crescent residents who oppose the change.

25



**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>
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.3: Asset Management - Maximise asset service delivery potential and take a proactive approach to lifetime asset maintenance	1.3.3.8	Provide ongoing detailed road assessment and valuation for the purposes of purchase, closure and land sale as required

**5 Legal/Statutory/Policy Considerations**

The *Roads Act 1993* empowers Council to name or rename roads for which it is the roads authority. The includes Hottentot Crescent.

10 Council’s power to rename a road is subject to the Act and the *Roads Regulation 2018*.

The renaming proposal will also need to be consistent with NSW Government policy, particularly the NSW Address Policy and User Manual.

15 Relevant Council policy includes Council Policy No.07/102 – Tourist, Street Name, Community Facility and Service Signs

**Financial Considerations**

If Council proceed with the road naming process, there will be a requirement to pay an amount of approximately \$500, for amendments to street name signage from the existing budget.

20 There is also the staff time in following the process for a road renaming.



5 **Report No. 14.1 Report of the Climate Change and Resource Recovery Advisory Committee Meeting held on 21 September 2023**

**Directorate:** Sustainable Environment and Economy

**File No:** I2023/1460

**Summary:**

10 This report provides the minutes of the Climate Change and Resource Recovery Advisory Committee meeting held on 21 September 2023.

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**RECOMMENDATION:**

15 1. That Council notes the minutes of the Climate Change and Resource Recovery Advisory Committee Meeting held on 21 September 2023.


2. That Council adopts the following Management Recommendation:

20 **Report No. 4.1 Investigating Bangalow Heritage House as an eco-house demonstration site**  
File No: I2023/1122

**Management Recommendation**

25 That Council notes the report.

**Attachments:**

30 1 Minutes 21/09/2023 Climate Change and Resource Recovery Advisory Committee, I2023/1398 



## Report

The attachment to this report provides the minutes of the Climate Change and Resource Recovery Advisory Committee Meeting of 21 September 2023 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2023/09/CCRR\\_21092023\\_AGN\\_1650\\_AT.PDF](https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2023/09/CCRR_21092023_AGN_1650_AT.PDF)

The following items were considered by the Committee:

### **Report No. 3.1 Confirmation of minutes from the 29 June 2023 meeting**

The previous meeting minutes were confirmed.

10 **Report No. 4.1 Investigating Bangalow Heritage House as an eco-house demonstration site**

The Committee determined:

- 15 *That Council keep Zero Emissions Byron informed of planning for future usage of Heritage House in Bangalow and collaborate with ZEB on any potential options for fitting and retrofitting the building or part of it, as a demonstration and information centre for sustainable living.*

### **Report No. 4.2 Development of Litter and Illegal Dumping Strategic Plan**

*The Committee noted the report on the development of the Litter and Illegal Dumping Strategic Plan.*

20 **Report No. 4.3 Future Discussion Items for Climate Change and Resource Recovery Advisory Committee**

The Committee:

1. *Noted the report on future discussion items for the Climate Change and Resource Recovery Advisory Committee.*
- 25 2. *Requests staff to provide a brief update on the adopted Climate Change Adaptation Plan at the next available meeting, with a particular focus on planning provisions.*

## Management Comments

In relation to Report No. 4.1 Investigating Bangalow Heritage House as an eco-house demonstration site:

- 30 No further action is appropriate at this time, particularly pending a Council decision regarding the future uses of the Bangalow Heritage House. Staff are otherwise aware of ZEB's interest in the building as a demonstration Eco House.

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### REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.1

Specifically, in reference to the Committee's recommendation:

- *"That Council keep Zero Emissions Byron informed of planning for future usage of Heritage House in Bangalow..."*

5 Response: The future of the Bangalow Heritage House is under consideration by Council who may provide direction at the 26 October meeting. Council's decisions will be publicly available for ZEB and the community.

- *"...and collaborate with ZEB on any potential options for fitting and retro-fitting the building or part of it, as a demonstration and information centre for sustainable living."*

10 Response: ZEB have acknowledged that they are in the early stages of planning, having not completed a detailed project proposal. Staff have encouraged ZEB and Bangalow Historical Society to scope other buildings/properties for suitability as a demonstration Eco House in order to ensure that the features of the property and its' use are best suited ZEB's project outcomes.

15 Management do not agree with the Committee recommendation for the reasons outlined and alternatively recommend that Council notes the report only.

### **Financial Implications**

As per the Reports listed within the Climate Change and Resource Recovery Advisory Committee Meeting of 21 September 2023.

### 20 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Climate Change and Resource Recovery Advisory Committee Meeting of 21 September 2023.

**Report No. 14.2 Report of the Coast and ICOLL Advisory Committee Meeting held on 15 August 2023**

**Directorate:** Sustainable Environment and Economy

**File No:** I2023/1631

5

**Summary:**

This report provides the minutes of the Coast and ICOLL Advisory Committee Meeting held on 15 August 2023.

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**RECOMMENDATION:**

- 1. That Council notes the minutes of the Coast and ICOLL Advisory Committee Meeting held on 15 August 2023.**

15

**Attachments:**

- 1 Minutes 15/08/2023 Coast and ICOLL Advisory Committee, I2023/1167 

20

## BYRON SHIRE COUNCIL

### REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.2

## Report

The attachment to this report provides the minutes of the Coast and ICOLL Advisory Committee Meeting of 15 August 2023 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2023/08/CICOL\\_15082023\\_AGN\\_1653\\_AT.PDF](https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2023/08/CICOL_15082023_AGN_1653_AT.PDF)

The following items were considered by the Committee:

#### **Report No. 3.1 Confirmation of minutes from the 15 August meeting**

- 10 The Committee noted the report, noting that under Item 4.1 Part 2 there is an anomaly in that the report that Council will receive at a Council meeting should also come to a committee meeting.

#### **Report No. 4.1 Future Discussion Items for Coast and ICOLL Advisory Committee**

- 15 The Committee noted the report.

#### **Report No. 4.2 Update on the development of Coastal Management Programs (CMPs) for the Byron Shire Coastline**

The Committee noted the update of the development of CMPs and CMP projects for the Byron Shire coastline and next steps.

- 20 **Report No. 4.3 Presentation by Hydrosphere Consulting on 'ICOLL Water Quality Source Tracking and Control Program for Belongil Creek, Tallow Creek and Ti Tree Lake' Stage 2 CMP project outcomes**

- 25 The Committee noted that the outcomes of this project will be provided to Council to note and will subsequently be provided on Council's website.

#### **Report No. 4.4 Presentation by DPE on "DPE Coastal and Marine Science Programs - NSW North coast"**

- 30 The Committee noted the Presentation by Department of Planning and Environment (DPE) on "DPE Coastal and Marine Science Programs - NSW North coast by the Department to Planning and Environment - Water, Floodplains and Coast (North East).

## Financial Implications

As per the Reports listed within the Coast and ICOLL Advisory Committee Meeting of 15 August 2023.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Coast and ICOLL Advisory Committee Meeting of 15 August 2023.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.3 Report of the Local Traffic Committee Meeting held on 17 October 2023**

5 **Directorate:** Infrastructure Services  
**File No:** I2023/1609

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**Summary:**

10 The attachment to this report provides the minutes of the Local Traffic Committee Meeting held on 17 October 2023 for determination by Council.

Council's action on the LTC advice will be:

- 15 a) If Council is in agreement with the LTC unanimous support then the proposal may be approved. In these cases there is no conflict between Council and the advice of the LTC, consequently there is no need for Council to inform TfNSW or the NSW Police representatives of the decision.
- b) If Council is in agreement with the LTC unanimous support, but no longer wants to proceed, the proposal may still be rejected.
- 20 c) If Council is in agreement with the LTC unanimous decline then the proposal may be rejected. Again there is no conflict between Council and the advice of the LTC. Consequently there is no need for Council to inform TfNSW or the NSW Police representatives of the decision.
- 25 d) If Council decides to proceed with a proposal where the advice of the LTC is not unanimous support, then the Council must first advise the TfNSW and the NSW Police representatives in writing of their intention to approve the proposal. TfNSW or the NSW Police may then lodge an appeal to the Regional Traffic Committee (RTC).
- 30 e) If Council decides to proceed with a proposal where the advice of the LTC is a unanimous decline, then the Council must first advise the TfNSW and NSW Police representatives in writing of their intention to approve the proposal. TfNSW or the NSW Police may then lodge an appeal to the RTC.

Due to the fact that the TfNSW and the NSW Police have the power to appeal certain decisions of the Council, the LTC cannot provide its advice to Council until both TfNSW and the NSW Police have provided their vote on the issue.

**RECOMMENDATION:**

- 5 1. That Council notes the minutes of the Local Traffic Committee Meeting held on 17 October 2023.

2. That Council adopts the following Committee Recommendation:

**Report No. 6.1 Upgrade intersection works of Tweed Street and Bayside Way and LATM traffic control devices for New Roads within the Subdivision**

File No: I2023/1461

**Committee Recommendation 6.1.1**

**That the Local Traffic Committee defers the decision the signage, line markings and traffic control devices associated with the Bayside Way intersection works, and traffic calming signage and devices as shown in Attachment 1 (E2023/99209) to a later meeting.**

3. That Council adopts the following Committee Recommendation:

**Report No. 6.2 No Stopping zone at intersection of Old Bangalow Road and Bangalow Road, Byron Bay**

File No: I2023/1533

**Committee Recommendation 6.2.1**

**That the Local Traffic Committee support the extension of the No Stopping restriction on the south side of Old Bangalow Road from The Roadhouse Café car park to the railway line.**

10 **Attachments:**

- 1 Minutes 17/10/2023 Local Traffic Committee, I2023/1567 

## Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 17 October 2023 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Local Traffic Committee Meeting - Tuesday, 17 October 2023 \(infocouncil.biz\)](https://infocouncil.biz)

This report contains the recommendations of the Local Traffic Committee (LTC) meeting held on 17 October 2023.

### Committee Recommendation

As per the Reports listed within the Local Traffic Committee Meeting of 17 October 2023

### 10 Financial Implications

As per the Reports listed within the Local Traffic Committee Meeting of 17 October 2023.

### Statutory and Policy Compliance Implications

As per the Reports listed within the Local Traffic Committee Meeting of 17 October 2023.



QUESTIONS WITH NOTICE

**Question with Notice No. 15.1 Habitat damage at “Wallum”,  
Bayside Brunswick**

5 **File No:** I2023/1754

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Cr Duncan Dey asks the following question:

- 10 *I understand that the landholder at 15 Torakina Road Brunswick Heads has recently undertaken clearing and/or vegetation removal on this property (“Wallum” development, Clarence Property Group) including slashing, low-cut mowing and vegetation removal **within mapped areas of Wallum froglet habitat.***
- 15 *The Wallum froglet is a protected threatened species in NSW and damage to a threatened species or its habitat is prohibited under the Biodiversity Conservation Act.*
- Several complaints and enquiries have been made to the NSW Department of Planning & Environment (DPE) regarding the alleged damage to a threatened species or its habitat.*
- The Conditions of Consent for the development explicitly state, at Condition 3 “Vegetation Removal”:*
- 20 *This development consent does not authorise any native tree to be ringbarked, cut down, lopped, removed, or damaged, or caused to be ringbarked, cut down, lopped, removed or damaged beyond those in the area identified as “extent of works” on the*
- 25 *Vegetation Management Plan (VMP). **No native trees or vegetation may be cleared or removed until a Subdivision Certificate has been issued relevant to those trees and vegetation.***
- The **bold type** is by me, to emphasise the part of the Consent Condition that may have been breached.*
- 30 1. *Does the approval in May 2023 of DA10.2021.575.1 for residential development on the site extinguish the Biodiversity Conservation Act, in regards to this species and activates the Environmental Planning & Assessment Act?*
2. *If so, does that leave Byron Shire Council holding jurisdiction for assessment and management of this species and of other NSW-listed threatened species and habitat on the site?*
3. *has a Subdivision Certificate been issued?*
- 35 4. *has Council considered a Stop Work Order, or taken other compliance action?*

## BYRON SHIRE COUNCIL

### QUESTIONS WITH NOTICE

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5. *does the recent activity, which is likely to have a negative impact on a protected NSW threatened species or its habitat, constitute a breach of the Consent Conditions?*
6. *is the Consent voided by that breach, because one of the conditions of the consent is not fulfilled?*

#### **Response Director Sustainable Environment and Economy:**

1. *does the approval in May 2023 of DA10.2021.575.1 for residential development on the site extinguish the Biodiversity Conservation Act, in regards to this species and activates the Environmental Planning & Assessment Act?*

10 *A Clause 34A certificate under the Biodiversity Conservation (Savings and Transitional) Regulation 2017 applies to the land.*

15 *A Clause 34A certificate recognises offset arrangements made before the commencement of Part 7 of Biodiversity Conservation Act 2016 - agreements secured as part of a concept plan approval or a relevant planning arrangement.*

*DPE issued a Clause 34A(3) Certificate for the proposed development, dated 30 March 2023, which stated:*

20 *a) the proposed development (the proposed development) is part of a concept plan approval (the concept plan approval) for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25 August 2017, and*

25 *b) that conservation measures to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts have been secured into the future.*

*The Biodiversity Conservation Act does not apply to proposed developments certified under Clause 34A.*

- 30
2. *if so, does that leave Byron Shire Council holding jurisdiction for assessment and management of this species and of other NSW-listed threatened species and habitat on the site?*

35 *The Clause 34A certificate certifies that the biodiversity impacts of the proposed development have been satisfactorily assessed.*

*Accordingly, Council does not hold jurisdiction for further biodiversity assessments.*

40 *Management of the impacts of the proposed development is the subject of various Management Plans required in accordance with the terms of the Development Consent.*

## BYRON SHIRE COUNCIL

### QUESTIONS WITH NOTICE

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3. has a Subdivision Certificate been issued?

*No subdivision certificate has been issued in relation to DA10.2021.575.1.*

5 4. has Council considered a Stop Work Order, or taken other compliance action?

*Concerns have been raised and are included in this QoN about 'slashing, low-cut mowing and vegetation removal within mapped areas of Wallum froglet habitat'.*

10 *It is understood from the landowner/proponent and aerial photography, that slashing maintenance has been ongoing at the property on a regular basis for many decades and possibly as early as the 1950's.*

15 *At times in the past previous landowners have been requested to slash part of the property due to potential bushfire risk to adjoining properties.*

*Staff have attended the property and spoken to the landowner/proponent about this.*

20 *A review of the approved plans (condition 1 Approved plans and supporting documentation) has occurred.*

25 *Any slashing or low-cut mowing on the property is understood to have been limited to outside of the mapped retained Wallum Froglet Habitat as per the approved Wallum Froglet Management Plan. No native trees have been removed in these areas either.*

30 *Notwithstanding the above, condition 3 states in relation to areas 'beyond those in the area identified as "extent of works" on the Vegetation Management Plan (VMP)' that 'No native trees or vegetation may be cleared or removed until a Subdivision Certificate has been issued relevant to those trees and vegetation'.*

35 *Given the concerns raised in this QoN, and recent responses from the landowner/proponent about these concerns, staff continue to review the matter in accordance with Byron Shire Enforcement Policy 2020 section 4.4.*

*At the time of writing this response, no decision had been made in relation to a stop work order or other enforcement action.*

5. does the recent activity, which is likely to have a negative impact on a protected NSW threatened species or its habitat, constitute a breach of the Consent Conditions?

40 *As per above response.*

## BYRON SHIRE COUNCIL

### QUESTIONS WITH NOTICE

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6. is the Consent voided by that breach, because one of the conditions of the consent is not fulfilled?

*As per the above response.*

5

**Question with Notice No. 15.2 Consult & inform on Mullum's future water supply**

**File No:** I2023/1759

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Cr Duncan Dey asks the following question:

10 *Council's Water and Sewer Advisory Committee has advised Council that, to adequately consider options for the future of water supply of Mullumbimby, it should investigate an option that augments the current supply system from Lavertys Gap with an inter-seasonal storage component. Most of the negative environmental impacts of 'normal' on-creek storage dams are avoided by making them off-creek. They then do not capture all stream flows. Water is extracted from the source creek in wet times and not in dry times, to be stored for use in those dry times. Dry weather flows remain in the creek.*

15 *Such systems work well and are becoming common in NSW.*

*Local examples of on-creek storages include two on Rocky Creek. One is Rous's current Rocky Creek Dam. The other is their proposed Dunoon Dam.*

20 *On 24 August 2023, Council resolved (Res 23-365) in relation to a future water strategy for Mullumbimby that Councillors would (Part 1) discuss the matter with Rous at a Confidential Councillor Workshop and (Part 2):*

*2. That Council notes that this issue [Mullumbimby future water supply] is of significant importance and **will consult and inform the community in a meaningful way before making a decision.***

*The confidential workshop of Part 1 has now taken place.*

25 1. *what progress has been made to date to consult and inform the community of Mullumbimby?*

2. *alternatively, what actions will take place to complete Resolution 23-365?*

30

**Response Director Infrastructure Services**

1. *what progress has been made to date to consult and inform the community of Mullumbimby?*

Council have engaged a consultant to develop a stakeholder management plan.

- 5 The Stakeholder Management Plan outlines the process on how stakeholders are effectively involved in project throughout the lifecycle of the project, to gain support for the project and anticipate resistance, conflict, or competing objectives among the project's stakeholders. The management plan will inform Council on how to consult and inform the community in a meaningful way before making major decisions.
- 10 At this stage of the project, Council have not started the process to consult or inform the community of Mullumbimby. The Stakeholder Management Plan is currently in the development stage and is scheduled for completion and execution in February 2024.
2. *alternatively, what actions will take place to complete Resolution 23-365?*
- 15 1. *That Council defers Report No. 4.1 Byron Shire Council Future Water Strategy until Councillors have discussed the matter with Rous County Council at the first available workshop.*

The workshop with Byron Shire Council and Rous County Council was completed on 2 November 2023.

- 20 2. *That Council notes that this issue is of significant importance and will consult and inform the community in a meaningful way before making a decision.*

The Stakeholder Management Plan is currently in the development stage and is scheduled for completion and execution in February 2024.

25

**Question with Notice No. 15.3 Ecological matters at 'Wallum',  
Bayside Brunswick**

**File No:** I2023/1766

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Cr Duncan Dey asks the following question:

- 10 1. *In a letter of October 2023 to Councillors from Peter Fahey Managing Director of Clarence Property, he stated "The removal of 21 secondary koala food trees will be offset in a conservation corridor on site at a 2:1 ratio, resulting in a gain in food trees in the long term." This appears inconsistent with the old Vegetation Management Plan (VMP) that gained approval in May 2023 and with the tree removal plan.*
- 15 *QUESTION: how many koala feed trees such as Swamp Mahogany (primary koala feed tree), Scribbly Gum, broad leaf paperbark and other secondary species as listed in the State Government Koala guidelines are proposed for removal under the old VMP (cited in Consent Condition 6).*
- 20 2. *The old VMP recognises the Federally listed Endangered Ecological Community "Coastal Swamp Sclerophyll" of NSW and SE Queensland. Its occurrence on the site is confirmed by Save Wallum ecologists. Under that VMP, about half a hectare of this EEC will be cleared for Lots 98-101. This area has been highlighted with the Federal Environment Minister as a Matter of National Environmental Significance.*
- The area of EEC mapped in the old VMP is not consistent with BSC vegetation mapping, which is at a broader scale and not ground-truthed and shows this area as scribbly gum forest.*
- 25 *QUESTION: will Council's mapping be updated?*
- 30 3. *QUESTION: is the above-mentioned area of Swamp Mahogany Forest EEC to be restored as potential habitat for Mitchells Rainforest Snail (MRS) under Consent Condition 6)b.?*
- 35 4. *Early research to date indicates that the Black Glossy Cockatoo does not nest in artificial hollows. Fifty such boxes are required under Consent Condition 6)c. While these may serve a range of arboreal mammals found in the area, they are not likely to serve Black Glossy Cockatoos.*
- QUESTION: will this anomaly be considered when the Amended VMP is assessed by Council?*

## BYRON SHIRE COUNCIL

### QUESTIONS WITH NOTICE

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5. *Mapping in the old VMP indicates a first order stream in Lots 98-101 will be filled in. The December 2012 Revised Statement of Commitments (author Jim Glazebrook) refers on page 9 to first order streams under the Strahler system and notes that the Water Management Act of 2000 requires a 10m Vegetated Riparian Zone (VRZ) for such areas. Under the Coastal Swamp Sclerophyll Forest guidelines, changes in drainage are considered one of the significant impacts on potential MRS habitat.*
- 5
- QUESTION: will hydrological impacts and changes of drainage be included in the Amended VMP, to ensure they do not impact any areas of Swamp Sclerophyll Forest EEC?*
- 10 6. *Actions that degrade potential future MRS habitat “will interfere with the recovery of the species” – this is a trigger named in the Environmental Protection Biodiversity Conservation Act.*
- QUESTION: will the Amended VMP required under Condition 6)b ensure that potential MRS habitat in Zones 1 and 4 is protected including with buffer areas retained and restored to ensure the recovery of the critically endangered MRS?*
- 15

### **Response Director Sustainable Environment and Economy:**

As per resolution **23-454-parts 5 and 7** below, staff are progressing the various assessments that will then be reported to council at a future meeting. Should the assessments identify the need to update mapping and or other plans this can be referenced then.

20

5. *Receives assessments of the Amended Management Plans submitted to Council for the development at Bayside Brunswick (DA10.2021.575.1) to ensure that those Plans comply with Consent Conditions set by the NRPP and with federal, state and local regulations, including separate assessments of Plans for:*
- 25
- a) Vegetation Management (Condition 6);*
  - b) Wallum Froglet Management (Condition 7);*
  - c) Construction Environmental Management (Condition 8);*
  - d) Updated Surface and Groundwater Management (Condition 9);*
  - e) Stormwater Maintenance Management (Condition 12);*
  - f) Cultural Heritage Site Inspection (Condition 18).*
- 30
- a) the assessments resulting from Part 5 above; and*
  - b) return correspondence from the Federal Government resulting from Parts 2 and 3 above; and*
- 35
- c) return correspondence from the State Government resulting from Parts 2 and 4 above.*



## BYRON SHIRE COUNCIL

### QUESTIONS WITH NOTICE

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7. *Determines at a Council meeting the suitability of those Amended Plans and the efficacy of the proposed stormwater system, as pointed out in the note under consent condition 11b, after considering:*
- a) *the assessments resulting from Part 5 above; and*
  - 5 b) *return correspondence from the Federal Government resulting from Parts 2 and 3 above; and*
  - c) *return correspondence from the State Government resulting from Parts 2 and 4 above.*

10

CONFIDENTIAL REPORTS - GENERAL MANAGER

**Report No. 16.1      CONFIDENTIAL - Annual Review of General Manager's Performance Agreement**

5    **Directorate:**                      General Manager  
**Report Author:**                  Vicki Lawrence, Manager People and Culture  
**File No:**                              I2023/1750

**Summary:**

10    On 20 October 2023, the General Manager's annual performance review for the 2022/2023 financial year was conducted by a performance review panel, in accordance with the Guidelines for the Appointment and Oversight of General Managers issued by the Division of Local Government, Department of Premier and Cabinet (the 'Guidelines').

15    The performance review panel consisted of the Mayor Cr Michael Lyon, Cr Duncan Dey, Cr Alan Hunter and Cr Sarah Ndiaye, assisted by an external facilitator Melinda Hewitt from Anson Australia.

A performance agreement for the 2023/2024 financial year is currently under development by the General Manager and Mayor, Cr Michael Lyon, with reference to the input provided by the other review panel members during the review process.

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**RECOMMENDATION:**

- 25    1.    **That pursuant to Section 10A(2)(a) of the Local Government Act, 1993, Council resolves to move into Confidential Session to discuss the report Annual Review of General Manager's Performance Agreement.**
2.    **That the reasons for closing the meeting to the public to consider this item be that the report contains:**
- a)    **personnel matters concerning particular individuals (other than councillors)**
- 30    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:**

**The report contains confidential information about performance**

# BYRON SHIRE COUNCIL

## CONFIDENTIAL REPORTS - GENERAL MANAGER

16.1

### **Attachments:**

- 5      1      Confidential - GM Mark Arnold Performance REPORT period ending 30 June 2023,  
E2023/99864