

# Agenda Ordinary Meeting

Thursday, 27 June 2024



**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

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**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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### 2. APOLOGIES

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### 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 screen at the meeting.***

NOTICES OF MOTION

**Notice of Motion No. 9.1 E-bike Safety Regulations**

**File No:** I2024/916

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**I move that Council:**

- 10
1. **Writes to the Federal and State MPs about the safety issues surrounding E-bikes, specifically that current regulations are inadequate to prevent modifications to E-bikes which bypass the regulations around speed limiting.**
  2. **Works with Tweed/Byron Police to:**
    - a) **Promote safe E-biking in a media campaign; and**
    - b) **Ensure appropriate enforcement of the regulations relating to E-bikes.**
- 15

**Signed: Cr Michael Lyon**

**Councillor's supporting information:**

20 Community concerns around E-bikes have been increasing due to the speeds that modified versions of these bikes can reach without effort from the rider. We can no longer ignore the risks posed by inadequate regulations, or the lack of enforcement of existing regulations.

The current rules outlined by Transport NSW for electrically power-assisted cycles say that:

25 An electrically power-assisted cycle has a maximum continued rated power of up to 500 watts. This power output must be:

progressively reduced as the bicycle's speed increases beyond 6km/h and cut off when:

- the bicycle reaches a speed of 25km/h
- the cyclist stops pedalling and the speed exceeds 6km/h.

30 Some E-bike riders are using illegally modified bikes that are allowing the pedal-assist function to be overridden and are simply-throttle controlled with no effort from the rider, and at speeds well in excess of the mandated maximum. This facilitates the easy transport of other passengers on the bike, creating a huge safety risk to those riders and nearby

pedestrians and/or vehicles. Just this April, a devastating incident claimed the life of a 30-year-old cyclist due to an e-bike crash on our roads. This loss serves as a saddening reminder of the pressing need for change.

## **Staff comments**

### **5 by James Flockton, Infrastructure Planning Coordinator, Infrastructure Services:**

The safety of users of all modes of transport is a concern for staff that has increased with the prevalence of e-bikes, especially e-bikes that are not pedal assist or have had their 25km/h restrictor removed.

10 The laws around these bikes are clear, but difficult to enforce. Staff have held a number of discussions on this matter and are currently taking this discussion further with Transport for NSW.

Options have included seeking funding for an education campaign around the use of e-bikes.

15 Staff support the recommendation with the addition of working with TfNSW, as well as local Police.

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

Education campaigns do come with a cost, however, the actions from the proposed recommendation can be managed within current staff resources.

20 Enforcement of e-bike regulations would largely sit with the Police. Discussion with the Police will help staff understand any legal implications that will be difficult to work around.

## **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>
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.3: Active transport - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan	5.1.3.1	Continue to deliver replacement of damaged footpaths Shire-wide as per inspection report
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.3: Active transport - pedestrians and cycleways - Deliver the actions identified	5.1.3.2	Review and update 10-year Active Transport program

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.1

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
		in the Pedestrian Access and Mobility Plan and in the Bike Plan		
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.3: Active transport - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan	5.1.3.3	Undertake options analysis, planning and design for the Mullumbimby to Brunswick Heads on-road cycleway
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.3: Active transport - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan	5.1.3.4	Undertake Kolora Way, Ocean Shores footpath and bridge upgrade
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.3: Active transport - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan	5.1.3.5	Deliver Cowper Street, Byron Bay shared path and road upgrade
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.3: Active transport - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan	5.1.3.6	Incorporate the Pedestrian Access and Mobility Plan and Bike Plan into the Active Transport Action Plan through community consultation and Council consideration
5: Connected	5.1: Provide a	5.1.3: Active	5.1.3.7	Undertake access

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.1

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Infrastructure	safe, reliable, and accessible transport network	transport - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan		ramps and footpaths works program
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.3: Active transport - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan	5.1.3.8	Undertake design of Bangalow Road, Byron Bay shared path underpass upgrade
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.4: Multi-use rail corridor - Activate the rail corridor for multi-use that provides expanded active and shared transport options catering to visitors and residents	5.1.4.1	Investigate use of the rail corridor



## Notice of Motion No. 9.2 Humanitarian crisis in Gaza

File No: I2024/919

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I move that Council:

1. Notes that, for the most part, individuals arrive in Australia from every corner of the globe, seeking to embrace peace and unity, and shed the burdens of past conflicts in pursuit of a harmonious future together
- 10 2. Mourns the tragic and horrific loss of over 38,000 civilian lives in the current conflict in Palestine and Israel and condemns all attacks that target civilians.
3. In representing a diverse, multi-cultural, and multi-faith community, is committed to standing against all forms of racism including racism against Arabic, Islamic, Israeli and Jewish people.
- 15 4. Recognises that the hostage situation on both sides and the 8-month siege of Gaza are traumatising for many Byron Shire residents including those who have relatives in the region, or have come from war-torn countries, and expresses our solidarity with these communities.
- 20 5. Condemns the attack by Hamas on Israel on 7 October 2023 as an horrific act in a decades-long and violent conflict that has resulted from the occupation of Palestinian land by Israel.
6. Notes that:
  - a) Australia is a signatory to the International Criminal Court (ICC);
  - 25 b) that warrants have been filed by the Court for the arrest of Hamas leaders Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri (Deif) and Ismail Haniyeh for war crimes in the 7 October attacks on Israel, and for Benjamin Netanyahu (Prime Minister of Israel) and Yoav Galant (Minister of Defence of Israel) for war crimes in the ongoing war on Gaza;
  - 30 c) the UN's Independent International Commission of Inquiry on Occupied Palestinian Territory, United Nations Special Rapporteurs, Amnesty International, the Red Cross and many international organisations have documented evidence of Israel committing war crimes against
  - 35 Palestinians, including:
    - i. sustained bombing of residential neighbourhoods;

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

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- ii. the bombing of refugee camps, schools, health facilities, mosques and churches where civilians are sheltering;
- iii. the illegal use of white phosphorous bombs;
- iv. the denial of food, water, fuel, electricity, internet, and medical supplies to the people of Gaza.

7. Writes to Prime Minister Anthony Albanese and Foreign Minister Penny Wong, expressing support for Australia's condemnation of the attacks on Israel by Hamas on 7 October and calling for the Australian government to also:

- a) strongly condemn war crimes being carried out by Israel against people in Gaza;
- b) join the international call for an immediate and permanent ceasefire in Gaza;
- c) call for an immediate lifting of the siege on Gaza to allow its people to have unlimited access to food, water, fuel, electricity, medical supplies and construction materials to repair damaged homes and civilian infrastructure;
- d) advocate for all Palestinian and Israeli hostages to be released;
- e) end military, economic, political and diplomatic ties with the state of Israel until it complies with its obligations under international law.

8. Urges Australia's Prime Minister and Foreign Minister to use all diplomatic tools and power to enable Australian aid to enter Gaza, including ensuring the Freedom Flotilla Coalition's successful delivery of critical aid to Gaza and the safe passage of the Flotilla, which includes Australian representatives Surya McEwen, of Byron Shire, plus Daniel Coward and Helen O'Sullivan.

9. Also:

- a) notes that boycotts, divestment and sanctions are legitimate, non-violent tactics used to pressure foreign governments over human rights abuses and war crimes, and
- b) receives a report in August to explore options for Council to cancel contracts with companies that:
  - i. support Israel's illegal occupation of Palestine, or profit from it, or
  - ii. that supply equipment to the Israeli Defence Force.

10. upholds the fundamental right to peaceful protest and advocates for constructive dialogue, stands firm against the boycotting of local businesses, and rejects any actions that may inflict harm upon our community.

11. asks Council's delegate to support any similar motion\* raised at the National General Assembly of Local Governmental Associations from July 2-4 in Canberra.

5

Signed: Crs Cate Coorey, Duncan Dey

### Councillor's supporting information:

10 This motion asks for Council to add its voice to the call, by governments at national and local levels, aid agencies, university students, trade unions and other civil society organisations around the world, for an end to the fighting and to the severe humanitarian crisis that has overtaken Gaza. The situation in Gaza is desperate and we can act as a community to convey to our government that we want it to end.

15 The Hamas attack on Israel in October 2023 was a shocking and brutal event that was met with condemnation around the world. Given the history of the decades-long conflict in Palestine/Israel it was inevitable that there would be retaliation.

20 After 8 months the expected retaliation has exceeded any kind of 'reasonable' response. Palestinian civilians are not responsible for the crimes of Hamas and other Palestinian armed groups and Israel must not, under international law, make them suffer for acts they play no role in and cannot control. The siege has been worsened by the blockade of the means for people to survive, with fuel, water medical supplies and food.

25 Last week the World Food Program and the Food and Agriculture Organization said in a joint report that hunger is worsening because of heavy restrictions on humanitarian access and the collapse of the local food system. About 90 percent of children in Gaza lack nutrition and face "severe" threats to their "survival, growth and development", according to the United Nations children's agency, UNICEF.

30 Since 2007, Israel has imposed an air, land and sea blockade on the Gaza Strip collectively punishing its entire population. The current fighting is the sixth major military operation between Israel and Gaza-based armed groups since then. On 9<sup>th</sup> of October Israel's minister of defence Yoav Gallant announced a "complete siege on Gaza... No electricity, no food, no water, no gas – it's all closed." The ensuing siege of Gaza has  
35 resulted in the following:

- 35,800 Palestinians killed; 31 due to famine
- 25,000 women and children killed
- 17,000 children have lost one or both parents
- 40 • 10,000 Palestinians missing
- 80,200 Palestinians wounded
- 5,000 detained Palestinians
- 87,000 housing units completely destroyed by the occupation
- 297,000 housing units partially destroyed by the occupation and unfit for habitation
- 45 • 77,000 tons of explosives dropped by IOF on Gaza

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

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Whilst war crimes are being perpetrated in Gaza, Australia, as a signatory to the Geneva Conventions, must act. Similarly, Australia has signed and ratified the UN International Bill of Rights and the core human rights treaties, many of which have been identified by the UN, the ICC and the ICJ as being breached in the siege of Gaza.

- 5 This motion urges the Australian government to push for these war crimes to stop, for basic human rights to be upheld and for Australia to desist in aiding, in any form, war crimes and human rights violations being perpetrated in Gaza.
- 10 The motion also asks us to join with other Australian councils, trade unions and university students in conveying our government to take immediate action to end the violence and ensure immediate humanitarian aid is provided to Gaza.
- Councils that have passed motions:
- 1 Ballarat City Council (VIC)
  - 15 2 Banyule City Council (VIC)
  - 3 Bayside Council (NSW)
  - 4 Brimbank City Council (VIC)
  - 5 Canterbury Bankstown Council (NSW)
  - 6 Darebin City Council (VIC)
  - 20 7 Greater Dandenong City Council (VIC)
  - 8 Darebin City Council (VIC)
  - 9 Hume City Council (VIC)
  - 10 Inner West Council (NSW)
  - 11 Maribyrnong City Council (VIC)
  - 25 12 Merri-bek City Council (VIC)
  - 13 Randwick City Council (NSW)
  - 14 Wyndham City Council (VIC)
  - 15 Yarra City Council (VIC)
- 30 UNIONS For Palestine:
- 1 ANMF- Australian Nursing and Midwifery Federation
  - 2 AEU-Australian Education Union
  - 3 UWW- United Workers Union
  - 4 CFMEU-Construction, Forestry and Maritime Employees Union
  - 35 5 ASU- Australian Services Union
  - 6 CPSU- Community and Public Sector Union
  - 7 AMWU- Australian Manufacturing Workers Union
  - 8 RTBU-Rail, Tram and Bus Union
  - 9 NTEU-National Tertiary Education Union
  - 40 10 ACTU-Australian Council of Trade Unions
  - 11 MEAA- Media Entertainment and Arts Alliance
  - 12 MUA- Maritime Union of Australia
  - 13 NUS- National Union of Students
  - 14 ETU- Electrical Trades Union
  - 45 15 IEUA- Independent Education Union Australia
  - 16 FSU -Financial Services Union
  - 17 ASU- the Australian Services Union
  - 18 AMWU -Australian Manufacturing Workers Union

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.2

### UNI ENCAMPMENTS:

- 1 University of Sydney,  
2 University of Adelaide,  
3 University of Queensland,  
5 4 Curtin University,  
5 Monash University,  
6 RMIT University,  
7 Deakin University,  
8 University of Tasmania,  
10 9 Latrobe University,  
10 Australian National University,  
11 University of Wollongong.

15 With regard to point (9) in the NoM, the Merri-bek Council motion to the ALGA in July is as follows:

*ALGA Mourns the tragic and horrific loss of civilian lives in the conflict in Gaza and condemns all attacks that target civilians. This pain resonates deeply worldwide and within our communities across Australia.*

20 *ALGA calls on the Australian government to help stop the starvation of people in Gaza by immediately restoring funding to UNRWA and doubling the funding. ALGA also calls on the Australian government to advance the cause of peace by calling for:*

- 25
- *an immediate and permanent ceasefire*
  - *the immediate lifting of the siege to allow an unlimited supply of all of the essentials of life to be delivered to people in Gaza*
  - *ending any weapons sales to Israel and ending any deals with weapons companies that supply weapons to the Israeli military*
  - *urge all parties to uphold international law) including decisions of the*
- 30 *International Court of Justice.*

## Staff comments

### by Esmeralda Davis, Director, Corporate and Community Services:

Should the Notice of Motion be adopted, staff will draft a letter to Prime Minister Anthony Albanese and Foreign Minister Penny Wong for signature by the Mayor.

- 5 In relation to 9 (b) receives a report in August to explore options for Council to cancel contracts with companies that:

- i. support Israel's illegal occupation of Palestine, or profit from it, or
- ii. that supply equipment to the Israeli Defence Force.

- 10 This report can be brought to Council, noting that it will be difficult to identify such companies outside of any already publicly available information.

Beyond knowing which companies might be caught by the above criteria, no Council contract with a relevant company would allow Council to terminate the contract on the above grounds. As such, Council would need to act unlawfully in its private dealings to signal its support for the application of international law to the Israel-Hamas conflict.

### 15 Financial/Resource/Legal Implications:

Staff resources are available to draft the correspondence outlined in this motion.

- 20 Resourcing to undertake the necessary research for the report to Council, including understanding the legal and financial implications of what is proposed, is currently not allocated. If this part of the motion proceeds, it will require diversion of resources away from other activities. The timing of the report will be dependent on the extent and complexity of the research findings.

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

No

**Notice of Motion No. 9.3 Nomination of Wallum Heath as a Threatened Ecological Community (TEC)**

**File No:** I2024/920


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**I move that Council:**

- 10 1. Provides a report outlining the necessary processes to nominate Wallum Heath, including associated woodland and shrubland, as a Threatened Ecological Community (TEC) at or prior to the August meeting of Council.
2. Sets up a working group or pathway to:
- 15 a) Conduct a thorough assessment of Wallum Heath's ecological and biodiversity values together with its status, condition and existing threats in Byron Shire and adjoining LGAs.
- b) Identify the legislative and regulatory requirements for the nomination of Wallum Heath as a TEC at the state, and federal levels and its protection at the local level.
- 20 c) Engage with relevant stakeholders, including environmental experts, community groups, and government agencies, to gather input and expertise in relation to the nomination process.
- d) Develop a timeline and action plan for the nomination process, including milestones, responsibilities, and resource requirements.
- 25 e) Present the findings and recommendations of the report to the council for further consideration and nomination to the NSW Scientific Committee.

**Attachments:**

- 1 1 Proposed TEC: Coastal plant communities on Pleistocene sands (Wallum) - with C-zone, HEV, Biodiversity Values and SEPP wetlands map - 12/6/24, E2024/67380 
- 30

**Signed: Cr Sarah Ndiaye**

## Councillor's supporting information:

**Background:** Wallum Heath, a unique ecosystem within our region, is facing increasing threats due to fragmentation and degradation from urbanisation, land clearing, and climate change. Recognising its ecological significance and the fact that it is not formerly protected under the NSW *Biodiversity Conservation Act 2016* and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, it is imperative that we take proactive steps to protect and preserve this vital habitat.

**Objective:** The aim of this motion is to initiate the process of formally recognising Wallum Heath as a TEC, which will facilitate the implementation of conservation measures to assist in ensuring its long-term survival and help to avoid future issues such as occurred during the approval process for the Wallum Estate in Brunswick Heads.

### Significance of Wallum Heath in the Byron Shire:

**Biodiversity Hotspot:** Wallum Heath is a biodiverse ecosystem unique to coastal regions and of particular significance in the Byron Shire and adjoining LGAs. It supports a wide range of plant and animal species adapted to its acidic, tannin-stained waters, low-nutrient soils derived from Pleistocene sands and fire-adapted vegetation.

**Critical Habitat:** Wallum Heath serves as critical habitat for a number of plant and animal species, many of which are highly adapted to Wallum conditions and endemic to the bioregion. Its diverse plant communities provide foraging, shelter and breeding habitat for numerous animals, including winter migrant bird species from other States, contributing to its ecosystem functioning and the overall ecological significance of the area.

**Cultural Importance:** In addition to its ecological significance, Wallum Heath holds cultural importance for indigenous communities, who have traditional knowledge and connections to the land. Preserving Wallum Heath is essential for maintaining these cultural heritage values.

### Vulnerability of Wallum Heath:

**Habitat Loss:** Clearing, fragmentation and degradation from urbanization, agriculture, and infrastructure development pose significant threats to the integrity of Wallum Heath. As the human population expands along the coast and land use intensifies, large areas of natural habitat are cleared, fragmented and subjected to nutrient enrichment and invasions of exotic plants and animals, leading to overall loss of the functional Wallum system.

**Fire Susceptibility:** The Wallum Heath ecosystem is naturally adapted to regular fire events, which play a crucial role in maintaining its ecological balance. However, altered fire regimes due to human activities, such as fire suppression or too frequent burning for asset protection, can threaten the health and resilience of Wallum Heath communities.

**Climate Change:** Climate change exacerbates existing threats to Wallum Heath by altering temperature and precipitation patterns, increasing the frequency and intensity of extreme weather events, and exacerbating habitat fragmentation and degradation. These changes can disrupt ecological processes and push species beyond their tolerance limits.



**Habitat for Threatened Species:**

**Flora:** Wallum Heath supports a wide range of plant species, including some that are listed as threatened, including Dwarf Casuarina *Allocasuarina defungens*, Swamp Orchid *Phaius australis*, Pink Nodding Orchid *Geodorum densiflorum* and Dark Greenhood *Pterostylis nigricans*. Many of the characteristic species such as Wallum Banksia *Banksia aemula*, Coast Banksia *Banksia integrifolia*, Broad-leaved Paperbark *Melaleuca quinquenervia*, and Johnson's Grass Tree *Xanthorrhoea johnsonii* provide important food resources for nectarivorous birds and flying-foxes.

Wallum Heath, including the associated shrublands and woodlands, provides habitat for many Threatened animal species including frogs, reptiles, birds and mammals. Examples include the Wallum Sedge Frog *Litoria olongburensis*, Wallum Froglet *Crinia tinnula*, South-eastern Glossy Black-cockatoo *Calyptorhynchus lathamii*, Eastern Grass Owl *Tyto longimembris*, Common Planigale *Planigale maculata*, Koala *Phascolarctos cinereus*, Long-nosed Potoroo *Potorous tridactylus* and Grey-headed Flying-fox *Pteropus poliocephalus*, all of which rely on Wallum Heath for feeding, shelter and breeding resources.

Protecting and conserving Wallum Heath is therefore essential for maintaining its unique biodiversity, preserving cultural heritage, and ensuring the survival of many Threatened species in the Byron Shire and elsewhere throughout its range in northern NSW and south-eastern Queensland.

**Conclusion:** By nominating Wallum Heath as a TEC, we can demonstrate our commitment to environmental stewardship and help ensure the protection of the small patches left of this invaluable ecosystem for future generations. I urge my fellow council members to support this motion and take decisive action towards safeguarding our natural heritage.

**Staff comments**

**by Shannon Burt, Director, Sustainable Environment and Economy and Liz Caddick Biodiversity Team Leader:**

*'The aim of this motion is to initiate the process of formally recognising Wallum Heath as a TEC, which will facilitate the implementation of conservation measures to assist in ensuring its long-term survival and help to avoid future issues such as occurred during the approval process for the Wallum Estate in Brunswick Heads.'*

To do this, the motion is asking for staff to prepare *'a report outlining the necessary processes to nominate Wallum Heath, including associated woodland and shrubland, as a Threatened Ecological Community (TEC) at or prior to the August meeting of council'*.

Further, the motion is seeking Council support to set up a working group or pathway to undertake what will be a significant body of work to enable a nomination of the Wallum

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Heath that being on Pleistocene sands to be made to the NSW Scientific Committee for their consideration and listing under the Biodiversity Conservation Act as a TEC.

5 To clarify what is meant by 'Wallum Heath' – there are multiple different wallum heath communities occurring in NSW, and in Byron Shire, differentiated by factors such as hydrology (wet or dry heath), substrate (e.g. sand, alluvium) and climate (e.g. some of the wallum communities in northern NSW support a different suite and diversity of species than those further south). Recent discussions regarding the status of wallum heath at Council's Biodiversity Committee Meeting identified *the coastal plant communities on Pleistocene sands (Wallum) of Byron, Tweed and Ballina LGAs*, as a distinct and  
10 ecologically important subset of the multiple wallum communities in this region. These dry Pleistocene sand communities are considered by some ecologists to be particularly significant in the Tweed-Byron-Ballina region because they provide habitat for a high diversity of threatened plants and animals. With regards to existing vegetation classification systems, the *coastal plant communities on Pleistocene sands (Wallum) of Byron, Tweed and Ballina LGAs* most closely aligns with Plant Community Type (PCT)  
15 3548: Far North Sands Scribbly Gum Heathy Forest.

The attached maps (Attachment 1) show the KNOWN areas of the vegetation community: *coastal plant communities on Pleistocene sands (Wallum) of Byron, Tweed and Ballina LGAs* (yellow outline), overlaying several layers of legislative control:

- 20
- C-zones
  - Biodiversity Values (BV) map
  - High Environmental Value (HEV) map
  - Coastal SEPP wetlands

All of the sites are included in HEV and the BV map.

25 Also, see link to flow chart to explain [NSW Biodiversity Offsets Scheme and Land Management Framework: Biodiversity Assessment and Approval Pathways for Local Government](#).

30 The approval pathways for development depend on site circumstances, include exemptions, tests of significant impact on threatened species, as well as the requirements and triggers for a biodiversity development assessment report.

In response to the motion the following is provided:

Under the Biodiversity Conservation Act community involvement in the protection of threatened species and ecological communities is encouraged.

35 Any person or organisation can propose changes to the threatened species or threatened ecological community or key threatening process lists.

The steps in the process are:

<b>1. Nomination</b>	Anyone can make a nomination to list, delist or to change the status of a species, population or ecological community and list or delist a key threatening processes.
<b>2. Nomination accepted</b>	The NSW TSSC reviews the nomination and decides whether to accept the nomination or not. A nomination can be rejected if the information provided is inadequate for an assessment to be completed.
<b>3. Assessment against criteria</b>	The NSW TSSC assesses the species or ecological community against the criteria in the <b>Biodiversity Conservation Regulation 2017</b> <a href="#">using the Common Assessment Method (CAM)</a> .
<b>4. Public exhibition of Preliminary Determination and assessment report</b>	The NSW TSSC places a Preliminary Determination and Conservation Assessment Report on public exhibition to encourage comment and to attract additional information relevant to the assessment.
<b>5. Review of submissions</b>	The NSW TSSC reviews all submissions received during the public exhibition period before making a final decision.
<b>6. Final Determination and update to the BC Act Schedule</b>	<p>The Committee makes a Final Determination regarding listing, delisting or a change in threat status or the Committee rejects the proposal.</p> <p>The relevant Schedule of the BC Act is updated to reflect the Committee's decision and this takes effect when the Final Determination is published on the <b>NSW Legislation website</b> <a href="#">using the Common Assessment Method (CAM)</a>.</p> <p>The Committee also publishes a notice of <b>Final Determination</b> which includes the reasons for the decision.</p>

There is a specific nomination form [Nomination | NSW Environment and Heritage](#) that needs to be completed to initiate the process. There is a body of work, which needs to be verified and agreed to by the nominator in completing and submitting this nomination form.

- 5 The NSW TSSC note that completing a nomination form is demanding due to the volume and detail of information that is required to undertake an assessment, and that supporting published scientific material rather than anecdotal evidence is generally required. Some of the key information required includes:
  - Details of any other state or federal listing for the ecological community.
- 10
  - Detailed description of biological components of the ecological community, including species list, dominant species, threatened species, floristic structure,

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- Details of adjacent and intergrading ecological communities and differences between these and the nominated EC.
- Details of abiotic factors (climate, landform, substrate etc).
- Details of interactions and functional processes.
- 5      • Impacts of fire, flood, drought, storm.
- Total extent, mapped geographic boundary, number of locations and list of all surveyed sites, plus list of all sites currently in conservation estate.
- Description of all surveys on which nomination is based.
- Threats, future threats, key threatening processes and detail of impacts of each.
- 10     • Details of all management plans
- Changes in geographic distribution, environmental degradation and disrupted biological processes since 1750 and in past and forthcoming 50 years, including quantitative analysis of collapse.

### NSW Threatened Species Scientific Committee

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#### **Nomination form for listing ecological communities as critically endangered, endangered or vulnerable under the NSW *Biodiversity Conservation Act 2016***

##### Background

The purpose of this form is to provide a nomination to the NSW Threatened Species Scientific Committee (NSW TSSC) to list an Ecological Community as critically endangered, endangered or vulnerable under Schedule 2 of the *NSW Biodiversity Conservation Act 2016* (BC Act). Please refer to the NSW TSSC Nomination Background Information document and the NSW TSSC Guidelines for information on the BC Act and criteria in the *Biodiversity Conservation Regulation 2017* (BC Regulation).

##### How to complete the nomination form

This nomination form consists of a series of questions to help you provide the information necessary to address the criteria in the BC Act and BC Regulation. Note, terms used in the nomination form and marked with asterisk (\*) are defined in section 5 of the NSW TSSC Nomination Background Information document.

The NSW TSSC recognises that completing a nomination form is demanding due to the volume and detail of information that is required to undertake an assessment. Nominators are encouraged to seek expert advice where appropriate to assist in the completion of the nomination form. Complete as much of the nomination form as you can. While the NSW TSSC will seek advice from other sources, any information not provided in the nomination may delay the assessment process.

Include references to published journal articles or other material that support the information you have provided. Unsupported or anecdotal information may not provide sufficient evidence to demonstrate the ecological community meets the criteria for listing.

If there is insufficient information to enable details to be provided because of a lack of scientific data or analysis please include any information that is available or provide a statement next to the relevant question identifying that the data or analysis is not available.

Do not quote or provide information you have obtained from other people (usually referenced as personal communications) unless you have obtained the agreement of those people to use those statements in the nomination.

Indicate if you are providing information you have obtained on a confidential basis or data under a data licence that prohibits its release to other parties and if you have obtained permission to publicly release the confidential information or data.

Ensure you know and agree to how the NSW TSSC will use and share your nomination and the information contained in the nomination and any attachments including your personal details by signing the declaration section. If you request confidentiality please ensure you have not included your personal information, or any information that can be used to identify you, in the nomination or attachments.

The assessment, public notification, and determination of any update of listing to the BC Act schedule thereafter is the sole responsibility of the Scientific Committee, not an individual, group or council. The above, addresses point 1.

- 5 In relation to point 2 of the motion, Council's Biodiversity Team has no capacity to take on this work as a new project.

Instead, if deemed appropriate it is suggested that Council enables nominated members of the current Biodiversity Advisory Committee to form a working group complete the nomination form for submission to the Scientific Committee nominating Wallum Heath on

Pleistocene sands as a TEC. Noting this work would be done in kind by the BAC members. A report to Council on this work would also need to occur once prepared by the BAC members for Council endorsement as the nominating organisation.

5 Otherwise, if staff are to take on this work, a budget would need to be allocated and a new Operational Plan activity added for 2024-2025.

Financial/Resource/Legal Implications:

As discussed in the response above.

There is no budget or action in the current Operational Plan for this work.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
3: Nurtured Environment	3.1: Partner to nurture and enhance biodiversity, ecosystems, and ecology	3.1.1: Native species - Use best practice land management to improve ecological resilience and reduce threats to biodiversity		

**Notice of Motion No. 9.4 Establishment of a Register of Interested Parties for Development Applications Contradicting Biodiversity Regulations in Council's LEP and DCP**

**File No:** I2024/922

I move that Council explores the feasibility and legality of establishing a Register of Interested Parties to track and involve stakeholders in Development Applications (DAs) that contradict Biodiversity Regulations outlined in the Council's Local Environmental Plan (LEP) and Development Control Plan (DCP) or raise matters of interest or significance.

**Signed: Cr Sarah Ndiaye**

**Councillor's supporting information:**

**Background:** This idea was discussed in our Biodiversity Committee but was not minuted. We were told something similar exists in relation to heritage and would like the option for a group to look over DA's that contradict Biodiversity Regulations outlined in the Council's Local Environmental Plan (LEP) and Development Control Plan (DCP) or raise matters of interest or significance.

With so much of our he preservation of biodiversity is of paramount importance for maintaining ecological balance and safeguarding natural habitats within our region. However, Development Applications that are not in alignment with Biodiversity Regulations can have detrimental impacts on local ecosystems, threatening native flora and fauna.

**Objective:** The objective of this motion is to enhance transparency, community engagement, and accountability in the development assessment process, particularly concerning biodiversity conservation efforts. By establishing a Register of Interested Parties, we aim to involve stakeholders who have a vested interest in biodiversity conservation and empower them to contribute meaningfully to the decision-making process.

**Proposed Actions:** That Council is requested to:

1. Investigate the feasibility of establishing a Register of Interested Parties specifically for DAs that contravene Biodiversity Regulations in the Council's LEP and DCP.

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2. Review existing processes, such as those utilized by the Shire's Heritage Committee, and assess their applicability to the proposed Register of Interested Parties.
3. Consult with relevant stakeholders, including environmental organizations, community groups, and government agencies, to gather input and feedback on the establishment and operation of the register.
4. Develop guidelines and criteria for inclusion in the Register of Interested Parties, ensuring representation from diverse stakeholder groups with expertise in biodiversity conservation.
5. Present findings and recommendations to the council for consideration and potential implementation.

**Conclusion:** By creating a Register of Interested Parties for DAs conflicting with Biodiversity Regulations, we can foster greater collaboration, transparency, and accountability in the development assessment process. This initiative will empower the community to actively participate in biodiversity conservation efforts and ensure that decisions align with the overarching goal of environmental sustainability.

### Staff comments

**by Shannon Burt, Director, Sustainable Environment and Economy and Matt Meir, Legal Counsel:**

The purpose of the motion is to have Council look at the creation of a register of interested parties for development applications to *'involve stakeholders who have a vested interest in biodiversity conservation and empower them to contribute meaningfully to the decision-making process'*.

Opportunities for community and stakeholders to participate in and contribute to the development application process already exist in various ways and forms. These opportunities are identified through legislation and Council's Community Participation Plan and Community Engagement Strategy.

In addition to the above:

Council has a public facing DA tracker, where community and stakeholders can search for and view all development applications in their local area or query applications based on their status, for example applications received, determined or on exhibition.

Additionally, there is an independent and free service called [Planning Alerts](#) where the community and stakeholders can subscribe to receive area specific notifications about development applications. This service links back to Council's DA Tracker. It is understood that many community members have already signed up to this service.

Or, as is the current process for known heritage development applications (meaning they are on land with a listed item or in a conservation area as mapped under the Byron Local Environmental Plan 1988 and 2014), a notification of development application lodgement



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is sent by email to the relevant heritage committee member to alert them to the opportunity to review the DA, and make their own private submission during the exhibition period if they deem necessary.

5 Note, the above process as suggested by point 2 in the motion, would not work for the purposes of the motion. It is unreasonable and unfeasible to expect development support staff when a development application is lodged and requires notification, to determine whether it 'contravenes Biodiversity Regulations in the Council's LEP and DCP'. This is a merit test for a planner subject to expert referral when triggered to be made during the assessment process.

10 Again, community and or stakeholders should use the current tools available to them for development application monitoring which includes the query and search tools for site, area, and locality of interest.

Given the above, and the objective sought by the motion,

15 *'to enhance transparency, community engagement, and accountability in the development assessment process..., we aim to involve stakeholders who have a vested interest in biodiversity conservation and empower them to contribute meaningfully to the decision-making process'.*

It is unclear how the current legislation, plans and policies of Council are not meeting this objective or outcome.

20 Staff assessments of development, and determinations of development applications are made within delegations, and to meet current legislation, plans and policies of Council. These provide community and stakeholders with more than ample opportunity to contribute through submissions at various times during the development assessment process.

25 Staff assessments of development, and determinations of development applications made by the relevant planning authority must also comply with the Council's Model Code of Conduct, or Planning Panel Operational Procedures and Code of Conduct and other various professional standards of ethics such as the Planning Institute of Australia.

### [Expected Standards of Behaviour - Office of Local Government NSW](#)

30 Council officials are expected to:

- conduct themselves in a manner that will not bring the council into disrepute
- act lawfully, honestly and exercise due care
- treat others with respect and not harass or discriminate against them, or support others who do so
- 35 • consider issues consistently, promptly and fairly
- ensure development decisions are properly made and deal fairly with all parties involved
- disclose and appropriately manage conflicts of interests including, in the case of councillors, from reportable political donations
- 40 • use and secure information appropriately and not disclose confidential information
- use council resources ethically, effectively and efficiently.

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It should be noted however that community and stakeholders are not subject to the same levels of accountability or standards of behaviour.

Further, the legal counsel's view of the proposal is below:

- 5 The proposal creates unreasonable risk for Council – and thus the public interest – and should not be pursued.

This view is explained below.

### Context

Public participation in the development approval process is a central principle of the planning law in NSW.

- 10 This principle is given effect via the *Environmental Planning and Assessment Act* (the Act) in numerous ways. See, for example, the Act's objects, and its requirements for public notification of development (including the right for a person to make a submission about proposed development).

- 15 Taken together, the Act creates a regime marked by high degrees of public transparency. No development application in the State is assessed and determined in secret.

At the same time as creating high levels of public transparency for development assessment and determination, the NSW planning law also recognises that a public objector to a particular development application is not a party to any potential proceedings regarding that application. Objectors are not adversaries to an applicant for development.

- 20 It is important to hold these two elements of the planning law in balance when considering the above proposal to create a 'register of interested parties' regarding some development applications.

### Council CPP

- 25 The proposal would result in lots of changes to Council's processes for publicly notifying development applications. But the focus here is on what it would mean for Council carrying out the Act's community participation requirements.

These requirements are detailed (see the Act sections 2.21 to 2.24 and Schedule 1).

- 30 Under the provisions, Council is legally required to have a community participation plan (CPP). The CPP explains how Council will publicly notify the development applications it receives.

Broadly, Council's 2019 CPP provides for four levels of public notification, depending on a proposed development's scale.

The criteria for who should be notified at each of the four levels is clearly defined. For example, see the meanings of 'adjoining owner' and 'surrounding owner' on CPP page 23.

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The above provides easily understandable criteria for the two essential elements of public notification under the planning law: 1) what type of development is subject to public notification, and 2) who in the community is notified about each development type.

- 5 Council's CPP would need to be significantly amended to try and give effect to the proposed register. In doing so, it would foreseeably expose Council – and thus the wider Byron Shire public – to legal risk.

#### Unreasonable risk

- 10 By contrast to the current CPP, the proposed creation of a 'register of interested parties' to be notified of development applications that 'contradict Council's biodiversity regulations' unreasonably exposes Council to legal risk.

This risk is created by two factors intersecting: the importance of public participation under the planning law, and second, the inherent uncertainty of adding the proposed criteria to Council's CPP.

- 15 On the first factor, public participation is so important to the NSW planning law that substantial compliance with the relevant public notification requirements is a prerequisite to the lawful exercise of Council's planning functions (see *Tweed Business and Residents Focus Group Inc v Northern Region Joint Regional Planning Panel* [2012] NSWLEC 166 [9] to [16].

- 20 This means that the legal risk to any Local Council of not complying with its public notification requirements is already high.

But this risk would be substantially amplified if Council attempted to create a special group of people to be notified regarding certain development applications.

- 25 The register's proposed *composition* amplifies the risk because it would be incredibly difficult for Council's CPP to establish clear criteria for who is worthy of being on the proposed register.

- 30 How does Council decide how much 'interest' a person or group needs to have to qualify for the register? What if they are interested in one development application, but not another? What if someone who isn't on the register has a particular interest in an application and could provide a more useful public submission to someone on the register? How often would the register's currency be reviewed?

Because general interest is much more fluid than geographic interest, Council would be exposed to regularly amending its CPP to reflect the changing mix of people and/or groups on the proposed register.

- 35 The proposed register is a vastly different measure to the clearly defined geographic criteria for notification under the current CPP (where a person is notified of development because they are an 'adjoining' or 'surrounding' owner or are a member of the Byron Shire community).

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The current CPP reflects reality. On the overwhelming majority of occasions, any one person's interest in a development application is either acute – e.g., they live next door or nearby – or non-existent (because they don't live nearby).

- 5 But the current CPP also comfortably deals with those minority occasions where someone has a general interest in a development application. Currently, anyone is already entitled to have their say on development applications as they see fit. Any person can access Council's public development application tracker when it suits them and make a public submission. But they need to opt in to participate, rather than Council being legally obliged – with all the attendant risk – to notify a subset of this general group.
- 10 This means the proposed register is arguably a solution in need of a problem. The planning system is not marked by a lack of public transparency. While it takes effort on the part of members of the public to involve themselves, that is part of the obligation of living in a civic community. This allocation of effort is better spread broadly across the community, rather than by compelling Council to pick particular groups of people to receive extra
- 15 notification of a development application based only on a general interest.

Meanwhile, the requirements for *when* the register is notified also amplifies Council's risk. This is because the CPP couldn't say with any certainty which development applications would be subject to notification.

- 20 The current CPP classifies development applications according to scale. This information is known shortly after an application is lodged and is easy to determine, because it based on estimated dollar values.

But a public notification criterion based on a 'contradiction of Council's biodiversity regulations' cannot reveal itself until after Council has started the evaluation phase of the development assessment process.

- 25 More so, if the apparent 'contradiction' is based on an application's merits, the judgment about this is subjective (albeit it bound by relevant considerations under the Act). This is why the NSW Land and Environment Court is full to the brim with contests about whether a particular application 'contradicts' relevant planning requirements.

- 30 People can reasonably disagree about an application's merits. It would be all but impossible to frame this in a way that created certainty about when Council would be obliged to notify the proposed register of interests.

This means adding a development application's perceived merits as a notification criterion under Council's CPP is beyond fraught.

- 35 And the current system already provides for the public to object to an application on merit. This is partly why Councils across NSW refuse countless development applications a day for a perceived lack of merit.

Beyond this, by the time Council had concluded that a 'contradiction' exists, the proposed notification system would be circular.

- 40 That's because Council would decide that a development application 'contradicts Council's biodiversity regulations' – and so need to notify the proposed register – only for parties on

the register to potentially make a public submission saying that the application contradicts the relevant regulations. There isn't enough benefit in the proposal to justify the increased risk of Council making notification errors.

5 Meanwhile, if the relevant 'contradiction' was based on a tougher standard than merit – say, that the 'contradiction' represents a legal barrier to Council granting consent to the development application, there is little use in Council having a member of the public note the barrier. In those circumstances, Council has no lawful power to grant a consent, irrelevant of a member of the public's view.

10 In a context where proper public notification is an essential step in Council lawfully exercising its development application determination powers, the proposal would expose Council – and therefore the general public that funds it – to increased litigation due to the expanded scope for errors under an amended CPP.

15 The desire to increase public participation in the planning process is noble. But the proposal is not the preferable way to pursue that aim. It should not be pursued for the reasons above.

### Financial/Resource/Legal Implications:

As discussed in the response. Finance and resource implications have otherwise not been scoped.

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

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth	4.1: Manage responsible development through effective place and space planning	4.1.1: Development assessment - Manage development through a transparent and efficient assessment process	4.1.1.3	Exhibit development applications as required by the Community Participation Plan

PETITIONS

**Petition No. 11.1 Lack of public transport options for residents in Ocean Shores on Sundays compared to other areas in the Byron Shire**

**Directorate:** Infrastructure Services  
**Report Author:** James Flockton, Infrastructure Planning Coordinator  
**File No:** I2024/903

Council is receipt of petition containing 974 signatures (Attachment 1 - E2024/65039) from Adam Luck which states:

*"My name is Adam Luck and I live in Ocean Shores.*

*As many people are aware, there is no public transport in the north of Byron Shire on Sundays, making it difficult for people to travel between Ocean Shores, New Brighton Brunswick Heads and Mullumbimby to visit friends and family etc. This lack of transport is a problem for a lot of people I speak too.*

*So, Mum told me to stop complaining about the lack of public transport and do something about it. So with the help of Mum and Vanessa I decided to start a petition with a goal of 1000 signatures so that I could present the petition to Byron Shire Council at a meeting. There was so much support for the petition that it only took me 5 days to get over 1000 signatures.*

*So, here I am asking Council for their opinion on this issue of no buses on Sunday to Mullumbimby and how we can fix the problem.*

*Thanks everyone for your support.*

*Adam Luck"*

**Comments from Director Infrastructure Services:**

The provision of public transport services and routes is a state matter. However, staff are aware that the community has concerns with the current availability of services and routes across the shire and in and out of the Shire. To address this staff recently held a workshop with Transport for NSW to discuss opportunities to improve public transport.

A second workshop is current being planned.

These workshops have followed the below Council resolution that staff are currently working through:

**Council Resolved:**

That Council adopts the following Committee Recommendation:

5 Report No. 4.2 Public Transport Workshop Outcomes

File No: I2023/1862

Committee Recommendation 4.2.1

1. That the Moving Byron Committee note the ongoing work with TfNSW to help achieve the Shires Public Transport expectations.
- 10 2. That staff provide a follow up Public Transport Workshop to discuss other modes of public transport not discussed at this workshop (Moving Byron Public Transport Workshop, 13 November 2023).
3. That Council facilitates discussion with TfNSW and bus companies regarding Ocean Shores to Byron service and other improvements to the bus routes and timetables.
- 15 4. Council note the following issues presented as current and urgent issues with the bus system requiring attention to address customer needs.
  - a) Poorly presented timetable formation
  - b) Dysfunctional 'trip planner' coordinated by TfNSW.
  - 20 c) Better understanding and attention to meeting the needs of disabled and mobility challenged people.
5. That the next Moving Byron Committee receive the report on the progress and funding on the following issues, which come from the Moving Byron Strategy:
  - 5.2.2 Survey community to identify service gaps and undertake route evaluation.
  - 5.2.3 Undertake data collection and research project to understand.
  - 25 - Non-work and tourist visitor travel patterns and demand.
  - Identify grant and other funding opportunities.
  - 5.2.6 Understand the movement needs of tourist visitors and opportunities to align services that can cater to experiential, commuter, and other cohorts.
  - 5.2.7 Complete review of bus stop and facilities in town and village centres to identify opportunities to provide central locations, enhance convenience, connectivity, and accessibility.
  - 30 5.2.8 Provide bus bay adjacent to Tourism Information Centre in Jonson Street Byron Bay and support town bus services circulating in the town centre.
  - 5.3.3 Review Development Control Plans, Master Plans, and relevant policy to facilitate and promote shared transport options in land use and place planning.
  - 35 7.2.3 Amend development assessment criteria for transport infrastructure including for Traffic Impact Assessments to include:

## BYRON SHIRE COUNCIL

### PETITIONS

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- *Counts for pedestrians, cyclists, and other road users.*
- *Measures that address risks to all road users (including pedestrians and cyclists).*
- *The provision of public transport facilities.*
- *Travel Demand Management strategies.*


- 5     8.1.4 *Identify and develop a priority funding plan for hinterland connection points, such as bus transfers at road intersections and nodes such as halls and schools that can be made safer with improved facilities such as bus bays, signage, kiss and ride etc.*  
(Lyon/Westheimer).

- 10    Actions and outcomes from the above resolution will need to report back Council, this will likely be to the new Council at the end of 2024.
- 

### **RECOMMENDATION:**

- 15     1.    **That the petition regarding the lack of public transport options for residents in Ocean Shores on Sundays compared to other areas in the Byron Shire be noted.**
2.    **That the petition be referred to the Director Infrastructure Services.**

### **Attachments:**

- 20     1     Confidential - Lack of public transport options for residents in Ocean Shores on Sundays compared to other areas in the Byron Shire, E2024/65039
- 2     Lack of public transport options for residents in Ocean Shores on Sundays compared to other areas in the Byron Shire - REDACTED, E2024/65072 

25



DELEGATES' REPORTS














**Delegate's Report No. 12.1 Rous County Council - Past Meeting Summaries**

5 File No: I2024/872

10 The attached summaries of the Rous County Council Meetings are provided for information.

**Signed: Cr Michael Lyon and Cr Sarah Ndiaye**

**Attachments:**

- 15 1 Rous County Council Meeting Summary - April 2024, E2024/61737 
- 2 Rous County Council Meeting Summary - February 2024, E2024/61736 
- 3 Rous County Council Meeting Summary - December 2023, E2024/61724 
- 4 Rous County Council Meeting Summary - August 2023, E2024/61734 
- 5 Rous County Council Meeting Summary - June 2023, E2024/61733 
- 20 6 Rous County Council Meeting Summary - April 2023, E2024/61732 
- 7 Rous County Council Meeting Summary - February 2023, E2024/61731 
- 8 Rous County Council Meeting Summary - December 2022, E2024/61730 
- 9 Rous County Council Meeting Summary - October 2022, E2024/61729 
- 25 10 Rous County Council Meeting Summary - August 2022, E2024/61728 
- 11 Rous County Council Meeting Summary - June 2022, E2024/61727 
- 12 Rous County Council Meeting Summary - May 2022, E2024/61726 
- 13 Rous County Council Meeting Summary - February 2022, E2024/61725 

## Delegate's Report No. 12.2 Myall Creek Massacre Commemoration Trip with Rous County Council

File No: I2024/928

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**Date:** 8-9th of June 2024

10 **Introduction:** In my role as Chair of the Rous County Council Reconciliation Action Plan (RAP) working group, I went on a trip the Myall Creek Massacre commemoration.

15 **What is the RAP?** The purpose of the Rous County Council RAP Working Group is to develop and implement strategies and initiatives aimed at advancing reconciliation between Indigenous and non-Indigenous Australians within the operations and activities of Rous County Council. This may include fostering respectful relationships with local  
20 Aboriginal communities, promoting awareness and understanding of Aboriginal and Torres Strait Islander cultures, histories, and contributions, and identifying opportunities for collaboration, employment opportunities and partnership on reconciliation-related projects and initiatives. The group can also be responsible for monitoring progress towards reconciliation goals outlined in the Rous County Council's Reconciliation Action Plan and recommending adjustments or improvements as needed.

It was an enlightening and deeply impactful experience for all involved. Accompanied by Rous staff members and local Aboriginal elders who sit on the RAP and family members, the journey provided a profound opportunity to reflect on the significance of the event and the importance of reconciliation in Australian history.

25 **Significance of the Event:** The Myall Creek Massacre, like many other massacre sites across the country, represents a dark chapter in Australia's history of colonisation and Indigenous relations. The massacre, which occurred in 1838, resulted in the brutal killings of at least 28 Aboriginal men, women, and children by a group of European settlers. The  
30 significance of the Myall Creek Massacre lies in the fact that it was one of the few instances in Australian history where white men were actually convicted and punished for the murder of Aboriginal people. It was not the first instance of violence against Indigenous Australians by any means - or the last, but it was one of the first times that the perpetrators were brought to justice under colonial law. The trials and subsequent convictions marked a  
35 significant departure from the prevailing attitudes of the time, which often condoned or ignored violence against Aboriginal people. What was particularly moving was that families of both those who were killed and those who were involved in the killings participate in commemorative events. They made pledges of reconciliation, call on the spirits of the ancestors and hug. It was hard not to shed a tear. The involvement of families from both  
40 sides can be a powerful symbol of healing, understanding, and reconciliation.

The Myall Creek Massacre and its legal aftermath therefore serve as a landmark in the

ongoing struggle for justice and reconciliation between Indigenous and non-Indigenous Australians. The commemoration serves as a reminder of the atrocities committed against Indigenous Australians and the ongoing journey towards reconciliation and healing.

5 There was also a strong participation from students coming from a variety of schools in QLD, NSW, ACT and VIC.

10 **Importance of Reconciliation:** Reconciliation is essential for Australians to come to terms with the injustices of the past and build a more inclusive and equitable future. The trip provided a platform for meaningful conversations about the impacts of colonisation, the legacy of the Stolen Generations, and the ongoing effects of intergenerational trauma experienced by Indigenous communities.

15 **Enlightening Conversations:** Throughout the journey to and from the event, as well as during dinner discussions, we all shared personal stories and insights, some of those really shed light on the lived experiences of Indigenous Australians. Stories of growing up under the welfare act, being denied access to basic rights, and experiencing the pain of having siblings removed from their families highlighted the profound injustices faced by Indigenous communities.

20 **Shared Moments of Joy and Resilience:** Despite the sombre nature of the event, there were also moments of joy, laughter, and cultural celebration. Participants engaged in singing, dancing, and storytelling, showcasing the resilience and strength of Indigenous cultures. These shared moments fostered a sense of connection and solidarity among attendees, reinforcing the importance of cultural exchange and mutual understanding.

25 **Recommendation for Further Engagement:** The organisers of the Myall Creek Massacre commemoration expressed a desire for other councils to participate become involved in similar reconciliation initiatives. They suggested exploring opportunities to establish local sites where reconciliation activities can take place, fostering dialogue, understanding, and healing within communities.

30 **Conclusion:** In conclusion, the trip to the Myall Creek Massacre commemoration was a profoundly moving and enlightening experience that underscored the importance of reconciliation in Australian society. I would highly recommend that others seize the opportunity to participate in similar events and engage in meaningful dialogue with Indigenous communities. By acknowledging the past, honouring Indigenous perspectives, and working towards a more just and inclusive future, we can contribute to the ongoing process of reconciliation in Australia.







5 Signed: Cr Sarah Ndiaye

## Delegate's Report No. 12.3 Rainforest Connections 2024 Conference

File No: I2024/929

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**Date:** Wednesday 5th June 2024

10 **Introduction:** I saw the opportunity to attend this conference and was very keen after seeing who was going to be presenting. Don't worry, it wasn't paid for by Council. I only went for one of the four days but I wish I'd had time to emerge myself in it further.

The Rainforest Connections 2024 conference held in Ballina at the RSL. The conference marked a significant milestone as the first event in over two decades dedicated to the restoration, rehabilitation, and management of Australia's unique rainforest habitats.

15 **Key Themes and Discussions:** The conference provided a comprehensive exploration of key themes and topics related to rainforest conservation and management. Discussions ranged from species recovery programs to cutting-edge environmental research and weed management, showcasing the diverse array of initiatives aimed at preserving and restoring rainforest ecosystems.

20 **Highlights and Takeaways:** Several presentations and discussions left a lasting impression, offering valuable insights and practical strategies for addressing the challenges facing rainforest conservation. Highlights included:

- Case studies of successful on-ground action and restoration efforts.
- Innovative techniques and tools for managing rainforest habitats.
- The importance of recognizing the connection between nature and culture in conservation efforts.
- Engaging people in nature through art which could be embraced in the cycleways.

**Speaker Highlights:** The conference featured an impressive lineup of speakers who shared their expertise and experiences in rainforest conservation:

- 30 • Sean Dooley: Author, comedian, and birdman, Sean Dooley's passion for connecting people with nature was evident in his presentation. He shared anecdotes from his experiences in birdwatching and highlighted the significance of rainforest habitats for bird diversity.
- 35 • Dr. Tony Parkes AO: As the founder and past president of Big Scrub Landcare, Dr. Tony Parkes AO's leadership in rainforest restoration has been instrumental in

## BYRON SHIRE COUNCIL

### DELEGATES' REPORTS

12.3

advancing conservation efforts in northern New South Wales. His insights into community-based conservation initiatives were particularly enlightening.

- 5      • Prof. Maurizio Rossetto: Leading the Research Centre of Ecosystem Resilience at the Botanic Garden of Sydney, Prof. Maurizio Rossetto's research integrates molecular ecology, environmental modeling, and innovative approaches to understanding rainforest ecosystems. His presentation on landscape genomic projects shed light on cutting-edge conservation strategies.
- 10     • Professor Carla Catterall: Professor Emeritus in environmental sciences at Griffith University, Prof. Carla Catterall's research into rainforest restoration processes has informed land management practices and biodiversity outcomes. Her expertise in plant-animal interactions and ecological processes was evident in her engaging presentation.
- 15     • Prof. Brendan Mackey: Director of the Climate Action Beacon at Griffith University, Prof. Brendan Mackey's contributions to forest ecology, biogeography, and conservation biology have shaped our understanding of climate and ecosystem dynamics. His presentation on the impacts of climate change on rainforest habitats provided valuable insights into future challenges.
- 20     • Dr. Robert Kooyman: Honorary Research Fellow at Macquarie University, Dr. Robert Kooyman's extensive research in rainforest ecology has contributed to our understanding of species distribution and assembly processes. His presentation on rainforest assembly dynamics provided a deeper appreciation of the complexity of rainforest ecosystems.
- 25     • Dr. Bill McDonald: Honorary Research Associate at Queensland Herbarium, Dr. Bill McDonald's expertise in rainforest vegetation surveying and mapping has been invaluable for conservation efforts in Queensland. His presentation on rainforest communities highlighted the diversity and ecological importance of these habitats.
- 30     • Hugh and Nan Nicholson: Renowned conservationists and authors, Hugh and Nan Nicholson's pioneering work in rainforest propagation and advocacy has had a lasting impact on rainforest conservation in Australia. Their presentation on the role of activism and community engagement underscored the importance of grassroots movements in driving environmental change.
- 35     • Oliver Costello: Executive Director of Jagun Alliance and Conservation Futures project co-manager at Bush Heritage Australia, Oliver Costello's leadership in Indigenous-led conservation initiatives has been transformative. His presentation on the role of Aboriginal culture in land management highlighted the importance of traditional ecological knowledge in achieving sustainable outcomes.
- 40     •

- Byron Shire Council's "No Bat No Me" Presentation: A standout moment of the conference was Byron Shire Council's engaging presentation titled "No Bat No Me." Liz Caddick's creative portrayal as a bat, coupled with Claudia Caliarì's insightful sharing of knowledge and experiences, captivated the audience. Their innovative approach to raising awareness about bat conservation highlighted the importance of community engagement in environmental initiatives.

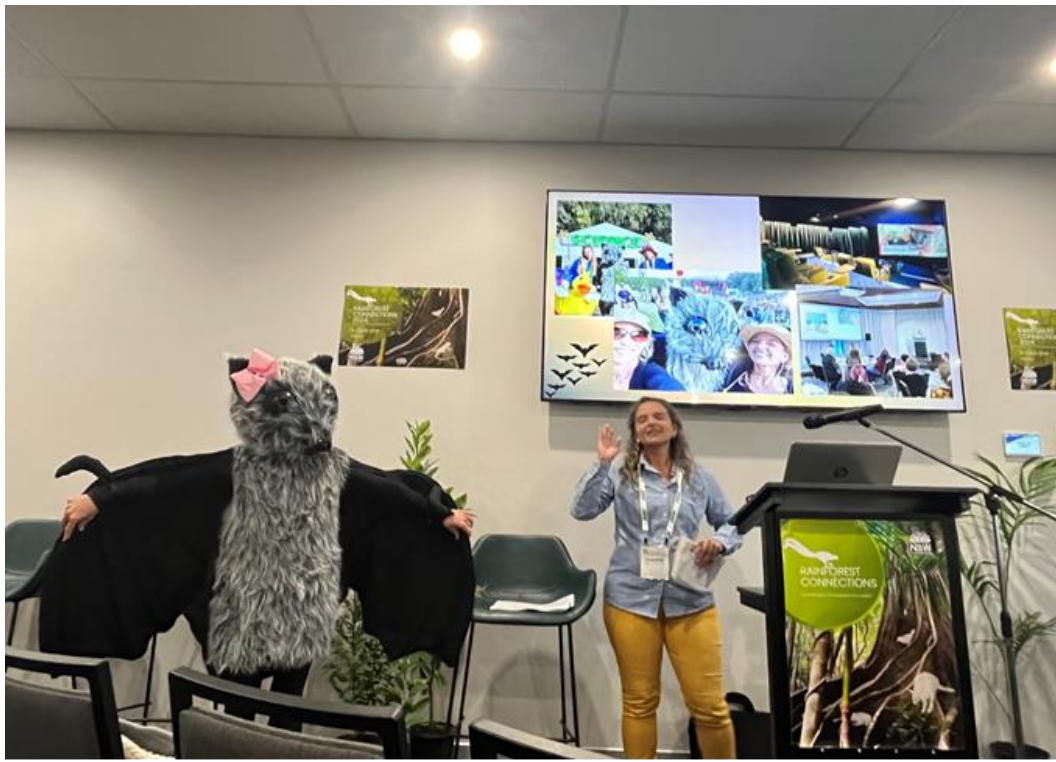
**Networking Opportunities:** One of the most valuable aspects of the conference was the opportunity to connect with fellow delegates from diverse backgrounds, including scientists, program managers, practitioners, and community members. Networking sessions facilitated meaningful exchanges of ideas and fostered collaborations that hold the potential to drive positive environmental outcomes. I wish I had more time there.

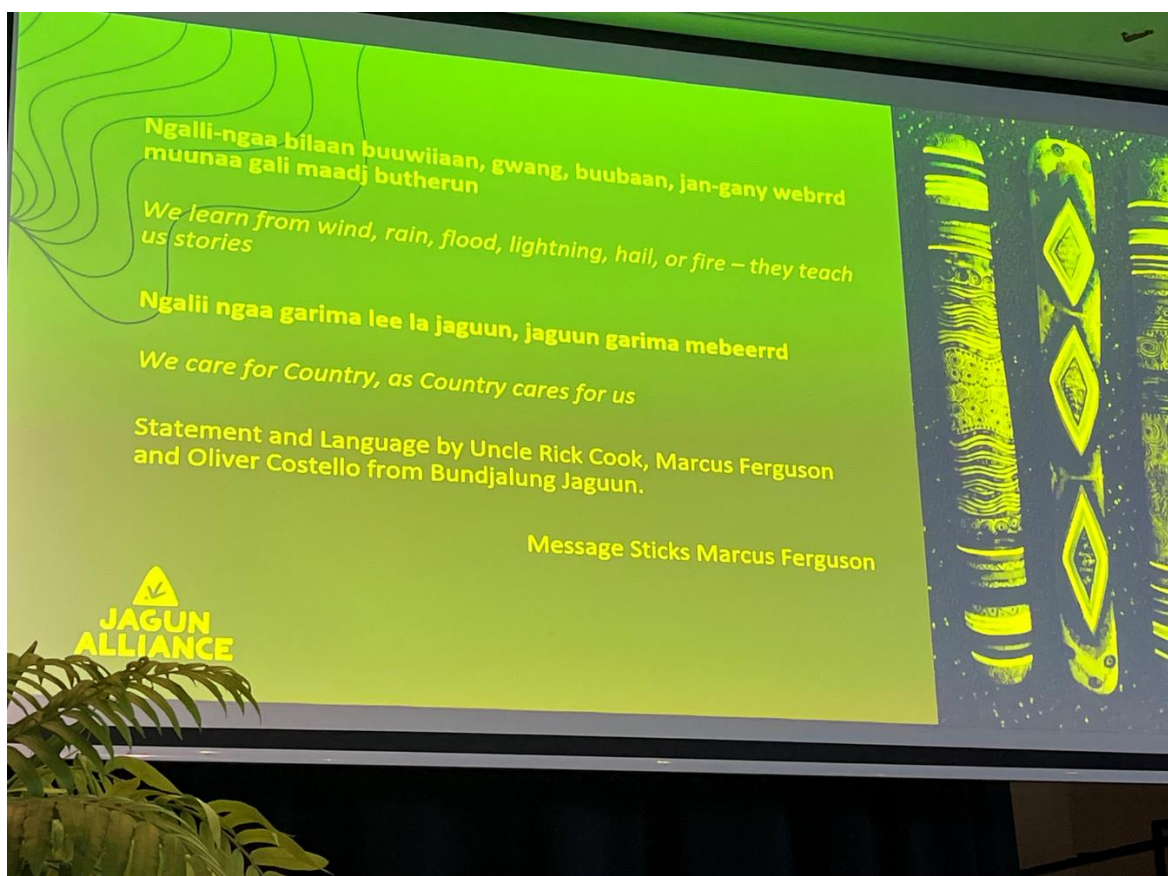
**Inspiration and Motivation:** Attending the conference left me feeling inspired and motivated to contribute to rainforest conservation efforts in my professional capacity. The passion and dedication of the speakers served as a powerful reminder of the importance of collective action in safeguarding our precious rainforest environments.

**Recommendations for Future Participation:** Based on the success of Rainforest Connections 2024, I wholeheartedly encourage council, councillors and students interested in rainforest conservation and management to attend future iterations of the conference. The event offers a unique opportunity to stay informed about the latest developments in the field and engage with fellow practitioners and experts.

**Conclusion:** In conclusion, the Rainforest Connections 2024 conference provided a vital platform for advancing dialogue, sharing knowledge, and fostering collaboration in the realm of rainforest conservation. I am grateful for the opportunity to have participated in this event and encourage councillors and staff to attend if it happens again anytime soon.











Signed: Cr Sarah Ndiaye

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 13.1      Grants May 2024**

**Directorate:** Corporate and Community Services

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

**File No:** I2024/606

**Summary:**


10    Council is waiting on determination of 23 Grant applications which, if successful, would provide funding to enable the delivery of identified projects. This report provides an update on Grant applications.

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**RECOMMENDATION:**

15    **That Council notes the Grant Submissions Report for the month of May 2024 (Attachment 1 #E2024/61551).**

**Attachments:**

20    1    Grant submissions as at 31 May 2024, E2024/61551 

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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## Report

Currently Council has 23 grant applications awaiting determination (refer to Grants Submissions as of 31 May - Attachment 1, E2024/61551).

### Successful applications

Funding body	Project name	Total project value \$	Amount requested \$	Council \$
NSW Reconstruction Authority	The Saddle Road - Resilient Lands Strategy	\$300,000	\$300,000	\$0

### 5 Unsuccessful applications

Funding body	Project name	Total project value \$	Amount requested \$	Council \$
Australian Government - Department of Infrastructure, Transport, Regional Development, Communications and the Arts  Growing Regions Program	Byron Bioenergy	\$24,636,000	\$12,318,000	\$12,318,000
Feedback: Unfortunately, whilst the project has merit, it was considered more likely to be suitable for funding through programs operated by other jurisdictions or Australian Government portfolios.  Staff have requested an in-person feedback session.				

## **Upcoming Grant opportunities**

### Regional Precincts Partnership Fund

- 5 Staff are continuing to work with neighbouring Councils to submit a partnership application for sections of the Northern Rivers Rail Trail within the Mullumbimby to Crabbes Creek and Lismore to Bangalow corridors.

### Electric vehicle destination charging grants | NSW Climate and Energy Action

\$20 million to assist eligible regional NSW businesses and councils by co-funding the purchase and installation of EV chargers. This funding is available through Drive electric NSW EV destination charging grant. Up to 75% of costs covered.

- 10 Staff are currently preparing applications for:
- Lawson Street North Carpark – Byron Bay. 2 x 7kW chargers
  - Mullumbimby Administration Centre – Mullumbimby. 2 x 22kW chargers

Estimated total cost: \$34,000

## **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

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

- 20 Under section 409 3(c) of the *Local Government Act 1993* Council is required to ensure that 'money that has been received from the Government or from a public authority by way of a specific purpose advance or Grant, may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose'. This legislative requirement governs Council's administration of Grants.

## Financial Considerations

If Council is successful in obtaining the identified Grants, this would bring funding sought to approximately \$7.2 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>\$7,278,511</b>
	Requested funds from funding bodies	\$7,119,703
10	Council contribution cash	\$257,015
	Council co-contribution in-kind	\$295,760
	Other contributions	\$0

Funding determined in May 2024 (total project value):

15	Successful applications	\$300,000
	Unsuccessful applications	\$24,636,000

## Consultation and Engagement

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

## Report No. 13.2 Mayor and Councillor Remuneration 2024/25

**Directorate:** Corporate and Community Services

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

**File No:** I2024/770

### 5 Summary:

The Local Government Remuneration Tribunal has handed down its report and determination on fees for Councillors and Mayors for the 2024/25 financial year. A copy of the report is provided in attachment 1 (E2024/57812).

10 The Tribunal determined a 3.75% per annum increase in the minimum and maximum fees applicable to each category, effective 1 July 2024 and two councils were reclassified into a higher category.

This report outlines the Tribunal's fee range and the proposed Mayor and Councillor fees for 2024/25.

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### RECOMMENDATION:

#### That Council:

- 20
1. Fixes the fee payable to each Councillor under section 248 of the *Local Government Act 1993* for the period 1 July 2024 to 30 June 2025 at \$27,050.
  2. Fixes the fee payable to the Mayor under section 249 of the *Local Government Act 1993*, for the period from 1 July 2024 to 30 June 2025 at \$66,800.
  3. Does not determine a fee payable to the Deputy Mayor, in accordance with current practice.

### 25 Attachments:

- 1 Local Government Remuneration Tribunal 2024 Annual-Determination 29-April-2024, E2024/57812 

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# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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### Report

Each year the Local Government Remuneration Tribunal (Tribunal) must determine, in each of the categories determined under section 239 of the *Local Government Act 1993* the maximum and minimum amounts of fees to be paid during the following year to councillors and mayors.

The Tribunal has released its 2024/25 Determination, in summary:

- a **3.75% per annum increase** in the minimum and maximum fees will apply to each category, effective 1 July 2024
- two councils were reclassified into a higher category

The Remuneration Tribunal has determined the maximum and minimum amounts of fees to be paid during the 2024/25 financial year. As Byron Shire Council is categorised as a Regional Centre the appropriate fee range is as follows:

Category	Councillor/Member Annual Fee (\$) effective 1 July 2023		Mayor/Chairperson Additional Fee* (\$) effective 1 July 2023	
	Minimum	Maximum	Minimum	Maximum
Regional Centre	15,370	27,050	31,980	66,800

*\*This fee must be paid in addition to the fee paid to the Mayor/Chairperson as a Councillor/Member (s.249(2) of the Local Government Act 1993).*

Currently, the annual fees payable to Councillors and the Mayor for the 2023/24 financial year are the maximum fee fixed at \$26,070 per annum for a Councillor, and an additional fee of \$64,390 for the Mayor.

In making its determination, the Remuneration Tribunal considered a range of factors including the Consumer Price Index, Wage Price Index, full-time adult average weekly ordinary time earnings, NSW Public Sector increases, and Local Government State Award increases. It also considered the Base Cost Change model used by IPART in setting the rate peg for 2024-25.

A full version of the determination is provided in Attachment 1.

## 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

### Recent Resolutions

- 5 **22-222** - resolved to make a superannuation contribution payment to its councillors in accordance with section 254B of the Act.
- 22-070** - endorsed the submission to the Local Government Remuneration Tribunal on the fees payable to Mayors and Councillors in 2023/24 and sought recategorisation to 'Regional Centre'.
- 10 **23-536** – endorsed the submission to the Local Government Remuneration on the fees payable to Mayors and Councillors in 2024/25.

### Legal/Statutory/Policy Considerations

[Section 248](#) of the *Local Government Act 1993* states:

- 15 (1) *A council must pay each councillor an annual fee.*  
 (2) *A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.*  
 (3) *The annual fee so fixed must be the same for each councillor.*  
 (4) *A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.*

[Section 249](#) of the *Local Government Act 1993* further states:

- 20 (1) *A council must pay the mayor an annual fee.*  
 (2) *The annual fee must be paid in addition to the fee paid to the mayor as a councillor.*  
 (3) *A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.*  
 25 (4) *A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.*  
 (5) *A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.*

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## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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[Section 250](#) of the *Local Government Act 1993* states that fees are payable monthly in arrears for each month (or part of a month) for which the councillor holds office.

[Section 254B](#) of the *Local Government Act 1993* relates to the payment of a superannuation contribution, which came into effect on 1 July 2022.

### 5 Financial Considerations

#### Councillors and Mayoral fees currently paid:

\$26,070 each x 9	=	\$234,630
Plus Mayor additional fee	=	\$ 64,390
Total Paid		<b>\$299,020</b>

#### 10 Councillors and Mayoral fees 2024/25 increased to maximum set by the Tribunal\*:

\$27,050 each x 9	=	\$243,450
Plus Mayor additional fee	=	\$ 66,800
Total Paid		<b>\$310,250</b>

#### 15 Superannuation contribution payments:

Council resolved (**22-222**) to make a superannuation contribution payment to its councillors in accordance with section 254B of the Act. In 2024/25 this will be payable at the rate of 11.5%, which is equivalent to amount under the Commonwealth superannuation legislation if the councillor were an employee of the Council. The rate increases by 0.5% percent each year until 1 July 2025 when it reaches 12%. This payment is in addition to Councillor fees.

$$11.5\% \times \$310,250^* = \mathbf{\$35,679}$$

*\*based on the assumption that councillors will determine to receive the full contribution.*

25 Councillors are required nominate a superannuation account or if they do not wish to receive a superannuation contribution payment, may agree in writing to forgo or reduce the payment.

30 The draft 2024/25 Budget was prepared prior to the determination by the Tribunal and includes a total allocation of \$310,300 for Councillor Fees and the Mayoral Allowance, and \$34,200 for superannuation payments. The amount for superannuation will be increased to \$35,700 prior to the adoption of the budget.

**Allowance for Deputy Mayor**

Section 249 (Clause 5) of the *Local Government Act 1993* states that:

- 5        *A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.*

As stated in the above clause, Council is not bound to set a fee, but if it so chooses must deduct that sum from the amount available under the Mayoral allowance.

- 10       Current practice is that the payment of a fee for an acting period by Deputy Mayor undertaking the role of Mayor, would apply only in instances where the Mayor has leave of absence endorsed by Council, and any pro rata fees would be deducted from the Mayoral allowance, where agreed on a case by case basis in accordance with section 249 of the *Local Government Act 1993*.

**Consultation and Engagement**

- 15       The Remuneration Tribunal consults with local governments to arrive at its determination. Byron Shire Council made a submission to the Remuneration requesting the maximum increase. Council has an adopted view that the current maximum fees for Councillors and Mayors are inadequate for the roles and responsibilities undertaken.

**Report No. 13.3      Adoption of Operational Plan 2024/25,  
including Budget, Statement of Revenue  
Policy, and Fees and Charges**

**Directorate:** Corporate and Community Services

5    **Report Author:** James Brickley, Manager Finance  
Amber Evans Crane, Corporate Planning and Improvement  
Coordinator

**File No:** I2024/792

**Summary:**

10    At its 18 April Ordinary Meeting, Council endorsed the draft Integrated Planning and Reporting documents for public exhibition, namely, the:

- Operational Plan 2024/25
- Detailed Budget Estimates 2024/25
- Statement of Revenue Policy 2024/25, including Fees and Charges

15    The preparation of these documents is regulated under the Integrated Planning and Reporting Framework requirements legislated by [s406](#) of the *Local Government Act 1993*.

20    Council received 18 submissions during the public exhibition period. This report provides consideration of those submissions as well as proposed administrative changes that arose during the public exhibition period. It recommends that Council adopts the revised documents.

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**RECOMMENDATION:**

25    **That Council:**

1. Notes the submissions received during the public exhibition period for the Operational Plan 2024/25 (including the Budget, Statement of Revenue Policy, and Fees and Charges) as outlined in Attachment 2 (#E2024/62876).
2. Adopts the following documents:
  - 30    a) Operational Plan 2024/25 as amended, Attachment 1 (#E2024/63298).
  - b) Statement of Revenue Policy 2024/25 including fees and charges as exhibited, with the amendments (included in Attachment 4 #E2024/65966)

# BYRON SHIRE COUNCIL






## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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**discussed in the report under the headings ‘Draft General Land Rates and Charges (Statement of Revenue Policy)’ and ‘Draft Fees and Charges (Statement of Revenue Policy)’**

- 5      c)      **Budget Estimates 2024/25 as exhibited, with the amendments discussed in the report under the heading ‘Draft 2024/25 Budget Estimates (Statement of Revenue Policy)’ and included at Attachment 5 (#E2024/65967)**

### **Attachments:**

- |    |   |   |
|----|---|---|
| 10 | 1 | Operational Plan 2024/25, E2024/63298    |
|    | 2 | Community Engagement Report - Operational Plan and Budget 2024/25, E2024/62876                       |
|    | 3 | Redacted - Submissions On The Draft 2024 25 Operational Plan Budget And Fees And Charges, E2024/64992  |
|    | 4 | Draft Revenue Policy 2024/25, E2024/65966    |
| 15 | 5 | Draft 202425 Detailed Budget Estimates, E2024/65967   |

## **Report**

The Community Strategic Plan, the Delivery Program and the Operational Plan form part of the Integrated Planning and Reporting Framework which is a requirement under the *Local Government Act 1993*.

- 5 The annual Operational Plan spells out the detail of the Delivery Program, identifying the individual projects and activities that will be undertaken in a specific year to achieve the commitments made in the Delivery Program. The Operational Plan must include the Council's annual budget, along with Council's Statement of Revenue Policy, which includes the proposed rates, fees, and charges for that financial year.
- 10 The following documents were placed on public exhibition from 19 April 2024 to 17 May 2024:
- Operational Plan 2024/25
  - Detailed Budget Estimates 2024/25
  - Statement of Revenue Policy 2024/25, including Fees and Charges
- 15 Council received 18 submissions during this period (as outlined further in the Consultation and Engagement section of this report).

## **Operational Plan 2024/25**

- 20 The Operational Plan actions detail the activities and projects Council will undertake in a financial year, resourced by the annual budget. It is grouped under the five Community Strategic Plan themes.

- 25 The Operational Plan must be prepared and adopted by 30 June for the year ahead. Each quarter we take the opportunity to review and amend the activities in the Operational Plan to provide a clear and accurate picture of what activities can be achieved with the available resources. The Operational Plan should therefore be seen as a 'live' document. All changes must first be adopted by Council and are publicly shared with the community online in each [quarterly report](#).

The draft Operational Plan for 2024/25 is included at Attachment 1.

- 30 The Operational Plan presented to Council includes amendments based on the feedback from public exhibition, Council resolutions, and administrative amendments.

## **Draft 2024/25 Operational Plan – amendments**

### **Amendments arising through public exhibition**

<b>Strategic Link</b>	<b>Activity</b>	<b>Measure</b>	<b>Due Date</b>	<b>Other Details</b>
<b>2.5.1 Access and inclusion</b> - Improve access and inclusion for all community members, including people with disability	Work in partnership with people with disability, carers and educators in the development of a new Disability Inclusion Action Plan 2025-2029	Disability Inclusion Action Plan 2025-2029	June-25	Amended activity (2.5.1.4)
<b>4.1.3 Town / Village Masterplans</b> - Develop, implement and update Place Plans that promote place	Commence scoping of the Local Environmental Plan and Development Control Plan review to reflect the vision, principles and character statement of the Federal Village Masterplan (Action 5 Federal Village Masterplan).	Scoping report commenced.	June-25	New activity
<b>5.1.3 Active transport</b> - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan	Investigate grant opportunities to fund the delivery of sealed shoulders on hinterland roads.	Grants sought to fund sealed shoulders on hinterland roads.	June-25	New activity
<b>5.3.1 Future needs</b> - Plan for the infrastructure needs of the current and future population	Lobby state government to increase the storm water charge.	State government contacted requesting an increase to the storm water charge.	June-25	New activity
<b>5.4.4 Sporting facilities and swimming pools</b> - Ensure ongoing maintenance and upgrade of inclusive sporting facilities and swimming pools	Work with sport and community groups to build relationships and help drive increased participation opportunities and event attraction for people of all abilities	Facilitate 3-5 regional sporting events per annum	June-25	Amended activity (5.4.4.6)



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## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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### Amendments arising through Council Resolutions (new activities)

Strategic Link	Activity	Measure	Due Date	Resolution Details
<b>2.2.1 Safety initiatives -</b> Support community driven safety initiatives	Seek additional Government support and funding to engage more effectively in creating safe places for women and children in the Byron Shire	Government support and funding sought and applied for to increase safe places for women and children in Byron Shire	Jun-25	Council resolved (24-237) to seek additional Government support and funding to engage more effectively in creating safe places for women and children in the Byron Shire
<b>3.2.3 Planning -</b> Plan to improve the quality of the natural environment	Explore options for facilitating the creation of a Conservation Trust	Findings presented to a councillor workshop	Sep-24	Council resolved (24-235) to explore options for facilitating the creation of a Conservation Trust
<b>5.4.2 Parks and open spaces -</b> Provide and maintain active and passive recreational community space that is accessible and inclusive for all	Establish prioritised locations and design details for inclusive access at Byron Shire beaches,	Key stakeholders consulted and environmental and engineering studies facilitated to inform design details	June-25	Council resolved (24-192) to allocate budget of \$20,000 for studies to inform design details of inclusive beach access
<b>5.4.4 Sporting facilities and swimming pools -</b> Ensure ongoing maintenance and upgrade of inclusive sporting facilities and swimming pools	Explore options to install a heating system at the Mullumbimby Petria Thomas Swimming Pool	Investigation complete and options considered	June-25	Council resolved (24-232) to explore the option of installing a heating system at the Mullumbimby Petria Thomas Swimming Pool, funding of \$200,000 was allocated in resolution 24-242.

### Administrative Changes

- To ensure clear alignment with the Disability Inclusion Action Plan (DIAP), those activities which did not have a direct link to achieving the desired outcomes had the DIAP classification removed
- Grammatical errors corrected

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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- Program area corrected

### Amended Activities:

Code	Activity	Measure	Due Date	Details
5.2.4.6	Implementation of Paid Parking Scheme in Brunswick Heads	Strategy developed, reviewed, adopted and implemented	Sep-24	Amended due date.
5.4.1.4	Maintenance works undertaken at Sandhills Early Childhood Centre	Painting and replacement of roof, external walls, and lining	Jun-25	Activity removed.  The proposed initiative was not budgeted for 2024/25 but has been scheduled for the 2025/26 program.

### Draft 2024/25 Budget Estimates (Statement of Revenue Policy)

- 5 The Draft 2024/25 Budget Estimates are based on the 2023/24 budget reviewed at 31 March 2024 Quarter Budget Review with various changes to reflect the updated cost of service delivery across all programs developed from the input received from each Council Directorate.

The Draft 2024/25 Budget Result on a Consolidated (All Funds) basis as placed on public exhibition forecasted a balanced budget result as outlined below at Table 1.

- 10 Table 1 – Forecast Budget Result 2024/25 Consolidated (All Funds)

Item	Amount \$
<b>Operating Result</b>	
Operating Revenue	115,842,500
Less: Operating Expenditure	(97,403,800)
Less: Depreciation	(20,657,300)
<b>Operating Result – Surplus/(Deficit)</b>	<b>(2,218,600)</b>
<b>Funding Result</b>	

# BYRON SHIRE COUNCIL

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Operating Result – Surplus/ (Deficit)	(2,218,600)
Add: Non-cash expenses – Depreciation	20,657,300
Add: Capital Grants and Contributions	45,448,000
Add: Loan Funds Used	4,194,000
Add: Asset Sales	0
Less: Capital Works	(69,373,000)
Less: Loan Principal Repayments	(4,561,300)
<b>Funding Result – Surplus/(Deficit) (Cash Movement)</b>	<b>(5,853,600)</b>
Reserves Movement – Increase/(Decrease)	(5,853,600)
<b>Overall Budget Result – Surplus/(Deficit) (Operating + Funding)</b>	<b>0</b>

Table 1 indicated a balanced budget position, and this relates to the General Fund. The forecast General Fund Unrestricted Cash Balance position based on the draft budget included at Table 1 and placed on public exhibition is outlined in Table 2 below:

Table 2 – Forecast General Fund Unrestricted Cash Balance

Item	\$
Forecast unrestricted cash balance to 30 June 2024 at 31 March 2024 Budget Review (proposed)	0
Add: Estimated initial draft 2024/25 budget result	0
<b>Forecast unrestricted cash balance at 30 June 2025</b>	<b>0</b>

- 5 During the public exhibition period, the Draft 2024/25 Statement of Revenue Policy incorporating the Draft 2024/25 Budget Estimates has been further reviewed.

The revised budget position is summarised in Table 3 below:

## BYRON SHIRE COUNCIL

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Table 3 – Forecast Budget Result 2024/25 Consolidated (All Funds) revised during public exhibition period

Item	Amount \$
<b>Operating Result</b>	
Operating Revenue	116,334,600
Less: Operating Expenditure	(98,326,400)
Less: Depreciation	(20,657,300)
<b>Operating Result – Surplus/(Deficit)</b>	<b>(2,649,100)</b>
<b>Funding Result</b>	
Operating Result – Surplus/ (Deficit)	(2,649,100)
Add: Non-cash expenses – Depreciation	20,657,300
Add: Capital Grants and Contributions	48,688,000
Add: Loan Funds Used	9,941,100
Add: Asset Sales	0
Less: Capital Works	(85,607,300)
Less: Loan Principal Repayments	(4,047,500)
<b>Funding Result – Surplus/(Deficit) (Cash Movement)</b>	<b>(13,017,500)</b>
Reserves Movement – Increase/(Decrease)	(13,093,000)
<b>Overall Budget Result – Surplus/(Deficit) (Operating + Funding)</b>	<b>75,500</b>

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

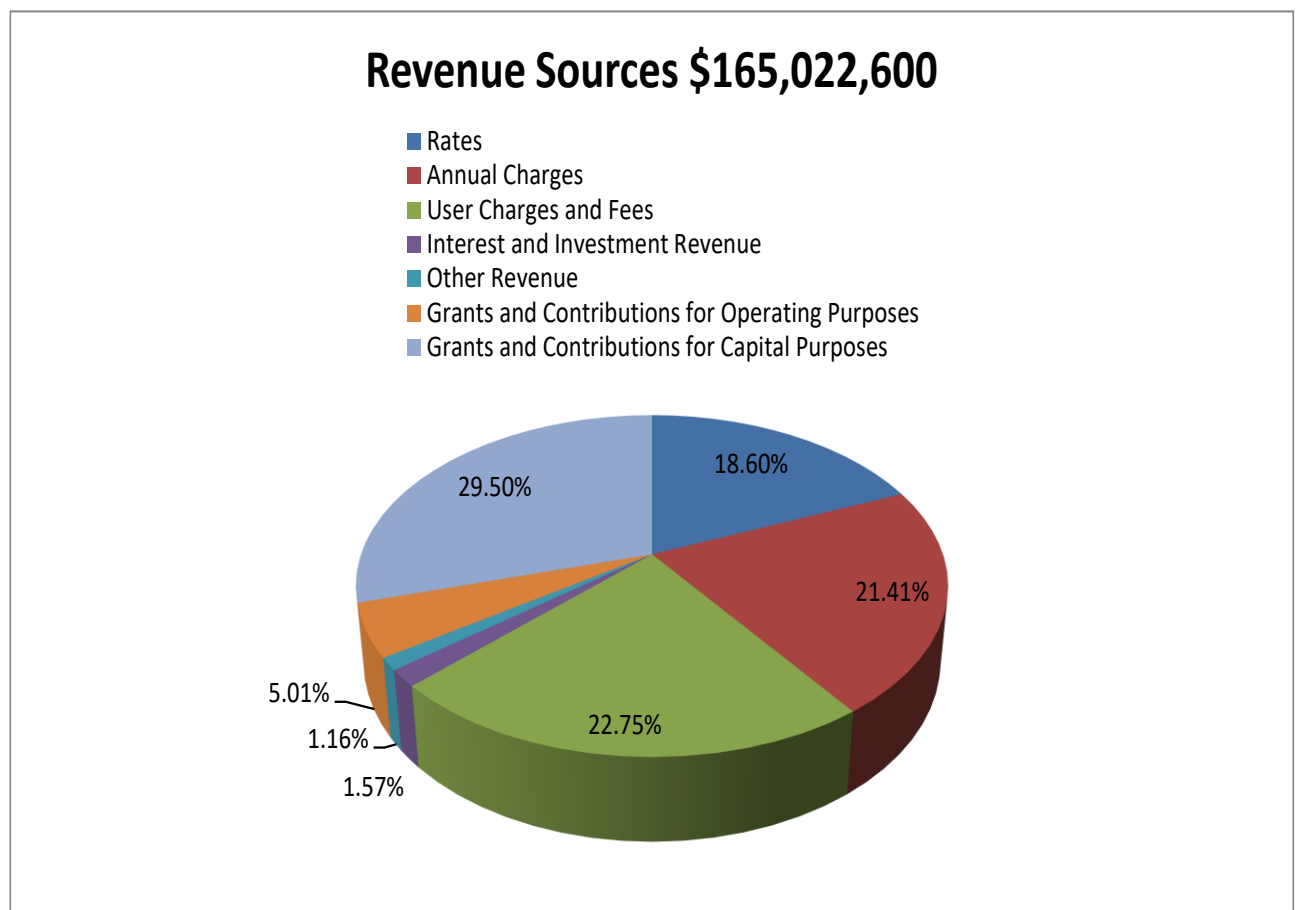
13.3

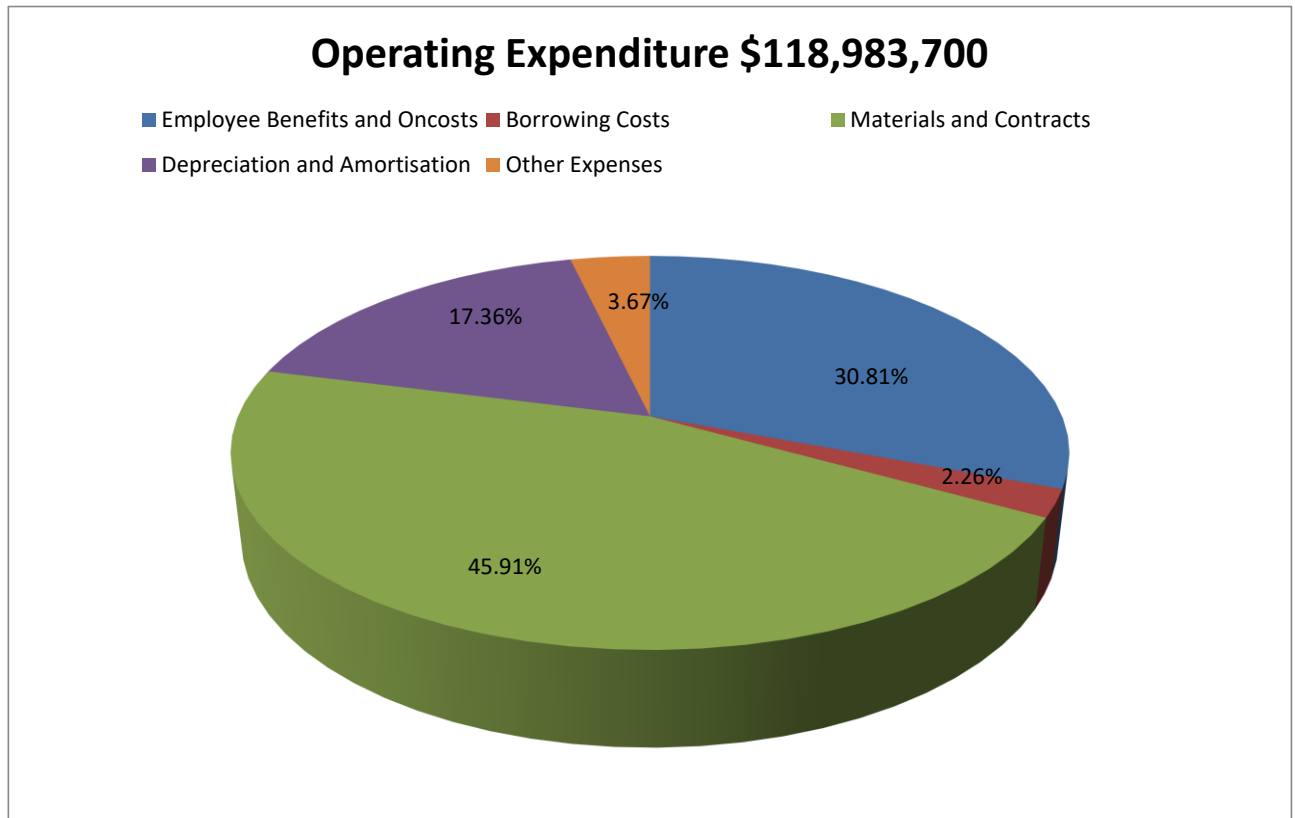
The forecast General Fund Unrestricted Cash Balance position based on the draft budget included at Table 3 is outlined in Table 4 below:

Table 4 – Forecast General Fund Unrestricted Cash Balance

Item	\$
Forecast unrestricted cash balance to 30 June 2024 at 31 March 2024 Budget Review	0
Add: Estimated initial draft 2024/25 budget result	75,500
<b>Forecast unrestricted cash balance at 30 June 2025</b>	<b>75,500</b>

- 5 The revised Draft 2024/25 Budget Estimates indicate that Council's overall revenue and operational expenses are expected to be derived from the following sources and allocated respectively as outlined in the graphs below:

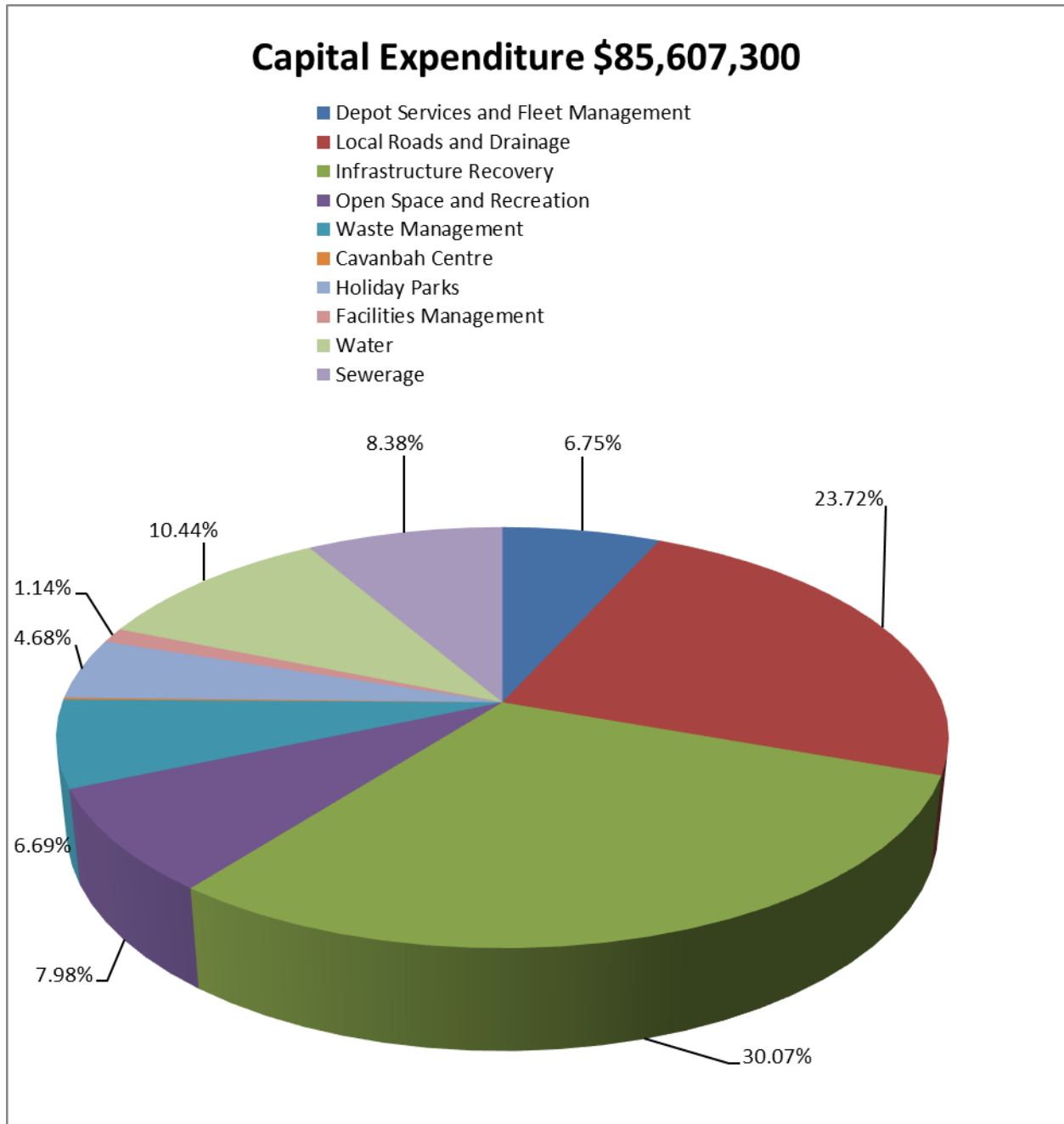




In addition to the operational aspects of the proposed Draft 2024/25 Budget Estimates as revised during the public exhibition period, Council is proposing a capital works program of \$85.607million. This specifically includes an estimated \$25.74million in proposed infrastructure recovery works following the February/March 2022 flood events.

By Fund, the projected capital works are:

- General Fund \$69.504 million
- Water Fund \$8.933 million
- Sewerage Fund \$7.170 million



The Draft 2024/25 Budget Estimates also propose new loan borrowings of \$9.941 million to fund the following projects:

- First Sun Holiday Park Land Purchase \$2.075million and other improvements \$852,000.
- Suffolk Beachfront Holiday Park compliance works and cabin replacements \$841,500
- Plant replacement – fleet upgrades for major plant \$3.672 million.
- Lot 12 Bayshore Drive Roundabout Construction \$2.500million.

The amount of actual loan funds Council will need to borrow may be reduced pending how the above projects proceed and Council decision to proceed formally.

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Should Council need to borrow the full \$9.941 million or less, this will be subject to lending approval and it will be necessary for all projects to be financially viable to generate sufficient return to fund their future loan repayments.

- 5 The loan borrowings for First Sun Holiday Park Land Purchase and Plant Replacement were proposed to be borrowed in 2023/24 financial year however, were deferred to 2024/25 as reported to Council on 23 May 2024.

#### **Proposed Draft 2024/25 Budget adjustments following public exhibition**

The major changes proposed to the Draft 2024/25 Budget Estimates following public exhibition are:

- 10 • Inclusion of projects that are not to be completed in the 2023/24 financial year and were removed from the 2023/24 budget as part of the 31 March 2024 Quarterly Budget Review adopted by Council at the Ordinary Meeting held on 23 May 2024. All of these adjustments have corresponding funding and have not impacted the budget result.
- 15 • Advice from Revenue NSW as to Council's reduced contribution in 2024/2025 for the Emergency Services Levy (ESL) amounting to \$65,700. After a number of years of steep increases this has been a surprise and a main contributor to the projected budget surplus.
- Additional Water Fund Capital Works provision of \$1.359million.
- 20 • Provision of additional budget to fund bulk water purchases from Rous County Council \$574,300.
- Budget adjustment for EPAR11 Mullumbimby Road \$1.980million deferred from 2023/24 financial year.
- 25 • Adjustments in the Facilities Management Budget Program of \$367,100 taking into consideration works not completed in 2023/24, available funding and recent tender decisions.
- Additional capital works budget provided for the Waste Management Facility of \$4.490million principally for Leachate and stormwater management plus a further \$510,000 for three projects that have received recent grant funding.
- 30 The result of the proposed changes above have an overall positive budget impact increasing the proposed budget result from a balanced result to a surplus of \$75,500.

- In addition to Table 3 above, budgeted financial statements incorporating an Operating Statement and Cash Flow Statement have been produced. These financial statements, replicating the format of Council's Annual Financial Statements, are included in
- 35 Attachment 1 as part of the Operational Plan, along with a one-page summary of all Council budget programs.

- The immediate financial forecast of the General Fund for 2024/25 has been outlined in this report, however it is suggested Council should consider its longer-term financial position. The budget projections demonstrate the difficulty Council has absorbing additional costs without corresponding revenue increases. Council must carefully consider the long-term implications on its finances when it is considering the addition of a new asset or service or current service expansion.
- 40



The Draft Detailed 2024/25 Budget Estimates are provided at Attachment 5 reflective of the summarised budget outcomes identified in Table 3 and the graphs above.

Draft 2024/25-2033/34 Long Term Financial Plan

- 5 At the time of preparing this report and agenda distribution, the new Draft 2024/25-2033/34 Long Term Financial Plan has not been prepared due to resourcing constraints. It was determined that work needed to be focussed on progressing/resolving Natural Disaster claims associated with the February/March 2022 Flood Events Infrastructure Recovery instead.

**Draft General Land Rates and Charges (Statement of Revenue Policy)**

- 10 The Draft 2024/25 Revenue Policy includes the proposed rating structure, consistent with the structure revised by Council for the 2017/18 financial year. This is outlined in Attachment 4.

- 15 The rating structure incorporates the approved rate peg of 4.80% determined by the Independent Pricing and Regulatory Tribunal (IPART) representing the standard rate peg of 4.50% plus a population increase factor of 0.30%.

Council, at the Ordinary Meeting held on 25 May 2023, considered a Notice of Motion and resolved to consider applying a minimum rate of \$1,000 for 2024/25 compared to the publicly exhibited minimum rate of \$1,014. This resolution also asked that the minimum rate of \$1,000 be considered for the 2024/2025 financial year.

- 20 Whilst at the 18 April 2024 Ordinary Meeting, Council resolved to publicly exhibit a rating structure with a \$1,000 minimum, for full transparency with community a rating structure was also exhibited with a \$1,048 minimum for the community's information. There were no submissions received on either rating structure so the Draft 2024/25 Revenue Policy is presented in Attachment 4 with a minimum rate structure of \$1,048 representing  
25 application of the rate peg to the 2023/2024 minimum rate. It is not correct to assume that all ratepayers on the minimum rate are 'low income'. Given the property values in Byron Shire and the extent of strata titled properties, there is an argument keeping the minimum rate at \$1,000 will assist those who are property investors or own a highly valued apartment/unit.

- 30 There is a separate report to this Ordinary Meeting for Council to resolve on this matter, as Council must make the ordinary rates and charges (Section 534 and 535 Local Government Act 1993). Should Council resolve to set the minimum rate at \$1,000 the 2024/25 Statement of Revenue Policy will be updated with corresponding minimum rates and ad valorem rates prior to final publication. If Council does this in adopting this report  
35 and has already resolved on the 'Making of the Rate' report, it will need to recommit that report.

In respect of other charges, the Draft 2024/25 Revenue Policy includes:

- Waste Charges – increase of up to 4.70%.
- Water access charges and usage charges - increasing by 9.00% (access) and 9.00%  
40 (consumption) due to increased Rous County Council bulk water charges.

- Sewerage charge - increased by 9.00%.
- The stormwater charge has not increased. It is a regulated charge that has not changed over the last eighteen years.

- 5 For the average residential ratepayer, the increases proposed to rates and charges for 2024/25 will see an overall increase of \$306.00 or 6.7% for 2024/25 compared to 2023/24.

### **Draft Fees and Charges (Statement of Revenue Policy)**

The Draft 2024/25 Fees and Charges have been reviewed by the respective program managers and included at Attachment 4 as part of the Statement of Revenue Policy.

- 10 Where possible, fees have been altered/increased to reflect the following:

- Increases in the Consumer Price Index (CPI)/Indexation - assumed at 5.40%.
- Review of fees and charges including benchmarking/cost of service provision and where possible, introduction of new fees to assist Council to generate additional/enhanced revenue.
- 15 • Regulated fees updated to reflect latest changes in legislative regulations.

### **Proposed Amendments**

It is proposed to further amend the 2024/25 Fees and Charges placed on public exhibition with the following main changes:

- 20 • Cemetery Fees – The NSW State Government is introducing new fees through Cemeteries and Crematoria NSW (CCNSW) of \$156 per burial, \$63 per ash internment and \$41 per cremation to be levied on large operators as of 1 July 2024. Council will be required to charge these fees where applicable as an operator of cemeteries. It is not proposed to advertise these fees as they are set by the State Government and Council cannot change them. Currently CCNSW has not provided  
25 advice as to whether GST will apply to these fees but Council is assuming they will. The intent of the fees is to fund increased regulation of the internment industry. This cost was previously met by the core budget of the State Government.
- 30 • The Office of Local Government have set the fees for Section 603 Certificates at \$100.00 and the maximum interest rate to be charged for overdue rates and charges at 10.5% as per Circular 24-05 issued on 19 April 2024. These have been updated in the Draft 2024/25 Revenue Policy provided at Attachment 4.
- Updating any other statutory or regulated fee not determined by Council but must be applied by Council that became known during the public exhibition period

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>1: Effective Leadership</b> We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.1: Leadership - Enhance leadership effectiveness, capacity, and ethical behaviour	1.1.1.3	Develop 2024/25 Operational Plan

### Recent Resolutions

- Endorsement of draft plans for public exhibition – **24-180**

### 5 Legal/Statutory/Policy Considerations

The requirements for Integrated Planning and Reporting are governed by [Sections 402-406](#) of the Local Government Act 1993.

10 [Section 403](#) requires that a council must have a long-term resourcing strategy for the provision of the resources required to perform its functions. The resourcing strategy includes the long term financial plan, asset management strategy, and workforce management strategy.

[Section 404](#) requires that a council must have a 4-year delivery program detailing the principal activities to be undertaken within available resources.

15 [Section 405](#) outlines the Operational Plan requirements including public exhibition and timeframes.

Detailed requirements are outlined in the Integrated Planning and Reporting [Guidelines](#) and [Handbook](#).

### Financial Considerations

20 The Operational Plan includes the annual budget required to fund the projects and services delivered as part of the Plan. The financial implications are outlined in the body of this report.

### Consultation and Engagement

25 The Draft 2024/25 Operational Plan and Budget have been prepared based on the strategic priorities in the draft Community Strategic Plan. The Draft Operational Plan and Budget were subject to 28 days' public exhibition, from 19 April to 17 May 2024.

## BYRON SHIRE COUNCIL

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Two community conversations were held on 30 April (in-person) and 7 May (online) 23 as part of the exhibition period for the draft plans.

5 Community feedback was sought online via [www.byron.nsw.gov.au/OP-budget-2025](http://www.byron.nsw.gov.au/OP-budget-2025) and an information booth in the Mullumbimby Office front foyer. Emails, public notices, and media releases were distributed to reach the widest population possible and provide the community with information and links to engage with Council.

A detailed report of the outcomes of this consultation and engagement is provided at Attachment 2 and the recommended amendments as per the public exhibition are outlined in this report.

#### 10 *Submissions received:*

Council is required to consider any submissions received during the exhibition period prior to the Council's endorsement and/or adoption of these documents.

15 The submissions have been considered and the proposed changes are outlined in this report. A summary of the 18 submissions received and responses are provided in the comprehensive feedback document at Attachment 2.

**Report No. 13.4      Making of the 2024/25 Ordinary Rates,  
Charges, Fees and Interest Rate**

**Directorate:** Corporate and Community Services

**Report Author:** Stephen Ansoul, Revenue Coordinator

5    **File No:** I2024/892

**Summary:**

Each year Council is required to make the ordinary rates and charges pursuant to sections 533, 534 and 535 of the Local Government Act 1993 (LGA), with section 543 of the LGA requiring Council to make a short separate name for each rate and charge it makes.

10    Council is also required to set the rate of interest charged on overdue rates and charges in accordance with section 566 (3) of the LGA.

This report satisfies these legislative requirements for the 2024/25 financial year.

15

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**RECOMMENDATION:**

**That Council:**

- 20
1.    **Makes the ordinary rates for 2024/25 in accordance with Sections 533, 534, 535, 543 and 566 of the Local Government Act 1993 (LGA) as listed in the tables within this report.**
  2.    **Makes the charges, makes the fees, and sets the interest rate to be charged on overdue rates and charges for 2024/25 in accordance with Sections 533, 534, 535, 543 and 566 of the Local Government Act 1993 (LGA) as listed in the tables within this report.**

25

## Report

Council placed the Draft 2024/25 Statement of Revenue Policy comprising the Budget Estimates, Rates and Charges, Borrowings and Fees and Charges on public exhibition for twenty-eight days following consideration of Report No.13.3 Public Exhibition of draft 2024/25 Operational Plan, Budget, and Revenue Policy at the Council Meeting held on 18 April 2024 (Council resolution [24-180](#)).

The Statement of Revenue Policy provides a detailed description of the rating structure for ordinary land rates, charges and fees that Council will levy on the 2024/25 Rates and Charges Notice and describes the circumstances of a property to which a specific ordinary rate, charge, interest or fee will apply. It also lists relevant sections of legislation that allow for the levy of each rate, charge or fee to be made.

The public exhibition period seeking submissions on the draft documents closed on 17 May 2024, with details of those submissions being the subject of another report to this Ordinary Meeting. There were no submissions received in relation to the Draft 2024/25 Revenue Policy.

Council has applied the maximum 4.8% rate pegging increase to its 2024/25 permissible general income as advised by the Independent Pricing and Regulatory Tribunal (IPART) on 21 November 2023.

The permissible notional income has not been re-calculated since Council publicly exhibited the Draft 2024/25 Statement of Revenue Policy.

2022 base date land valuations from the NSW Valuer General are used to calculate ordinary land rates for the three rating years 2023/24, 2024/25 and 2025/26.

The Office of Local Government advised via Circular 24-05 on 19 April 2024, that the maximum 2024/25 interest rate on overdue rates and charges is to be 10.5%. Council has traditionally adopted the maximum permissible interest rate for overdue rates and charges.

In accordance with Sections 533, 534, 535, 543 and 566 of the Local Government Act 1993 (LGA), it is recommended that Council makes the ordinary rates, makes the charges, makes the fees and sets the interest rate to be charged on overdue rates and charges for 2024/25 as listed in the following tables.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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### Ordinary Rates

Name of Ordinary Rate (Rate Notice short name)	*Rate in the Dollar or Ad-Valorem amount (\$)	Minimum Rate (\$)
Ordinary Rate Residential	0.1135	1,048.00
Ordinary Rate Residential Flood/Coastal	0.1135	524.00
Ordinary Rate Business	0.2087	1,048.00
Ordinary Rate Business Byron CBD	0.3043	1,048.00
Ordinary Rate Mining	0.2087	1,048.00
Ordinary Rate Farmland	0.0878	1,048.00
Ordinary Rate Farmland Flood/Coastal	0.0878	524.00
<i>*Applied to 2022 base date land valuation</i>		

### 5 Domestic Waste Management Charges

Name of Domestic Waste Collection Charge (Rate Notice short name)	Annual Charge (\$)
Domestic Waste 80L 3 Bin Collection	226.00
Domestic Waste 140L 3 Bin Collection	474.00
Domestic Waste 240L 3 Bin Collection	701.00
Domestic Waste 140L Week Collect 3 Bins	1,239.00
Domestic Waste 240L Week Collect 3 Bins	1,578.00
Domestic Waste 140L 2 Bin Rural Service	338.00
Domestic Waste 240L 2 Bin Rural Service	505.00
Domestic Waste Vacant Land Charge Urban	46.00
Domestic Waste Vacant Land Charge Rural	46.00
Domestic Waste Exempt Collection Charge	92.00
Domestic Recycling Additional Bin	158.00
Domestic Organics Additional Bin	181.00
Domestic Waste 80L 3Bin Multi Unit Serv	226.00
Domestic Waste 140L 3Bin Multi Unit Serv	474.00
Domestic Waste 240L 3Bin Multi Unit Serv	701.00
Domestic Waste 140L 3Bin Multi Unit Week	1,239.00
Domestic Waste 240L 3Bin Multi Unit Week	1,578.00
Domestic Waste 80L 2Bin Multi Unit Serv	226.00
Domestic Waste 140L 2Bin Multi Unit Serv	474.00
Domestic Waste 240L 2Bin Multi Unit Serv	701.00
Domestic Waste 140L 2Bin Multi Unit Week	588.00
Domestic Waste 240L 2Bin Multi Unit Week	750.00
Domestic Waste Strata 2Bin Share Service	375.00
Domestic Waste Strata 3Bin Share Service (fortnightly)	375.00
Domestic Waste Strata 3Bin Share Service (weekly)	750.00

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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### Waste Management Charges (Non-Domestic)

Name of Waste Management Charge (Rate Notice short name)	Annual Charges (\$)
Commercial 140L Waste & Recycle Service	863.00
Commercial 240L Waste & Recycle Service	1,107.00
Commercial Waste 140L Bin Collection	863.00
Commercial Waste 240L Bin Collection	1,107.00
Commercial Rural Waste & Recycle Service	900.00
Commercial Recycling 240L Bin Collection	201.00
Commercial Organics 240L Bin Collection	186.00
Waste Operations Charge Residential	133.00
Waste Operations Charge Non-Residential	139.00

### 5 Bin Changeover Fee

Fee	Charges (\$)
Bins – Size and General Changeover Fee	82.00

### Stormwater Management Service Charges

Name of Stormwater Management Service Charge (Rate Notice short name)	Annual Charges (\$)
Stormwater Charge Residential	25.00
Stormwater Charge Residential Strata	12.50
Stormwater Charge Business Strata	\$25.00 per 350m <sup>2</sup> of the land area occupied by the strata scheme (or part thereof), proportioned by the unit entitlement of each lot in the strata scheme, minimum charge \$5.00
Stormwater Charge Bus/Mixed Strata Min	12.50
Stormwater Charge Business	\$25.00, plus an additional \$25.00 for each 350m <sup>2</sup> or part thereof by which the area of the parcel of land exceeds 350m <sup>2</sup>

10



# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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### Water Charges

Name of Water Charge (Rate Notice short name)	Annual Charges (\$)
Water Access Charge 20mm Residential	237.00
Water Access Charge 20mm Non-Residential	237.00
Water Access Charge 25mm Residential	371.00
Water Access Charge 25mm Non-Residential	371.00
Water Access Charge 32mm Residential	609.00
Water Access Charge 32mm Non-Residential	609.00
Water Access Charge 40mm Residential	947.00
Water Access Charge 40mm Non-Residential	947.00
Water Access Charge 50mm Residential	1,481.00
Water Access Charge 50mm Non-Residential	1,481.00
Water Access Charge 65mm Residential	2,503.00
Water Access Charge 65mm Non-Residential	2,503.00
Water Access Charge 80mm Residential	3,791.00
Water Access Charge 80mm Non-Residential	3,791.00
Water Access Charge 100mm Residential	5,922.00
Water Access Charge 100mm Non-Residential	5,922.00
Water Access Charge Vacant Residential	119.00
Water Access Charge Vacant Non-Residential	119.00
	Usage Charges (\$)
Water Usage Charge Residential	3.61 per KL
Water Usage Charge Residential – Non-Compliant	7.23 per KL
Recycled Water Usage Charge Residential	0.01 per KL
Water Usage Charge Non-Residential	3.61 per KL
Water Usage Charge Non-Residential - Non-Compliant	7.23 per KL
Recycled Water Usage Charge Non-Residential	0.01 per KL

**Wastewater (sewer) Charges and On-Site Sewage Management System Fee**

Name of Wastewater (sewer) Charge or Fee (Rate Notice short name)	Annual Charges or Fee (\$)
Wastewater (sewer) Access 20mm Res	1,563.00
Wastewater (sewer) Access 20mm Non-Res	1,055.00
Wastewater (sewer) Access 25mm Res	2,443.00
Wastewater (sewer) Access 25mm Non-Res	1,650.00
Wastewater (sewer) Access 32mm Res	4,001.00
Wastewater (sewer) Access 32mm Non-Res	2,701.00
Wastewater (sewer) Access 40mm Res	6,251.00
Wastewater (sewer) Access 40mm Non-Res	4,222.00
Wastewater (sewer) Access 50mm Res	9,767.00
Wastewater (sewer) Access 50mm Non-Res	6,597.00
Wastewater (sewer) Access 65mm Res	16,508.00
Wastewater (sewer) Access 65mm Non-Res	11,150.00
Wastewater (sewer) Access 80mm Res	25,006.00
Wastewater (sewer) Access 80mm Non-Res	16,891.00
Wastewater (sewer) Access 100mm Res	39,072.00
Wastewater (sewer) Access 100mm Non-Res	26,390.00
Wastewater (sewer) Access Vacant Res	783.00
Wastewater (sewer) Access Vacant Non-Res	783.00
Wastewater (sewer) Access – Pump Res	1,531.00
Wastewater (sewer) Access – Pump Non-Res	1,026.00
On-Site Sewage Management System Fee (OSMS)	61.00
	<b>Usage Charges (\$)</b>
Wastewater (sewer) Usage Charge Non-Residential	*SDF x 3.48 per KL

\*SDF = Individual Property Sewer Discharge Factor (%)

5

**Liquid Trade Waste Charges**

Name of Liquid Trade Waste Charge (Rate Notice short name)	Annual Charges (\$)
Liquid Trade Waste – Category 1	160.00
Liquid Trade Waste – Category 2	267.00
Liquid Trade Waste – Category 2S	267.00
Liquid Trade Waste – Category 3	798.00
	<b>Usage Charges (\$)</b>
Liquid Trade Waste Usage Charge	**TWDF x 2.34 per KL
Liquid Trade Waste Usage Charge – Non-Compliant Cat 1	**TWDF x 3.87 per KL
Liquid Trade Waste Usage Charge – Non-Compliant Cat 2/2S	**TWDF x 23.40 per KL
Liquid Trade Waste Usage Charge – Non-Compliant Pump Stn	**TWDF x 3.87 per KL

\*TWDF = Individual Property Trade Waste Discharge Factor (%)

10

**Interest Rate on Overdue Rates and Charges**

Name of Interest Rate (Rate Notice short name)	Rate (%)
Interest	10.5%

**Next steps**

- 5 Should Council adopt the recommendations in this report, 2024/25 levying of rates, charges and fees via issuing of the 2024/25 Rates and Charges Notice is scheduled for mid-July 2024.

**Strategic Considerations**

**Community Strategic Plan and Operational Plan**

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>1: Effective Leadership</b> We have effective decision making and community leadership that is open and informed	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	1.3.1.5	Issue annual/quarterly billing of rates and other charges

**Legal/Statutory/Policy Considerations**

- 10 Council is required to make the rates and charges and set the interest rate for 2024/25 pursuant to sections 533, 534, 535, 543 and 566 of the Local Government Act 1993 (LGA). The relevant sections or sub-sections of the LGA are summarised below:

**Section 533** Date by which a rate or charge must be made

- 15 A rate or charge must be made before 1 August in the year for which the rate or charge is made or before such later date in that year as the Minister may, if the Minister is of the opinion that there are special circumstances, allow.

**Section 534** Rate or charge to be made for a specified year

Each rate or charge is to be made for a specified year, being the year in which the rate or charge is made or the next year.

- 20 **Section 535** Rate or charge to be made by resolution

A rate or charge is made by resolution of the Council.

**Section 543** Each form of a rate and each charge to have its own name

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Council must, when making an ordinary rate or charge, give a short separate name for each amount of the ordinary rate or charge.

#### **Section 566** Accrual of interest on overdue rates and charges

- 5 The rate of interest is that set by the council but must not exceed the rate specified for the time being by the Minister by notice published in the Gazette.

### **Financial Considerations**

- 10 The 2024/25 budget including proposed works and services to be adopted by Council at this Ordinary Meeting is the subject of another report. The Draft 2024/25 Budget Estimates are based on the maximum 4.8% general permissible income increase as approved by IPART.

Charges proposed for water, wastewater (sewer), stormwater and waste services are based on the works and maintenance requirements of those areas and in conjunction with legislative requirements of the LGA to establish such charges.

### **Consultation and Engagement**

- 15 The rates, charges, fees and interest rate included within this report are contained within the Draft 2024/25 Statement of Revenue Policy comprising the Budget Estimates, Rates and Charges, Borrowings and Fees and Charges that was placed on public exhibition for twenty-eight days following consideration of Report No.13.3 Public Exhibition of draft 2024/25 Operational Plan, Budget, and Revenue Policy at the Council Meeting held on 18  
20 April 2024 (Council resolution **24-180**).

There were no submissions received in relation to the Draft 2024/25 Revenue Policy.

**Report No. 13.5      Council Investments - 1 May 2024 to 31 May 2024**

**Directorate:** Corporate and Community Services

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

5    **File No:** I2024/893

**Summary:**

This Report includes a list of investments and identifies Council's overall cash position for the period 1 May 2024 to 31 May 2024 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 May 2024.**

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### Report

5 Council has continued to maintain a diversified portfolio of investments. As of 31 May 2024, the average 90-day bank bill rate (BBSW) for the month was 4.37%. Council's performance for May 2024 was 4.52%. A higher BBSW indicates that Council earned a better return on its short-term investments compared to the market average.

The table below identifies the investments held by Council as at 31 May 2024.

### Schedule of Investments held as at 31 May 2024

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%	971,690.00
28/03/19	1,000,000.00	National Housing Finance & Investment Corporation	Y	AAA	28/03/29	N	B	2.38%	928,370.00
21/11/19	1,000,000.00	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	N	B	1.25%	973,140.00
27/11/19	500,000.00	National Housing Finance & Investment Corp	Y	AAA	27/05/30	N	B	1.52%	434,937.50
15/06/21	500,000.00	National Housing Finance & Investment Corp	Y	AAA	01/07/31	N	B	1.99%	500,346.07
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%	813,490.00
30/10/23	850,000.00	Bank Australia Ltd	P	BBB+	30/10/26	N	FRN	5.84%	854,230.32
21/02/24	500,000.00	Bank Australia Ltd	N	BBB+	21/02/28	N	FRN	6.04%	503,768.22
27/11/23	1,000,000.00	Westpac Tailored	P	AA-	27/11/24	N	TD	5.40%	1,000,000.00
04/12/23	2,000,000.00	Bank of QLD	P	BBB+	04/10/24	N	TD	5.10%	2,000,000.00

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Fossil Fuel	Type	Int. Rate	Current Value (\$)
12/01/24	5,000,000.00	NAB	P	AA-	10/07/24	Y	TD	5.10%	5,000,000.00
12/01/24	5,000,000.00	Heritage Bank	P	BBB	11/07/24	N	TD	5.00%	5,000,000.00
07/02/24	1,000,000.00	Auswide Bank	N	BBB-	07/08/24	N	TD	5.15%	1,000,000.00
06/03/24	2,000,000.00	Beyond Bank	P	BBB	05/06/24	N	TD	5.10%	2,000,000.00
07/03/24	2,000,000.00	Judo Bank	N	BBB-	05/09/24	N	TD	5.20%	2,000,000.00
08/03/24	2,000,000.00	Beyond Bank Australia	N	BBB	06/06/24	N	TD	5.05%	2,000,000.00
14/03/24	1,000,000.00	Bank of QLD	N	BBB+	16/09/24	N	TD	5.17%	1,000,000.00
18/03/24	2,000,000.00	NAB	N	AA-	18/06/24	Y	TD	5.05%	2,000,000.00
21/03/24	2,000,000.00	NAB	N	AA-	21/06/24	Y	TD	5.05%	2,000,000.00
27/03/24	1,000,000.00	Auswide Bank Ltd	N	BBB-	27/06/24	N	TD	5.00%	1,000,000.00
04/04/24	1,000,000.00	Judo Bank	N	BBB-	04/07/24	N	TD	5.00%	1,000,000.00
08/04/24	2,000,000.00	NAB	N	AA-	08/07/24	Y	TD	5.00%	2,000,000.00
10/04/24	2,000,000.00	Judo Bank	N	BBB-	10/07/24	N	TD	5.00%	2,000,000.00
12/04/24	5,000,000.00	Judo Bank	N	BBB-	11/07/24	N	TD	5.00%	5,000,000.00
18/04/24	1,000,000.00	NAB	N	AA-	17/07/24	Y	TD	5.00%	1,000,000.00
19/04/24	1,000,000.00	Judo Bank	P	BBB-	18/07/24	N	TD	5.00%	1,000,000.00
29/04/24	1,000,000.00	NAB	N	AA-	29/07/24	Y	TD	5.00%	1,000,000.00
08/05/24	2,000,000.00	Judo Bank	N	BBB	07/08/24	N	TD	5.05%	2,000,000.00
13/05/24	5,000,000.00	MyState Bank	N	BBB	13/11/24	N	TD	5.20%	5,000,000.00
20/05/24	1,000,000.00	MyState Bank	N	BBB	19/08/24	N	TD	5.05%	1,000,000.00
20/05/24	1,000,000.00	Judo Bank	N	BBB	19/08/24	N	TD	5.10%	1,000,000.00
22/05/24	1,000,000.00	MyState Bank	N	BBB	21/08/24	N	TD	5.05%	1,000,000.00
29/05/24	1,000,000.00	MyState Bank	P	BBB	27/08/24	N	TD	5.10%	1,000,000.00
N/A	23,475,714.92	CBA Business Saver	P	AA-	N/A	Y	CALL	4.35%	23,475,714.92
N/A	543,078.04	CBA Business Saver – Tourism Infrastructure Grant	N	AA-	N/A	Y	CALL	4.35%	543,078.04
N/A	10,178,259.65	Macquarie Accelerator Call	N	A	N/A	Y	CALL	4.20%	10,178,259.65

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Fossil Fuel	Type	Int. Rate	Current Value (\$)
Total	91,547,052.61						AVG	4.52%	91,177,024.72

**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

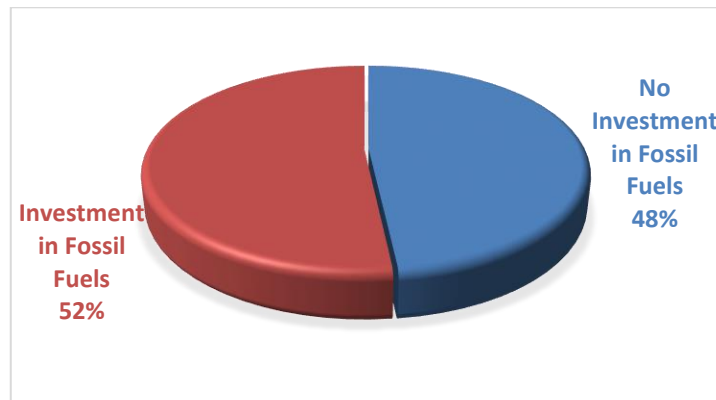
**Note 3. Type Description**

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 During the month of November 2023 as an example, Council undertook an investment with Westpac Bank as a tailored deposit. The investment proceeds are utilised for environmental purposes as this investment in Climate Bond Certified.

15 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 May 2024, the portfolio has increased to 48%.

### Investment Policy Compliance

20 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).

Investment policy compliance % should not exceed the following			ACTUAL	
AAA to AA	A1+	100%	48%	Meets policy
A+ to A-	A1	60%	14%	Meets policy
BBB to NR	A2,NR	40%	38%	Meets policy

25 The investment portfolio is outlined in the table below by investment type for the period 1 May 2024 to 31 May 2024:

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### Dissection of Council Investment Portfolio as at 31 May 2024

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
50,000,000.00	Term Deposits	50,000,000.00	0.00
23,475,714.92	CBA Business Saver	23,475,714.92	0.00
543,078.04	CBA Business Saver – Tourism Infrastructure Grant	543,078.04	0.00
10,178,259.65	Macquarie Accelerator	10,178,259.65	0.00
7,350,000.00	Bonds/Floating Rate Notes	6,979,972.11	(370,027.89)
<b>91,547,052.61</b>	<b>Total</b>	<b>91,177,024.72</b>	<b>(370,027.89)</b>

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 May 2024 as follows:

### 5 Dissection of Council's Cash Position as at 31 May 2024

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
<b>Investments Portfolio</b>			
Term Deposits	50,000,000.00	50,000,000.00	0.00
CBA Business Saver	23,475,714.92	23,475,714.92	0.00
CBA Business Saver – Tourism Infrastructure Grant	543,078.04	543,078.04	0.00
Macquarie Accelerator	10,178,259.65	10,178,259.65	0.00
Bonds	7,350,000.00	6,979,972.11	(370,027.89)
<b>Total Investment Portfolio</b>	<b>91,547,052.61</b>	<b>91,177,024.72</b>	<b>(370,027.89)</b>
<b>Cash at Bank</b>			
Consolidated Fund	3,582,839.09	3,582,839.09	0.00
<b>Total Cash at Bank</b>	<b>3,582,839.09</b>	<b>3,582,839.09</b>	<b>0.00</b>
<b>Total Cash Position</b>	<b>95,129,891.70</b>	<b>94,759,863.81</b>	<b>(370,027.89)</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.

15 Council's investments are made in accordance with section 625(2) of the *Local Government Act 1993* and Council's Investment Policy. The *Local Government Act 1993* allows Council to invest money as per the Minister's Order – Forms of Investment, last published in the Government Gazette on 11 March 2011.

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

### Financial Considerations

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

25

## Report No. 13.6 Policies for Review

**Directorate:** Corporate and Community Services

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

**File No:** I2024/898

### 5 Summary:

As part of Council's compliance framework, an annual review of Council policies is undertaken, and reports are provided to Council as policies are reviewed.

Two policies are discussed in this report:

- Tree/Vegetation Vandalism Policy which is recommended for updating
- 10 - Child Safe Policy which is new as a result of legislative changes

Both policies are recommended to be placed on public exhibition for a period of 28 days, inviting public comment.

15



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### RECOMMENDATION:

**That Council places the draft Tree/Vegetation Vandalism Policy (Attachment 1 E2021/30925) and the Child Safe Policy (Attachment 2 E2024/64408) on public exhibition for 28 days to allow for submissions and that:**

- 20 1. **Should there be no submissions received then the Policies be endorsed from the date after the close of the exhibition period; and**
- 2. **Should submissions be received, that the policy/policies be reported back to Council noting the submissions and amendments made because of the feedback received**

### 25 Attachments:

- 1 DRAFT Policy: Tree/Vegetation Vandalism 2024, E2021/30925 
- 2 DRAFT Policy: Child Safe, E2024/64408 

30

## Report

An important element of public sector governance is establishing key policies and ensuring they are available, regularly updated and monitored for compliance.

- 5 An ongoing review of Council's policies is coordinated with relevant document development officers. Two policies are discussed in this report.

### Updated Policy – Tree/Vegetation Vandalism Policy

The purpose of this policy is to promote a consistent Shire wide approach to the protection and management of trees and vegetation in the landscape, particularly in deterring and responding to the loss of vegetation arising from deliberate vandalism on public land.

- 10 The policy review identified a need for major review as the previous policy contained a great deal of operational detail, from step-by-step processes through template letters and tables of legislation.

The intention of the review and draft Policy is to refine the document to provide overarching corporate direction.

- 15 Operational detail will to be contained in a separate operational guideline (similar form to the Guidelines on Tree Management). All appropriate operational detail from the previous Policy will be included in the Guidelines.

The revised Policy is provided at **attachment 1**.

- 20 For reference, the currently adopted policy is available here: [Tree and Vegetation Vandalism Policy](#)

### New Policy – Child Safe Policy

The NSW Child Safe Scheme commenced in 2022 and embeds the 10 Child Safe Standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse, in the Children's Guardian Act 2019.

- 25 Local councils are obligated to implement the Child Safe Standards.

There are obligations on individuals and organisations regarding protection and reporting. Some of these have been in place for a number of years, as well as new obligations introduced under the Children's Guardian Act 2019. They include:

- mandatory reporting,
- 30 • reportable conduct,
- requirement on all adults to report child abuse to police,
- working with children checks,
- failure to protect, and
- duty of care.

The Child Safe Standards provide a framework for creating child safe organisations. They are designed to drive cultural change to create, maintain and improve child safe practices. When organisations implement the Standards they build a culture where abuse of children is prevented, responded to and reported.

- 5 A policy is a key component of embedding the standards across the organisation. A draft policy has been developed and is provided **attachment 2**.

## **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

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

- 10 Each policy is reviewed to ensure consistency with the relevant legislation, agency guidelines, rules or protocols.

Councils have a number of statutory policies that it must adopt the rest are optional. These optional policies are useful to:

- reflect a council's key issues and responsibilities
- 15 • guide staff and ensure consistency
- clearly inform the public of a council's commitments

- 20 Clause 3.1(b) of the Codes of Conduct for Staff and for Councillors provides that council officials must not conduct themselves in a manner that is contrary to a council's policies. If adopted by a council, a breach of a policy will be a breach of the council's code of conduct.  
Community Strategic Plan

The [Community Strategic Plan](#) (CSP) is the top-level document for Council which sets out the community's and council's aspirations.

- 25 As such they give guidance for developing policies, which should reflect and be consistent with the CSP. The CSP is reviewed every four years and therefore policies need to be reviewed at this time also.

When reviewing our policies, Council's Corporate Documents Standard provides the following guidance to staff:

5        *A Policy sets out Byron Shire Council's position on a specific matter – a formal statement of intent and non-discretionary governing principles that apply to Byron Shire Council's practice. The principles are derived from and shaped by the law and regulations that apply, community expectations, and the values and mission contained in the adopted Community Strategic Plan. A Policy is a concise document that may facilitate, enable or constrain practice, standard, guidelines or delegated functions but does not prescribe in detail how to perform certain*  
10       *functions - instead it provides a framework for action with its primary role being to guide the achievement of the adopted strategic goals and ensure legislative compliance.*

15       The most recent developments in legislative requirements, and the community's and Council's position on certain matters are checked for each policy to determine whether a policy requires updating, or whether a policy is still necessary. A policy may no longer be necessary, for instance, if legislation now wholly covers Council's policy position, or if a Policy reflects legislation that no longer exists.

### Financial Considerations

N/A

### 20       Consultation and Engagement

The draft policies are to be placed on public exhibition for a period of 28 days, inviting public comment. Should any submissions be received the policy/policies will be reported back to Council to consider the submissions and make any necessary adjustments.

**Report No. 13.7      Byron Writers Festival Fee Reduction Request**

**Directorate:** Corporate and Community Services

**Report Author:** Richard Bradbury, Community Project Officer

5    **File No:** I2024/874

**Summary:**

Byron Writers Festival (BWF) is seeking to confirm arrangements for hire of the Bangalow Showgrounds and the Bangalow A&I Hall for 2024 and 2025. BWF is requesting a reduction to the standard fees and charges for the hire of the Showgrounds.

10    Under Section 610E of the Local Government Act (NSW) 1993, a council may waive payment of, or reduce a fee if the council is satisfied that the case falls within a category of hardship or any other category in respect of which the council has determined payment should be waived or reduced.

15    \_\_\_\_\_

**RECOMMENDATION:**

**That Council provides a fee reduction of \$5,150 to Byron Writers Festival for the 2024 and 2025 events at Bangalow Showgrounds.**

20    \_\_\_\_\_



## Report

Byron Writers Festival (BWF) celebrates diverse Australian writers and stories and enhances access to literature and literacy for people both regionally and nationally through their flagship festival program each year.

- 5 BWF was first held in 1997 and since then, has attracted thousands of visitors and locals.

The BWF is staffed by a small, dedicated team led by a volunteer committee. The organisation is not-for-profit and receives its core funding from Create NSW.

- 10 Last year, BWF held a successful event for the first time at Bangalow Showgrounds and Bangalow A&I Hall. BWF are planning to use these facilities for the 2024 and 2025 festival events.

In early 2024, BWF approached the Bangalow Showground Committee, a section 355 committee of Council, to hire the facilities for a further two-year period.

- 15 While an in-principle agreement had been discussed, the proposed fees would vary from the established fees and charges. The Committee does not hold the required delegation to alter the fees.

This in-principle agreement included use of the entire showground at a cost of \$25,000, a reduction of \$5,150 from the current fees and charges schedule.

- 20 To ensure Council is meeting its obligations under the Local Government Act 1993 (NSW) and other relevant legislation including the Crown Land Management Act 2016 (NSW), Council staff have taken responsibility to finalise arrangements.

Council's negotiations have progressed satisfactorily on agreed terms and conditions of hire. However, BWF has advised that it would be difficult to accommodate the full cost of hire as per the schedule of fees and charges due to:

- 25
- increased cost of venue hire which is significantly more than previous event space at Elements, Byron Bay;
  - additional fee relief requested from Council for traffic management, waste management and water were not granted;
  - the 'in principle' amount of \$25,000 has already been signed off by the BWF Board.

- 30 BWF emphasised the success of the festival in 2023 and their willingness to engage the venues for a further two-year period. The Bangalow Showgrounds Committee is supportive of the fee reduction.

## Options

Council has the following options regarding the fee reduction request:

- 35 **Option 1:** Provide \$5,150 fee reduction to BWF enabling the organisation to continue sustainable operations.

**Option 2:** Provide no financial assistance with the following likely consequences:

- a. risk securing the event at Bangalow Showgrounds and Bangalow A&I Hall
- 5      b. impact the financial viability of the festival
- c. damage good faith negotiations between BWF and Bangalow Showgrounds Committee

## **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>
2: Inclusive Community	2.1: Foster opportunities to express, celebrate and participate in arts and cultural activity	2.1.3: Events and festivals - Support and enable arts & cultural activity, festivals, projects, and events	2.1.3.3	Provide information and support to the event industry

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

Local Government Act (NSW 1993)

Crown Land Management Act 2016 (NSW)

- Section 355 Committee Guidelines Section 7.3 outlines the process to waive and reduce fees via Council resolution. The Guidelines state that S355 Committees cannot provide subsidies or waive hire fees and charges. Only Council has the power under the Local Government Act to set fees and charges. This is outlined in S377 of the Local Government Act which states that Council cannot delegate the making of a charge or the fixing of a fee. Requests should include the Committee's recommendation for Council's consideration.
- 15

### **Financial Considerations**

- 20 If Council supports the recommendation, the impact will be a loss of revenue to the value of \$5,150, while at the same time see a fee of \$25,000 paid to the Bangalow Showground Committee.

### **Consultation and Engagement**

The Bangalow Showgrounds Committee is supportive of the fee reduction.

**Report No. 13.8      Additional Loan - Byron Bay Football Club**

**Directorate:** Corporate and Community Services

**Report Author:** Esmeralda Davis, Director Corporate and Community Services

**File No:** I2024/937

5 **Summary:**

On 18 April 2024, Council resolved to loan the Byron Bay Football Club (BBFC) \$200,000 to complete the build of a new clubhouse on the Byron Bay Memorial Recreation Grounds (**Res 24-165**). The provision of this loan by Council recognised that the BBFC facility is a Council owned asset on Council managed land, and the financial capacity of the club to meet the repayment obligations with interest.

Subsequently, the BBFC has written to Council to advise the project is at risk of being stalled due to the unsuccessful outcome of a grant application, which would have paid for the manufacturing and installation of a lift valued at \$62,460.00 (Attachment 1 E2024/684420). The BBFC has paid a 10% deposit to secure the lift and is seeking a second loan to pay the remaining \$56,214 lift costs, in order to be able to finish the project and re-open the clubhouse.


This report recommends that Council provide the additional loan to ensure the BBFC can finish the project and provide equity of access to clubhouse users of all abilities.

---

**RECOMMENDATION:**

**That Council lends the Byron Bay Football Club an additional \$56,214 over ten years fixed at the current TCorp interest rate and delegates responsibility to the General Manager to negotiate the terms.**

**Attachments:**

- 1      Email request from Clinton Bown regarding Byron Bay Football Club Loan - 14 June 2024, E2024/68442 

## **Report**

On 18 April 2024, Council resolved to loan the Byron Bay Football Club (BBFC) \$200,000 to complete the build of a new clubhouse on the Byron Bay Memorial Recreation Grounds (**Res 24-165**). The provision of this loan by Council recognised that the BBFC facility is a Council owned asset on Council managed land, which means there are no issues with security over the loan. It also recognised the financial capacity of the club to meet the repayment obligations with interest, as required by the previous resolution and verified during the establishment of the previous loan.

The loan amount of \$200,000 was advanced to BBFC on 7 May 2024 and the Club has made their first loan repayment to Council.

The BBFC wrote to Council to advise that the project is at risk of being stalled due to the unsuccessful outcome of a grant application, which would have paid for the manufacturing and installation of a lift valued at \$62,460.00 (Attachment 1 E2024/684420). The BBFC has paid a 10% deposit to secure the lift and commence its build however, with the notification of the unsuccessful grant application, is now seeking a second loan to pay the remaining \$56,214 lift costs. Staff are advised the clubhouse cannot reopen until the lift is installed.

Whilst not a regular occurrence, the provision of a loan to a sporting club is not uncommon in local government. These have been known as a 'Sporting Club Advance.'

Currently Council could borrow at 5.34% per annum over ten years, based on a reference interest rate provided by NSW Treasury Corporation. If that interest rate were acceptable and Council loaned the additional \$56,214 to the BBFC, annual loan repayments would be \$7,400.66 per annum, inclusive of loan fixed interest and principal.

Council has already undertaken steps to understand the capacity of the BBFC to repay the previous loan and staff consider that it remains feasible for the club, based on their financial statements, to make the additional repayments towards the second loan.

Council may consider delegating to the General Manager the authority to negotiate an appropriate loan agreement with the BBFC that secures Council's interests, covers the situation if there is any payment default, plus any other relevant terms or conditions.

Further, whilst the term of the loan is suggested at 10 years, Council should without penalty accept early repayment of the entire loan or even in part if the situation arises.

## **Key issues**

From discussions and the information supplied by the BBFC, it appears that the lift manufacturer has commenced building the lift for installation in mid-July, enabling the clubhouse to re-open by the end of July.

The lift is a critical component of the project, required to be installed before the facility can be reopened, to provide equitable access for people of all abilities.

Without support from Council, the BBFC will have to resort to private funding options which are limited and will likely stall the project for a significant amount of time until capital can be raised.

## Strategic Considerations

### 5 Community Strategic Plan and Operational Plan

Yes

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure	5.4: Provide accessible community facilities and open spaces	5.4.4: Sporting facilities and swimming pools - Ensure ongoing maintenance and upgrade of inclusive sporting facilities and swimming pools	5.4.4.6	Work with sport and community groups to build relationships and help drive increased participation opportunities and event attraction

## Recent Resolutions

- **Res 24-165** that Council lends the Byron Bay Football Club \$200,000 over ten years fixed at the current TCorp interest rate and delegates responsibility to the General Manager to negotiate the terms subject to Council's financial interests being addressed.

## Legal/Statutory/Policy Considerations

As outlined in the body of the report.

### 15 Financial Considerations

The Property Development Reserve could fund the loan, with that reserve being reimbursed as loan repayments are made. On a cashflow basis, this reserve will be left with approximately \$38,000 on current projections, should the loan offer be made and accepted. In the short term, this may limit Council undertaking other projects that this reserve could be called upon to fund, but in the longer term it will be replenished through loan repayments. The loan would be established in Council's accounts as a 'deferred debtor.'

## Consultation and Engagement

Discussions with the BBFC were held by the Director Corporate and Community Services and Manager Finance prior preparing this report.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.9 PLANNING: 26.2022.9.1 - Submissions report - New heritage items for Byron Local Environmental Plan 2014.**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Greg Yopp, Planner

**File No:** I2024/468

**Summary:**

10 This report presents the exhibition outcomes of the amendment to Byron Local Environmental Plan 2014 (LEP 2014) for the proposed new heritage items.

15 The publicly exhibited Planning Proposal sought to include 17 items in Schedule 5 – Environmental Heritage of Byron LEP 2014 and amend the relevant Heritage Maps accordingly. The 17 items included 24 privately owned sites and 5 publicly owned sites/items.

Twenty-three (23) public submissions were received during the 28-day exhibition period (14 March 2024 – 17 April 2024). Six (6) landowners objected to the heritage listing of their properties (Items: 1, 2, 3, 9, 14 & 15) and these are recommended for removal from the Planning Proposal.

20 Comments received from the Department Primary Industries - Crown Lands required further targeted consultation with the Reflections Holidays as the manager of land within Banner Park – Brunswick Heads and with native title claimants or native title holders for other lands within Brunswick Heads. Further consultation regarding Crown land sites and the Council owned bridge could potentially ‘derail’ the progress of the entire heritage  
25 planning proposal due to non-compliance with the tight time frames of the Gateway Determination. There is no imminent risk associated with not progressing the heritage listing for these publicly owned sites at this stage. In the unlikely event that circumstances change and there were to be imminent risk of, say development pressure, Council can always apply for an ‘Interim Heritage Order’ for the subject properties. It is recommended  
30 that the 5 publicly owned sites (Items 4, 5, 6, 7 & 8) are removed from the Planning Proposal.

In accordance with the Gateway Determination, Council is the delegated plan making authority in this instance and the Planning Proposal is to be finalised within 8 months of the issuance of the Gateway, i.e., 13 August 2024.

35 The report recommends that the amended planning proposal be finalised with the exclusion of the 11 aforementioned properties.

### NOTE TO COUNCILLORS:

- 5 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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### 10 RECOMMENDATION:

#### That Council:

- 15 1. **Forwards the attached planning proposal to amend Byron LEP 2014 (Attachment 1), as revised to include the changes recommended in Table 4 of this report, to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared;**
2. **Requests confirmation from the NSW Department of Planning, Housing and Infrastructure that the changes made to the planning proposal post-exhibition are of such a minor nature that re-exhibition is not required; and**
- 20 3. **Pending receipt of PCO opinion that the plan can be made, forwards the plan to the NSW Department of Planning, Housing and Infrastructure requesting notification on the NSW Government legislation website.**

#### Attachments:

- 25 1 26.2022.9.1 Planning Proposal Report - Including recommended amendments, E2024/60938 
- 2 26.2022.9.1 Public Submissions, E2024/63650 
- 3 Disclosure of Pecuniary Interest, E2012/2815 

## Report

### Background

At the 12 October 2023 Council (Planning Meeting) Council resolved [23-459](#) to proceed with a Planning Proposal that seeks to amend Schedule 5 – Environmental Heritage and the relevant Heritage Maps of Byron LEP 2014 to introduce 17 new heritage items, consisting of 29 individual items/sites. A Gateway determination was issued on the 13 November 2023 and the Planning Proposal has been publicly exhibited and relevant Government agencies were consulted.

In accordance with the Gateway Determination Council has delegation to exercise its plan making functions in this instance and the proposed LEP is to be finalised by 13 August 2024.

### Overview

Where a landowner has objected to the heritage listing of their property, it is recommended that the item is removed from the planning proposal. This will remove any perception that Council (in this instance) is imposing a heritage listing in the absence of the support of affected landowners. Additionally, it is recommended that the proposed Crown Land sites and Council owned bridge in Brunswick Heads are also removed from the planning proposal to enable finalisation of the proposal in accordance with the Gateway determination timeframe.

Table 1 provides a summary of the items recommended for removal from the Planning Proposal, as a response to landowner submissions and agency consultation. The Planning Proposal (post exhibition version) is located at Attachment 1 to this report.

**Table 1 – Exhibited items recommended for removal from Planning Proposal**

Item No	Description
<b>Private properties</b>	
1	23 Charlotte Street, Bangalow (1 of 6 dwellings in Item 1)
2	7 Leslie Street, Bangalow
3	19 Lismore Road, Bangalow (1 of 7 dwellings in Item 3)
9	30 Fingal Street, Brunswick Heads
14	24 Coolamon Scenic Drive, Mullumbimby
15	5 Main Arm Road, Mullumbimby
<b>Crown/Council</b>	
4	War Memorial Reserve – Lot 6 Sec 1, DP 758171, Brunswick Heads (Crown



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Item No	Description
	Land)
5	Foreshore Reserve, Brunswick Heads (Crown Land)
6	Housie Shed & former Ambulance Shed, Banner Park Reserve Lot 406 DP 728643, Brunswick Heads (Crown Land)
7	South Arm Bridge Road Reserve (Council owned asset)
8	Boulevard plantings and Pioneer Memorial Park Tweed Street, Brunswick Heads (Crown Land)

### Public submissions

- 5 The Planning Proposal was publicly exhibited, in accordance with the Gateway Determination, from 14 March 2024 to 17 April 2024. Table 2 provides a brief submissions analysis. The main reasons for objection included but are not limited to: concern the property was not worthy of heritage listing; cost of maintenance; complexity of seeking approval for minor work such as painting; and concern about impact on property values.

The submissions are contained in Attachment 2 to this report.

**Table 2: Summary of submissions**

Submission Issues	Staff comment
<b>Bangalow</b>	
<b>Item 1</b> <b>23 Charlotte St, Bangalow</b> Landowner does not support listing. Considers the existing Bangalow Conservation Area is a good middle ground.	<b>Recommendation</b> Remove 23 Charlotte Street, Bangalow from this planning proposal.
<b>Item 2</b> <b>7 Leslie Street, Bangalow</b> Landowner does not support listing. Stormwater concerns regarding proposed listing. The shed described below was removed from 7 Leslie St Bangalow shortly after the new owners moved in. They then added a 'pod' temporary building at the	The listing of 7 Leslie Street would not impact on the stormwater drainage of Leslie Street or prevent owners from upgrading drainage in this area. <b>Recommendation</b> Remove 7 Leslie Street, Bangalow from this planning proposal.

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Submission Issues	Staff comment
rear in a clashing turquoise colour. This highlights the importance of heritage classification.	
<b>Item 3</b>  <b>19 Lismore Road, Bangalow</b>  Landowner objection to the proposed listing.	<b>Recommendation</b>  Remove 19 Lismore Road, Bangalow from this planning proposal.
<b>Items 1 to 3</b>  <b>Bangalow - general</b>  Support for the proposed listings by the Bangalow Community Association.	Comments noted.  Eleven of the proposed fourteen houses in Bangalow publicly exhibited for listing are still recommended for inclusion in the planning proposal.
<b>Brunswick Heads</b>	
<b>Item 9</b>  <b>30 Fingal Street, Brunswick Heads</b>  Landowner objection to the proposed listing.	<b>Recommendation</b>  Remove 30 Fingal Street (the Brunswick Picture House) from this planning proposal.
<b>Items 4 to 11</b>  <b>Brunswick Heads - general</b>  Support for all 8 items proposed from Brunswick Heads.  The Brunswick Heads Progress Association supports the inclusion of Brunswick Heads heritage items.	Comments noted.  To progress the planning proposal in accordance with Gateway timeframe, the 4 Crown land sites and the Council owned South Arm Bridge are proposed for deletion from this planning proposal. The 2 of the 3 privately owned sites in Brunswick Heads proposed for listing remain as part of the planning proposal. Recommendations for Brunswick Heads sites appear elsewhere in Tables 2 & 3.
<b>Item 4</b>  <b>Brunswick Heads War Memorial</b>  The Memorial World War 1 tree plantings in the Terrace Reserve are worthy of listing.	Comments noted.  It is not proposed to include any additional items in this planning proposal due to tight Gateway time constraints. Additional heritage items can be considered in future heritage studies and planning proposals.
<b>Brunswick Heads - general</b>  Request the following additional listings	Comments noted.  It is not proposed to include any additional items in

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Submission Issues	Staff comment
<p>in Brunswick Heads:</p> <ul style="list-style-type: none"> <li>• Gum tree opposite pub in Banner Park</li> <li>• Norfolk pines in Memorial Park</li> <li>• Cypress pines in southern precinct of The Terrace</li> <li>• All laneways</li> <li>• Pedestrian bridge across Simpsons Creek</li> </ul>	<p>this planning proposal due to tight Gateway time constraints. Additional heritage items can be considered in future heritage studies and planning proposals.</p>
<p><b>Item 5</b></p> <p><b>Brunswick Heads Norfolk Pines (Foreshore Crown Reserve)</b></p> <p>Brunswick Valley Historical Society do not support listing of Norfolk Pines in Foreshore Crown Reserve.</p> <ul style="list-style-type: none"> <li>• Prejudice option to revert to the original native flora.</li> <li>• Legacy of destruction of indigenous flora</li> </ul>	<p>Comments noted.</p> <p>To progress the planning proposal in accordance with Gateway timeframe, the 4 Crown land sites and the Council owned South Arm Bridge are proposed for deletion from this planning proposal. Recommendations for Brunswick Heads Crown Land sites appear in Table 3.</p>
<b>Byron Bay</b>	
<p><b>Item 12</b></p> <p><b>40 &amp; 42 Cowper St, Byron Bay</b></p> <p>Conditional support for listing by landowner of No. 40 Cowper Street, contingent upon financial assistance for building preservation. Otherwise, objects.</p> <p>Support for listing of 40 &amp; 42 Cowper Street Byron Bay.</p>	<p>Council offers annual heritage grants to assist with costs of maintenance.</p> <p>This submission is considered as support from the landholder for the inclusion of 40 Cowper Street, Byron Bay in planning proposal.</p>
<b>Mullumbimby</b>	
<p><b>Item 14</b></p> <p><b>24 Coolamon Scenic Drive, Mullumbimby</b></p>	<p><b>Recommendation</b></p> <p>Remove 24 Coolamon Scenic Drive, Mullumbimby from this planning proposal.</p>

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Submission Issues	Staff comment
<p>Landowner objection to the proposed listing.</p> <p>Brunswick Valley Historical Society consider this house unworthy of inclusion as a 'heritage item'. The house was erected in 1947 from the remains of another house salvaged from Tyagarah.</p>	
<p><b>Item 15</b></p> <p><b>5 Main Arm Rd, Mullumbimby</b></p> <p>Landowner does not support listing.</p>	<p><b>Recommendation</b></p> <p>Remove 5 Main Arm Road, Mullumbimby from this planning proposal.</p>
<b>General</b>	
<p>General support for planning proposal</p> <p>Support for new Shire Wide Heritage Study.</p>	<p>Comments noted.</p>

### Government agency consultation

- 5 Government agencies were consulted in accordance with the Gateway Determination and a summary of the consultation is provided in Table 3.

**Table 3 - Agency Consultation**

Agency Name	Submission Issues and Staff comment (where applicable)
New South Wales Rural Fires Service	The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.
Heritage NSW	Heritage NSW has considered the information submitted and subsequently raise no concerns or issues.

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Agency Name	Submission Issues and Staff comment (where applicable)
Crown Lands	<p>Crown Lands has no objections, however, has requested that additional requirements for items 4, 5, 6, 7 &amp; 8 are addressed. Details provided below.</p> <p><b>a) War Memorial Reserve, Fawcett Street, Brunswick Heads</b></p> <p>Crown Lands requested that Council must seek advice from its Native Title manager in relation to Native Title requirements or implications. Advice has been sought but not received at the time of writing.</p> <p><b>b) Foreshore reserves and Norfolk pine cultural plantings</b></p> <p>Crown Lands requested: Cadastral mapping corrections; Lot 7007 DP 1113388 is under Aboriginal Land Claim and formal consultation is required with the claimant body; and Council must seek advice from its Native Title manager in relation to Native Title requirements or implications. Advice has been sought but not received at the time of writing.</p> <p><b>c) Housie shed and former ambulance shed</b></p> <p>Crown lands has requested: the Planning Proposal be amended to describe the site as “Tom Kendall Park” and not “Banner Park”; formal consultation with Reflections Holidays as the reserve manager of Lots 416 DP 28666 and Lot 408 DP 728643; and Council must seek advice from its Native Title manager in relation to Native Title requirements or implications. Advice has been sought but not received at the time of writing.</p> <p>The Planning proposal correctly identifies the site containing the Housie shed and former ambulance shed as Banner Park. Tom Kendall Park is located within New Brighton and this change has not been incorporated into the Planning Proposal.</p> <p><b>d) South Arm bridge</b></p> <p>Crown Lands has requested: that Byron Shire Council must investigate status and easement requirements relevant to this asset to ensure legal occupation, as the bridge is not a DPHI - Crown Lands asset; and Council must seek advice from its Native Title manager in relation to Native Title requirements or implications. Advice has been sought but not received at the time of writing.</p> <p><b>e) Boulevard plantings and Pioneer Memorial Park</b></p> <p>Crown Lands has requested: Council must seek advice from its Native Title manager in relation to Native Title requirements or implications; formal consultation with the Tweed Byron LALC in relation to any native title claims over Lot 587 DP 755692, Lot 398 DP 724682; and consultation with Reflections Holidays (Crown Land Manager of Lot 416 DP 28666).</p> <p>Tweed Byron LALC have been consulted in relation to any native title claims over Lot 587 DP 755692, Lot 398 DP 724682. No response received at the time of writing.</p> <p><b>Staff comment and justification for recommendation</b></p> <p>Further consultation for the Crown land sites and the Council owned bridge could potentially ‘derail’ the progress of the entire heritage planning proposal due to non-compliance with the tight time frames of the Gateway</p>

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Agency Name	Submission Issues and Staff comment (where applicable)
	<p>Determination. There is no imminent risk associated with not progressing the heritage listing for these publicly owned sites at this stage. In the unlikely event that circumstances change and there were to be imminent risk of, say development pressure, Council can always apply for an 'Interim Heritage Order' for the subject properties.</p> <p><b>Recommendation</b></p> <p>Delete the four Crown land sites and the Council owned South Arm Bridge (Items 4, 5, 6, 7 &amp; 8) from this planning proposal.</p>
NSW Department of Climate Change, Energy, the Environment and Water	Raises no specific concerns or objections in relation to this proposal.

### Summary of the proposed amendments to the Planning Proposal

The final recommendations are provided in Table 4 after consideration of public submissions and agency consultation.

**Table 4 - Summary of outcomes for after public exhibition & agency consultation**

Item Number	Property Address	Landowner Objection	Comments/Recommendation
1	17 Charlotte Street, Bangalow	No	Proceed as publicly exhibited
1	18 Charlotte Street, Bangalow	No	Proceed as publicly exhibited
1	20 Charlotte Street, Bangalow	No	Proceed as publicly exhibited
1	21 Charlotte Street, Bangalow	No	Proceed as publicly exhibited
1	23 Charlotte Street, Bangalow	Yes	<p><b>Recommendation</b></p> <p>Remove 23 Charlotte Street, Bangalow from this planning proposal.</p>
1	26 Charlotte Street, Bangalow	No	Proceed as publicly exhibited
2	7 Leslie Street, Bangalow	Yes	<p><b>Recommendation</b></p> <p>Remove 7 Leslie Street, Bangalow from this planning proposal.</p>

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Item Number	Property Address	Landowner Objection	Comments/Recommendation
3	9 Lismore Road, Bangalow	No	Proceed as publicly exhibited
3	11 Lismore Road, Bangalow	No	Proceed as publicly exhibited
3	13 Lismore Road, Bangalow	No	Proceed as publicly exhibited
3	15 Lismore Road, Bangalow	No	Proceed as publicly exhibited
3	17 Lismore Road, Bangalow	No	Proceed as publicly exhibited
3	19 Lismore Road, Bangalow	Yes	<b>Recommendation</b>  Remove 19 Lismore Road, Bangalow from this planning proposal.
3	25 Lismore Road, Bangalow	No	Proceed as publicly exhibited
4	War Memorial Reserve – Lot 6 Sec 1, DP 758171, Brunswick Heads	No	<b>Recommendation</b>  Remove the Item 4 from this planning proposal.
5	Foreshore Reserve, Brunswick Heads	No	<b>Recommendation</b>  Remove Item 5 from this planning proposal.
6	Housie Shed & former Ambulance Shed, Banner Park Reserve Lot 406 DP 728643, Brunswick Heads	No	<b>Recommendation</b>  Remove Item 6 from this planning proposal.
7	South Arm Bridge Road Reserve	No	<b>Recommendation</b>  Remove Item 7 from this planning proposal.
8	Boulevard plantings and Pioneer Memorial Park Tweed Street, Brunswick Heads	No	<b>Recommendation</b>  Remove Item 8 from this planning

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Item Number	Property Address	Landowner Objection	Comments/Recommendation
			proposal.
9	Brunswick Picture House, 30 Fingal Street, Brunswick Heads	Yes	<b>Recommendation</b> Remove 30 Fingal Street, Brunswick Heads from this planning proposal.
10	26 Mullumbimbi Street, Brunswick Heads	No	Proceed as publicly exhibited
11	28 Mullumbimbi Street, Brunswick Heads	No	Proceed as publicly exhibited
12	40 Cowper Street, Byron Bay	No	Proceed as publicly exhibited
12	42 Cowper Street, Byron Bay	No	Proceed as publicly exhibited
13	"Carabene" (The Farm) 11 Ewingsdale Road, Ewingsdale	No	Proceed as publicly exhibited
14	22-24 Coolamon Scenic Drive, Mullumbimby	Yes	<b>Recommendation</b> Remove 24 Coolamon Scenic Drive, Mullumbimby from this planning proposal.
15	5 Main Arm Road, Mullumbimby	Yes	<b>Recommendation</b> Remove 5 Main Arm Road, Mullumbimby from this planning proposal.
16	221 Coolamon Scenic Drive, Coorabell	No	Proceed as publicly exhibited
17	175 Wilsons Creek Road, Wilsons Creek	No	Proceed as publicly exhibited

### Next steps

It is recommended that Council adopt the planning proposal with the changes recommended in this report. Should Council adopt the recommended amendments, the



planning proposal will be sent to Parliamentary Counsel for legal drafting; Council exercises its plan making functions; and the Planning Proposal will be sent to the Department of Planning, Housing and Infrastructure for notification.

## **Strategic Considerations**

### **5 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>
4: Ethical Growth	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.2	Review and update Local Environmental Plan and Development Control Plans to reflect strategic land use priorities and/or legislative reforms

## **Recent Resolutions**

- 23-459: 12 October 2023 Ordinary (Planning) Meeting - Brunswick Heads Heritage Conservation Area and Heritage Material and Colours Guide, 26.2022.9.1
- 20-265: 28 May 2020 Ordinary Meeting – Heritage Panel Walk – Brunswick Heads, I2020/168
- 21-005: 11 February 2021 Ordinary (Planning) Meeting – Brunswick Heads Heritage Conservation, I2021/133
- 22-598: 27 October 2022 Ordinary Meeting – Report of the Heritage Advisory Committee Meeting held on 15 September 2022, I2022/1279

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

This planning proposal will amend the Byron Local Environmental Plan 2014.

The Byron Shire Heritage Strategy (2020–2024) includes the following action in relation to the local area’s heritage:

- **“Identify Heritage Items in the Byron Shire and list them in the Local Environmental Plan - Maintain, review, and update the Byron LEP 2014 Heritage Schedule and accompanying State Heritage Inventory database.”**

## **Financial Considerations**

This is a Council initiated planning proposal and will be funded from within existing budgets.

The listing of a site as a heritage item on the Local Environmental Plan will assist property owners in applying for Council's Heritage Assistance Funds as well as State Government grants.

**Consultation and Engagement**

- 5   Exhibition of the planning proposal which included Brunswick Heads Heritage Conservation Area occurred in the 28 days preceding 29 September 2022.

Exhibition of the amended planning proposal for the Heritage items occurred in accordance with the Gateway Determination for a period of 28 days concluding on 17 April 2024.

10

**Report No. 13.10 PLANNING - DA 10.2023.230.1 - Rural Function Centre - 1390 Hinterland Way, Bangalow**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Ben Grant, Planner

**File No:** I2024/732

**Proposal:**

<b>DA No:</b>	10.2023.230.1		
<b>Planning Portal ref</b>	PAN-343320		
<b>Proposal description:</b>	Temporary Use of Land for Function Centre (3-Years)		
<b>Property description:</b>	LOT: 1 DP: 1077265		
	1390 Hinterland Way BANGALOW		
<b>Parcel No/s:</b>	268661		
<b>Applicant:</b>	Mr M Walker		
<b>Owner:</b>	Metropolis Studios Pty Ltd		
<b>Zoning:</b>	RU2 Rural Landscape		
<b>Date received:</b>	7 July 2023		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Community Significant Development.</li> <li>– Level 2 advertising under Council's Community Participation Plan.</li> <li>– Exhibition period: 18 July 2023 to 31 July 2023</li> </ul>		

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	<ul style="list-style-type: none"><li>– Submissions received: 6 submissions from 5 persons.</li><li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</li></ul>
<b>Planning Review Committee</b>	Considered by PRC September 2023 and Referred to Council
<b>Variation request to Development Standards under an EPI (e.g., clause 4.6)</b>	Not applicable
<b>Estimated cost</b>	\$2,200.00
<b>Delegation to determine</b>	Council
<b>Issues</b>	<ul style="list-style-type: none"><li>• Potential land use conflict with neighbouring farms and residential dwellings.</li><li>• Potential social impacts and conflict with Bangalow cemetery.</li><li>• Submissions in opposition.</li></ul>

### Summary:

5 This development application seeks consent to use the subject land at 1390 Hinterland Way Bangalow for the purposes of a temporary rural function centre, primarily for weddings and corporate events. Up to 20 events will be held per year with a maximum of 150 guests and not more than one event being held per weekend.

Weddings and functions will be held within the landscaped gardens immediately surrounding the heritage listed dwelling house, although it is anticipated that guests will move throughout various parts of the property during each event. If approved, the development consent would expire after three years.

10 The site will be accessed off Pioneers Crescent which extends off Granuaille Road and passes through Bangalow Cemetery. Most guests are anticipated to arrive by a pre-arranged minibus service, with private car access being restricted to staff and elderly or disabled persons unable to utilise the bus service.

15 This assessment finds that the proposed development is unable to be supported in its current form primarily due to potential noise impacts on adjoining residential properties and land use conflict with Bangalow Cemetery.

The proposed function centre will generate an estimated 50 vehicle trips per day when in operation, which could conflict with planned funerals and may detract from the amenity and atmosphere of the cemetery. Council's Manager of Open Spaces commented that

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proposed development would be inconsistent with community expectations that the facility would be managed in a sensitive and respectful manner.

It is noted that the applicant attempted to resolve the access issue with concept plans for an alternative driveway directly off Hinterland Way. Transport for NSW (TfNSW) advised during initial discussions that deceleration lanes either side of the new access and purpose-built U-turn bays within Hinterland Way would be required which was not considered to be viable by the applicant due to the cost and technical complexity of complying with TfNSW design guidelines.

In relation to noise and land use conflict, Council's Environmental Health Officer commented that the operation of the proposed function centre would likely result in significant noise impacts on the neighbouring dwelling at 1384 Hinterland Way due to amplified music and traffic noise that will be difficult to manage or mitigate to an acceptable level.

It is therefore recommended that the application be refused for the reasons listed in the recommendations of this report.

Notwithstanding the recommendation of the report, a set of draft conditions of consent has been provided in Attachment 6 should Council form a view that the impacts of the development are able to be managed through additional restrictions and/or improved venue management measures.

#### NOTE TO COUNCILLORS:

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:

**It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.230.1 for Temporary Use of land for Function Centre (3-Years), be refused for the following reasons:**

- Pursuant to section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is not satisfactory having regard to the matters for consideration under Clause 6.11 of Byron Local Environmental Plan 2014 as the development will likely generate unacceptable levels of noise and traffic that will impact on surrounding residential dwellings and the cemetery.**







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- 5      2.    The development application is not satisfactory having regard to section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 because the proposal does not adequately minimise and manage land use conflict particularly in relation to the impact of traffic generated by the development on the Bangalow Cemetery, noise impacts on surrounding development and land use conflicts with the adjacent macadamia farm contrary to the requirements of B6.2.1 and B6.2.3 in Chapter B6 Buffers and Minimising Land Use Conflict, and Chapter D9.4.1 of Byron Shire Development Control Plan 2014 (DCP 2014).
- 10     3.    The development is not satisfactory having regard to subsection 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* because the proposed development is likely to detract from the amenity of the locality due to noise and traffic impacts, including access to the site via the Bangalow Cemetery.
- 15     5.    The development is not satisfactory having regard to subsection 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* because approval of the development application is likely to result in social impacts in the locality specifically on visitors of Bangalow Cemetery.
- 20     6.    The development is not satisfactory having regard to subsection 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* because insufficient information has been provided to demonstrate that the site is suitable for the proposed development.
- 25     7.    The development is not satisfactory having regard to subsection 4.15(1)(d) and (e) of the *Environmental Planning and Assessment Act 1979* because approval of the development application is not in the public interest having regards to the objects of the Act, the land use conflict between the development and the Bangalow Cemetery and submissions in objection to the development.

#### Attachments:

- 30    1    DA 10.2023.230.1 Plans, E2024/58595 
- 2    DA 10.2023.230.1 Traffic report, E2024/58608 
- 3    DA 10.2023.230.1 LUCRA, E2024/58615 
- 4    DA 10.2023.230.1 Noise report, E2024/58616 
- 5    Confidential - DA 10.2023.230.1 Combined Submissions (Confidential Attachment), E2024/66844
- 6    DA 10.2023.230.1 Draft Conditions of Consent, E2024/65291 
- 35   7    10.2023.230.1 Late submission received, E2024/67950 

## **Report**

### **History/Background**

The subject site is a rural property with an area of approximately 9 hectares that was subdivided off a larger macadamia farm in April 2004. The site contains an early 20<sup>th</sup> century homestead known as “Jelbon Leigh House” which is currently used for holiday letting.

A search of Council’s records returned the following determinations for the property:

- **DA 10.2002.16.1** – Three (3) lot boundary adjustment, approved 6 June 2002.
- **DA 10.2003.21.1** – Two lot subdivision with SEPP 1 variation, approved 1 April 2004.
- **DA 10.2009.357.1** – New Carport, approved 1 October 2009.
- **DA 10.2021.60.1** – Temporary outdoor function centre, refused 11 November 2021.
- **DA 10.2022.528.1** – Use of alterations to dwelling house, approved 18 May 2023.
- **DA 10.2023.308.1** – Partial use of shed as art studio and dual occupancy, approved 23 May 2024.

### **Previous development application**

A similar development application (10.2021.60.1) for a function centre at the subject site was refused by Council officers on 11 November 2021, primarily due to traffic issues and potential conflict with Bangalow cemetery. A Class 1 appeal against Council’s refusal of the application was lodged in the Land and Environment Court however the appeal was later withdrawn. The applicant noted that a new development application has been lodged to resolve the remaining issues.

### **Compliance actions**

Council’s records show that a series of complaints were received between 2018 and 2022 regarding the alleged use of the premises as a wedding venue. The following compliance actions have been taken to date:

- On 27 September 2022, Council issued a Stop Use Order requiring the landowner to cease using the premises as a function centre.
- On 16 November 2022, Council issued two Penalty Infringement Notices for unauthorised functions which allegedly occurred 29 October 2022 and 5 November 2022.

## **Description of the proposed development**

5 This development application seeks consent to use the subject land for the purpose of a temporary rural function centre, primarily for weddings and corporate events. Up to 20 events will be held per year with a maximum of 150 guests attending each event and not more than one event being held per weekend. The consent would be limited to a maximum of three years if approved.

Weddings and functions will be held within the landscaped gardens immediately surrounding the historic dwelling, although it is anticipated that guests will move throughout various parts of the property during the day of the event.

10 The application does not propose any physical works or the installation of any permanent buildings or structures. It is anticipated that temporary structures such tents or marquees will be erected as needed for each function depending on the needs of clientele.

15 The site will be accessed off Pioneers Crescent which extends off Granuaille Road and passes through Bangalow Cemetery. Most guests will arrive to each wedding or function by minibus, with private car being restricted to staff and elderly or disabled persons unable to utilise the bus service.

### **Summary of proposal**

The proposal is summarised in the table below:

Proposed Use	Weddings and other functions (e.g., corporate events).
Maximum Patron Numbers	Up to 150 patrons per event.
Number of events per year	Up to 20 events in any 12-month period.
Frequency of events	Up to 1 event per weekend.
Access and transport	Guests to arrive by 26-seat minibus. Private vehicle for staff and elderly/disabled guests.
Buildings/works	Temporary tents or marquees as needed.
Consent period	3-years in accordance with Clause 6.11 of LEP 2014.





Figure 1: Extract of Site Layout Plan.

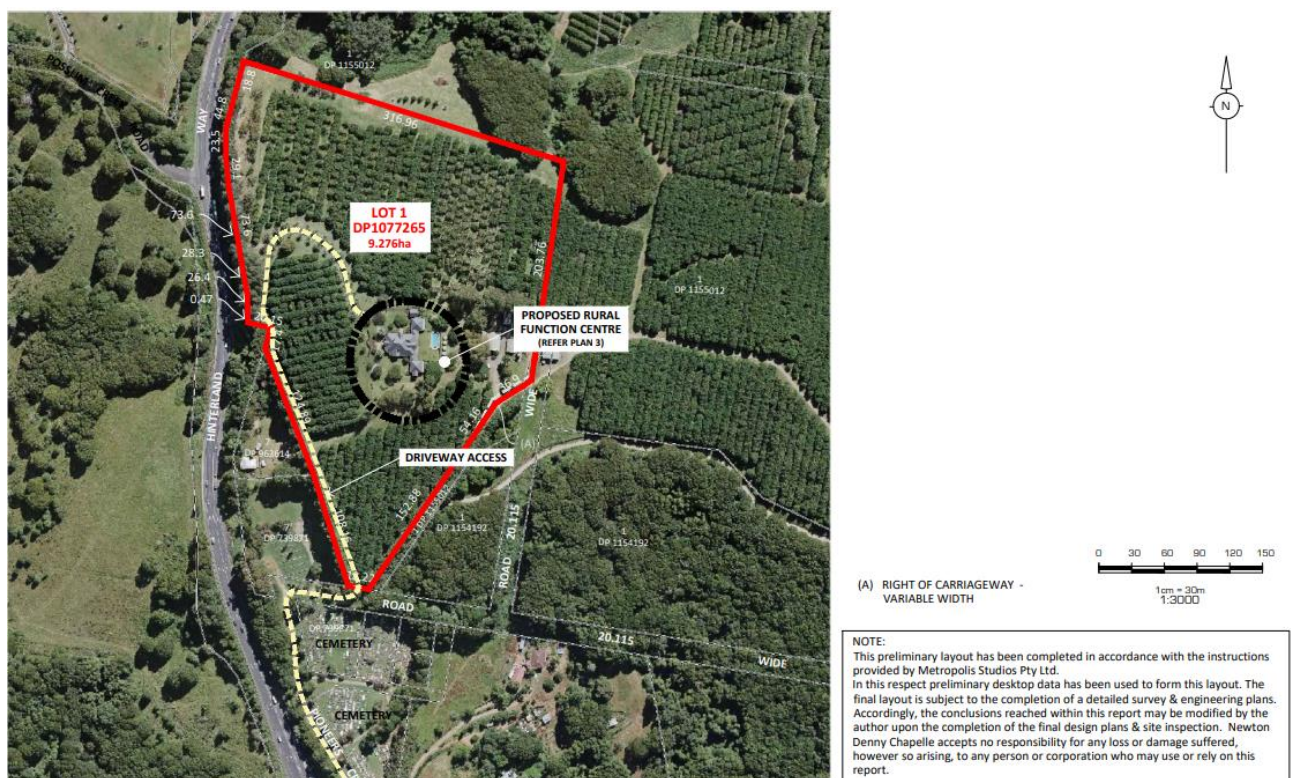


Figure 2: Proposed Access Plan providing access off Pioneers Crescent.

## **Description of the site**

A site inspection was carried out on 27 February 2024.

Land is legally described	LOT: 1 DP: 1077265	
Property address	1390 Hinterland Way BANGALOW	
Land is zoned:	RU2 Rural Landscape	
Land area is:	9.276 hectares	
Property is constrained by:	Bushfire prone land, High Conservation Value Vegetation	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

5 The subject site is a small rural parcel of land located approximately 1.5km north of the Bangalow town centre. It has an irregular shape with an area of 9.27 hectares and is zoned RU2 Rural Landscape.

10 The site contains a macadamia orchard with approximately 1600 trees and a historic masonry dwelling known as Jelbon Leigh house which dates to the early 1900's. The dwelling is listed as an item of local heritage significance in Schedule 5 of Byron LEP 2014.

The site lies immediately north of Bangalow cemetery and adjoins two large macadamia farms to the east and south-east. A residential dwelling house is located to the south-west at 1380 Hinterland Way while the remaining north-western boundary is formed by Hinterland Way.

15 The site is currently accessed from Pioneers Crescent which runs off Granuaille Road through Bangalow Cemetery. The road provides access for two other properties being 20 Pioneers Crescent and 1270 Hinterland Way. There is also a second driveway on the western boundary which connects directly to Hinterland Way.

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**Figure 3:** Aerial image of site.



**Figure 4:** View of historic dwelling ("Jelbon Leigh").





**Figure 5:** Proposed ceremony location.



**Figure 6:** Proposed marquee location for larger events.





**Figure 7:** Proposed location for smaller events.



**Figure 8:** Proposed access via Pioneers Crescent through Bangalow Cemetery.





**Figure 9:** Existing driveway access to Hinterland Way.

## SUMMARY OF REFERRALS

### Internal Referrals

Referral	Issue
Environmental Health Officer	<p>Council's Environmental Health Officer raised concerns over potential noise impacts and land use conflict with surrounding residential and agricultural uses.</p> <p>The submitted LUCRA and Noise Impact Assessment were generally acceptable although there remains a degree of uncertainty regarding the full extent of the potential impacts from the proposed function centre on adjoining properties in relation to noise and land use conflict.</p> <p>The initial recommendation was to not support the application primarily due to insufficient information. Notwithstanding it was acknowledged that the impacts of the proposed function centre could potentially be reduced by imposing conditions of consent requiring an amended Event Management Plan detailing additional measures for sound,</p>

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Referral	Issue
	waste and complaints management, and further measures to control hours of operation, patron numbers and waste.
Development Engineer	Council's Development Engineer commented that the proposed development was acceptable on engineering grounds based on the submitted traffic report and proposed access off Pioneers Crescent.
Systems Planning Officer	Council's Systems Planning Officer noted that the site is not serviced by Council water or sewerage systems and therefore no development servicing levies are required.
Infrastructure Services (Open Spaces)	Council's Manager Open Spaces raised concerns over potential conflict with funeral services in Bangalow Cemetery if a wedding and funeral were being held at the same time. It was further noted that event traffic could detract from the amenity of the cemetery and may not align with community expectations for the cemetery to be managed in a sensitive manner.

#### External Referrals

Referral	Issue
Rural Fire Service	The development application was referred to the Rural Fire Service (RFS) however it was returned without comment. The RFS noted that the proposed development did not require a Bush Fire Safety Authority and was not integrated development.
Transport for NSW (TfNSW)	<p>During the assessment period the applicant submitted a concept driveway design that provided direct access from the site to Hinterland Way. TfNSW advised during initial discussions with the applicant that deceleration lanes either side of the new access and purpose-built U-turn bays within Hinterland Way would likely be required to satisfy TfNSW and Austroads design guidelines.</p> <p>The applicant decided not to pursue the proposed Hinterland Way access due to the likely cost and technical</p>

Referral	Issue
	<p>difficulties in meeting TfNSW requirements.</p> <p>TfNSW commented that should this option be pursued in the future the applicant would need to prepare a strategic design demonstrating that the scope of works is a complaint with TfNSW requirements and can be achieved within the available reserve area.</p>
Essential Energy	Essential Energy raised no objection to the proposal subject to the imposition of standard conditions for safe working near powerlines.

## **SECTION 4.14 – BUSH FIRE PRONE LAND**

- Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document *‘Planning for Bush Fire Protection 2019’* (PBP). The site is within the bushfire buffer from surrounding vegetation hazards to south adjoining the Bangalow Cemetery, north on the adjoining farm at 20 Pioneer Crescent and west, on the opposite side of Hinterland Way.

### Section 8 – Other Development

- The subject site has a relatively low bushfire risk site can be evacuated quite easily in the event of an emergency. Should the Council grant consent to the application, it is recommended that a Bush Fire Emergency Management Plan be prepared for the venue in accordance with Section 8.3.8 of PBP.

## **SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

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

### **State Environmental Planning Policies (SEPP)**

Considerations	Satisfactory	Unsatisfactory
<p><b>Biodiversity and Conservation SEPP 2021</b></p> <p><u>Chapter 3 Koala habitat protection 2020</u></p> <p>The site is predominantly covered by macadamia</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



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Considerations	Satisfactory	Unsatisfactory
<p>orchards and exotic landscape plantings. There is also a band of mature planted eucalypt species running along the western boundary of the property.</p> <p>The site is not considered to be a potential or core koala habitat as defined in this policy because less than 15% of the trees in the upper or lower strata of the vegetation comprises koala feed tree species.</p> <p>Council can grant consent to the application without requiring the preparation of a koala plan of management.</p>		
<p><b>Resilience and Hazards SEPP 2021</b></p> <p><u>Chapter 4 Remediation of land</u></p> <p>Council's Environmental Health Officer commented that the site has low potential for contamination and is suitable for the proposed temporary function centre in its current state without requiring remediation or further investigation.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Transport and Infrastructure SEPP 2021</b></p> <p><u>Section 2.119 – Development with frontage to classified road.</u></p> <p><i>Proposed access off Pioneers Crescent</i></p> <p>The proposed development will be accessed via an existing driveway on the southern boundary that connects with Pioneers Crescent. This road runs further south and joins a crossing over Hinterland Way which intersects with Granuaille Road on the northern side of Bangalow.</p> <p>The potential impacts of the proposed development on the safety and efficiency of Hinterland Way have been considered by Council's Development Engineer and were found to be acceptable subject to a condition requiring a Road Safety Audit of the site access. Any additional safety measures such as improved signage, line-marking or road widening will need to be implemented prior to the commencement of any</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<b>Considerations</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
<p>functions or events, should consent be granted.</p> <p>The existing driveway on the western boundary which connects directly to Hinterland Way will not be utilised as part of the proposed development.</p> <p><i>Alternative access considerations</i></p> <p>During the assessment period the applicant explored the option of obtaining vehicular access directly off Hinterland Way to avoid having to use Pioneers Crescent which runs through Bangalow Cemetery.</p> <p>Transport for NSW (TfNSW) commented that two U-turn bays and a deceleration lane would need to be constructed within Hinterland Way which was not considered to be viable by the applicant due to the cost and technical complexity of TfNSW requirements.</p> <p>Due to these challenges, the applicant reverted to the original access design which involves utilising the existing driveway connection to Pioneer Crescent.</p>		

## **4.2A Byron Local Environmental Plan 2014 (LEP 2014)**

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as a function centre;
- (b) The land is within the RU2 Rural Landscape according to the Land Zoning Map.

<b>Zone Objective RU2 Rural Landscape</b>	<b>Consideration</b>
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal is generally compatible with the zone objectives which permit scale rural tourism uses.
To maintain the rural landscape character of the land.	
To provide for a range of compatible land uses, including extensive agriculture.	
To enable the provision of tourist	

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accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.	
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

#### 5 Part 5 Miscellaneous provisions

Provision	Compliance	Comment
Clause 5.10 Heritage conservation	Yes	<p>The site contains a locally listed heritage item known as Jelbon Leigh House that dates to the early 1900's.</p> <p>The proposed use of the land as a temporary function centre will not adversely affect the aesthetic or historical significance of the dwelling or its interiors. Each function will at most involve the erection of temporary marquees and tents which can be easily removed following the departure of guests. No permanent buildings or alterations to the heritage listed house or surrounding gardens are proposed.</p> <p>Council's Heritage Advisor commented on a similar application for this property (DA 10.2021.60.1) that more interpretation such as signage and background information would assist in providing an understanding of the dwelling's historical significance should the Council decide to grant consent.</p>

#### Part 6 Additional local provisions

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Provision	Compliance	Comment
Clause 6.6 Essential services	Yes	<p>The site is capable of being adequately serviced subject to conditions of consent and has adequate vehicular access.</p> <p>Temporary port-a-loos will be utilised during weddings or functions which is an acceptable outcome for a temporary function centre.</p> <p>Drinking water can be provided to guests using rainwater harvesting and storage or via bottled water as part of event catering.</p>
Clause 6.11 Temporary use of land in Zone RU2 for purpose of function centre	No	<p>The proposed development is inconsistent with the relevant matters for consideration under Clause 6.11 for the following reasons:</p> <ul style="list-style-type: none"><li>• The development has the potential to generate noise from amplified music and traffic movements that will significantly impact adjoining residences, particularly the neighbouring dwelling at 1384 Hinterland Way. Insufficient information has been provided to demonstrate that such impacts can be adequately mitigated or managed.</li><li>• Given the potential for noise and traffic impacts, it is questionable whether the proposal can be considered small scale and low impact as required under Clause 6.11(3)(b).</li></ul>

### 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

There are no proposed instruments that are relevant to the subject application.

## 5 4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

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

Taxi	Compliance	Comment																
B4.2.1 Traffic Impact	Yes	<p>The submitted Traffic Impact Assessment (TIA) estimated that a typical wedding would generate a total of 96 daily trips, and 26 peak hour trips on the day of the function as show below.</p> <p><b>Table 1:</b> Estimated Daily Trips Generation</p> <table><tr><td>Set-up</td><td>22 Daily Trips</td></tr><tr><td>Function Day</td><td>50 Daily Trips</td></tr><tr><td>Pack-down</td><td>24 Daily Trips</td></tr><tr><td><b>Total</b></td><td><b>96 Daily Trips</b></td></tr></table> <p><b>Table 2:</b> Estimated Peak Hour Trips.</p> <table><tr><td>Guests – Taxi:</td><td>10 trips</td></tr><tr><td>Guest – Private Vehicle:</td><td>6 trips</td></tr><tr><td>Guest – Mini-Bus:</td><td>10 Daily trips</td></tr><tr><td><b>Total</b></td><td><b>26 Peak Hour Trips</b></td></tr></table> <p>Granuaille Crescent is a two-lane rural access road with a carrying capacity of approximately 500-1000 vehicles per day.</p> <p>Council’s Development Engineer endorsed the findings of the TIA which found that Granuaille Crescent has adequate capacity to handle the additional traffic generated by the proposed function centre.</p> <p>Impacts on Bangalow Cemetery from increased traffic volumes are discussed in Section 4.6 of this report.</p>	Set-up	22 Daily Trips	Function Day	50 Daily Trips	Pack-down	24 Daily Trips	<b>Total</b>	<b>96 Daily Trips</b>	Guests – Taxi:	10 trips	Guest – Private Vehicle:	6 trips	Guest – Mini-Bus:	10 Daily trips	<b>Total</b>	<b>26 Peak Hour Trips</b>
Set-up	22 Daily Trips																	
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B4.2.5 Car Parking Requirements	Yes	<p>Chapter B4 does not specify a parking rate for rural function centres holding outdoor events such as weddings. A merit assessment is therefore required based on estimated carparking demand for a typical wedding or function.</p> <p>The site currently has six carparking spaces available near the existing dwelling for guests, and a further 12 informal carparking spaces at the rear of the site for staff (catering, entertainment, celebrant etc.). A parking bay is also available in front of the main house which is suitable for minibuses and small delivery vehicles.</p> <p>The application states that most guests will be transported to the site via a 26-seat minibus, with private vehicles being limited to older guests or those with a disability which cannot utilise the minibus service. The main wedding party along with event staff will also arrive by private vehicle.</p> <p>Council's Development Engineer concluded that the existing 18 car parking spaces would be adequate if most guests arrived via minibus in accordance with the stated transport plan. Further room would be available along the main driveway to accommodate overflow parking for latecomers or additional guests should the need arise.</p>
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### Chapter B6 Buffers and Minimising Land Use Conflict

Development control	Compliance	Comment
B6.2.1 Responsibility for Managing Land Use Conflict  B6.2.2 Conflict Risk Assessment (CRA)	No, insufficient information	Council's Environmental Health Officer was not fully supportive of the applicant's LUCRA, noting there was insufficient information to demonstrate that potential conflicts with neighbouring agricultural and residential uses could be adequately managed.

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		<p>In particular, noise impacts on the adjoining dwelling at 1384 Hinterland Way are likely to occur and increased traffic movements through Bangalow cemetery could potentially disturb visitors and burial ceremonies.</p> <p>To address these potential impacts, additional mitigation measures would be needed including restriction on the number of guests attending weddings or event (to reduce traffic and noise impacts), along with reduced operating hours and limits on amplified music.</p>
B6.2.4 Buffers	Not applicable	<p>There is limited opportunity for buffers to play a role as the function centre location cannot be changed, and the key sources of conflict (being noise and traffic impacts) cannot be mitigated by using vegetation or other physical barriers.</p> <p>As discussed in B6.2.1 &amp; B6.2.2, potential land use conflicts should be managed through management measures where possible.</p>

#### Chapter B8 Waste Minimisation and Management

Development control	Compliance	Comment
B8.2.2 Site Waste Minimisation and Management Plans	Yes, subject to conditions	Waste management for the proposed function centre can be addressed using conditions of consent if required.

#### Chapter B12 Social Impact Assessment

Development control	Compliance	Comment
B12.1.3 Application of this Chapter	Yes, subject to conditions	Many of the elements listed for consideration in an SIA have been addressed in the land use conflict risk assessment (LUCRA) and/or other

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		<p>documents provided with the application such that a standalone SIA is not considered necessary.</p> <p>If required, conditions could be imposed reducing the maximum number of patrons to less than 100 which would negate the need for a separate SIA to be provided in accordance with Part B12.1.3.</p>
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#### Chapter B13 Access and Mobility

Development control	Compliance	Comment
B13.2.5 Development Affecting Heritage Conservation Areas and Heritage Items	Yes	An accessible events plans was submitted with the application in accordance with Chapter B13.

#### Chapter C1 Non-Indigenous Heritage

Development control	Compliance	Comment
Chapter C1 Non-Indigenous Heritage	Yes	The proposed function centre will not have an adverse impact on the aesthetic or historic significance of the heritage listed dwelling or surrounding gardens.

#### Chapter D9 Rural Function Centres

Development control	Compliance	Comment
D9.4.1 Site Suitability	No	<p>The proposed development has not addressed the Objectives, Performance Criteria or Prescriptive Measures of Part D9.4.1 in relation to site suitability for the following reasons:</p> <ul style="list-style-type: none"><li>• Council's Environmental Health Officer did not fully support the conclusions of the submitted LUCRA and noted that</li></ul>



		<p>the proposed development would likely generate unacceptable noise impacts on the adjoining residence at 1384 Hinterland Way.</p> <ul style="list-style-type: none"> <li>The submitted Traffic Impact Assessment demonstrated that traffic numbers and impacts on local roads are acceptable, however, potential conflict with the operations of Bangalow cemetery has not been adequately addressed.</li> </ul>
D9.4.2 Management of Functions and Events	Yes, subject to conditions	<p>The application did not include an Events Management Plan, although some management procedures were discussed in the Statement of Environmental Effects.</p> <p>If required, an Events Management Plan could be provided for approval post-consent with specific limitations on the patron numbers and operating hours in accordance with D9.4.2.</p>

## 4.5 Environmental Planning and Assessment Regulation 2021 considerations

The proposed development is satisfactory having regard to the matters for consideration in ss. 61- 64 of the Regulation. No demolition or building upgrades are proposed or required.

## 5 4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	Increased traffic and the use of amplified music could potentially disturb the amenity of surrounding residential dwellings. Insufficient information has been provided to demonstrate how such impacts can be adequately managed.
<b>Social Environment</b>	The proposal may detract from the amenity of Bangalow

	cemetery. The degree of impact is largely a function of the volume of traffic passing the cemetery and the scale of future weddings or events being carried out.
<b>Economic impact</b>	The proposed development will likely have a positive impact on the local economy and will contribute to tourism and accommodation services in the area.

## 4.7 The suitability of the site for the development

Insufficient information has been provided to demonstrate that the site attributes are conducive to the development particularly in relation to the site access and potential conflict with Bangalow cemetery.

## 4.8 Submissions made in accordance with this Act or the regulations

The proposed development is identified as Community Significant Development in the Byron Shire Community Participation Plan (CPP). A pre-lodgement consultation report prepared by Newton Denny Chapelle was provided in accordance with the CPP.

The development application was publicly exhibited for a period of 14-days from 18 July 2023 to 31 July 2023. There were six submissions made on the development application from five submission authors. Issues raised in the submissions are summarised and discussed below.

Issue	Comment
<b>Land use conflict</b>	
The proposed wedding venue will prejudice the use of our macadamia farm and create land use conflict. The LUCRA is inaccurate, and they have not consulted how we run our business.	Conflicts with adjoining macadamia orchards can potentially be managed through conditions of consent and an updated Event Management Plan.  Spray drift, odour and machinery noise are unlikely to generate persistent complaints given the temporary and intermittent nature of events and functions.
We spray our trees in accordance with the rules and regulations of the Australian Macadamia Society, however, the spray does smell and has a very strong odour. We	See above.

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disburse manure pellets under our trees at least 4 times a year. They smell for at least 3 days. Yet again, complaints.	
We hope to have a de-husking facility near our shed soon. This is very loud and will run 24hrs a day in harvest season	See above.
Trespassing, interference, and antisocial behaviour	
<p>Since the beginning we have had guests from Hinterland House guests riding bikes, smoking, and strolling through the macadamia orchard and past our house.</p> <p>Driving past our house 'lost' but just coming for a look as well as flying drones over our house and farm. Guests outside our bedroom window on their mobile phone.</p>	Noted. Should the Council grant consent, it is recommended that signage be installed which clearly identifies the property entrance and boundaries and warns guests that crossing onto neighbouring land is trespassing and not permitted. Improved guest education may also assist.
History of weddings and unresolved complaints	
We are concerned that Hinterland House will not be operated in accordance with the guidelines and rules outlined in the DA. Weddings have already been held at the property and complaints ignored. The function centre will further degrade Pioneers Crescent which other persons have paid to maintain and repair.	It is acknowledged that unauthorised events have occurred in the past however Council cannot speculate on the likelihood of future non-compliances.
Impact on koalas	
<p>The Development Application fails to address the negative and detrimental impact the increased traffic will have on koalas in a well-documented koala road death hotspot area.</p> <p>The concern is the increase in traffic due to the frequency of the proposed functions, the numbers of guest attending who will have to be transported in and out, and the increase in traffic for all the infrastructure that will</p>	There is not a clear nexus between the operation of the proposed function centre and increased koala road deaths to justify refusal of the DA or special management conditions on ecological grounds.

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need to be transported in and out. The developer should be required to put in some road mitigation steps on the road network.	
Traffic Impact	
A traffic incident occurs almost any time a car is leaving Pioneers Crescent and entering Hinterland Way or vice versa.	Council's Development Engineer did not consider the link between Pioneers Crescent and Granuaille Crescent to be a significant safety issue.
Impact / maintenance of roads	
<p>The maintenance of this road (sealed and unsealed) is undertaken by the neighbours of the Hinterland House.</p> <p>At no time has the submission of DA 10.2023.230.1 ever contributed or made himself available for any consultation. We have conducted numerous upgrades - removed fallen trees from blocking the road and continued to clear storm drains in order to keep the road in good order and protect the runoff into the cemetery.</p>	Concerns over such financial contributions/concerns for road upgrades are outside the scope of this DA assessment.
Conflict with cemetery	
We have seen cars trying to access Hinterland House at night run off the road and tip over in the Cemetery, these incidents were not reported to the Police due to embarrassment	Noted. Potential conflict with Bangalow cemetery has not been adequately addressed in the DA. An alternative access off Hinterland Way was investigate however this was found to be unviable due to the cost and technical complexity of meeting TfNSW requirements.
To suggest that over a 3-day period over 90 additional cars will access this dangerous spot is going to create an extremely unsafe situation. It is a blind narrow corner and I have seen many near misses here	See above.

## 4.9 Public interest

It would not be in the public interest to permit development which could conflict with the operation of Bangalow cemetery. It is not clear whether potential conflicts could be adequately managed through consent conditions.

## 5 DEVELOPER CONTRIBUTIONS

### 5.1 Water & Sewer Levies

Council's System Planning Officer noted that the site is not connected to the Council's reticulated water or sewer network. No development servicing levies will be required.

### 5.2 Developer Contributions

- 10 The proposed development is for a commercial purpose and has an estimated development cost of less than \$100,000. No development contributions are required.

## DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

## Options

- 15 1. Refuse the DA as recommended in this report; or
2. Should Council wish to approve the DA, draft conditions of consent are included in Attachment 6 to this report.

20 This would provide a three-year consent for the function centre to operate on a temporary basis. At the end of this period the applicant would be able to re-apply to Council to use the land again for a further three years as a temporary function centre. The success of that future application would depend on how successfully the function centre has been managed. (i.e., without impact on neighbours and the like).

## CONCLUSION

- 25 This development application seeks consent to use the subject land at 1390 Hinterland Way Bangalow for the purposes of a temporary rural function centre, primarily for

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weddings and corporate events. Up to 20 events will be held per year with a maximum of 150 guests and not more than one event being held per weekend.

5 It is concluded that the development is likely to result in land use conflict with surrounding properties including the Bangalow Cemetery and the adjacent Macadamia Farm. It is therefore recommended that the application be refused for the reasons listed in the recommendations of this report.

Notwithstanding the recommendation of this report, a set of draft conditions of consent has been provided in Attachment 6 should Council form a view that the impacts of the development are able to be managed.

10

**Report No. 13.11 PLANNING - Submissions Report - Planning Proposal - 26.2021.5.1 - 114 Stewarts Road, Clunes**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Dylan Johnstone, Development Investigations Lead

**File No:** I2024/327

**Summary:**

10 On 12 October 2023 Council considered a Planning Proposal to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land, so that development consent can be sought for the use of an existing unauthorised dwelling on the land.

The Department of Planning & Environment issued a Gateway determination on 31 October 2023 and the Planning Proposal was placed on public exhibition for a minimum period of 28 days from 8 April to 10 May 2024. Agency consultation was undertaken in accordance with the Gateway determination.

15 Two (2) public submissions were received and three (3) agency submissions were received. Public submissions are included in Attachment 3 and agency submissions are included in Attachment 4.

20 A formal Planning Agreement (Attachment 2), for a monetary contribution equal to developer contributions captured by the Byron Shire Developer Contributions Plan 2012 and Section 7.11 of the Environmental Planning and Assessment Act 1979, was drafted by the Applicant's legal representative and exhibited concurrently with the Planning Proposal.

This Report recommends that the Planning Proposal be forwarded to the Department of Planning & Environment for finalisation and that delegation be granted to the General Manager to execute the Planning Agreement associated with the Planning Proposal.

25 **NOTE TO COUNCILLORS:**

30 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:**

**That Council:**

- 5    1.    **Adopts the Planning Proposal in Attachment 1 (E2024/16665).**
2.    **Forwards the Planning Proposal to the NSW Department of Planning, Housing and Infrastructure requesting finalisation.**
3.    **Grants delegation to the General Manager to execute the Planning Agreement associated with the Planning Proposal in Attachment 2 (E2024/16702).**

10    **Attachments:**

- 1    26.2021.5.1 Planning Proposal, E2024/16665 
- 2    26.2021.5.1 Planning Agreement, E2024/16702 
- 3    26.2021.5.1 Public submissions redacted, E2024/61124 
- 15    4    26.2021.5.1 Agency submissions combined, E2024/61587 
- 5    26.2021.5.1 Gateway Determination, E2024/8269 
- 6    Special Disclosure of Pecuniary Interest form, E2012/2815 



## Report

### Background

5 On 12 October 2023 Council considered a Planning Proposal to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land so that development consent can be sought for the use of an existing unauthorised dwelling on the land.

Action No. 22 of the Byron Shire Rural Land Use Strategy 2017 (BSRLS) recommends investigation into a strategic framework for resolving dwelling entitlement issues. This action provides the strategic basis for the subject Planning Proposal. This BSRLS was endorsed by the NSW Department of Planning and Environment (DPE) in July 2018.

10 Following consideration of the 12 October 2023 Council report, **23-450** Resolved that Council:

1. *Proceeds with the planning proposal as attached to this report (Attachment 1 – E2023/99264) to amend LEP 2014 to permit a dwelling with consent on the subject land;*
- 15 2. *Notes that the encroachment of the existing dwelling on Council's road reserve will be addressed as a separate process to the planning proposal;*
3. *Forwards the planning proposal to the NSW Department of Planning and Environment for a Gateway determination;*
- 20 4. *Pending a positive Gateway determination and completion of further studies by the applicant (if required), undertakes public exhibition of the planning proposal in accordance with the determination requirements;*
5. *Considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.*

### Planning Proposal

25 The Planning Proposal seeks to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land (Lot 10 DP 586360) so that development consent can be sought for the use of an existing unauthorised dwelling on the land. Specifically, the Planning Proposal seeks to add the land to Division 1 of Part 6 – Additional local provisions of LEP 2014 to permit a dwelling with consent (similar to existing LEP [clause 6.15](#)).

30 A "Plain English" version of the proposed Byron LEP 2014 Part 6 – Additional local provisions clause is as follows:

#### What Land Does it Apply to?

Lot 10 DP 586360, 114 Stewarts Road, Clunes.

#### What Additional Development will be Permitted?

35 A dwelling house will be permitted with development consent.

### Gateway Determination

A Gateway determination (Attachment 5) was issued by the DPE on 31 October 2023. The Gateway determination required:

- Minor amendments to the Planning Proposal
- 5      • Public exhibition for a minimum of 20 days
- Consultation with agencies
- A 9 month time frame for completing the LEP from the date of the Gateway determination.

### Planning Agreement for Infrastructure Contributions

- 10      The Planning Proposal seeks to amend LEP 2014 so that a dwelling is permitted with consent on the subject site.

If a dwelling is permitted on the site, this will create additional demands on rural roads, community facilities, open spaces etc. Such demands are captured by the Byron Shire Developer Contributions Plan 2012 which requires a monetary contribution in accordance with the Plan and Section 7.11 of the *Environmental Planning and Assessment Act 1979*.

- 15

Ordinarily contributions would be paid at the time of subdivision for creating a lot with a dwelling entitlement equivalent to one Standard Dwelling Unit (SDU). However, for the purposes of this Planning Proposal, there is no clear mechanism within the Contributions Plan for applying developer contributions.

- 20      To address this the submitted Planning Proposal included a letter of offer to enter into a Planning Agreement with Council. The offer proposes payment of a monetary contribution equivalent to one SDU for the existing dwelling.

Council staff have no justification to require additional contributions over and above the demand normally generated for a rural dwelling under the terms of the Contributions Plan 2012.

- 25

A formal agreement was drafted by the Applicant's legal representative and exhibited concurrently with the Planning Proposal.

The Planning Agreement (Attachment 2) has been reviewed and it is recommended that the Planning Agreement be executed by the General Manager.

- 30

### **Public Exhibition**

In accordance with the Gateway determination, the Planning Proposal was placed on public exhibition for a minimum period of 28 days from 8 April to 10 May 2024. The Planning Agreement was exhibited concurrently with the Planning Proposal.

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A total of two (2) public submissions were received.

The Planning Proposal was also referred to the following agencies for comment:

- NSW Rural Fire Service
- NSW Department of Primary Industries – Agriculture
- Essential Energy
- Jali Local Aboriginal Land Council
- Ngulingah Local Aboriginal Land Council
- Arakwal Corporation
- Widjabul Wia-bal

No comments were received from Essential Energy, Jali Local Aboriginal Land Council, Ngulingah Local Aboriginal Land Council, or Widjabul Wia-bal.

A copy of all public submissions received are included in Attachment 3 and agency submissions are included in Attachment 4.

#### Agency submissions

Submissions were received from the NSW Department of Primary Industries – Agriculture, NSW Rural Fire Service and from Arakwal Corporation. The key issues and staff response to these are summarised below.

NSW Rural Fire Service (RFS) Submission (Attachment 4)		
Item #	Issues Raised	Council Staff Response
1.	The submitted bushfire report makes recommendations to improve bushfire resilience measures to the dwelling and surrounding land. Council should consider applying those recommendations as part of the local provisions.	Noted. A future development application that seeks consent for the use of the existing dwelling will require assessment in accordance with the relevant requirements of <i>Planning for Bush Fire Protection 2019</i> .
	Based on the above, no changes are required to the Planning Proposal with regard to bushfire.	

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<b>NSW Department of Primary Industries Agriculture Submission (Attachment 4)</b>		
<b>Item #</b>	<b>Issues Raised</b>	<b>Council Staff Response</b>
1.	<p>Council should carefully consider how permitting a dwelling house on the site as an additional permitted use in response to the unlawful construction of the original dwelling, will affect any future proposal to increase residential density on the site, such as a dual occupancy or secondary dwelling. Increased residential density in rural areas can lead to increased risk of land use conflict with surrounding agricultural land uses.</p> <p>Council is requested to ensure that the regularisation of the original unlawful dwelling does not lead to increased residential density that adversely impacts agricultural land uses on neighbouring rural zoned land mapped as Important Farmland.</p>	<p>Noted. The proposed amendment to LEP 2014 will permit a single dwelling on the land with development consent. The proposed amendment will not permit a secondary dwelling or dual occupancy on the land.</p>
	<p>Based on the above, no changes are required to the Planning Proposal with regard to agricultural and land use conflict impacts..</p>	

<b>Arakwal Corporation Submission (Attachment 4)</b>		
<b>Item #</b>	<b>Issues Raised</b>	<b>Council Staff Response</b>
1.	<p>Advised that this property does not sit on Arakwal Country and it is recommended that Council contact the Widjabul Wia-bal native title office for comment.</p>	<p>Noted. The proposal was referred to the Widjabul Wia-bal native title office with no comment received.</p>

	<b>Arakwal Corporation Submission</b> <b>(Attachment 4)</b>	
Item #	Issues Raised	Council Staff Response
	Based on the above, no changes are required to the Planning Proposal with regard to Aboriginal heritage.	

### Public submissions

Two public submissions were received (Attachment 3) with one supportive of the proposal and one objection.

- 5 The one objection raised concern that granting a pathway to legalise an unauthorised dwelling sets an undesirable precedent.

*Planning Response:* The pathway being utilised by this planning proposal is in accordance with the “Unauthorised Dwellings Guideline 2022” adopted by Council under resolution **21-448**.

10

## **Strategic Considerations**

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

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.1	Assess requests to amend Local Environmental Plans and/or Development Control Plans including maps in accordance with legislative requirements.

### **Recent Resolutions**

- 15 • **23-450** dated 12 October 2023

**Legal/Statutory/Policy Considerations**

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

**Financial Considerations**

- 5 If Council chooses to proceed with the Planning Proposal, it will be at the proponent's expense as a landowner initiated Planning Proposal. Council will require full cost recovery of the remaining stages. If the applicant chooses not to pay then the Planning Proposal will not proceed.

If Council chooses not to proceed then the matter does not incur any additional costs.

10 **Consultation and Engagement**

Details pertaining to community consultation and engagement are provided above. Consultation has been undertaken in accordance with the Gateway determination.

**Report No. 13.12 PLANNING - Report of the Planning Review Committee held 6 June 2024**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Chris Larkin, Manager Sustainable Development

5 **File No:** I2024/668

**Summary:**

This report provides the outcome of the Planning Review Committee (PRC) held on 6 June 2024.

**NOTE TO COUNCILLORS:**

10 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.

15

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**RECOMMENDATION:**

**That Council endorses the outcomes of the Planning Review Committee meeting held 6 June 2024.**

20

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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### Report

The PRC meeting was held on 6 June 2024. The meeting commenced at 4:30pm and concluded at 4:50pm.

**Councillors:** Cr D Dey, Cr P Westheimer, Cr S Ndiaye.

5 **Apologies:** Cr C Coorey, Cr M Lyon.

**Staff:** Chris Larkin (Manager Sustainable Development).

**Conflict of Interest:** Cr Sarah Ndiaye (10.2023.430.1)

DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
10.2023.430.1 Newton Denny Chapelle	2 Tanner Lane Tyagarah  Staged Construction of an Amphitheatre in association with Approved Community Events Site.	Level 2  05/02/24 to 18/02/24  No submissions	No Quorum for this item.  As per Code of Meeting Practice 2022 - Clause 21.13 staff delegations will be assumed.
10.2023.277.1 Planners North	9 Fingal Street BRUNSWICK HEADS  Mixed Use Development Comprising Two Tenancies for Business Premises or Office Premises or Shops, One Restaurant or Café and Shop Top Housing for Four Dwellings and Parking at Ground Level.	Level 2  08/08/23 to 21/08/23  3 submissions against 1 For	Staff Delegation
10.2024.80.1 Futureflip Design Pty Ltd	46 Paterson Lane BYRON BAY  Demolition of existing dwelling and ancillary structures, construction of new Dwelling House with Swimming Pool, basement parking, and removal of five (5) trees.	Level 1  08/05/24 to 21/05/24  25 submissions against	(a) The number of public submissions.  Report to Council



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The S 4.55 applications to modify these development consents are referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority.




DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
10.2018.486.4 Town Planning Studio Pty Ltd	South Beach Road BRUNSWICK HEAD  Modification to Stage Redevelopment of Brunswick Heads Surf Life Saving Club into 2 Stages.	Level 2  23/05/24 to 05/06/24	Staff Delegation
10.2023.266.2  Steve Connelly	66 The Saddle Road BRUNSWICK HEADS  Modification to Condition of Consent No. 18 Stormwater Drainage – Dispersion Trench.	Level 0	Staff Delegation
10.2021.559.2  Newton Denny Chapelle	36 Keys Road COORABELL  Modification - Additional Dwelling Site & Community Title Subdivision to Amend Condition of Consent Number 29. Fibre-ready Facilities and Telecommunications Infrastructure.	Level 0	Staff Delegation
10.2021.348.2  Ardill Payne & Partners	158 Jonson Street BYRON BAY  Modification to mixed use development including changes to design and the number of parking spaces in the on-site car parking structure.	Level 2  24/04/24 to 08/05/24  16 Against	(a) The number of public submissions.  Report to Council
<b>Late Item</b> 10.2018.480.3 Ardill Payne & Partners	Unit 1 8 Cemetery Road BYRON BAY  Modification to the Approved Strata Lots such that Lot 2 is Battleaxe shaped with Access to Cemetery Road including Alterations and Additions to the Existing Dwelling on Proposed Lot 1 and Tree Removal to Facilitate the Access.	Level 1 16/5/24 to 10/6/24  No submissions	Staff Delegation



**RECOMMENDATION:**

5      **That Council adopts the Byron Shire Council Flying-fox Camp Management Plan (FFCMP) 2024-2029 (Attachment 1, E2024/54184) and Byron Shire Council Roosts (Camps) Plan Detailed Information (FFCMP-R) 2024-2029 (Attachment 2, E2024/48318).**

**Attachments:**

- 10      1      BSC Flying-fox Camp Management Plan (FFCMP) 2024-2029, E2024/54184 
- 2      BSC Roosts (Camps) Plan Detailed Information (FFCMP-R) 2024-2029, E2024/48318 
- 3      Flying-fox Camp Management Plan - combined submissions, E2024/48141 

## Report

### Background

The Flying-fox Camp Management Plan 2024-2029 is a framework to support Council responding to community concerns while supporting threatened flying-foxes and conservation of their habitat. Flying-foxes are a complex group of species due to their ecology, physiology, habits, geographical range and sensitivity to extreme weather. Of the five flying-fox species occurring in Australia, three are endangered. Of those five, Byron Shire hosts two species: the Black Flying-fox and the endangered Grey Headed Flying-fox. They are almost fully seasonal in our Shire, arriving in spring and summer and departing in autumn and winter, except for one camp (Middleton Street), where some flying-foxes remain all year round. A third species, Little Red Flying-foxes are rarely observed roosting in some parts of the Shire.

Flying-foxes (FF) are keystone species due to their critical role in long-distance pollination and seed dispersal, which is particularly important in fragmented landscapes. Black and Grey Headed FF have historically preferred coastal areas, and since European settlement, these areas have been largely deforested, fragmented, and replaced by monocultural farming systems, including fruit crops. Flying-foxes feed primarily on nectar, but rainforest fruits are also an important part of their diet. As rainforests were cleared for farming, exotic fruit trees became part of their diet. This created conflict with farmers, and frequent flying-fox culling occurred for many years. In 2001, Grey Headed FF were listed as vulnerable in NSW, but it was only in July 2021 that flying-fox culling was banned in NSW, and it is still allowed in QLD.

Myths and legends in some cultures have given bats a negative reputation, which can create indifference towards their plight. Adding to that, flying-foxes, like all animals on earth, can carry diseases, and in some cases, spillover can be potentially harmful to humans and exotic animals (horses and pigs). Flying-foxes like to roost during the day in big groups ranging from a few hundred to thousands, often called camps, which can result in seasonal noise, defoliation, and musky scent. In recent years, flying-foxes have shown a preference for camps in urban areas, probably due to the stability of urban parks and surrounding trees. This proximity to human settlements can impact nearby residents and can cause conflict.

EarthScapes Consulting have reviewed the 2018-2023 Byron Shire Flying-fox Camp Management Plan, focusing on new research, industry best practices, indigenous connections and any missing information that could support better management decisions and inform our community. After extensive research, consultation with experts, discussions with relevant land managers, flying-fox officers in other Local Government areas and relevant State officers, a more comprehensive management plan has been developed. This revised plan incorporates all the known urban and rural camps in Byron Shire - previously only actively managed urban camps were included in the FFCMP. This decision reflects the current ecological understanding: all flying-foxes in Australia are now considered to be part of one large population, with all individuals frequently moving between camps, rather than smaller sub-populations that regularly return to the same camp. Managing flying-foxes across all their known habitats in Byron Shire aims to bring more consistency to flying-fox management and, consequently, more community benefits.

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The review takes into consideration many recent scientific papers and relevant documents, including:

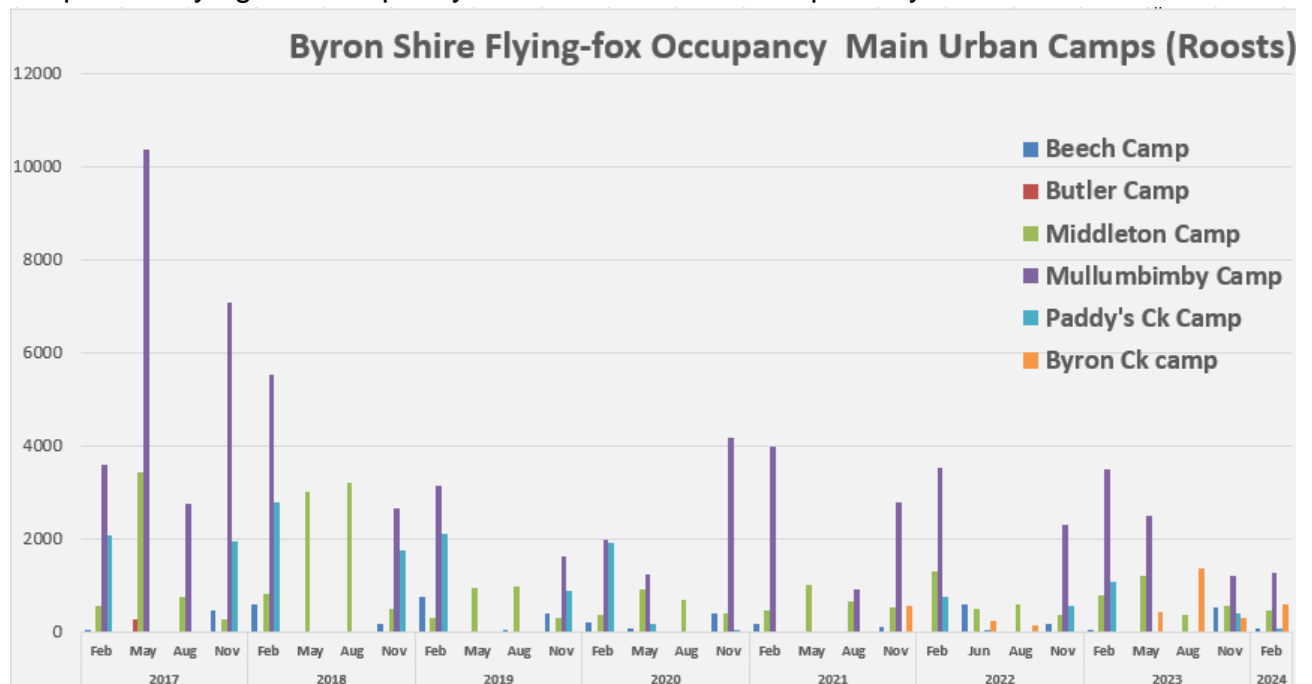
- Current and historic species records and habitat,
- 5 • DCCEEW (Department of Climate Change, Environment and Water) 2022. *National Light Pollution Guidelines for Wildlife: Appendix I – Bats*,
- Timmiss, LA, *et al.* 2021. 'Threatened but not conserved: flying-fox roosting and foraging habitat in Australia',
- National Recovery Plan for the Grey-headed Flying-fox 2021,
- 10 • Welbergen JA *et al.* 2020. 'Extreme mobility of the world's largest flying mammals creates key challenges for management and conservation'.
- DPIE (Department of Planning, Industry and Environment) 2019. *Flying-fox Camp Management Plan Template*.
- Flying-fox Camp Management Code of Practice 2018 (NSW)

15 The revised plan, Flying-fox Camp Management Plan 2024-2029 is in Attachment 1 and the Byron Shire Council Roosts (Camps) Plan Detailed Information 2024-2029 is in Attachment 2.

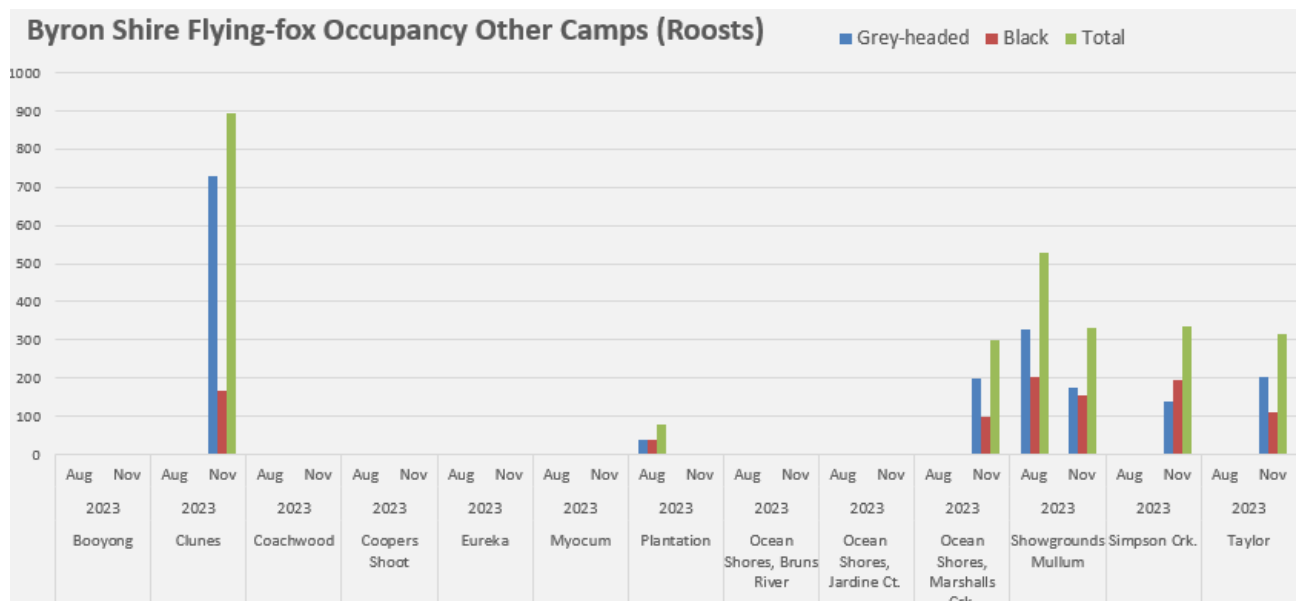
20 To better understand the camps occupancy, distribution, and location, including the two newly reported camps, Council staff and the consultant carried out site assessments, in winter and spring, on camps usually not assessed during the National Flying-fox Monitoring Program quarterly survey (which assesses only the six main urban camps in Byron Shire) run by Council since 2017. Eleven out of the twelve known rural camps were assessed (permission was not given by the landholder for the 12<sup>th</sup> camp), and two additional urban camps were assessed. The results of the updated quarterly surveys and the rural assessments are presented in the graphs below. (Note that to increase visibility

25 the third graphic presented below is a summary of the second, excluding the camps where no flying-fox were recorded).

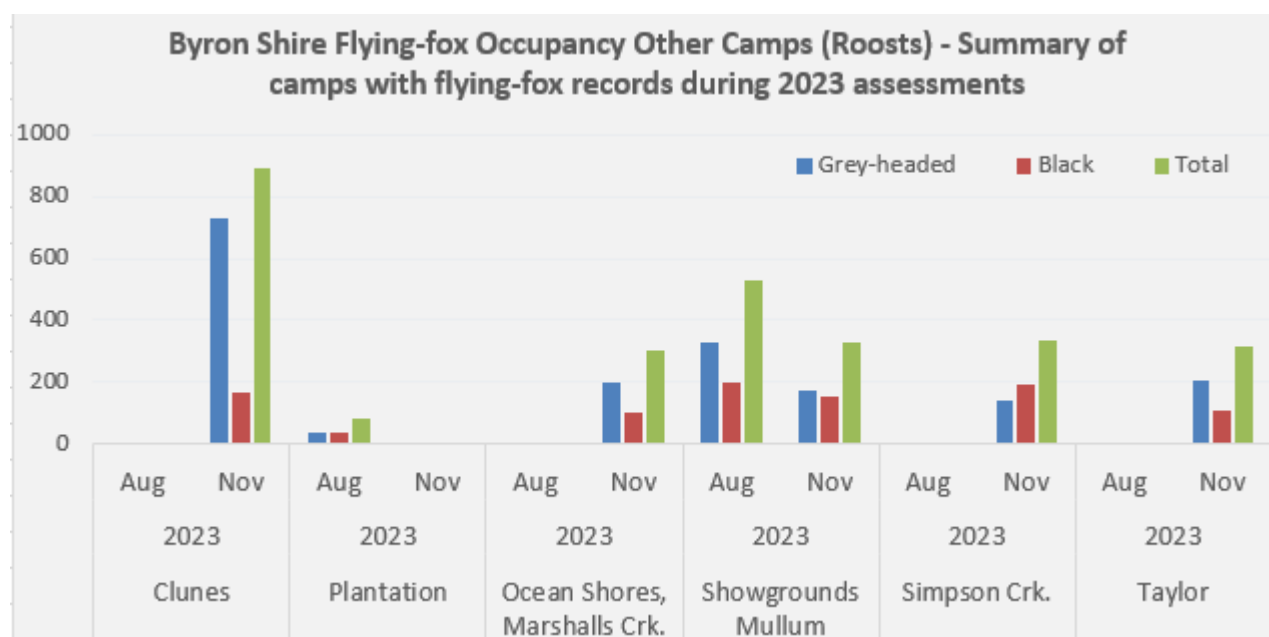
Graphic 1: Flying-fox occupancy on the main urban Camps in Byron Shire since 2017.



Graphic 2: Flying-fox occupancy on other than the main flying-fox camps (roosts) in Byron Shire during the winter and spring assessments.



Graphic 3: Summary of graphic 2 showing only the camps where flying-foxes were recorded.



## Community Engagement

5 The FFCMP and FFCMP-R were on public exhibition for five weeks, from 18 January to 22 February 2024. To increase community understanding, an information session was provided on 7 February; three people attended. Over this period, three submissions were received (Attachment 3). Most feedback on the plan related to the species' essential ecological role and the need to restore and increase conservation efforts for both the species and their habitat.

10 The Your Say web page had 217 page views, which was 5% of traffic to the Your Say section in February. The FFCMP had 94 downloads, which indicates a satisfactory level of interest, given that document download rates on Your Say pages are often low.

15 The Arakwal Corporation, Jali Local Aboriginal Land Council, Ngulingah Local Aboriginal Council, Tweed Byron Local Aboriginal Council, Widjabul Wia-bal Gurrumbil Aboriginal Corporation were all invited to engage with the project since its inception. This engagement happened through phone calls, emails and online and face-to-face meetings. Below is a summary of the engagement:

Traditional Custodian Group	Engagement method	date
Information sent to all Groups	Email	23/08/2023
Jali LALC	Introductory face-to-face meeting	18/09/2023
Letter of Engagement sent to all groups	Email followed by phone call	28/09/2023
Arakwal Corporation	Online meeting	9/10/2023
Tweed Byron LALC	Face-to-face meeting with Leweena Williams and rangers at Fingal Heads	16/10/2023

Feedback was collected during this process, and all groups were invited to participate in the plan implementation and to provide feedback at any time.

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Other relevant stakeholders were also invited to engage during the public exhibition period. Emails were sent to agencies and organisations listed in Table 1.

**Table 1 Agencies and community groups contacted during the public exhibition period.**

<b>Agencies contacted</b>	<b>Community Groups contacted</b>
Bangalow Public School	Bangalow Progress Association
Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)	Bangalow Showground
Byron Bay Public School	Brunswick Heads Progress Association
Cape Byron Steiner School	Byron Bay Chamber of Commerce
Crown Lands	Byron Bay Wildlife Hospital
Department of Planning and Environment	Byron Community Centre
Jali Local Aboriginal Land Council	Byron Environment Centre
LLS North Coast	Byron Residents Association
Mullumbimby High School	Byron Residents Group
Ngulingah Local Aboriginal Land Council	Ewingsdale Progress Association
NSW Farmers Association	Federal Masterplan Group
Rural Fire Service	Byron Shire Flying-fox Reference Group
School Infrastructure Division, Department of Education	Main Arm Rural Residents Association
Tweed Byron Local Aboriginal Land Council	Mullumbimby Residents Association
Tweed Byron Region, National Parks & Wildlife Service	Mullumbimby Showground
Widjabul Wia-bal Gurrumbil Aboriginal Corporation	Mullumbimby Veterinary Clinic
	North Coast Veterinary Service
	Northern Rivers Wildlife Carers



Agencies contacted	Community Groups contacted
	Ocean Shores Community Association
	Skidders Shoot Residents Association
	South Golden Beach Community Association
	Suffolk Park Progress Association
	WIRES

**BOX 1: Main issues raised by community feedback.**

- The need to extend the areas where flying-foxes can roost, providing a higher diversity of roost trees and habitats.
- The use of flying-fox feed trees in street planting and open spaces areas.
- The sensitivity of flying-foxes to climate change, which impacts flowering and fruiting times, quantity, and quality, as well as increasing heat stress and stress from extreme weather events.
- The use of the wrong netting in orchards and houses (larger mesh) and barbed wire, both of which can cause severe injury and death to flying-foxes.
- The need to educate our community about the importance of flying-foxes in our local ecosystems.

**Plan Structure**

Together with EarthScapes consulting, Council has developed a robust plan divided into five parts and its external Roosts (Camps) chapter (Attachments 1 & 2).

- 5        1. Overview: introduction, objectives and Indigenous knowledge and associations.
2. Species Profile: description of the species Byron Shire hosts, their habitat, health issues and concerns and relevant legislation.
3. Management opportunities: general guidance on each action level that can be taken when managing flying-foxes, as well as all relevant information needed when
- 10       4. Engaging communities: a description of proposed ways to build up community knowledge.
5. Plan administration: proposed actions in general and to all main urban camps.

15       The Roosts (Camps) chapter was developed to provide further information on habitat availability in Byron Shire, supported by scientific papers that are currently modelling flying-foxes distribution to better understand alternative ways to manage conflict.

## **Next steps**

Council staff and the broader community will be able to use the FFCMP to better understand the local context, use the most current camp management tools, connect with local indigenous knowledge and plan for future extreme climate events. This approach will also support wildlife rescue groups when they need help the most, e.g., WIRES and Northern Rivers Wildlife Carers.

Once the Flying-fox Camp Management Plan has Council endorsement, local data will be available for the broader community, increasing understanding of measures that can and can't be taken to manage impacts of flying-foxes. The document will also support education, up-to-date management, and restoration efforts in areas that can reduce the impact on community members living nearby camps.

## **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	1.2: Engage and involve community in decision making	1.2.1: Community-led decision making – Engage with community to inform Council decision making	1.2.1.2	Support staff to consider communication and engagement as part of all project development and implementation
1: Effective Leadership	1.2: Engage and involve community in decision making	1.2.2: Communication – Provide timely information to the community about Council projects and activities through traditional and digital media	1.2.2.5	Ensure information can be read and understood by our community regardless of their level of education, language spoken lived experience of disability.
1: Effective Leadership	1.2: Engage and involve community in decision making	1.2.3: Customer Service – Deliver efficient customer service consistent with our Customer Service Standards	1.2.3.2	Deliver efficient service to our customers by providing consistent, accurate and timely information.

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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community	2.3: Respect Aboriginal culture, value cultural knowledge, and acknowledge history	2.3.1: Aboriginal community and First Nations People – Develop strong and productive relationships that empower the Aboriginal community	2.3.1.1	Continue working with Traditional owners on land management matters
3: Nurtured Environment	3.1: Partner to nurture and enhance biodiversity, ecosystems, and ecology	3.1.1: Native species – Use best practice land management to improve ecological resilience and reduce threats to biodiversity	3.1.1.5	Review Flying-Fox Camp Management Plan
3: Nurtured Environment	3.2: Deliver initiatives and education programs to encourage protection of the environment	3.2.2: Environmental education and awareness – Coordinate and support environmental education to the community	3.2.2.8	Provide advice and information to the community regarding flying-foxes

## Recent Resolutions

### RESOLUTION NUMBER: 23-617

#### **Resolved:**

- 5 1. *Endorses the public exhibition of the Flying-fox Camp Management Plan 2024- 2029 for a minimum 5 weeks to allow for community feedback and submissions*
2. *Receives a submissions report following the public exhibition period.*

## Legal/Statutory/Policy Considerations

- **Biodiversity Conservation Act 2016 – administered by the Department of Planning and Environment.**

- 10 Under this Act, a person who harms or attempts to harm an animal of a threatened species, an animal that is part of a threatened ecological community, or a protected animal, is guilty of an offence. The Grey-headed Flying-fox is listed as threatened under the BC Act. A biodiversity conservation licence under Part 2 of the BC Act may be required if the proposed action is likely to result in one or more of the following:
- 15 - harm to an animal that is a threatened species, or part of a threatened population;
- the picking of a plant that is a threatened species, or part of a threatened population or ecological community;
- 20 - damage to habitat of a threatened species, population or ecological community;
- damage to a declared area of outstanding biodiversity conservation value.

- **Prevention of Cruelty to Animals Act 1979**

- 25 It may be an offence under this Act if there is evidence of unreasonable/unnecessary torment associated with management activities. Adhering to welfare and conservation measures provided in Section 10.3 will ensure compliance with this Act.

- **Environmental Planning and Assessment Act 1979 – administered by the Department of Planning and Environment**

- 30 Development control plans under the Act should consider Flying-fox camps so that planning, design, and construction of future developments is appropriate to avoid future conflict.

# BYRON SHIRE COUNCIL

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### Local Policies

Documentation	Administered by	Relevance to subject camps
Byron Local Environmental Plans 1988 & 2014	Council	Matters for consideration are camps within 'Deferred Matter' (DM) zones of Byron LEP 2014. Byron LEP 1988 currently applies to all DM areas, which are currently being assessed as part of Council's Environmental Zone review process.
Development Control Plan 2014	Council	Advice and guidance on planning for land use compatibility, avoiding land use conflict and the use of buffers. The emphasis is on identifying current and potential future land use conflicts at the outset and designing to avoid them during the development process where possible.
Byron Biodiversity Conservation Strategy 2020 – 2030	Council	<p>Matters for consideration when developing planning controls. New developments or activities that occur in close proximity to ecological attributes and/ or habitats can impose negative impacts to human health, safety, or comfort values (e.g., where in close proximity to Flying-fox camp). The Strategy supports appropriate buffers as required.</p> <p>The accuracy and availability of mappable information held within Council note high environmental values but indicates the need to continually update mapping including Flying-fox camps, as new and/ or emerging camps establish.</p>
Open Spaces Asset Management Plan 2020	Council	The plan details information about infrastructure assets including actions required to provide an agreed level of service in the most cost-effective manner while outlining associated risks.
Byron Shire Council Operational Plan for Pine Avenue Sports Field Mullumbimby Crown Reserve 85663 for Public Recreation	Council	<p>The Operational Plan provides a framework for the management and development of Crown Land under Council's control. Council has responsibility for two main types of public land; Crown Land whose control is vested in Council under the <i>Crown Lands Act 1989</i> and Council owned and managed community land dedicated under the <i>Local Government Act 1993</i>.</p> <p>The land included in the Operational Plan is Crown Land identified as Crown Reserve</p>

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Documentation	Administered by	Relevance to subject camps
		<p>85663, comprising Lot 451 DP 728526, which is located in Mullumbimby, west of the township and bordered by Pine Avenue, Garden Avenue and the tributaries of Chinbible Creek, being the Yalgany and Yoga-bera Creeks.</p> <p>The land is known locally as the Pine Avenue Sports fields and includes the Rotary Rainforest Park.</p>
Mullumbimby Flying-fox Camp Management Actions Plan	Council	Management actions support the Mullumbimby Flying-fox Camp Management Actions Plan and comply with the Flying-fox camp management policy. The Flying-fox camp management policy has been considered during the preparation of the proposed management actions in this Plan and the Mullumbimby Flying-fox Camp Management Actions Plan and as such recommends level 1 then level 2 management actions.
Plan of Management for Butler Street Reserve, Byron Bay – Reserve 88993 for Public Recreation	Crown Land	Management actions support the Plan of Management for Butler Street by seeking to minimise adverse environmental impacts of the Reserve use on adjacent land uses, water bodies and areas of significant habitat. However, under the Plan of Management for Butler Street, proposals to develop a skate park, children's playground and additional 20-space car parking would need to consider the negative impacts of Flying-foxes on such infrastructure e.g., smell, faecal drop and reduced general amenity.
Cumbebin Wetland Sanctuary Site Restoration and Weed Management Plan	Cumbebin Wetland Trust	Management actions support the Cumbebin Wetland Sanctuary Site Restoration and Weed Management Plan (2006) by assisting in managing the site in order to ensure that existing bushland elements are protected from excessive human induced disturbance. Focus is on bush regeneration and weed control.

**Financial Considerations**

Grant funding of \$25,200 was provided for the development of the Flying-Fox Camp Management Plan.

- 5 The new FFCMP will be delivered by Council staff, with support from grant funding where available.

5

**Report No. 13.14 PLANNING - DA 10.2023.451.1 - Swimming Pool, Three (3) padel courts, replacement office and ancillary works associated with an existing Dwelling House and Recreation Facility– 46 Melaleuca Drive Byron Bay**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Dylan Johnstone, Development Investigations Lead  
**File No:** I2024/802

**Proposal:**

**DA No:** 10.2023.451.1

**Planning Portal ref** PAN-391293

**Proposal description:** Swimming Pool, Three (3) Padel Courts, replacement Office and Ancillary Works associated with an Existing Dwelling House and Recreation Facility

**Property description:** LOT: 2 DP: 878549 & LOT: 10 DP: 1143215  
 46 Melaleuca Drive BYRON BAY

**Parcel No/s:** 220730 & 240855

**Applicant:** Town Planning Studio Pty Ltd

**Owner:** Citizen Capital Pty Ltd

**Zoning:** Zone E3 Environmental Management (West Byron) – Byron LEP 1988

**Date received:** 28 November 2023

**Integrated / Designated Development:** ☐ Integrated ☐ Designated ☒ Not applicable

**Public notification or exhibition:** – Level 1 advertising under Council’s Community Participation Plan.  
 – Exhibition period: 08/12/23 – 12/01/24 & 29/04/24 – 12/05/24



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- Submissions received: 16 submissions .
- Submissions acknowledged: ☒ Yes   ☐ No   ☐ N/A

**Planning Review  
Committee**

7 March 2024 – application to be determined by Council

**Estimated cost**

\$1,100,600.00

**Delegation to  
determine**

Council

**Issues**

- Noise impacts on surrounding sensitive receivers
- Land use permissibility / Existing use rights
- Landowners consent
- Submissions in opposition
- Scale and intensification of the development

### **Summary:**

This development application seeks consent for a Swimming Pool, Three (3) Padel Courts, replacement Office and Ancillary Works associated with an Existing Dwelling House and Recreation Facility at the subject land at 46 Melaleuca Drive Byron Bay.

- 5     The site contains an existing recreation hall in the eastern portion of the site that has been used for a range of purposes such as martial arts classes (aikido), yoga and meditation since its approval as a “community recreational facility” in 1990. This development application seeks to expand upon the historical use of the recreation hall to other areas of the site being the southwestern portion of the site where the padel courts are proposed to be located, and into the northern part of the site where the swimming pool is proposed to be located.

- 10     Due to changes in zoning and land use definitions since 1990, the proposed use is prohibited development in accordance with the current E3 zoning of the land under LEP 1988. Therefore the applicant is relying on “existing use” provisions of the *Environmental Planning and Assessment Regulation 2021* to expand upon existing approval. It is considered the scale of the development proposed is excessive and does not satisfy the existing use right provisions under the EPA Regulations 2021 as outlined in the report.

- 15     In relation to noise, Council’s Environmental Health Officer commented that the operation of the proposed padel courts would likely result in unacceptable noise impacts on surrounding dwellings due to loud short duration noise events (ball on racquet, ball played against glass wall, ball on wire cage, loud vocals from patrons using the padel court) at all times of the day - daytime, evening, and nighttime hours.

20     There is an existing easement for parking and right of access registered over the subject lot and adjoining Lot 10 DP 1143215 that benefits both lots. The application requires works

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to the existing car parking within the easement (including works on the adjoining Lot 10). Such works include sealing and line marking. Landowners consent has not been provided for proposed works on adjoining Lot 10 that are contained within the easement.

- 5 It is concluded that the development is likely to have an adverse impact on the amenity of the locality and the site is not suitable for the development having regard to the zoning of the land and the scale of the additional development footprint proposed. It is therefore recommended that the application be refused for the reasons listed below:

#### NOTE TO COUNCILLORS:

- 10 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.

15

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#### RECOMMENDATION:

##### That:

- 20 1. Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.451.1 for Swimming Pool, Three (3) Padel Courts, replacement Office and Ancillary Works associated with an Existing Dwelling House and Recreation Facility, be refused for the following reasons:
- 25 a. Pursuant to Section 4.15(1)(a)(i) the proposal development is inconsistent with the objectives of, and is prohibited in the E3 Environmental Management Zone under Byron LEP 1988.
- 30 b. Pursuant to Section 4.15(1)(a)(i) the proposed development does not satisfy the provisions contained within Clause 164 of Environmental Planning and Assessment Regulation 2021 pertaining to enlargement, expansion and intensification of existing uses.
- 35 b. Pursuant to Section 4.15(1)(a)(iv) the applicant has not provided written consent of the owner of all lots subject to the application in relation to works to the existing car parking on Lot 10 DP 1143215 and written consent from this landowner has not been provided.
- c. Pursuant to Section 4.15(1)(b) the proposed development will have a significant adverse impacts upon the built environment with respect to the noise impact upon the amenity of neighbouring residences, and the natural environment having regards to the scale of the development on

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land that should be managed for environmental protection purposes as intended by its E3 zoning.

- 5
- d. Pursuant to Section 4.15(1)(c) the application has not demonstrated that the site is suitable for the proposed development with respect to noise from the padel courts and hours of operations
- e. Pursuant to Section 4.15(1)(d) and (e) the proposed development is not in the public interest having regards to acoustic amenity impacts on surrounding noise sensitive receivers, land use permissibility and submissions in objection to the development.
- 10

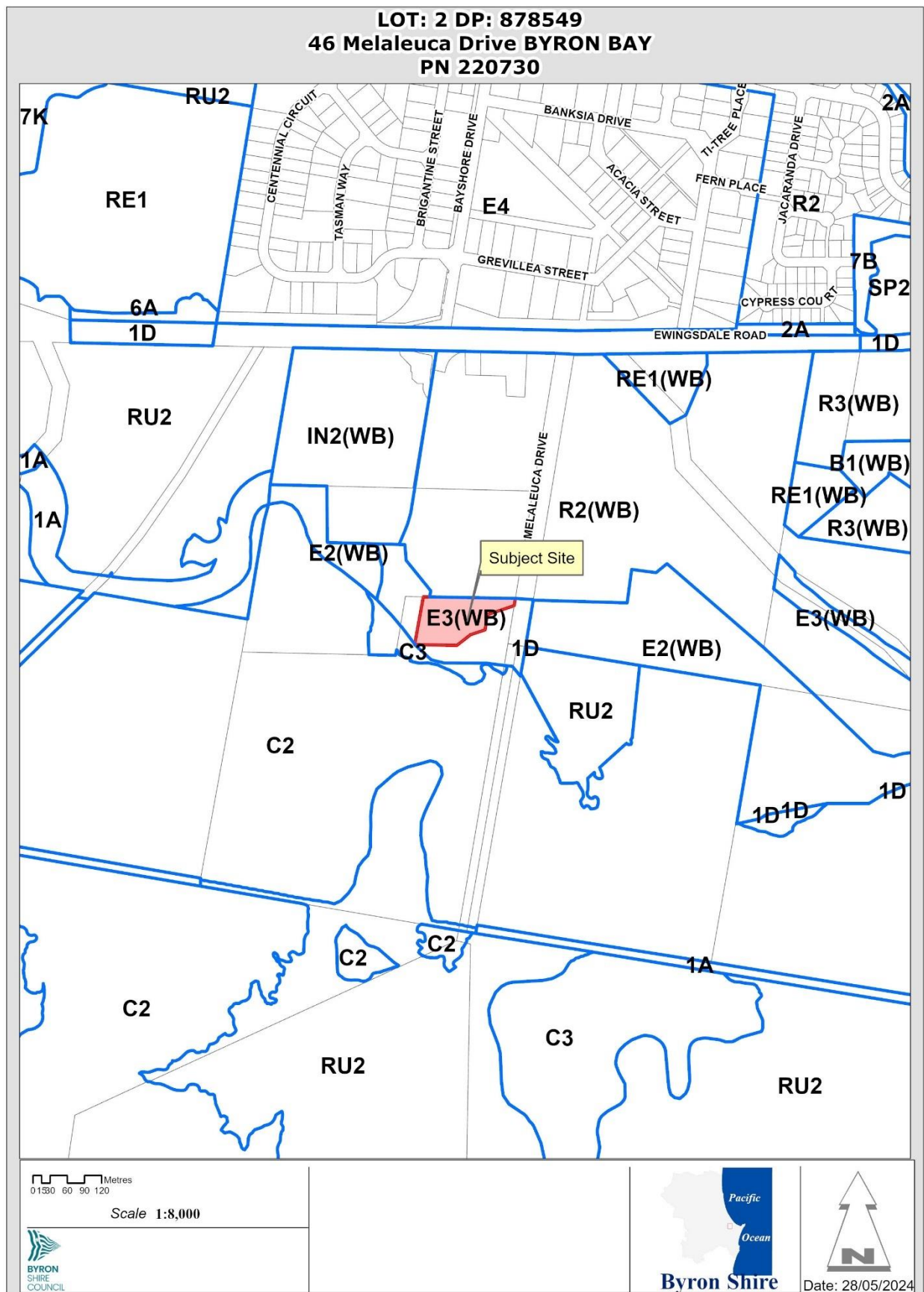
### Attachments:

- 1 DA 10.2023.451.1 Plans, E2024/40081 
- 2 DA 10.2023.451.1 Noise Impact Assessment, E2024/40080 
- 15 3 DA 10.2023.451.1 Guidance Padel and Sound January 2023 version 1.0, E2024/61913 
- 4 DA 10.2023.451.1 Traffic Impact Assessment, E2024/40082 
- 5 DA 10.2023.451.1 Stormwater Management Plan, E2024/40083 
- 6 DA 10.2023.451.1 Effluent Management Report, E2023/120819 
- 7 DA 10.2023.451.1 Geotechnical Site Investigation, E2023/120813 
- 20 8 Confidential - DA 10.2023.451.1 Submissions, E2024/60834

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## Report

### 1. INTRODUCTION

#### History/Background

- 5 5.1990.49.1 – Community Recreational Facility – approved 12/03/90
- 6.1990.2212.1 – Dwelling – approved 03/08/90
- 6.1990.2213.1 – Recreational Facility – approved 03/08/90
- 6.1990.2214.1 – Administration Building – approved 03/08/90
- 5.1991.51.1 – Subdivision – approved 28/05/91
- 10 5.1991.383.1 – Dwelling additions rural – approved 10/12/91
- 10.2014.422.1 – Office building ancillary to existing recreational facility – approved 15/10/14
- 10.2014.422.2 – Modification to alter setback and increase floor area – approved 20/05/15
- 10.2014.422.3 – Modification for alterations to office building ancillary to existing recreational facility – approved 07/10/16
- 15 10.2014.731.1 – Shed with mezzanine – approved 16/12/14

#### Description of the proposed development

- 20 Development consent is sought to construct a swimming pool and 3 x padel courts, replace an existing approved office building, and ancillary works associated with the approved dwelling and recreation facility on the site. Specifically, development consent is sought for the following:

##### Swimming pool

- 25 It is proposed to construct an inground swimming pool on the eastern side of the existing dwelling. The proposed swimming pool will be ancillary to the existing dwelling and recreation facility. As such, it is proposed to be used by the occupants of the dwelling and attendees of the recreation facility.

##### Padel courts

It is proposed to construct three padel courts in the southwestern portion of the property.

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Padel is a mix between tennis and squash and is played on an enclosed court which is one third the size of a tennis court.

- 5 The courts are proposed to be constructed with a roof height of 9m above existing ground level with one of the courts proposed to be constructed with a minimum setback of approximately 1.4m from the nearest side boundary. The walls of the padel courts are proposed to be constructed of a combination of tempered glass and wire cage.

#### Office building

- 10 The approved office building is proposed to be replaced with a new structure that is to be repositioned slightly to the west. The building will provide a checkpoint for access into the property from the adjacent parking area.

#### Deck extension

It is proposed to extend the deck on the western side of the existing recreation hall to enable attendees to sit and relax before / after using the facilities.

#### Access and parking

- 15 It is proposed to improve vehicle access and parking by extending the driveway adjacent to the northern property boundary. Twelve additional parking spaces are proposed to the west of the approved parking area that is located in the northeastern corner of the property.

- 20 There is an existing easement for parking and right of access registered over the subject lot and adjoining Lot 10 DP 1143215 that benefits both lots. The application requires works to the existing car parking within the easement (including works on the adjoining Lot 10). Such works include sealing and line marking.

It is noted that landowners consent has not been provided for proposed works on adjoining Lot 10 that are contained within the easement.

- 25 Effluent disposal

The proposal includes a new effluent disposal system to accommodate the development.

#### Rainwater tank

It is proposed to install a rainwater tank on the southwestern side of the recreation hall to serve the development.

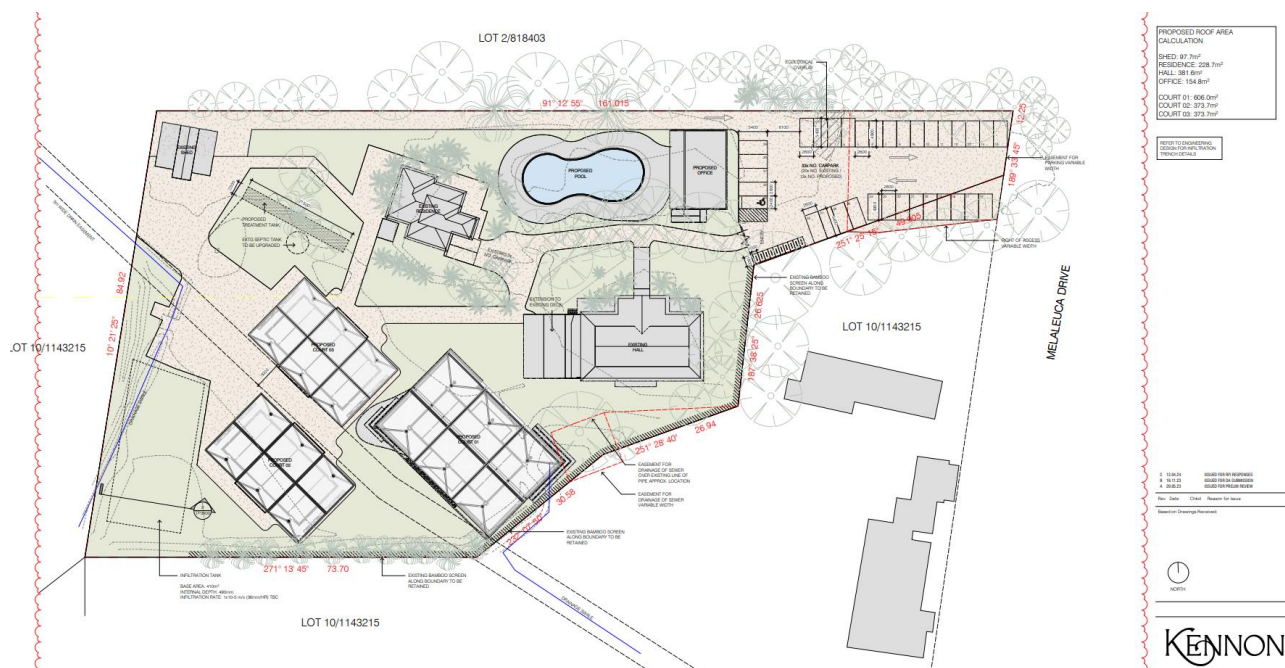
- 30 Use of existing dwelling

- 35 It is proposed that the existing dwelling on the site will be retained for use as both a dwelling and for home based childcare as defined by the standard instrument. It is proposed to carry out this activity as development permitted without consent in accordance with the E3 zoning of the land under LEP 1988. Therefore development consent is not sought for this use as part of this development application.

The proposed development is illustrated in Figure 1 below.

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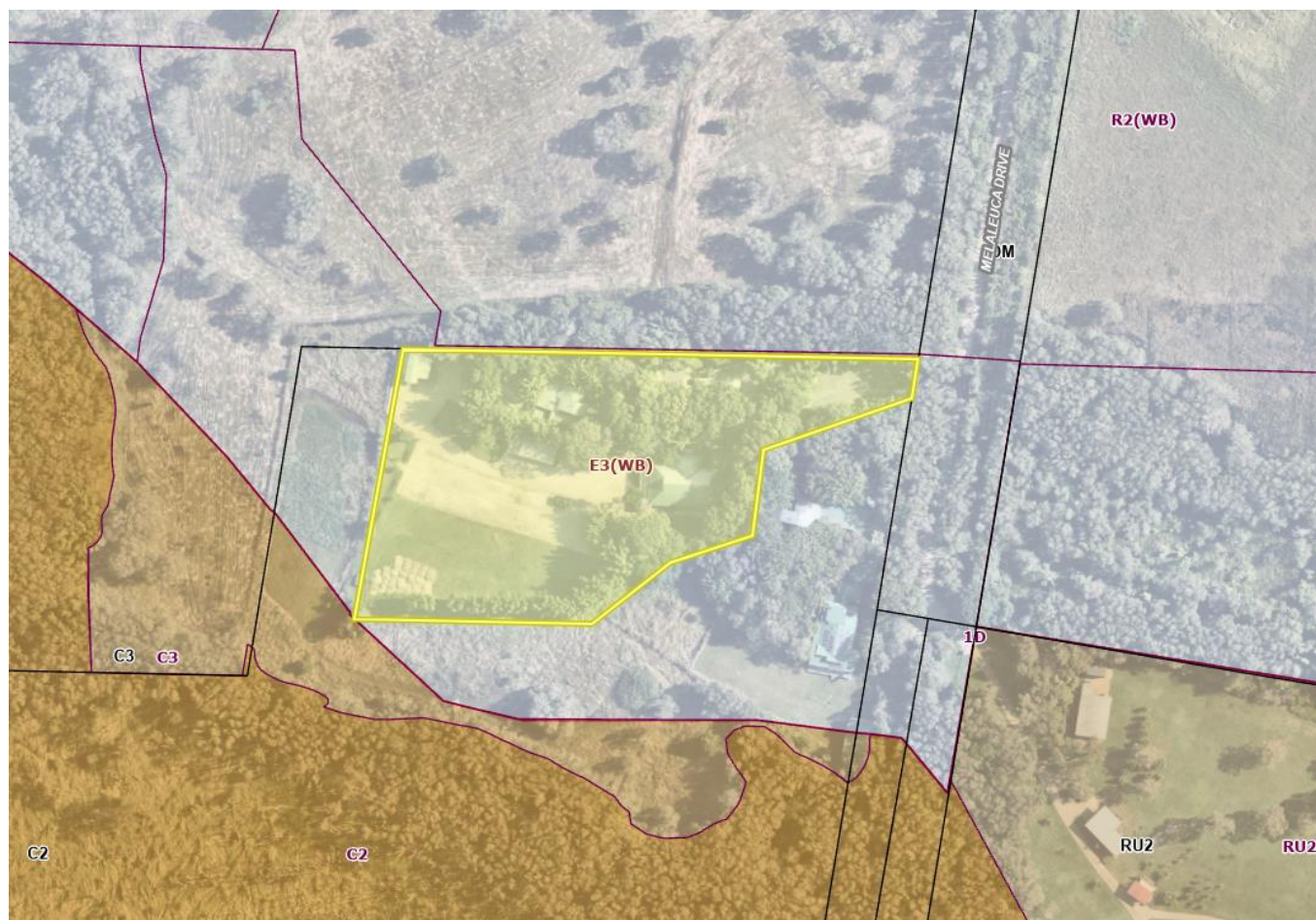
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**Figure 1: Extract of Site Plan**



## Description of the site



**Figure 2:** LEP 1988 zone map of the site

- 5 A site inspection was carried out on 14 February 2024

Land is legally described	LOT: 2 DP: 878549 & LOT: 10 DP: 1143215	
Property address	46 Melaleuca Drive BYRON BAY	
Land is zoned:	Byron LEP 1988 - Zone E3 Environmental Management (West Byron)	
Land area is:	1 ha	
Property is constrained by:	Flood Liable Land, Bushfire prone land ,Acid Sulfate Soils, High Environmental Value	
	Is a BDAR required due to the location of the	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



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	proposed development?	
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



**Figure 3:** Existing hall looking southwest





**Figure 4:** Location of proposed swimming pool looking northwest





**Figure 5:** Existing dwelling looking northwest





**Figure 6:** Existing shed looking northwest





**Figure 7:** Location of proposed padel courts with existing bamboo screening looking southeast

5

## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	The proposal is not supported due to noise impacts on sensitive receivers.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11 / Contributions	Section 7.12 contributions are applicable.

<b>Referral</b>	<b>Issue</b>
Planner	
Rural Fire Service (4.14)	No objections subject to recommended conditions.

### **3. SECTION 4.14 – BUSH FIRE PRONE LAND**

- 5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2019'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided recommended conditions to be placed on any consent granted.

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

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

#### **State Environmental Planning Policies (SEPP)**

<b>Considerations</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration:</p> <p>Chapter 2 Coastal Management</p> <p><u>Clause 2.8 – Development on land in proximity to coastal wetlands or littoral rainforest</u></p> <p><i>(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:</i></p> <p><i>(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or</i></p> <p><i>(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<b>Considerations</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
<p><i>rainforest.</i></p> <p>The subject site is located within proximity to coastal wetlands. All stormwater from the development is to be appropriately disposed of by onsite infiltration.</p> <p>The application does not propose any vegetation removal that is not already approved in accordance with previous development consents applicable to the site.</p> <p>The proposal is consistent with the provisions of Clause 2.8.</p>		

## **4.2 Byron Local Environmental Plan 1988 (LEP 1988)**

### **Clause 79 - Zone E3 Environmental Management**

- 5 (a) The proposed development is defined as recreation facility (outdoor);
- (b) The land is within the LEP1988 (Zone E3 Environmental Management) (West Byron) according to the map under LEP 1988;
- (c) The proposed development is prohibited in accordance with the Land Use Table; and
- (d) Regard is had for the Zone Objectives as follows:

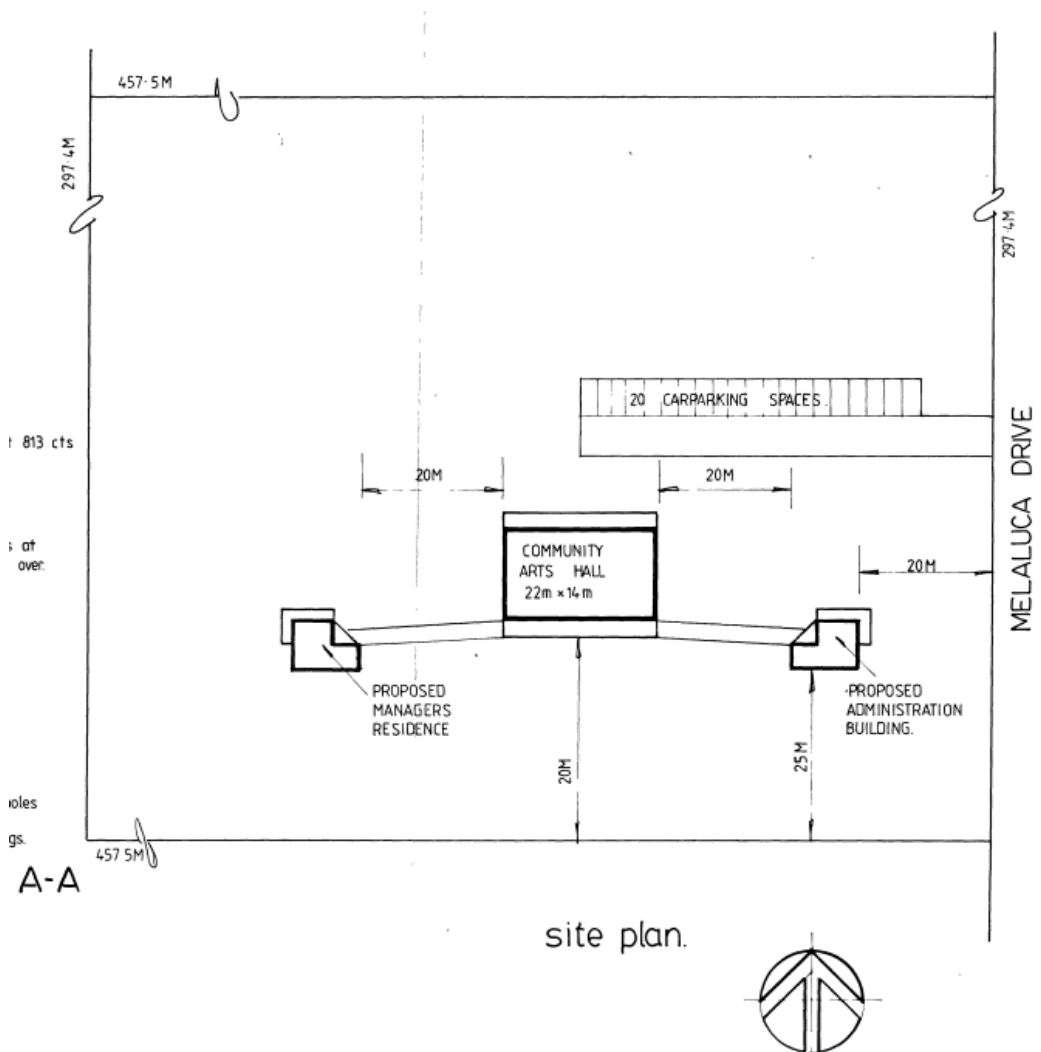
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<b>Zone Objective</b>	<b>Consideration</b>
(a) to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values,	<p>The proposed use is prohibited in the E3 Environmental Management zone in accordance with LEP 1988 and insufficient information has been provided to demonstrate that the proposal is consistent with existing use provisions of the Environmental Planning and Assessment Act and Regulation. Therefore the proposal does not fall within the limited range of development permitted in the zone and having regards to the scale of the development across most of the site is not consistent with the zone objectives</p> <p>(See further discussion below)</p>
(b) to provide for a limited range of development that does not have an adverse effect on those values.	

Existing uses

The site is zoned E3 Environmental Management subject to the provisions applying to development in West Byron under LEP 1988. The applicant has acknowledged that the proposal is prohibited in the zone as the current definition of a recreation area does not include a recreation facility. Therefore the applicant is relying on “existing use” provisions of the *Environmental Planning and Assessment Regulation 2021* to expand upon consent 5.1990.49.1 for a Community Recreational Facility.

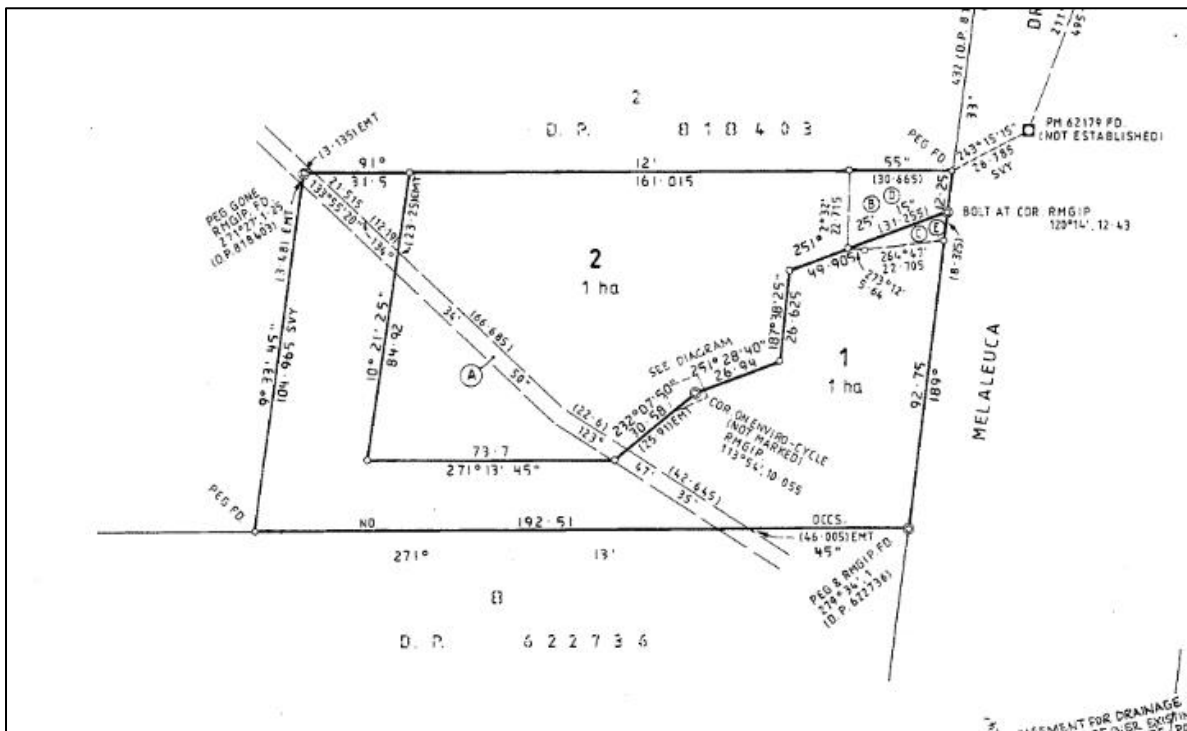
Consent 5.1990.49.1 consisted of a “community arts hall”, “manager’s residence”, “administration building” and associated 20 car parking spaces on what was once a much larger parcel of land. An extract of approved site plan below:



**Figure 8:** Extract of approved Site Plan for consent 5.1990.49.1

Since this original approval, the land has been further subdivided with the administration building if ever constructed located on the adjacent parcel to the east being Lot 1 DP 878549 (Now Lot 10 DP 1143215). Since the subdivision a small office has been approved with an area of 32 m<sup>2</sup> under DA10.2014.221.1.





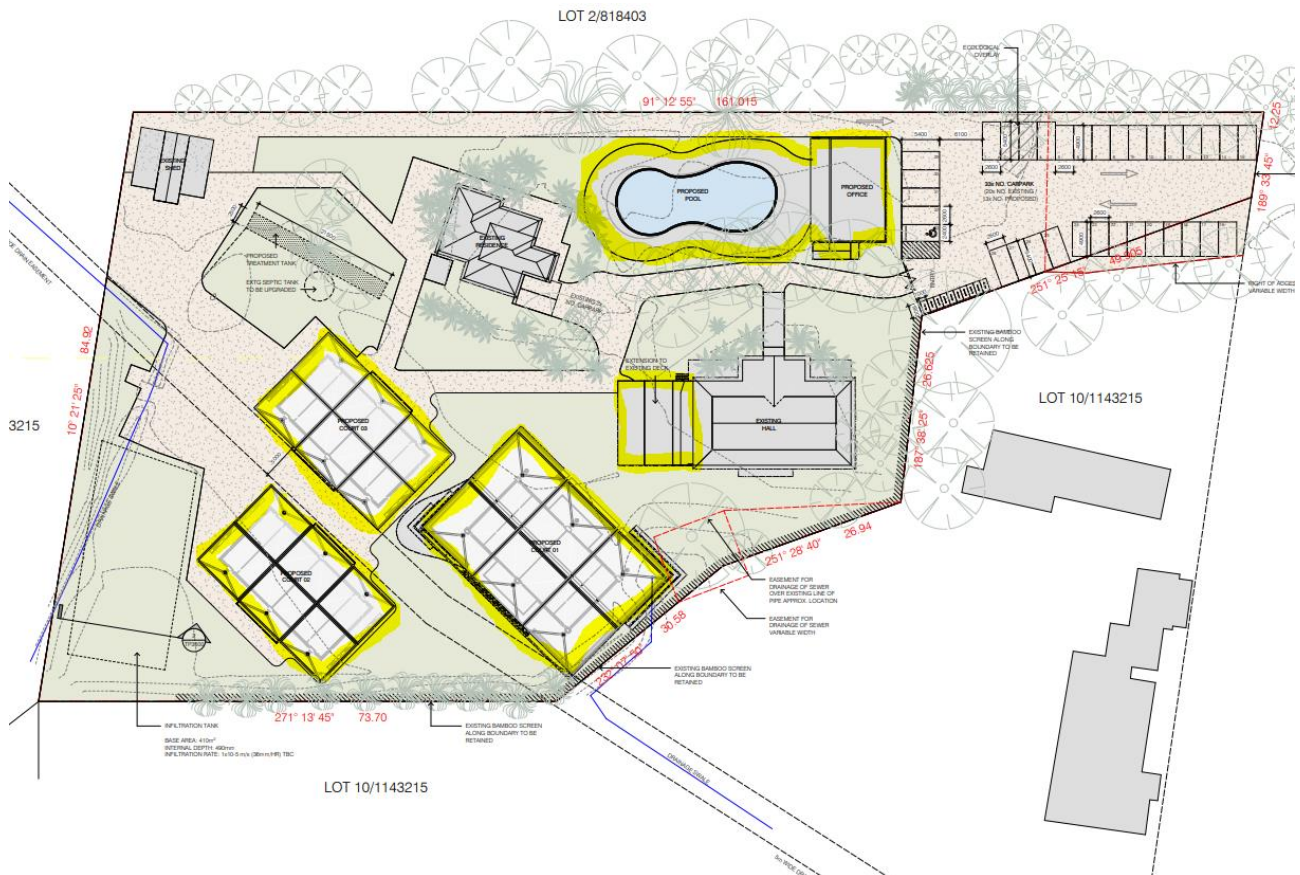
**Figure 9**– Extract of current Deposited Plan for the land showing the adjacent lot 1

The current application seeks to expand into the southwestern portion of the site with three padel courts, construct a new office building and swimming pool, and ad a large deck to the exiting yoga hall, as shown in the attached plans and highlighted yellow in the site plan extract below.

The Regulation provides that development consent **may be** granted for enlargement, expansion and intensification of existing uses provided it is “for the existing use and for no other use”, and it is “carried out only on the land on which the existing use was carried out”.

Submissions have referred to a number of Land and Environment Court rulings regarding existing use rights to argue that the proposal cannot rely on existing use provisions, with *Agostino v Penrith City Council [2022] NSWLEC 1258* of particular relevance.

In that case, the Court determined that the land to which the existing use applies is constrained to defined areas and does not extend to the whole site. Further, the Court found that, when determining the extent of the land to which the existing use applies and “on which the existing use was carried out immediately before the relevant date”, it is necessary to construe the consents that apply to the site, including by having regard to the approved plans and the conditions of consent.



**Figure 9:** Extract of Site Plan for subject application with additions/ expansions highlighted yellow

- 5 In this instance it is clear the development is expanded well beyond the area that was approved for the hall which as been used for yoga and the like into outdoor areas for a number of padel courts, an addition of deck to the yoga hall, a new office and a swimming pool. These structures alone (not including the addition car parking proposed and new effluent disposal area) comprise an additional footprint of more than 1500m<sup>2</sup>, compared to
- 10 the original approval being the yoga hall with an area of only 264 m<sup>2</sup> and the office with an area of only 32 m<sup>2</sup> as approved under DA10.2014.422.1

As such the expansion and intensification proposed is well beyond what is considered reasonable in terms of expanding or intensifying the existing use as permitted under the Regulations. The application is recommended for refusal.

15

### Clause 90 Preservation of trees or vegetation

- 20 A small area of vegetation in the northeastern portion of the site is identified on biodiversity values mapping and is mapped as koala habitat subject to the Byron Coast Comprehensive Koala Plan of Management. Consent 10.2014.422.3 for an office building in the northeast portion of the site was granted subject to a condition that the property around the office building, north to the boundary, be managed as an asset protection zone.

Therefore consent has already been granted to remove any vegetation in this area necessary to comply with Planning for Bushfire requirements and no further assessment is required regarding the ecological impacts of any such vegetation removal.

- 5 The checked clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development has not demonstrated compliance with all clauses of LEP 1988.

#### **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

- 10 No such instrument applicable.

### **4.4 Byron Shire Development Control Plan 2014 (DCP 2014)**

#### Chapter B3 Services

- 15 In terms of effluent disposal as the site is not serviced the applicant has submitted an Effluent Management Report prepared by Truewater Australia dated November 2023 (Report No. BSC13255). The report proposes to upgrade the existing system with an advanced secondary treatment system in the form a Kubota HCZ-50 waste water treatment plant with a nominal treatment capacity of 10,000L/day, to accommodate the development. The report recommends a effluent disposal area of 280m<sup>2</sup> in the form of a
- 20 Wisconsin Mound. Such mounds are proposed on land that is low lying or prone to flooding. An extract from the applicants proposal is provided below with the Wisconsin Mound highlighted yellow.

- 25 The system was considered by Councils environmental health team who were satisfied the proposal could cater for the development. A copy of the applicants proposal is appended to this report in Attachment 6. Conditions of consent to apply if approved.

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

A Transport Impact Assessment was submitted in response to a request by Council staff for additional information.

- 30 The assessment proposed that required additional car parking for the development will be provided at a rate of 3 spaces per court in accordance with the requirements of the DCP for a squash / tennis court i.e. 9 spaces for 3 courts. The application proposes 13 additional car parking spaces which exceeds the number of spaces required by the DCP.

- 35 Therefore staff are of the view that the proposal is compliant with regard to the number of car parking spaces proposed.

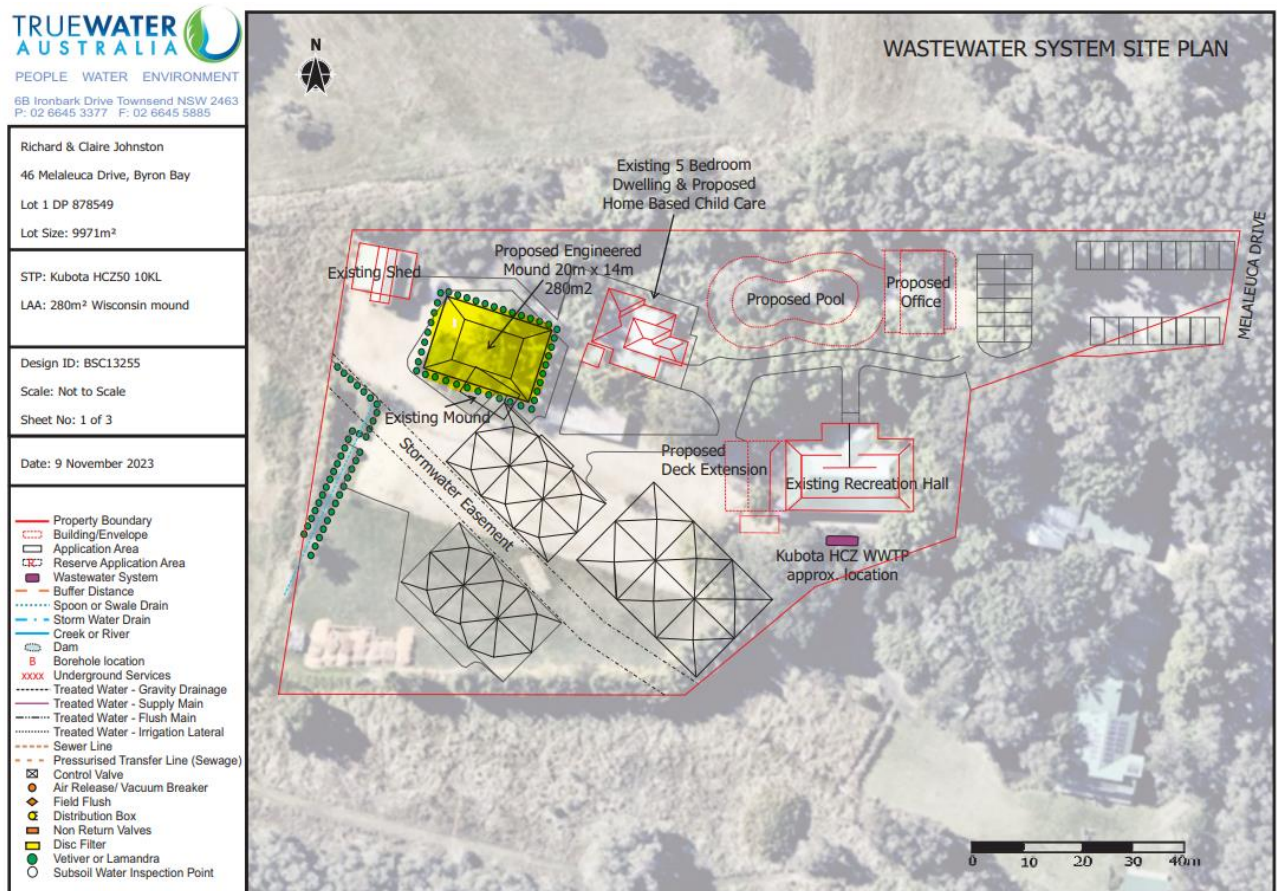


Figure 10 – Extract from Effluent Disposal Report

## 5 Chapter C2 Areas affected by Flood

The proposed development is located within the flood storage area in accordance with the Belongil Creek Flood Study.

Development within this area has been assessed for potential flood impacts on off-site flood levels.

- 10 The total building footprint of the paddle courts is 1420m<sup>2</sup> and the immediate catchment is 937,000m<sup>2</sup> (0.937km<sup>2</sup>). The impact of the proposed buildings in comparison to the immediate catchment is 0.15%. Any changes in flood level are therefore considered to be very minor.

## 15 4.5 Environmental Planning and Assessment Regulation 2021 considerations

Environmental Planning and	Applicable to the proposal:	Considered the control as it	If this control is applicable,
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# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Assessment Regulations 2021		relates to the proposal:	does the proposal comply?
Section 61 - Additional matters that consent authority must consider	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 62 - Consideration of fire safety	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 64 - Consent authority may require upgrade of buildings	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 63 - Considerations for erection of temporary structures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

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

5

#### 4.6.1

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	The proposal is on a small constrained property adjacent to coastal wetlands and although not having a direct impact on natural environment the land should be preserved for buffer purposes and managed carefully as intended by its E3 Zoning and not intensively developed as proposed.
<b>Built environment</b>	Noise from the proposed padel courts is predicted to have an unreasonable impact on the amenity of the area as outlined below.
<b>Social Environment</b>	The proposal will not have a significantly adverse impact on the social environment of the locality.
<b>Economic impact</b>	The proposed development will likely have a positive impact on the local economy by adding to the range of recreation facilities in the area.

#### Impact on built environment – noise and amenity



The proposed development will cause significant adverse impacts upon the built environment with respect to the impact upon the amenity of neighbouring residences.

5 The proposed padel courts are located approximately 60m from an approved dwelling and bed and breakfast establishment on the adjoining lot to the east, and approximately 150m from a dwelling on land located to the east of Melaleuca Drive.

It is noted that the proposed padel courts are also located approximately 60m from residential lots approved by consent 10.2017.661.1 (West Byron subdivision) on Lot 2 DP 818403 directly to the north.

10 During assessment of the application, staff requested that the applicant provide an acoustic report to determine the acoustic impact of the proposed development on the surrounding noise sensitive receivers.

In response, the applicant submitted a Noise Impact Assessment prepared by Tim Fitzroy & Associates (Attachment 2).

The report concludes the following, as extracted from the report:

- Noise emissions from the expected significant sources are predicted to exceed the day and evening Leq criteria by up to 6dB(A) at the closest sensitive receptors.
- Exceedances of the voluntary Lmax criteria of up to 8dB(A) are predicted at the closest sensitive receptors.
- The primary noise source contributing to the exceedances is the Padel tennis courts.
- An acoustic barrier to the east of Padel court 1 may be included to mitigate the exceedances. A 2.4m barrier at the location presented in **Plate 3.9** is predicted to mitigate the exceedances such that predicted exceedances are not greater than 3 dB, which may be considered a minor exceedance given that the model is intended to represent a worst case scenario. Increasing the height of the barrier to 3.0m provides further noise reduction, ensuring that predicted exceedances are not greater than 2 dB.
- This assessment is based on the assumptions presented. The noise model is intended to represent a worst-case scenario where all sources operate simultaneously and continuously.

It is recommended that –

- A minimum 2.4m high acoustic barrier is installed to the extent presented in **Plate 3.9**. The barrier must be continuous and gap-free (except as is required for drainage) with a minimum surface density of 12.5kg/m<sup>2</sup>.

15

**Plate 3.9** Location of acoustic barrier, as modelled, shown in blue.



As per extract of the Noise Impact Assessment above, the report predicts that noise associated with the proposed development will exceed the relevant noise criteria.

It is important to note that when undertaking an assessment against the *NSW EPA Noise Policy for Industry 2017*, noise source levels are averaged out over a 15 minute period.

These noise source levels are then compared to the following noise criteria:

- Project intrusiveness noise level. This criterion is the measured background noise levels plus 5dBA.
- Project Amenity Noise Levels. This criterion is related to the type of zone the nearest residential receiver lies within.
- Maximum noise level assessment. This is used to determine the potential for sleep disturbance.

One of the issues when determining the acoustic impact of a development solely by assessing the impact of a development against the *NSW EPA Noise Policy for Industry 2017*, is that noise source levels are averaged over a 15 minute period. This average noise level does not provide an indication of how loud the short duration noise events will be at the nearby sensitive receivers. In relation to the proposed development, an assessment against the Policy alone will not provide an indication on how loud and what impact the short term noise events, listed below, will have on the surrounding receivers:

- Impact of ball on racquet
- Impact of ball played against glass wall
- Impact of ball on wire cage
- Loud vocals from patrons using the padel court.



The noise impact assessment does not specify exactly what the maximum noise sources associated with the use of the padel court will be. Staff have determined that short duration noise sources that will create the highest level of noise will be those listed above.

5 Using acoustic calculations (Inverse Square Law) that takes into account the maximum noise source level associated with padel activities and the distance between the padel courts and the nearest noise sensitive receivers, Environmental Health staff predict that maximum noise level events associated with the use of the padel courts on the nearest noise sensitive receiver will be more than 20dBA above the measured background noise levels. Comparing this difference in decibel levels, 20dBA plus, to the below table, padel  
10 tennis noise will be perceived to be approximately four (4) times louder than existing background noise levels. Therefore, noise associated with padel activities will be clearly audible at the surrounding noise sensitive receivers at all times when the padel courts are in use.

<b>Perceptions of Increases in Decibel Level</b>	
Imperceptible Change	1dB
Barely Perceptible Change	3dB
Clearly Noticeable Change	5dB
About Twice as Loud	10dB
About Four Times as Loud	20dB

15 Table reference – National Hearing Conservation Association -  
<https://www.hearingconservation.org/assets/Decibel.pdf>

The following issues have been identified with the submitted noise impact assessment:

- The report has not specified the height of the noise source levels used within the acoustic model. With the padel courts surrounded by both wire cage and glass,  
20 noise from these parts of the court will radiate from a relatively high level, most likely above the height of the proposed 2.4-3.0m acoustic fence, making the proposed acoustic fence less effective; and
- The background noise monitoring that was undertaken was likely impacted by a venue called 'The Playground' operating out of Grevillea Street, Byron Bay. Council  
25 staff are in receipt of noise diaries from one of the effected noise sensitive dwellings that alleges loud music on the 17/2/24 which was part of the noise monitoring period. Figure 3.2 of the noise assessment that graphs the measured levels illustrates that this was potentially the case. This may have resulted in the noise criteria specified in the report being more generous to the applicant.

30 A guideline has been produced in the Netherlands to assist in assessing the impact of padel courts on sensitive receivers – 'Guidance Padel and Sound - A practical tool that can help parties make the right decision and adaptability' – January 2023 version 1.0 (Attachment 3). The guideline highlights that two (2) x padel courts will impact receivers located in rural areas/quiet areas up to 160m away from the edge of the courts and 200m  
35 away from four (4) or more courts.

In summary, it is predicted that noise from the padel courts will be clearly noticeable at surrounding noise sensitive receivers at all times of the day - daytime, evening, and nighttime hours and unreasonably impact the acoustic amenity of surrounding noise sensitive receivers. Staff do not support the application based on acoustic amenity impacts.

<b>Council Policy</b>	<b>Consideration</b>
<a href="#"><u>Provision of Driveways Policy</u></a>	The policy requires upgrading of the existing driveway in accordance with Council's Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings.

## **4.7 The suitability of the site for the development**

The application has not demonstrated that the site is suitable for the proposed development. The predicted noise from the padel courts will be clearly noticeable at surrounding noise sensitive receivers at all times of the day - daytime, evening, and nighttime hours and unreasonably impact the acoustic amenity of surrounding noise sensitive receivers. In essence the site is small and constrained and larger property with larger setbacks to the nearest boundary and neighbours is required.

Also, the application has not provided sufficient information to demonstrate that the proposed land use is permitted on the site in accordance with existing use provisions of the Environmental Planning and Assessment Act and Regulation.

## **4.8 Submissions made in accordance with this Act or the regulations**

The development application was publicly exhibited for a period of 14 days from 8 December 2023 to 12 January 2024 (extended due to the holiday period). Following this exhibition period, staff requested further information from the applicant. It was determined that the information provided by the applicant in response was required to be readvertised from 29 April 2024 to 12 May 2024 to provide adjoining landowners the opportunity to make further comment on this additional information. There was a total of sixteen submissions made on the development application from eight submission authors. Issues raised in the submissions are summarised and discussed below.

<b>Issue - Objections</b>	<b>Staff Comment</b>
<u>Noise</u>  Concerns have been raised in submissions regarding the noise to be generated by the	As outlined within this report, staff share the concerns raised within submissions regarding noise impacts on sensitive receivers and the application is recommended to be refused on these grounds.

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Issue - Objections	Staff Comment
<p>proposed padel courts including the level and frequency of noise of racquets striking balls, balls rebounding off the metal and glass walls, shouting participants, amplified music etc, noise from the swimming pool especially with regard to reference to a “pool bar” and “club house” in submitted documentation, and from increased traffic.</p> <p>Submissions contend that the separation distance between the proposed padel courts and the nearest dwelling (approximately 40m) is inadequate to mitigate noise impacts.</p> <p>Concerns have also been raised in relation to the proposed use being incompatible with an approved residential subdivision (harvest estate) located approximately 200m away from the nearest proposed padel court.</p>	
<p><u>Land use permissibility / overdevelopment of site</u></p> <p>Concerns have been raised in submissions that the proposal is prohibited in the zone and doesn't meet the criteria for expansion of existing use rights in accordance with the Environmental Planning and Assessment Act and</p>	<p>The site is zoned E3 Environmental Management subject to the provisions applying to development in West Byron under LEP 1988. The applicant has acknowledged that the proposal is prohibited in the zone as the current definition of a recreation area does not include a recreation facility. Therefore the applicant is relying on “existing use” provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> to expand upon consent 5.1990.49.1 for a Community Recreational Facility.</p> <p>Consent 5.1990.49.1 consisted of a “community arts hall”, “manager’s residence”, “administration building” and associated 20 car parking spaces in the eastern portion of</p>

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Issue - Objections	Staff Comment
<p>Regulation.</p> <p>Concerns have been raised in submissions that the scale of the proposal including 3 padel courts (each to be constructed to a height of 9m) and a 220,000L swimming pool is incompatible with the site and surrounding land.</p>	<p>the site.</p> <p>The current application seeks to expand into the southwestern portion of the site where the padel courts are proposed to be located.</p> <p>The Regulation provides that development consent may be granted for enlargement, expansion and intensification of existing uses provided it is “for the existing use and for no other use”, and it is “carried out only on the land on which the existing use was carried out”.</p> <p>Submissions have referred to a number of Land and Environment Court rulings regarding existing use rights to argue that the proposal cannot rely on existing use provisions, with <i>Agostino v Penrith City Council [2022] NSWLEC 1258</i> of particular relevance.</p> <p>In that case, the Court determined that the land to which the existing use applies is constrained to defined areas and does not extend to the whole site. Further, the Court found that, when determining the extent of the land to which the existing use applies and “on which the existing use was carried out immediately before the relevant date”, it is necessary to construe the consents that apply to the site, including by having regard to the approved plans and the conditions of consent.</p> <p>Therefore, it appears that the proposal is not consistent with this court ruling.</p>
<p><u>Landowners consent</u></p> <p>Adjoining landowners consent has not been provided for the development application and is required if the car parking spaces shown to be on adjoining property are to be utilised for the proposed development.</p>	<p>There is an existing easement for parking and right of access registered over the subject lot and adjoining Lot 10 DP 1143215 that benefits both lots. The application proposes works to the existing car parking within the easement (including works on the adjoining Lot 10) as identified on the submitted site plan Dwg No. TP0006 Rev C dated 29/05/23. Such works include sealing and line marking.</p> <p>It is noted that landowners consent has not been provided for proposed works on adjoining Lot 10 that are contained within the easement.</p>

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Issue - Objections	Staff Comment
Site is not suitable for the proposed development given its environmental value, being a sensitive location and adverse amenity impacts on the surrounding locality	The application has not demonstrated that the site is suitable for the proposed development with regard to noise impacts on surrounding sensitive receivers.
The proposal is not in the public interest	<p>The application has not demonstrated that the site is suitable for the proposed development with regard to noise impacts on surrounding sensitive receivers and insufficient information has been provided to demonstrate that the proposal is consistent with existing use provisions of the Environmental Planning and Assessment Act and Regulation.</p> <p>Therefore the proposal is not in the public interest.</p>
Proposal not consistent with the objectives of the zone	The proposed use is prohibited in the E3 Environmental Management zone in accordance with LEP 1988 and insufficient information has been provided to demonstrate that the proposal is consistent with existing use provisions of the Environmental Planning and Assessment Act and Regulation. Therefore the proposal does not fall within the limited range of development permitted in the zone and is not consistent with the zone objectives.
Removal of vegetation within a mapped coastal wetlands buffer	The site is mapped as being located within 100m of coastal wetlands pursuant to State Environmental Planning Policy (Resilience and Hazards) 2021. The application does not seek to remove any vegetation beyond what is already approved for removal in accordance with conditions of consent 10.2014.422.1 requiring the maintenance of asset protection zones to comply with Planning for Bushfire Protection requirements.
Light pollution	<p>There is the potential for lighting from the proposed padel courts to impact surrounding sensitive receivers. It is noted that there is currently a tall vegetative buffer consisting of bamboo along the property boundary of the development site. It is likely that this buffer will minimise the lighting impact.</p> <p>Staff are of the view that lighting from the proposed padel courts can reasonably comply with AS4282:2019 – Control</p>

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Issue - Objections	Staff Comment
	of the obtrusive effects of outdoor lighting, or as an alternative should the application be approved, lighting not be approved and the facility operates only during the day. (eg 9am to 5pm)
<u>Car parking is insufficient</u>	As discussed above car parking is considered to comply with Councils DCP requirements.
<u>Traffic</u>  A significant increase in car movements like this on the still unsealed Melaleuca Drive would have a detrimental impact on our amenity from noise and dust.	Council engineering staff are satisfied that the road network can accommodate traffic generated by the proposal subject to the upgrade of Melaleuca Drive from Harvest Boulevard to the development driveway and associated drainage construction including any necessary relocation of services to provide a road carriageway and shoulders suitable for daily traffic of 150 – 500 Average Annual Daily Traffic in accordance with Table T1.27 in Chapter D1 of Northern Rivers Local Government Design and Construction Guidelines.
<u>Water use for the swimming pool – 220,000 litres required to fill the pool</u>	Should the application be approved water headworks charges would apply for water and bulk water.
Stormwater	The application has proposed an infiltration tank with an area of 410m <sup>2</sup> and a depth of 490mm to manage stormwater generated by the proposal. Council engineering staff are satisfied that there is sufficient space to provide an infiltration area to cater for the roof and impervious areas of the site.
Wastewater	In support of the application, the applicant has submitted an Effluent Management Report prepared by Truewater Australia dated November 2023 (Report No. BSC13255). As discussed above Staff have reviewed the report and deem it satisfactory.
Hours of operation are	The application proposes hours of operation of the padel

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Issue - Objections	Staff Comment
excessive	courts and swimming pool will be from 7am-9pm Monday to Saturday and 8am-9pm Sunday. As discussed noise impacts are a reason for refusal, and the hours of operation as proposed exacerbate this issue
Visual impact of structures	The application originally proposed to remove existing bamboo screening vegetation along the southeastern boundary to accommodate proposed padel court 1. Plans have since been amended by the applicant to retain this vegetation which provides effective screening of the structures from adjoining land.
<u>Impacts on wildlife</u>  There are mapped coastal wetlands to the south of the site and there is also a mapped wildlife corridor in the southern portion of the site. The SEE is not supported by any ecological assessment and does not acknowledge use of the site by Swamp Wallabies, several species of frogs (we see about 8 different species regularly), ringtail and brush tail possums, sugar gliders, echidnas, koalas, goannas, Water Dragons, many bird species including herons, spoonbills, cormorants, Jabiru, Goshawks, Osprey, several snake species and all kinds of bats.	Noted
Proposed use of existing hall	The application does not propose any change of use of the existing hall.
<u>Concerns regarding future</u>	It is noted that the site plan attached to the submitted Geotechnical Site Investigation includes the additional components referenced in submissions which are not



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Issue - Objections	Staff Comment
<p><u>development</u></p> <p>The submitted Geotechnical report includes a site plan with six (6) Padel courts, a 'Pool Bar', 'Club House' and 'Parking x50'. This plan includes land that is currently not part of the property to the North and the easement of the current car park to the east appears to have been deleted (or ignored). Council should require the Geotechnical Report to be reissued with the correct site plan to avoid any confusion as to the exact development that is being proposed and assessed.</p>	<p>consistent with the plans prepared by Kennon architects.</p> <p>As the application is being refused amended Geotechnical report has not been pursued</p>
<p>Location of proposed onsite sewage management system</p>	<p>It is noted that the submitted Effluent Management Report indicates that the proposed wastewater system will be located to the south of the existing recreation hall while the submitted architectural plans identify that the system is proposed to be located on the disposal mound which would interfere with the mound. Should the application be approved the system would need to be located as per the Effluent Management Report and pumped to the disposal mound.</p>
<p>Proposed swimming pool will disturb acid sulfate soils</p>	<p>The location of the proposed swimming pool is mapped as Acid Sulfate soils Class 3. In accordance with LEP 1988, works more than 1m below the natural ground surface requires a preliminary assessment in accordance with the Acid Sulfate Soils Manual. Plans submitted with the application demonstrate that the proposed swimming pool will require excavation works to a maximum depth of 1.5m. Accordingly, an acid sulfate soil investigation and management plan have been prepared by Australian Soil &amp; Concrete Testing which satisfies the requirements of LEP 1988.</p>
<p>Lack of detail regarding the use of the approved</p>	<p>This application does not seek consent for use of the approved manager's residence to provide child care and any concerns regarding this use is a separate compliance</p>

Issue - Objections	Staff Comment
manager's residence to provide child care	matter.

## 4.9 Public interest

The proposal is not in the public interest as it is predicted that noise from the padel courts will be clearly noticeable at surrounding noise sensitive receivers at all times of the day - daytime, evening, and nighttime hours and unreasonably impact the acoustic amenity of surrounding noise sensitive receivers. Also, the application has not provided sufficient information to demonstrate that the proposed land use is permitted in accordance with existing use provisions of the Environmental Planning and Assessment Act and Regulation. The application proposes an undesirable precedent.

## 5. DEVELOPER CONTRIBUTIONS

### 5.1 Water & Sewer Levies

Section 64 levies are applicable for additional water usage if approved.

### 5.2 Developer Contributions

Section 7.11 Contributions are applicable if approved.

## 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

## **7. CONCLUSION**

The DA proposes Swimming Pool, Three (3) Paddle Courts, replacement Office and Ancillary Works associated with an Existing Dwelling House and Recreation Facility.

- 5 The proposed development has not satisfactorily addressed the relevant environmental planning instruments and planning controls applicable to the site. The application is recommended for refusal.

## Report No. 13.15 PLANNING - DA 10.2022.107.3 - s8.2 review to modify Condition 40(a) – 42 Wallum Place, Ewingsdale

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Jordan Vickers, Planner

**File No:** I2024/913

### Proposal:

<b>Review of Development Application No.</b>	10.2022.107.3
<b>Applicant:</b>	Planit Consulting
<b>Development:</b>	s8.2 review to modify Condition 40(a)
<b>Parcel No.:</b>	267109, 271730
<b>Location:</b>	LOT: 12 DP: 1189646, PT: 12 DP: 1189646, 23 Bayshore Drive BYRON BAY
<b>Date of Determination</b>	Approved 14/03/2024 – Council
<b>8.2 Assessment Officer</b>	Jordan Vickers

### Summary:

10 This Section 8.2 review has been submitted to remove wording added to condition 40(a) by Council via resolution of the previous modification (10.2022.107.2) when it was determined on the 14 March 2023. In this regard, Councillors resolved to approve DA10.2022.107.2 subject to condition 40(a) being amended from staff recommendation to include prohibition of bioretention basins and ponds in the easement/buffer area.

15 The easement/buffer area the area is planned as both a buffer area and location for stormwater management via bioretention, as described by the approved Vegetation Management Plan.

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By including the wording “*works that occupy the buffer, such as bioretention basins and ponds, are not permitted*” in the condition, the condition is self-contradictory by permitting stormwater and VMP works yet prohibiting bioretention basins.

- 5 It is recommended that the condition be amended to remove this prohibition from the easement requirement.

### NOTE TO COUNCILLORS:

- 10 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:

- 15 **That pursuant to Section 8.2 of the Environmental Planning & Assessment Act 1979, Application No. 10.2022.107.3, for Modification to Condition 40(a) of the Consent for the Approved Subdivision One (1) Lot into Three (3) Lots, be approved by modifying Development consent number 10.2022.107.1 as follows:**

- 20 **Amend condition 40 a) of the Notice of Determination to read:**

#### **40. Section 88B Instrument - Infrastructure**

A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:

- 25 **a) Ecological Buffer – Lot 1**  
A 25-metre ecological buffer be provided over Lot 1 from the western boundary with Lot 3 to prohibit any development (other than works associated with stormwater management) in this area other than VMP works.

30

## Assessment:

## Reasoning for Review:

This Section 8.2 review has been submitted to remove wording added to condition 40(a) by Council resolution of the previous modification (10.2022.107.2) on the 14 March 2024.

- 5 In this regard, Councillors resolved to approve DA10.2022.107.2 subject to condition 40(a) being amended to read:

### 40. Section 88B Instrument - Infrastructure

A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:

#### a) Ecological Buffer – Lot 1

A 25-metre ecological buffer be provided over Lot 1 from the western boundary with Lot 3 to prohibit any development other than **(i) VMP works; and (ii) stormwater works, stormwater pipes, bioretention swales and overland flow that cross this buffer. Works that occupy the buffer, such as Bioretention basins and ponds, are not permitted.**

**Figure 1:** Council amended Condition, Councillor addition in **bold**.

The original staff recommendation read as follows.

### 40. Section 88B Instrument - Infrastructure

A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:

#### i) Ecological Buffer – Lot 1

A 25 metre ecological buffer be provided over Lot 1 from the western boundary with Lot 3 to prohibit any development (other than works associated with stormwater management) in this area other than VMP works.

**Figure 2:** Staff recommended Condition.

The applicant sought to modify Condition 40(a) under DA10.2022.107.2 to ensure stormwater management works were permitted to be undertaken within the easement in accordance with the approved Vegetation Management Plan (VMP).

- 15 The additional wording in the clause, added by Councillors during Council meeting, restricts bioretention basins and ponds from being constructed in the ecological buffer; however, this contradicts the condition which permits works identified in the VMP.

- 20 Condition 10 of the existing consent requires the submission and approval of a VMP prior to the issue of a subdivision certificate for this development. The VMP addressing this condition has been reviewed and approved by Council and includes the following note regarding the buffer area:

*Note 2 The 25 m ecological buffer prohibits any development (with the exception of works associated with stormwater management) in this area other than VMP works. Future planting/ revegetation of VMZ5 would be prescribed within an updated VMP once the stormwater management works have been designed. This would likely result in VMZ5 becoming two separate management zones; a zone subject to an approved bioretention basin landscape plan and the remaining area comprising a planting/ revegetation area. An example planting schedule which may be used for the future planting/ revegetation area is provided at **Appendix C**. To avoid plant wastage, mass planting is not proposed at this time.*

Accordingly, the area is planned as both a buffer area and location for stormwater management via bioretention. This is also reflected in the staff recommended condition, wherein VMP works are not intended to be prohibited in the easement.

- 5 By including the wording “works that occupy the buffer, such as bioretention basins and ponds, are not permitted” in the condition, the condition is self-contradictory by permitting stormwater and VMP works yet prohibiting bioretention basins.

In this regard, it is noted a similar stormwater pond has been constructed adjacent to proposed Lot 2 and is situated inside the buffer with no limitations or requirements for its removal. Further, any future stormwater facilities are to be located on land either 4(a)  
10 Industry under Byron LEP 1988 or the Economic E3 Productivity Support Zone under Byron LEP 2014 and are not situated on land zoned for conservation purposes. Significantly this is mowed slashed area within the subject site with more significant remnant areas to the west not included in the subdivision, even though zoned for industrial  
15 and residential purposes.

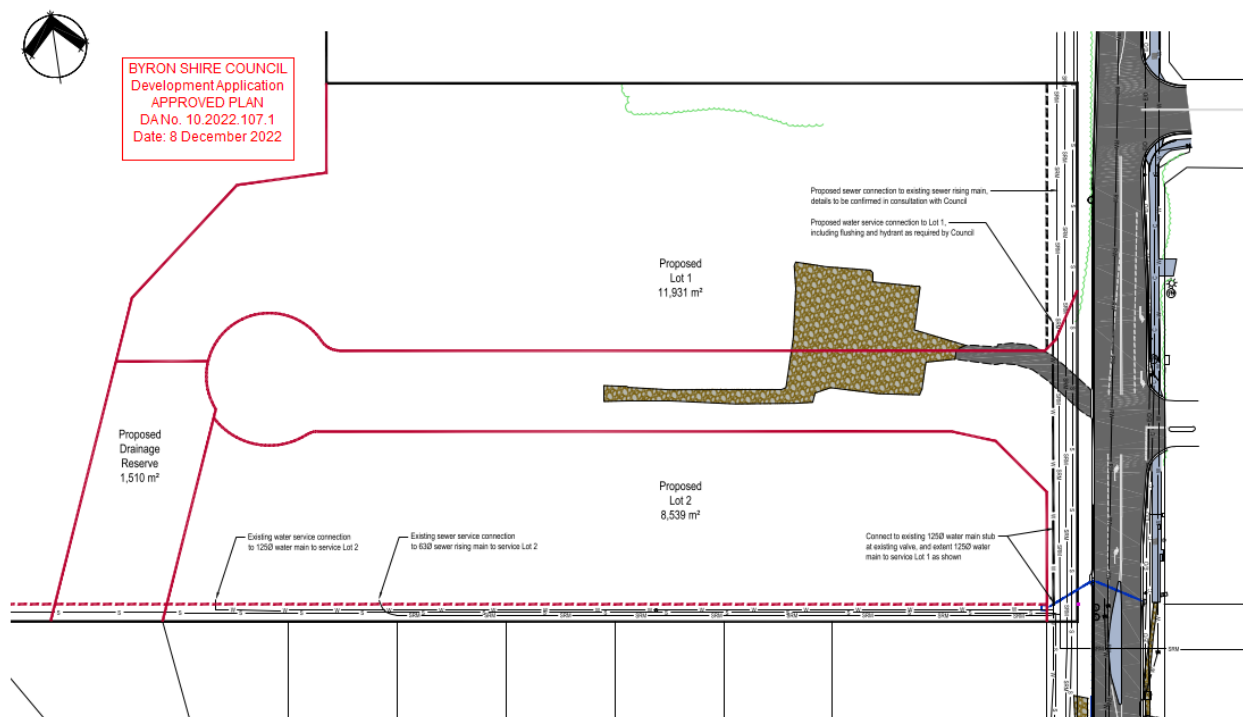
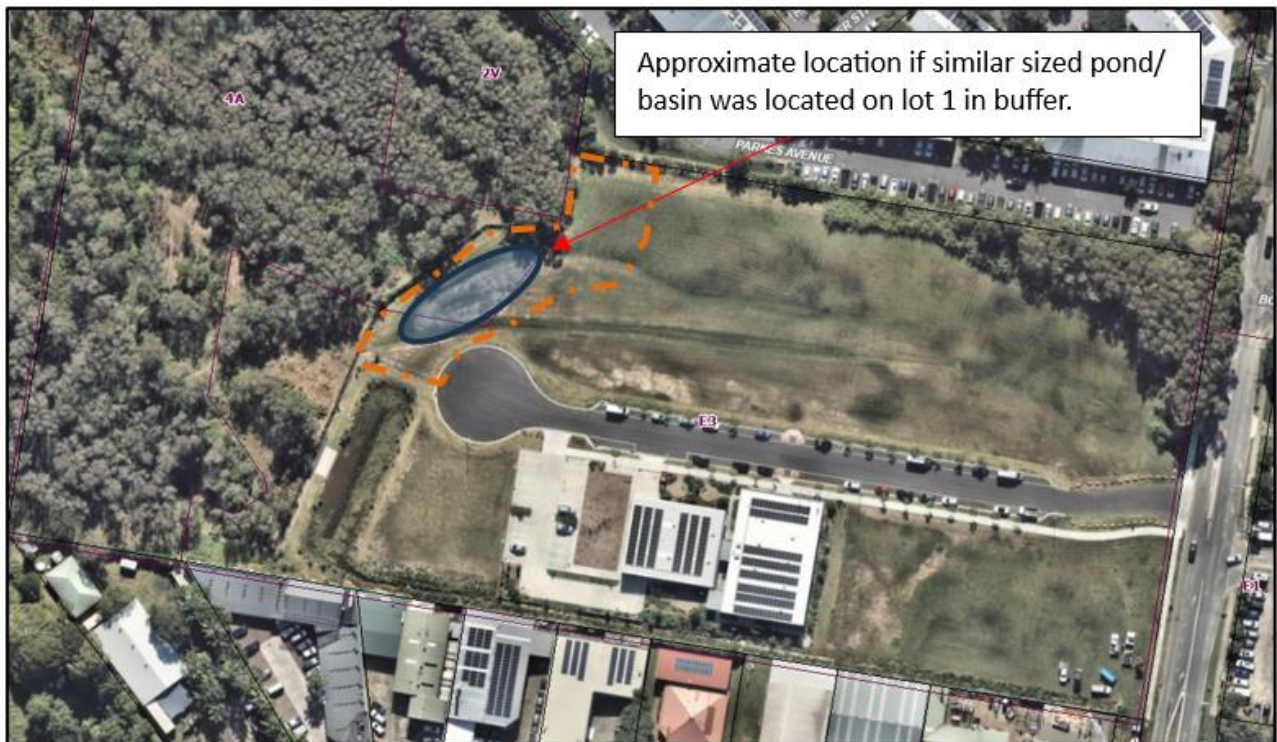


Figure 3 - Extract of Approved Subdivision Plan





**Figure 4 – Aerial Photograph – TAFE and existing stormwater pond on Lot 2/Drainage Reserve with approximate location of a potential pond/ bio retention basin on Lot 1 within ecological buffer.**

5

- The final design of the stormwater treatment system for Proposed Lot 1 will be subject to detailed design by the developer of this parcel of land in the future. On review of the buffer to be provided and its location on cleared land it is conceivable that approximately half of this area will be taken up with the bioretention pond and the remaining half planted out.
- 10 Such plantings as listed in the VMP include a range of natives such as banksias, tuckeroos paperbarks, corkwoods, and native grasses, ferns, and sedges. Importantly it won't be occupied by car parking, buildings or other hard stand areas which is the intent of the buffer in terms of adding further protection and separation to the remnant vegetation to the west. It is considered that a stormwater pond or bioretention basin in this location is not
- 15 inconsistent with the aims and objectives of the buffer.

Having regard to the above it is recommended that the condition be amended as follows:

#### 40. Section 88B Instrument - Infrastructure

A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:

##### a) Ecological Buffer – Lot 1

A 25-metre ecological buffer be provided over Lot 1 from the western boundary with Lot 3 to prohibit any development (other than works associated with

stormwater management) in this area other than VMP works.

## Reason/s for determination:

- To ensure the condition and resulting easement facilitates the approved development.
- To ensure the condition and resulting easement are actionable, reasonable and relevant.

## Issues addressed in the revised submission:

- Inconsistency and contradiction in conditions of consent.

## Decision:

- 10 It is recommended that pursuant to Section 8.2 of the Environmental Planning & Assessment Act 1979, Application No. 10.2022.107.3, for Modification to Condition 40(a) of the Consent for the Approved Subdivision One (1) Lot into Three (3) Lots, be approved by modifying Development consent number 10.2022.107.1 as follows:

Amend condition 40a) of the Notice of Determination to read:

### 15 40. Section 88B Instrument - Infrastructure

A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:

- 20 a) **Ecological Buffer – Lot 1**  
A 25-metre ecological buffer be provided over Lot 1 from the western boundary with Lot 3 to prohibit any development (other than works associated with stormwater management) in this area other than VMP works.

## Reasoning:

Reasoning and rationale behind the recommendation provided above is:

- 25
- To ensure the condition and resulting easement facilitates the approved development.
  - To ensure the condition and resulting easement are actionable, reasonable, and relevant.

30

STAFF REPORTS - INFRASTRUCTURE SERVICES

**Report No. 13.16 2024-2232 Lot 12 Bayshore Drive  
Roundabout Construction Tender  
Evaluation Report**

5

**Directorate:** Infrastructure Services  
**Report Author:** Ricky Ballard, Project Officer  
**File No:** I2024/673

**Summary:**

10

On the 3 May 2024, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2024-2232 for the construction of LOT 12 – BAYSHORE DRIVE ROUNDABOUT BYRON BAY.

15

The Request for Tender was advertised from the 9 May 2024 to 2 June 2024. Tenders were received from the following organisations:

- Civilcs Pty Ltd (Civilcs)
- Durack Civil Pty Ltd (Durack)
- GRC Civil Pty Ltd (GRC)
- Winslow Pty Ltd (Winslow) – Late email submission not conforming

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 award the tender for Contract 2024-2232.

**RECOMMENDATION:**

**That Council:**

- 5       1.   **Awards Tender 2024-2232 Lot 12 Bayshore Drive Roundabout Construction to the preferred tenderer as set out in the confidential Evaluation Panel Recommendation Report Lot 12 Bayshore Drive Roundabout 2024-2232, #E2024/65161.**
- 10       2.   **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.**

**Attachments:**

- 15       1    Confidential - Evaluation Panel Recommendation Report Lot 12 Bayshore Drive Roundabout 2024-2232, E2024/65161

## Report

On the 3 May 2024, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2024-2232 for the construction of LOT 12 – BAYSHORE DRIVE ROUNDABOUT BYRON BAY.

- 5 Byron Shire Council (BSC) intends to carry out the construction of a Roundabout on Bayshore Drive in Byron Bay for the increased traffic demand originating from the subdivision of the land known as Lot 12 (DP1189646).

- 10 Lot 12, is a Council owned 5.8-hectare block in the Byron Arts and Industrial Estate. As part of Council's growth plans for the Estate, it is proposed to subdivide Lot 12 Bayshore Drive into three lots. The roundabout is a condition of the subdivision DA. The extent of this project is shown in the Figure 1 below.

- 15 Works will involve constructing a Roundabout to service the new Lot 12 Access Road and Byron Bay Fair off Bayshore Drive including drainage, electrical and landscaping works. This contract will include the supply of all preliminaries, plant, labour and materials necessary to successfully complete the work under this contract.

The Request for Tender sought responses from proponents to supply and/or construct:

- Preliminaries Management Plans – Workplace Health and Safety, Construction and Environmental, Quality (including Inspection and Test Plans, allowance for WP and HP inspections) and Traffic
- 20 • Evidence of notification, fee and levy payment and insurance coverage
- Detailed Works Program
- Site set out including locating existing services
- Building Dilapidation Reports
- Site access and traffic management
- 25 • Site temporary environmental controls
- Demolition and Removal of applicable existing infrastructure
- Earthworks
- Stormwater Drainage
- Surfacing (road, trafficable, median, footpath)
- 30 • Roundabout works– granular and heavily bound pavement
- Trafficable surfacing
- Median
- Shared concrete footpath

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- Landscaping and Revegetation works
- Street Lighting
- Traffic works on Bayshore Drive (signage, line marking etc.)

The Contract is expected to commence in July 2024 for a period of 12 months.

- 5 The Contract will be managed by Ricky Ballard Project Officer.

Tenders were advertised as follows:

VendorPanel Online: 9/5/24 – 2/6/24

An optional briefing and site inspection was held at 23 Bayshore Drive (Lot 12) on 22 May 2024 at 11am and was attended by the following suppliers:

- 10
- Civilcs Pty Ltd
  - GRC Civil Pty Ltd

The briefing/site inspection was included in a VendorPanel notice. The purpose of the briefing/site inspection was to familiarise contractors with the site conditions and constraints.

- 15 An Evaluation Panel comprising of two Council staff and one consultant (Planit Consulting) was formed.

Tenders closed on the 2<sup>nd</sup> of June 2024 and tenders were received from the following proponents:

- 20
- Civilcs Pty Ltd (Civilcs)
  - Durack Civil Pty Ltd (Durack)
  - GRC Civil Pty Ltd (GRC)
  - Winslow Pty Ltd (Winslow) – Late email submission not conforming

The submission from Winslow was received via email and after the tender close time and so it was not considered in this evaluation.

- 25 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.
- c) Workers compensation insurance for all employees.
- 30 d) Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements.

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- e) Satisfactory Work Health and Safety practices.
- f) Commitment to ethical business practice principles.



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*Qualitative criteria:*

Criteria	Elements
Profile and relevant experience	Tenderer profile
	Previous relevant experience
	Environmental practices
	Opportunities for disadvantaged people
	Local employment opportunities
Quality and availability of resources	Proposed key personnel
	Proposed staff
	Use of subcontractors
	Vehicles, plant and equipment
Delivery Plan	Goods/services standards and methodology
	Implementation plan
	Product sustainability
	Supporting local business, social enterprise and Indigenous business
Social Procurement, Sustainable Practices and Local Industry	Opportunities for People experience disadvantage, Australian Disability Enterprise, Aboriginal business
	Employment opportunities
	Product sustainability
	Local content
Price	Total contract price

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

## 5 Financial Considerations

The price basis for the contract is a lump sum.

Council has budgeted \$2,500,000 for this project.

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

This does not however provide an appropriate contingency allowance of 10% of the construction cost nor an adequate allowance for a project management. These issues can be addressed in the next quarterly budget review (QBR) and will require an additional \$300,000. The funding source for this increase in budget will be reported at the QBR.

## Statutory and Policy Compliance Considerations

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

#### 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

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

(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.

(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.

(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,

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- (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,*
- 5 (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).*

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

## 20 Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community	2.4: Enrich lifelong learning and education and support services to help young people thrive	2.4.4: Vocational training - Support development of a vocational training precinct to provide high quality educational and vocational training in the Byron Shire	2.4.4.1	Progress Lot 12 Bayshore Drive Byron Bay future use

In accordance with the above operational plan activity staff have progressed the provision of the roundabout as required by condition 2 of development consent 10.2022.107.2. Condition 2 is set out as follows:

## 25 2. **Delivery of Stage 2 – Construction Works Stage 2**

*Construction works must be completed in accordance with the approved detailed design of the roundabout and associated works within 24 months of the issue of*

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*the Subdivision Certificate. No further development (being construction work approved by way of Construction Certificate, Complying Development Certificate, or Subdivision Works Certificate to occur on Lots 1 or 2 until such time as the Roundabout is constructed.*

5

## Report No. 13.17 Litter and Illegal Dumping Prevention Strategy

**Directorate:** Infrastructure Services

**Report Author:** Danielle Hanigan, Manager Resource Recovery

5 **File No:** I2024/706

### Summary:

At its 18 April 2024 Ordinary Meeting, Council endorsed the Draft Litter and Illegal Dumping Prevention Strategy for public exhibition.

10 The Strategy outlines the strategic direction for the effective management of litter and illegal dumping in the Byron Shire for the next 5 years.

The Strategy was placed on public exhibition for a period of 28 days during which time Council received 13 submissions. This report provides an overview of those submissions. It recommends Council adopts the Litter and Illegal Dumping Prevention Strategy.

15



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### RECOMMENDATION:

**That Council:**

- 20
1. **Notes the submissions received during the public exhibition period as outlined in Attachment 1 (E2024/60568).**
  2. **Adopts the Litter and Illegal Dumping Prevention Strategy 2024-2029 Attachment 2 (E2024/32361).**

### Attachments:

- 25
- 1 Submissions Draft Litter and Illegal Dumping Prevention Plan, E2024/60568 
  - 2 Litter\_Illegal\_Dumping\_Prevention\_Strategy 2024-2029, E2024/32361 

## Report

5 Building on the success of Council's Illegal Dumping and Litter Education and Enforcement Plan (IDLEEP) 2018 – 2022, the Litter and Illegal Dumping Prevention Strategy (2024 – 2029), aims to mitigate the huge financial, social and cultural impacts of litter and illegal dumping.

The Strategy targets the most problematic items and issues within the Byron Shire, using a variety of approaches to create long-term behaviour change. It outlines the significant actions that, together with our stakeholders and community, we need to take to reduce litter and illegal dumping for the long term.

10 In accordance with the NSW EPA, an integrated approach will be utilised to achieve our objectives and targets. Approaches include a combination of those outlined in the NSW Litter Prevention Strategy 2022 - 2027 and NSW Illegal Dumping Prevention Strategy 2022 -2030, as well as those highlighted by our community during consultation.

15 We continue to build organisational capacity to ensure that litter and illegal dumping prevention is a high priority for Council, and our organisational approach and investment reflects its importance. We will continue to collect long-term litter data so that our challenges (and successes) are clearly identifiable through evaluating trends.

20 The Strategy has been created in consultation with the Byron Shire community, key internal and external stakeholders and supports the Our Byron Our Future – Community Strategic Plan 2032 objective to nurture and enhance the natural environment.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
3: Nurtured Environment	3.5: Minimise waste and encourage recycling and resource recovery practices	3.5.1: Waste management and resource recovery strategy - Implement Integrated Waste Management and Resource Recovery Strategy - Towards Zero	3.5.1.1	Maintain membership and participation in the North East Waste regional waste management group

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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
3: Nurtured Environment	3.5: Minimise waste and encourage recycling and resource recovery practices	3.5.1: Waste management and resource recovery strategy - Implement Integrated Waste Management and Resource Recovery Strategy - Towards Zero	3.5.1.3	Improve management of Council generated waste through development and implementation of a policy that supports circular economy and waste hierarchy principles by eliminating single use packaging and materials
3: Nurtured Environment	3.5: Minimise waste and encourage recycling and resource recovery practices	3.5.1: Waste management and resource recovery strategy - Implement Integrated Waste Management and Resource Recovery Strategy - Towards Zero	3.5.1.4	Develop updated Illegal Dumping and Litter Education and Enforcement Plan (IDLEEP) for 2024 - 2029 in accordance with new NSW EPA litter and illegal dumping strategies and targets
3: Nurtured Environment	3.5: Minimise waste and encourage recycling and resource recovery practices	3.5.2: Recycling - Work with business and tourism sector to reduce waste to landfill	3.5.2.1	Develop and deliver targeted anti-littering and waste avoidance campaign for visitors, tourists and short-term accommodation providers
3: Nurtured Environment	3.5: Minimise waste and encourage recycling and resource recovery practices	3.5.2: Recycling - Work with business and tourism sector to reduce waste to landfill	3.5.2.2	Expand reusable networks in the takeaway food sector and decrease single use, disposable packaging



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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
3: Nurtured Environment	3.5: Minimise waste and encourage recycling and resource recovery practices	3.5.2: Recycling - Work with business and tourism sector to reduce waste to landfill	3.5.2.5	Develop and implement Zero Waste Event processes and policies
3: Nurtured Environment	3.5: Minimise waste and encourage recycling and resource recovery practices	3.5.3: Waste collection and landfill - Maintain and enhance solutions to recover / treat / dispose of residual waste	3.5.3.1	Maintain and manage Waste and Resource Recovery Collection, processing and disposal contracts

### Recent Resolutions

#### Resolution (24-159)

- 5 1. *The Draft Litter and Illegal Dumping Prevention Strategy 2024-2029 (Attachment 1 E2024/32361) be placed on public exhibition for a minimum of 28 days.*
2. a) *Should there be no submissions, the Draft Litter and Illegal Dumping Prevention Strategy 2024-2029 is endorsed from the date after the close of the exhibition period and;*
- 10 b) *Should submissions be received, the Draft Litter and Illegal Dumping Prevention Strategy be reported back to Council noting the submissions and any amendments made as a result of the feedback received*

### Legal/Statutory/Policy Considerations

#### State and Regional

- 15 • NSW Waste and Sustainable Materials Strategy 2041 (WASM)
- NSW Plastic Actions Plan
- The Protection of the Environment Operations Act 1997 (associated Waste 2014 Regulation)

- Local Government Act 1993
- NSW EPA Strategic Plan 2021 – 2024
- NSW Marine Estate Management Strategy 2018 - 2028
- North East Waste Regional Waste Strategy 2022-2027

### 5 Council

- Byron Shire Council Towards Zero Integrated Waste Management and Resource Recovery Strategy 2019- 2029
  - Single-use Packaging and Materials Policy 2023 Enforcement Policy 2020
  - Open Spaces Asset Management Plan 2020 – 2029
- 10 • Water Sensitive Urban Design Policy Coastal Management Program Southern Coastline including Estuaries and Northern Coastline

### Financial Considerations

15 Council funds a permanent full-time role for a Litter and Illegal Dumping Prevention Officer and budget for delivery via the waste. This will be supported by grant funding wherever feasible.

Grant funding has been received from the NSW EPA for \$420,000 under WASM Litter Prevention Grant Stream 3 funding to support implementation of the litter actions within the Strategy.

20 Additional applications will be made to support the Illegal Dumping actions in future funding rounds.

### Consultation and Engagement

Community consultation was undertaken to inform the Strategy. Responses received gave insight into the community needs and attitudes towards litter, illegal dumping and Council services.

25 Meetings were held with internal stakeholders to inform the Strategy and ensure a cross-departmental, holistic approach to tackling litter and illegal dumping issues which is a key component to its success. An internal working group will continue through the duration of the delivery of the Strategy, as supported by Councils executive team.

30 The Draft Litter and Illegal Dumping Strategy was on Public Exhibition for a period of 28 days from April 22 to May 19. Emails were distributed to key stakeholders, departments and community groups inviting them to share feedback on the Draft Strategy. Feedback from the wider community was encouraged through newspaper advertisements, media release, social media, and community events.

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13 responses were received via Your Say during the public exhibition period, and these submissions are outlined in Attachment 1 (E2024/60568).

Many of the submissions were in favour of the Strategy and its proposed initiatives. Concerns were raised about issues such as single-use coffee cups and take-away containers, which are being addressed as part of the implementation of the Single-Use Packaging and Materials Policy, as well as in the source reduction components of the Strategy.

Suggestions were made about working with businesses, tourism and community to encourage community pride, which will be addressed under key themes in the Strategy. Concerns regarding waste generated by illegal campers and rough sleepers will be considered and addressed in collaboration with Public Liaison Officers and community service organisations, as part of the implementation of the Strategy.

Some comments were in relation to reducing disposal fees and bringing back bulky items kerbside collection services. The Strategy will focus on the reduction of bulky household waste items through community education and partnership with property managers and real estate agents. The Strategy does not include reintroducing a kerbside bulky waste service as this service causes more illegal dumping, poses a health and safety risk to the community and is very costly to deliver. Council will continue to expand services that allow residents to dispose of their bulky waste items in an efficient manner.

**Report No. 13.18 Options for additional Off-Leash dog exercise areas in Suffolk Park**

**Directorate:** Infrastructure Services

**Report Author:** Jim Roberts, Coordinator Open Space

5 **File No:** I2024/721

**Summary:**

This report outlines initial investigations into options to establish an additional off leash dog exercise area in Suffolk Park.

10 Suffolk Park is a highly constrained area with many small pocket parks and one district size park (Linda Vidler). Sites were assessed using criteria including accessibility, parking, access to public amenities and proximity to main shopping nodes.

The investigation was unable to identify suitable land that could be recommended for a new off leash dog park at Suffolk Park.

15

---

**RECOMMENDATION:**

**That Council notes the findings of this investigation into a new off leash dog park at Suffolk Park.**

20

## Background

A petition was tabled at the 22 February 2024 Council meeting, indicating the following:

- There are not enough dog exercise areas for the number of dogs.
- The dog beach area at Suffolk Park is difficult for many pet owners due to the distance as there is usually a need for car travel.
- There are already a significant number of dogs from beachside Suffolk who use the beach.
- Some dogs are afraid of the water and are unhappy at the beach.
- The off-leash area at Beech Drive is not appropriate for exercise or socialising dogs.

5

10 Option for use of community land within Linda Vidler Park were proposed in the petition.

Council resolved not to support proposed off leash areas within Linda Vidler Park due to anticipated conflict with existing and planned uses within the recently adopted masterplan.

Council requested staff investigate options and costs for an additional off-leash dog area in Suffolk Park and provide outcomes in a future report to Council.

## 15 Current Availability

Two designated off-leash areas are available for community at Suffolk Park, as below. Dogs can also be exercised on-lead on paths and in most parks around Suffolk Park.

### Beech Drive Lake Park off-lead dog exercise area

1.4ha with circuit pathway around lake.

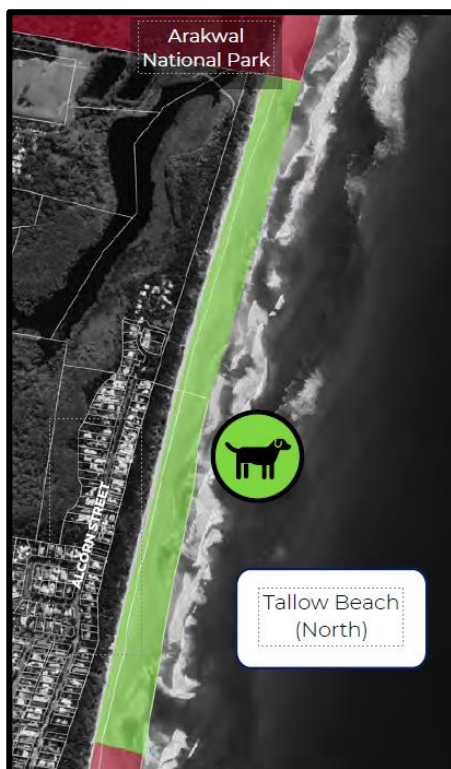


20

**Tallow Beach Off-Leash Area**

Suffolk Park (Tallow Beach) off-lead dog exercise area is an area of around 10ha designated from a point adjacent to Jarman Street extending in a northerly direction to the boundary of the Arakwal National Park.

- 5 Dogs are permitted in the inter-tidal zone only. Dog owners must keep their dogs off dune and dune rehabilitation areas.

**Options**

- 10 A feasibility and analysis of suitable parks for a dog off leash area, in the Bayside Chase and wider Suffolk Park area. The parks below were deemed suitable for further analysis.
- Bunya Place Park
  - Red Bean Park
  - Mango Bark Park
- 15 • Teak Circuit Drainage Reserve

The assessment factored in several key criteria, including:

- Accessibility/Walkability to key nodes within Baywood Chase and wider Suffolk Park area.

- Options for ancillary facilities such as extra parking and public amenities.
- Proximity to neighbours, including possible effect on street parking.
- Usable area, including sufficient width to ensure safe use and passage by other park users.

5

### 1. Bunya Place Park

Bunya Place Park is a small park close to Beech Drive. Approximate possible usable area is 1,200m<sup>2</sup>

#### Opportunities

- 10
- Good central location
  - Pathways linking to Beech Drive and Suffolk Lake off-leash loop, Ribbonwood Place/ Hayters Drive and Bunya Place
  - Possible extra parking area on Beech Drive if required.

#### Constraints

- 15
- Requires fencing.
  - Current playground requires removal.
  - Needs 5m separation from pedestrian pathway.
  - Adjacent to Koala Habitat and High Environmental Value Coastal Swamp Forest.
- 20
- Tree removal required, including small poinciana.
  - The area is relatively small and surrounded by houses.
  - Drainage area adjacent to park.

Figure 1 Bunya Place Park.





### 2. Red Bean Park

Red Bean Park is a small park between Red Bean Close and Hayters Drive. Approximate possible usable area is 2,000m<sup>2</sup>

#### *Opportunities:*

- 5 The park is currently used as an unapproved extension to a private resident's backyard and has extensive plantings of predominantly exotic fruit trees. A prescribed use of this area would enable access to the park for the wider community.



#### *Constraints:*

- 10
- Site is around 400m from main activity node at Linda Vidler Park.
  - Walking access to the site is steep.
  - Off-street parking area on Red Bean only accommodates two cars.
  - Multiple tree removals required, subject to approval.
  - Area surrounded by stormwater drains.
- 15
- Close proximity to residences, not all of which are fenced.

The petition organisers have inspected Red Bean Park and advised that they do not believe it is suitable due to size and number of trees.

Figure 2 Red Bean Park



### 3. Mango Bark Park

- 5 Mango Bark Park is a small park between Mango Bark Court and Corkwood Crescent. Approximate possible usable area is around 700m<sup>2</sup>

#### Opportunities:

- Area is currently used as an extension to a resident's backyard. A prescribed use of this area would enable access to the park for the wider community.

#### 10 Constraints:

- Site has a slight incline which may not be suitable for dog exercise area.
- 650m from main activity nodes at Linda Vidler Park
- Access to the site is steep.
- Site has pedestrian pathways bisecting north/south and east/west. Needs 5m separation from pedestrian pathways.
- Site has a current playground on southern end.
- Tree removal may be required.
- Area is small and surrounded by houses, not all of which are currently fenced.

Figure 3 Mango Bark Park



#### 4. Muli Place Park

- 5 Muli Place Park Reserve forms part of a drainage reserve linking Muli Place, Orchid Place, Beech Dive and Teak Circuit. Approximate possible usable area is 1,400m<sup>2</sup>.

##### *Opportunities:*

- Central location with flat pathway linked to the Suffolk Lake loop and surrounding areas.
- Potential to use operational land not currently utilised for any purpose.

##### *Constraints:*

- Small area close to residents.



Figure 4 :Muli Place Park



## Key Issues

5 Management of dogs in the Byron Shire is complicated by several constraints:

- Availability of space and competing uses (particularly relevant in Suffolk Park);
- Limited opportunity to change the boundaries of existing off-lead areas due to environmentally sensitive areas;
- Off-lead areas on beach constrain use by non-dog owners – therefore additional areas very difficult to identify;
- Large areas of public space are scarce and developing new off-lead areas away from the beach in major towns and villages is very difficult; and
- Two, sometimes opposing, views for and against dogs.

15 Consultation around the Dogs in Public Space Strategy (DiPS) found 86% of community believe Council should protect wildlife and habitat, but at the same time 68% of community strongly enjoyed their dog being able to move freely off lead.

It falls to Council to balance the public space needs of both dog owners and the wider community.

20 To ensure a balanced approach, Council in December 2022 adopted a new strategy and staff have been rolling this out providing clearer information around on-lead / off-lead areas and are getting out to speak to people about their responsibilities as dog owners.

There is risk that Council initiating piecemeal changes to the adopted DiPS may dilute the messaging, reduce community acceptance for the overall strategic approach and create potential for ongoing piecemeal review of the adopted strategy on a reactive basis.

Parks in Suffolk Park are too heavily constrained to accommodate a formal dog off leash facility. Limited usable area, proximity to neighbours, access to parking and lack of public amenities all impact usability of areas. Most available parks are either too small or have existing uses.

- 5 Should Council designate an off-leash area within an urban residential zone there is a need for perimeter fencing. Many properties adjoining reserves either have no fencing, or do not have fencing that would be animal proof. Council does not have joint ownership of fences adjoining Council lands and has specific exception for responsibility within the Dividing Fences Act 1991. If Council determined a specific type of fence was required, responsibility for provision and subsequent maintenance of that fence would fall to Council.
- 10

## **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>
2: Inclusive Community	2.2: Enhance safety and contribute to the physical, mental, and spiritual health and well-being of the community	2.2.4: Companion animals - Promote awareness of the requirements of the Companion Animals Act with respect to the ownership of companion animals	2.2.4.2	Provide companion animal management services

### **Recent Resolutions**

- Resolution 24-060

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

Companion Animals Act 1998  
Companion Animal Exercise Area Policy

### **Financial Considerations**

- 20 A high-level cost estimate to complete installation of fencing, gates and signage at a new urban location would be around \$30,000. There is currently no budget identified for new dog-park infrastructure.

### **Consultation and Engagement**

- 25 Should Council wish to continue investigation into options within Suffolk Park it would be necessary to undertake wider community consultation with the Suffolk Park community, including immediate neighbours of proposed locations.

## Report No. 13.19 Heritage Park Mullumbimby - Off Leash Dogs

**Directorate:** Infrastructure Services

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

5 **File No:** I2024/774

### Summary:

10 Currently the area within Heritage Park designated for dogs off-leash exercise includes the children's playground. A new pedestrian pathway will soon also bisect this area. Under the Companion Animals Act 1988, dogs off-leash must stay 10m away from a playground and 5m away from a pedestrian path.

Community have indicated preference for an unfenced off-leash area to be retained within Heritage Park, but for this to be relocated to the eastern, Stuart Street area of the park.

15


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### RECOMMENDATION:

**That Council:**

1. **Revokes the current Off-Leash designated area within Heritage Park; and**
- 20 2. **Designates "Area B" as detailed within the body of this report as the designated Off-Leash dog exercise area within Heritage Park, with this area to remain unfenced.**

### Attachments:

- 25 1 Your Say Responses - Off Leash Dogs in Heritage Park, E2024/64200 

## Background

5 When the 2022 Dogs in Public Spaces Strategy was adopted, there was only one Council controlled designated off-lead area for dogs in Mullumbimby, within Heritage Park. This area includes a children's playground. A pedestrian path will soon be constructed through the middle of the designated off-leash area. Under the Companion Animals Act 1988, dogs off-leash must stay 10m away from a playground and 5m away from a pedestrian path.

10 The adopted DiPS recommended that no changes be made to existing off-lead areas until additional areas were developed, and usage could be reviewed. Stage 1 of a second Mullumbimby new off leash dog exercise area opened in December 2023. This new Mullumbimby Dog Park has a 500m<sup>2</sup> fenced area for dog off leash use.

*Figure 1: New Mullumbimby Off-Leash Dog Park*



15 The area is separated for small and large dogs, close to the Mullumbimby skatepark, Community Gardens and Netball Courts.

## Heritage Park

The greater Mullumbimby Heritage Park area comprises critical community and ecological space across Heritage Park East, the Maslen Arboretum, Heritage Park West, and Palm Park. Landscape Masterplan for the park was adopted in 2023.

20 There are sensitive riparian zones along the river that are home to birds and wildlife and can be negatively impacted by uncontrolled dogs. Dogs off leash are not compatible with the playground or pedestrian pathways and separation needs to be provided.

The Landscape Masterplan recommends improved pathway connections for accessibility through Heritage Park, including through the Arboretum area. Currently the Arboretum



section is Dogs Prohibited, however construction of the major arterial pathway through the park, including the Arboretum, is about to commence.

5 The Masterplan is silent on dog exercise areas, with areas identified for open space recreation without specifying any compliance restrictions. Regulation and compliance over off leash use of public spaces sits within the 2022 Dogs in Public Spaces Strategy (DiPS).

Extensive community engagement was undertaken around the adopted DiPS which is guiding current strategic direction and resulted in the current Off-Lead and Dogs Prohibited areas, as below.

Figure 1: Current Heritage Park Dogs in Public Spaces Designations



10 With the successful opening of the new off-leash area at the Mullumbimby Recreation Grounds, community now need to decide what is the best options for dogs in Heritage Park.

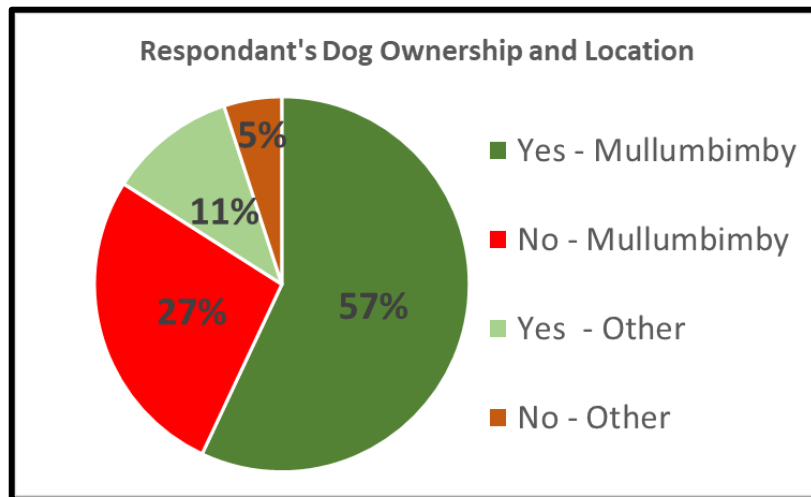
## Community Input

15 Community were asked to provide input on the following options for the off-leash dog area at Heritage Park Mullumbimby for a period from 10 May through to 3 June, providing feedback using the online form.

- 20
- Now that we have a new off-leash dog area in Mullumbimby near the community gardens, do we need to retain the current off-lead dog exercise area in Heritage Park?
  - Do we fence the off-leash dog area?
  - Do we move the off-lead area further away from the children's playground where it can remain unfenced?
  - Do we allow dogs to walk on-lead through the Maslen Arboretum?

## Your Say Results

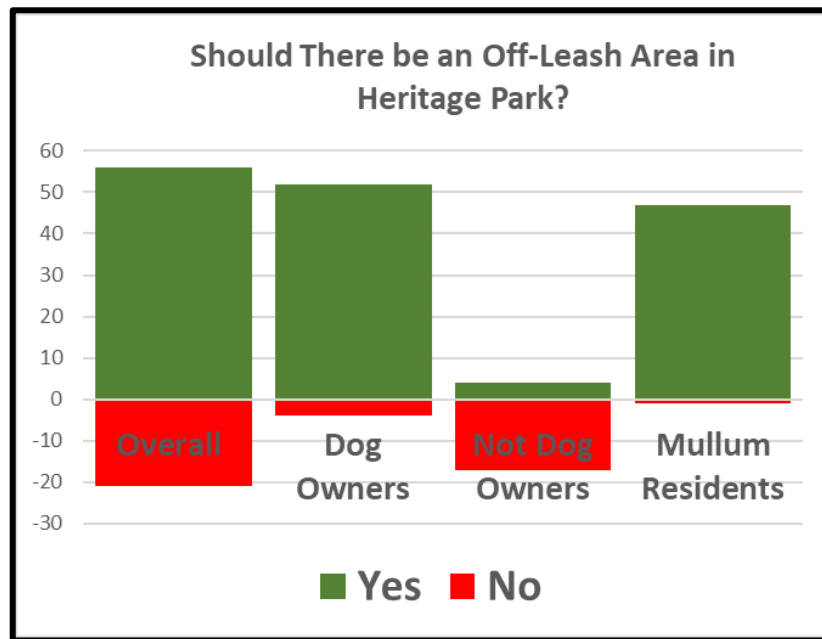
81 community members provided response to the Your Say survey.  
84% were from Mullumbimby and 16% elsewhere. 68% were dog owners..



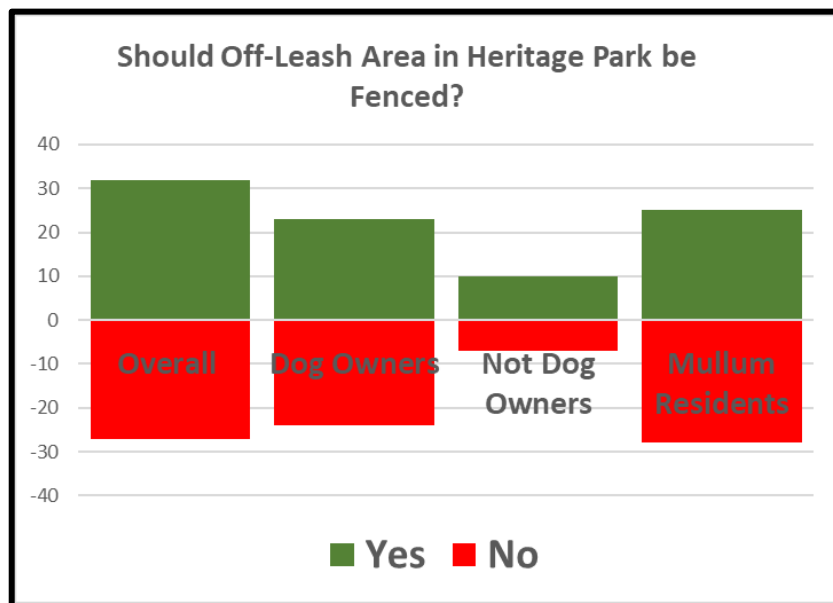
5

Support to retain an off-leash area within Heritage Park was strong. Respondents indicated the need for more areas to exercise dogs, as well as the convenience and natural beauty of the location for residents.

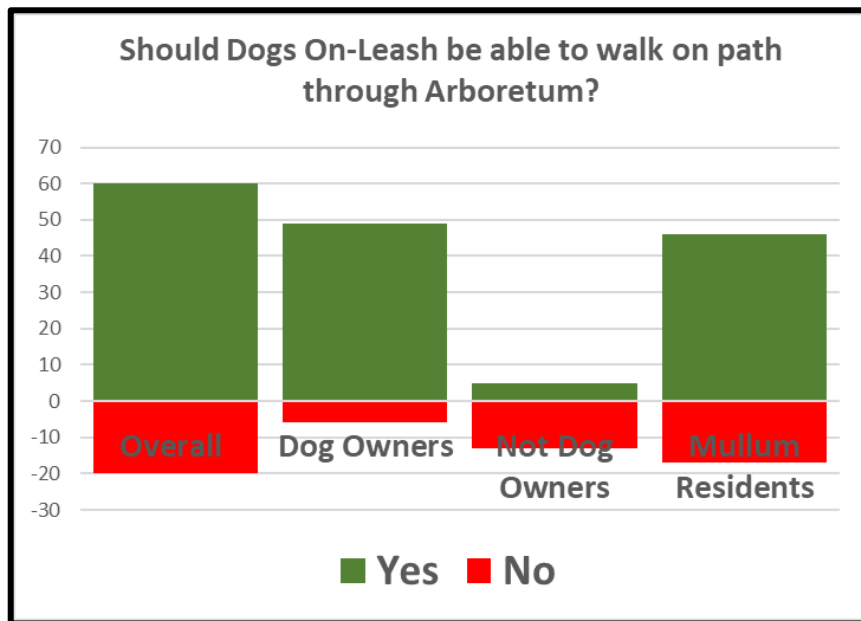
10 The value of the new off-leash area was noted by many respondents, but the lack of established shade and sometimes wet ground conditions were not looked on favourably.



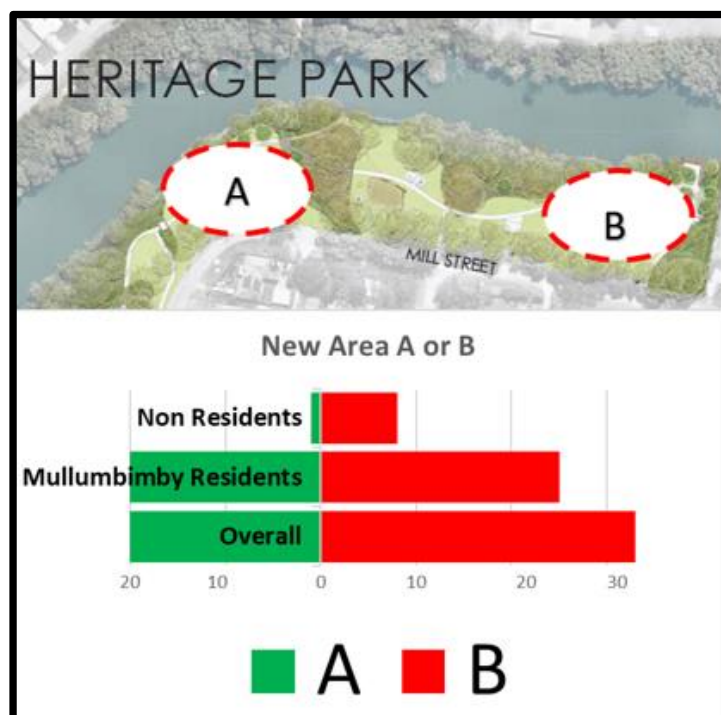
Respondents were closely divided around fencing with 55% of responses favouring fencing, although this 53% of Mullumbimby residents did not favour fencing. Maintenance issues and cost of fencing were key arguments. Alternate suggestions included fencing, but keeping access to the river for dogs, or fencing the playground and/or path to provide separation rather than containing dogs.



Respondents were clearly in favour of allowing dogs on-lead to use the pathway running through the arboretum. The lack of control over dogs in general was a recurrent theme for those that were opposed to on-leash dogs walking along the main pathway.



If an off-leash area was to be retained at Heritage Park, there is a need for this to be better defined. Respondents were asked which area was preferred out of the two shown below.



- 5 62% of respondents favoured area B. Area B is the 2700m<sup>2</sup> eastern section of Heritage Park that is currently being used for unauthorised camping and parking, and has become environmentally degraded as a result. The adopted masterplan has this area flagged as general recreational space, with plans to restrict vehicle access along with planned upgrades in the next financial year.

## **Key issues**

Management of dogs in the Byron Shire is complicated by a number of constraints:

- Availability of space and competing uses;
- 5     • Limited opportunity to change the boundaries of existing off-lead areas due to environmentally sensitive areas;
- Off-lead areas on beach constrain use by non-dog owners – therefore additional areas very difficult to identify; and
- Large areas of public space are scarce and developing new off-lead areas away from the beach in major towns and villages is very difficult.
- 10    • Two, sometimes opposing, views – dog lovers vs dog haters.

Dog owners want clarity on where they can take their dogs on-lead and off-lead and it falls to Council to balance the public space needs of both dog owners and the wider community.

## **Options**

- 15    Council may now choose to;
  - Retain exiting off-leash designation within Heritage Park
  - Adopt recommended amendment to off-leash area within Heritage Park
  - Resolve to remove of-lash designation within Heritage ark.

## **Strategic Considerations**

- 20    Current strategic direction in support of adopted DiPS includes action to:
  - 1) Educate dog owners about their responsibilities (Strategy direction 6). Education program being rolled out in schools.
  - 2) Provide certainty for dog owners about where on-lead and off-lead areas are.
  - 3) Educate residents and visitors about the environmental impact of dogs
  - 25    4) Develop education material specifically for visitors, accommodation providers and the tourism industry.
  - 5) Proactively enforce on-lead areas and promote this work.

- 30    Digital maps of on-lead and off-lead areas, graphics and educational content / information have been developed that are user-friendly and accessible via mobile phone. A new suite of public spaces signage clarifying on-lead and off-lead areas has been rolled out.

Any amendments to the DiPS can be completed with minimal cost, with on-line resources easily updated electronically.

## Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community	2.2: Enhance safety and contribute to the physical, mental, and spiritual health and well-being of the community	2.2.4: Companion animals - Promote awareness of the requirements of the Companion Animals Act with respect to the ownership of companion animals	2.2.4.2	Provide companion animal management services
2: Inclusive Community	2.2: Enhance safety and contribute to the physical, mental, and spiritual health and well-being of the community	2.2.4: Companion animals - Promote awareness of the requirements of the Companion Animals Act with respect to the ownership of companion animals	2.2.4.3	Facilitate companion animals' education

### Recent Resolutions

- May 2023 (23-210)
- December 2022 (22-738)

### Legal/Statutory/Policy Considerations

- Companion Animals Act 1998
- Companion Animal Exercise Area Policy

### Financial Considerations

There is currently no budget identified for construction of fencing either to enclose an off-leash dog area or exclude off-leash dogs from pedestrian pathways, playgrounds or sensitive ecologically sensitive areas.

## Consultation and Engagement

### 1. *Dogs in Public Spaces Strategy*

5 Consultation around the 2022 DiPS found 86% of community believe Council should protect wildlife and habitat, but at the same time 68% of community strongly enjoyed their dog being able to move freely off lead.

10 Out of the 120 submissions to the DiPS, three submissions raised concern regarding the Heritage Park area. Those concerns were that the Maslen Arboretum should be dogs prohibited area, dogs off leash in public areas should be confined in a fenced area, sensitive riparian zones require environmental protection and are not suitable for off-lead dog exercise and unleashed dogs should not be within ten metres of the playground.

15 Consultation around the DiPS found 86% of community believe Council should protect wildlife and habitat, but at the same time 68% of community strongly enjoyed their dog being able to move freely off lead.

### 2. *Heritage Park Masterplan*

- 20% of submissions requested the existing off leash dog area be maintained.
  - 3 submissions suggested that dogs could use the pathway through the Arboretum, but only if on lead.
- 20

### 3. *Community Survey*

25 Community Survey was advertised from 10 May until 3 June. Signage was installed in strategic locations within the current off-leash area in Heritage Park promoting the survey.



## Report No. 13.20 Resident Parking Permit Scheme

**Directorate:** Infrastructure Services

**Report Author:** Phillip Holloway, Director Infrastructure Services  
Heather Sills, Manager Corporate Services

5 **File No:** I2024/798

### Summary:

This report explores the feasibility and implications of different options for the free parking permits, as required by resolution **24-131** and **23-652** to develop a fair and practical implementation plan.

10

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### RECOMMENDATION:

That:

- 15 1. Council endorses the proposed implementation of the 'resident permit' system to respond to Council resolution 24-131, to *"reducing the resident permit fee from \$55 to \$0 when the Brunswick Heads scheme becomes operational"* such that:
  - 20 a) The draft fees and charges 2024/25 be updated to rename this permit type *"Shire resident parking permit"*, from the current *"Shire resident or ratepayer exemption, or resident interim parking permit"*
  - b) Each rateable property in the Byron Shire can access one free *"Shire resident parking permit"*, subject to terms and conditions as detailed within the recommendations of this report.
  - 25 c) That a fee for the purchase of additional *"Shire resident parking permit"* be included in the draft 2024/25 fees and charges to enable additional eligible permits to be purchased for \$55.
- 30 2. Council notes the parking scheme will be considered 'operational' when all essential components, including functioning meters capable of accepting payments, enforcement, and any associated regulations, are in place and ready to be enforced.
- 35 3. The parking permit terms and conditions be amended to reflect the proposed changes.

## Report

**24-131 Resolved** that Council:

1. *Endorses for inclusion in the draft 2024/25 Fees and Charges, a fee of \$5 per hour for the Brunswick Heads Pay Parking scheme and **reiterates its earlier commitment (Resolution 23-652) to reducing the resident permit fee from \$55 to \$0 when the Brunswick Heads scheme becomes operational.***
2. *Supports Brunswick Heads Pay Parking scheme using a combination of existing cash meters and Pay by Plate cashless parking meters and other options such as phone apps*
3. *Receives further reports:*
  - a) *discussing how the funds generated from the Brunswick Heads Pay Parking scheme could be distributed in Brunswick Heads and the Shire.*
  - b) ***advising of different software options to improve the usability and efficiency of the permit application process***
4. *Receives a further report on discussions with relevant Brunswick Heads community groups on:*
  - a) ***impacts on of likely overflow from avoidance of parking charges***
  - b) ***impacts on possible revenue from various options on permits and exemptions***
  - c) *unsealed parking areas*

Accordingly, the draft fees and charges for 2024/25 currently on public exhibition have the pay parking permit fee for residents listed at \$55 with a disclosure note to indicate this fee will revert to \$0 upon commencement of the Brunswick Heads Pay Parking Scheme.

This report provides a recommended implementation plan with the aim of achieving the objective of this Council Resolution. The report is structured to address each of the relevant parts of the resolution, denoted by a grey background.

### Date for Implementation:

***“reducing the resident permit fee from \$55 to \$0 when the Brunswick Heads scheme becomes operational.”***

The timeline for implementing the free resident parking permit program was outlined in the [March 2024 report to Council](#).

The parking scheme will be considered 'operational' when all essential components, including functioning meters capable of accepting payments, enforcement, and any associated regulations, are in place and ready to be enforced.

# BYRON SHIRE COUNCIL

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### Current Permit Types

Permit Type	Details	Evidence Required
<b>Resident Pay Parking Permits</b>	A resident parking permit allows parking in Byron Bay's pay-parking areas without the need for a parking meter ticket. <b>\$55 for 12 months</b>	<p><b>Ratepayer</b> – rates notice showing the same name as the permit application.</p> <p><b>Resident</b> - a current version of one of the following with a Shire address:</p> <ul style="list-style-type: none"> <li>• Vehicle registration</li> <li>• Driver's licence</li> <li>• Pensioner card</li> <li>• Utility bill</li> <li>• Rental agreement or letter from landlord/owner with proof of rental longer than 6 months.</li> </ul> <p><b>Residents and ratepayers</b> must also provide evidence of vehicle ownership:</p> <ul style="list-style-type: none"> <li>• Vehicle registration</li> <li>• Screenshot from Service NSW</li> <li>• NSW CTP renewal notice/certificate</li> <li>• NSW vehicle insurance</li> </ul> <p>If they don't own the vehicle, proof that they have full legal use:</p> <ul style="list-style-type: none"> <li>• Documents identifying owner of the company vehicle</li> <li>• A letter confirming that they are an employee, friend, or relative and have full use of the vehicle</li> </ul>
<b>Pensioner Pay Parking Permits</b>	A resident parking permit allows parking in Byron Bay's pay-parking areas without the need for a parking meter ticket. <b>Free</b>	<p>As above with one of the following supporting documents:</p> <ul style="list-style-type: none"> <li>• Current Centrelink Pension Card</li> <li>• DVA Gold Card</li> <li>• Vehicle registration stating pensioner</li> </ul>
<b>Business Parking Permit</b>	Must be a business based within the Byron Bay pay parking area <b>\$110 for 12 months</b>	<ul style="list-style-type: none"> <li>• Current vehicle registration certificate</li> <li>• Proof of Business Location: e.g. lease agreement or utilities bill</li> </ul>
<b>Worker Parking Permit</b>	Workers employed by a business with a fixed address within the Byron Bay pay parking area <b>\$110 for 12 months</b>	<ul style="list-style-type: none"> <li>• Current vehicle registration certificate in the name of the applicant.</li> <li>• Proof of employment, such as payslip or company letterhead</li> </ul>
<b>Volunteer Parking Permit</b>	Volunteers working for an organisation with a fixed address within the Byron Bay pay parking area <b>\$110 for 12 months</b>	<ul style="list-style-type: none"> <li>• Current vehicle registration certificate in the name of the applicant.</li> <li>• Proof of volunteer work, such as a supporting letter</li> </ul>

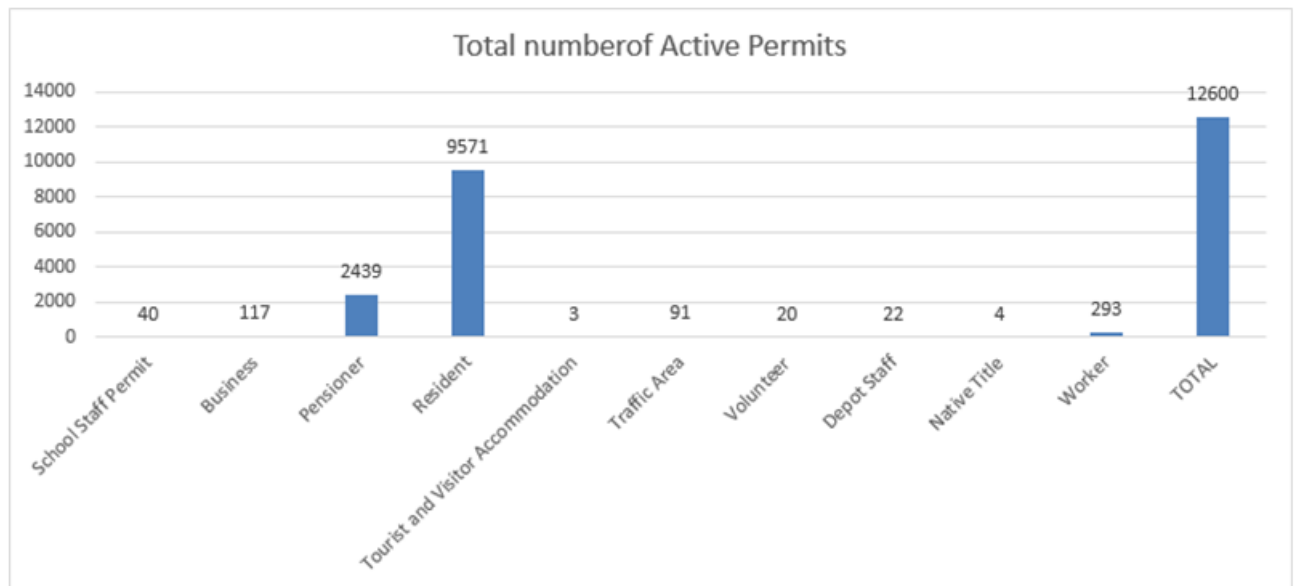
# BYRON SHIRE COUNCIL

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Permit Type	Details	Evidence Required
<b>Temporary Business Parking Permit</b>	A 3 month Temporary Permit for within 200m of the pay parking area. Limit of 5 permits/vehicles. <b>\$110 for 3 months</b>	<ul style="list-style-type: none"> <li>Vehicle registration for each vehicle</li> <li>Driver's licence for each vehicle owner</li> <li>Supporting letter(s) from the relevant business, activity, or service located within the pay parking</li> </ul>
<b>Traffic Area Permits</b>	Residents who live in certain parking areas are eligible for a Traffic Area Permit. A maximum of two vehicles per household can be exempt at any one time. Traffic Area Permits allow them to park in the street where they live with no time restriction. They cannot be used in the pay parking area. <b>Free</b>	<p>Must be a long-term resident (not a guest at hotel, hostel, holiday unit) with limited off-street parking. If they have 2+ spaces, they are not eligible.</p> <p>Supporting documentation to verify residential address:</p> <ul style="list-style-type: none"> <li>Utility bill or phone account</li> <li>Current lease</li> <li>Driver's licence</li> <li>Pension card</li> <li>Electoral roll card</li> <li>Rates notice</li> <li>Bank Statement</li> <li>Centrelink health card</li> <li>Rental bond receipt</li> <li>Government correspondence</li> </ul>
<b>Mobility Permit</b>	A mobility parking permit enables <b>free</b> parking in pay parking areas	Not required.
<b>Tourist and Visitor Accommodation Permit</b>	For approved tourist and visitor premises <b>\$660 for 12 months</b>	<ul style="list-style-type: none"> <li>Premises has an ABN</li> <li>Approval prior to 30 May 2014</li> <li>Excludes Short Term Rental</li> <li>Only within 200m of the premises</li> <li>Limit of 10 per premises</li> <li>A site inspection, review of DA and assessment required</li> </ul>
<b>Native Title Permit</b>	<b>Free</b> For Native Title Holders of the Bundjalung People of Byron Bay	Confirmation of membership and eligibility determined by Bundjalung of Byron Bay Aboriginal Corporation
<b>School Permit</b>	<b>Free</b> and exempts from time limits in specific streets surrounding schools.	<p>Staff and teachers at the following schools:</p> <ul style="list-style-type: none"> <li>Brunswick Heads Public School</li> <li>Byron Bay Public School</li> <li>Byron Community Primary School</li> </ul>

The number of active permits in the current system is 12,600, with over 75% being Resident Permits. The allocation across the various permit types is outlined in the table below.



### Current application process

1. Users can apply for a permit [online](#) or in-person
2. They are required to sign up for a pay stay account, then apply for an ePermit
- 5 3. Documents are uploaded to provide evidence (as required above) of vehicle ownership and address
4. Application comes to Customer Service staff for review and approval. A daily audit is undertaken to review every permit to ensure conditions are met
  - There is a 2 day grace period, allowing users to park with an interim permit
- 10 5. Once approved, payment is charged.  
At this point there is the possibility of a payment failure.

The current process requires a manual review of all permits prior to approval. It is estimated that approximately 20% of applications require follow up with the customer due to incorrect or invalid documentation, or ineligibility. In some cases, customers are opting for in-person applications due to technical issues.

### Contractual Arrangements

Council recently (March 2024) exercised the first of its one-year extensions on the contract for pay parking services in Byron Bay with Orikan. Staff are currently working with Orikan to vary the contract to include the Brunswick Heads pay parking scheme.

- 20 The current contract includes the transaction and processing fees on a percentage of revenue basis. Under a free permit system, the fee structure will be adjusted to a fixed price per permit. Indicative pricing has been provided suggesting a range between \$2.03 - \$3.75 per permit, pending volume.
- 25 This equates to approximately \$25,174 to \$46,504 in transaction and processing fees, based on the number of permits (12,401) processed in the last 12 months. It is noted

throughout this report that the anticipated uptake will likely increase significantly with the introduction of free permits.

## User Pays

5 Local goods and services come at a cost and it is generally accepted in a user-pays system, that the burden of that cost should be distributed equitably amongst those who benefit. Public goods should be funded from taxes, while private goods should be funded through fees and charges levied on those individuals receiving the benefit.

10 Parking spaces are a private good, they are both excludable (people can be prevented from using them) and rival (if someone is using it, another person cannot also use it). The person using the parking space directly receives the benefit of that parking space and benefit is internalised as a result of consumption.

15 Pay parking refers to the direct charges imposed for the use of a parking space. Under the user-pays principle individuals who directly benefit are expected to pay. It is generally inequitable that one group receive these benefits for free, whilst others are expected to pay. Notwithstanding, it shouldn't disproportionately burden or disadvantage vulnerable or low-income populations. Therefore, the current pay parking scheme provides a subsidy (free permits) to those members of the community that receive a pension concession.

20 The NSW Roads and Maritime Services' (RMS) *Pay Parking Guidelines* (2019) outlines its 'pricing principles' and states that *"one of the main objectives of pay parking is to provide equitable access to parking spaces by increasing parking turnover."*

The provision of free permits to a larger portion of the population may lead to economically inefficient levels of consumption and diminish the associated value of the permit.

25 We must therefore attempt to implement a fee structure that maintains the supply and demand in equilibrium. If this is not managed appropriately it could result in a decrease in turnover (those of a free permit staying for longer periods), paying users finding alternative free parking options (such as unregulated off-street parking or parking in fringe/residential areas), or parking illegally. Quantifying these impacts – referred to as the marginal response in consumption - is difficult to predict in the absence of experimental or survey data.

## Options

This section of the report explores different options and eligibility criteria for:

***reducing the resident permit fee from \$55 to \$0***

And includes considerations of the:

- a) *impacts of likely overflow from avoidance of parking charges*
- 35 b) *impacts on possible revenue from various options on permits and exemptions*

Options were discussed with Councillors at the 6 June 2024 Councillor Workshop, and feedback was received on eligibility and evidence requirements, the impacts of the free permit implementation and consideration of capping the number of \$0 permits and using a

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tiered approach to maintain equitable access to parking spaces whilst maintaining vehicle turnover. This feedback has been incorporated into the staff recommendations.

A comparative analysis of equity and fairness of each option is provided throughout this section. Examples of approaches by other councils are also provided in attachment 1.

Option 1 - Residents (only) Parking Permit																																	
Eligibility	A 'Residents Parking Permit' would apply only to those who reside in the Byron Shire on a permanent basis.																																
Evidence required	<p>Proof of vehicle ownership and Byron Shire address:</p> <ul style="list-style-type: none"><li>• Proof of ownership: <b>Vehicle registration</b></li><li>• Proof of address: <b>Vehicle registration</b> or <b>licence</b> with Shire address</li></ul> <p>For company owned vehicles, proof that they have full legal use:</p> <ul style="list-style-type: none"><li>• Documents identifying owner of the company vehicle and signed letter confirming they are an employee with full private use</li></ul>																																
Exclusions	<ul style="list-style-type: none"><li>• Ratepayers who own property in the Shire but do not identify this as their primary residence will be excluded from the free permit.</li><li>• People who register their car in another state (for other purposes and/or because of the cost to change address) would be excluded. This will affect the following number of permit holders:</li></ul> <div><table><thead><tr><th></th><th>QLD</th><th>VIC</th><th>WA</th><th>NT</th><th>TAS</th><th>ACT</th><th>SA</th></tr></thead><tbody><tr><td>Pensioner</td><td>39</td><td>6</td><td>3</td><td>0</td><td>0</td><td>0</td><td>1</td></tr><tr><td>Resident</td><td>543</td><td>138</td><td>14</td><td>6</td><td>2</td><td>8</td><td>12</td></tr><tr><td>Worker/Volunteer</td><td>34</td><td>4</td><td>1</td><td>0</td><td>0</td><td>0</td><td>3</td></tr></tbody></table></div> <ul style="list-style-type: none"><li>• The current system allows a permit for a person who supplies:<ul style="list-style-type: none"><li>○ a signed letter confirming that they are a friend or relative and have full use of the vehicle.</li><li>○ a rental agreement or a letter from landlord stating residency of more than 6 months.</li></ul></li></ul> <p>This practice will no longer be feasible when permits become free.</p>		QLD	VIC	WA	NT	TAS	ACT	SA	Pensioner	39	6	3	0	0	0	1	Resident	543	138	14	6	2	8	12	Worker/Volunteer	34	4	1	0	0	0	3
	QLD	VIC	WA	NT	TAS	ACT	SA																										
Pensioner	39	6	3	0	0	0	1																										
Resident	543	138	14	6	2	8	12																										
Worker/Volunteer	34	4	1	0	0	0	3																										
Impacts	<ul style="list-style-type: none"><li>• The expected uptake will likely increase significantly with multiple permits per household being applied for (see section on Anticipated Uptake).</li><li>• Reputational risk to council, with disgruntled ratepayers who feel they are subsidising residents who don't pay rates.</li><li>• Some non-local ratepayers may argue that they are a resident, despite their primary address (on their registration and licence) being outside of the Shire. For example, those that live in the Shire on weekends, or for extended periods of time (e.g. summer).</li><li>• Exploitation of the system through change of address with Service NSW.</li><li>• Inequitable system in that those with more cars are eligible for an unlimited number of free permits.</li><li>• It is anticipated that this system would result in an increased use of cars. Where residents who live close by might have otherwise opted to walk or use other modes of transport, the free permit may encourage them to use their car and park in pay parking bays.</li><li>• Congestion could be exacerbated further by multiple permits being applied for</li></ul>																																



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Option 1 - Residents (only) Parking Permit	
	<p>from the same household.</p> <ul style="list-style-type: none"> <li>• Increase in cars parking in surrounding residential streets due to cars avoiding the pay parking area.</li> <li>• Negative impacts both on permit processing and administration and on available parking for those that are paying at the meter.</li> </ul>
Option 2 - Residents & Ratepayers Parking Permit	
<b>Eligibility</b>	A 'Residents and Ratepayers Parking Permit' would apply to those who both reside in, or own property in, the Byron Shire.
<b>Evidence required</b>	<p>Proof of vehicle ownership and Byron Shire address:</p> <ul style="list-style-type: none"> <li>• Proof of ownership: <b>Vehicle registration</b></li> <li>• Proof of address: <b>Vehicle registration</b> or <b>licence</b> with Shire address; or</li> <li>• <b>Ratepayer:</b> rates notice</li> </ul> <p>For company owned vehicles, proof that they have full legal use:</p> <ul style="list-style-type: none"> <li>• Documents identifying owner of the company vehicle and signed letter confirming they are an employee with full private use</li> </ul>
<b>Exclusions</b>	<ul style="list-style-type: none"> <li>• The current system allows a permit for a person who supplies: <ul style="list-style-type: none"> <li>○ a signed letter confirming that they are a friend or relative and have full use of the vehicle.</li> <li>○ a rental agreement or a letter from landlord stating residency of more than 6 months.</li> </ul> <p>This practice will no longer be feasible when permits become free.</p> </li> <li>• Currently fringe communities Clunes, Newrybar, Rosebank, Nashua, Brooklet, Booyong, and Repentance Creek can purchase a permit. They would be excluded from the free permit system.</li> </ul>
<b>Impacts</b>	<ul style="list-style-type: none"> <li>• The present system requires an individual to undertake a value assessment, where they determine whether or not it is value for money to essentially 'pre-pay' for 11 hours of parking in metered locations (equates to \$55). If the permits become free, the expected uptake will likely increase significantly, particularly from non-resident ratepayers who visit infrequently.</li> <li>• This option is considered more equitable for ratepayers.</li> <li>• Exploitation of the system with change of address on Service NSW.</li> <li>• Inequitable in that those with more cars are eligible for an unlimited number of free permits, at the expense of others in a user pays system.</li> <li>• It is anticipated that this system would result in an increased use of cars. Where residents who live close by might have otherwise opted to walk or use other modes of transport, the free permit may encourage them to use their car and park in pay parking bays.</li> <li>• Increase in cars parking in surrounding residential streets due to cars avoiding the pay parking area (e.g. current fringe communities).</li> <li>• Negative impacts both on permit processing and administration, and on available parking for those that are paying at the meter.</li> </ul>

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## STAFF REPORTS - INFRASTRUCTURE SERVICES

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Option 3 - Capped Number of Free Resident (only) Permits	
<b>Eligibility</b>	A set number of free resident permits are available per address within the Byron Shire. After the cap is exceeded, additional permits can be purchased at a price set in Council's fees and charges.
<b>Evidence required</b>	Proof of vehicle ownership and Byron Shire address: <ul style="list-style-type: none"><li>• Proof of ownership: <b>Vehicle registration</b></li><li>• Proof of address: <b>Vehicle registration</b> or <b>licence</b> with Shire address; or</li></ul> For company owned vehicles, proof that they have full legal use: <ul style="list-style-type: none"><li>• Documents identifying owner of the company vehicle and signed letter confirming they are an employee with full private use</li></ul>
<b>Exclusions</b>	<ul style="list-style-type: none"><li>• Issues may arise if people don't update their address when they move.</li><li>• Currently there is no limit on the number of free pensioner permits per address, therefore it is recommended that pensioner permits continue to be free irrespective of cap.</li></ul>
<b>Impacts</b>	<ul style="list-style-type: none"><li>• Could cause some discord in residences where there are many vehicle owners and only a limited number of permits are free.</li><li>• Relatively easy for people to exploit the system with a simple change of address on Service NSW.</li><li>• Negative impacts both on permit processing and administration, and on available parking for those that are paying at the meter.</li></ul>

### Interim Permits

Consideration was given to the establishment of an 'interim' permit, at a reduced rate, to cover the period 1 July 2024 until implementation. This would add increased complexity to the scheme.

- 5 A robust communications plan is planned (see section later in this report) regarding the free resident permit eligibility, criteria, and application process. This communication will commence in July to ensure those considering purchasing a 12-month permit are adequately informed of the future availability of free permits.

### Overflow and Enforcement Impacts

- 10 Enforcing a free parking permit system presents several challenges that are consistent across each of the implementation options:
  - Overflow in surrounding residential areas due to cars avoiding the pay parking area
  - Enforcement efforts may primarily focus on overstays rather than payment compliance, as paid parking spaces will be occupied by those holding a 'free permit'
- 15
  - While people will be expected to obtain a 'free permit' there may be an inherent sense of entitlement or otherwise confusion, leading people to believe they can park for free as they are resident / ratepayer despite not having completed the application process

## Anticipated Uptake

### *b) impacts on possible revenue from various options on permits and exemptions*

5 The notion of getting something for free can create a psychological incentive for people to obtain parking permits, even if they may not have an immediate need for them. This "just-in-case" mentality can contribute to a higher volume of permit applications as people perceive the free permits as a valuable commodity to secure for potential future use.

10 The application of a fee has assisted with permit management, as people justify the expense. The current system requires an individual to undertake a value assessment, where they determine whether or not it is value for money to essentially pay for 11 hours of parking in metered locations. They may decide that they will likely only need the permit a couple of times a year and determine that the permit does not provide value, instead opting to pay the hourly rate in the circumstances that they need to.

15 When the permits become free, the expected uptake will likely increase significantly. For example, in the current system a two-car household will often only obtain a permit for one car and make arrangements that minimise the unnecessary use of multiple cars. This has a positive effect both on the environment and on parking management. It is possible, and likely, that an unlimited number of free permits issued could result in many households obtaining multiple permits and making decisions that are less environmentally conscious and put greater strain and competition on the available parking spaces.

20 Placing a cap on the number of permits will assist with the management of the increased uptake. In the scenario above, the household will likely accept their free permit and will be satisfied that they have made a \$55 saving.

25 Coupled with the expansion of the pay parking system to Brunswick Heads, the appeal of a free parking permit will be expanded to a greater portion of the population, and is expected to result in at least a twofold increase in demand.

The [report by Bizios](#) was based on the assumption that "*with the removal of the fee it has been conservatively assumed all residents would take up the option of applying for the permit*". The Bizios report already addressed the expected impact on parking demand and pay parking revenue and therefore this is not addressed in this report.

### 30 **Statistics:**

- Byron Shire 'adult' population (18+) was 29,167 at the last census
- The number of permits issued in the last 12 months was 12,401 (BSC permit data).
- The number of light passenger vehicles registered in Byron Shire is 22,848 ([Registration snapshot report | Transport for NSW](#))
- 35 • Number of cars per household is:
  - 0 = 447 households
  - 1 car = 4,765 households
  - 2 cars = 5,080 households

- 3 cars = 2,801 households

### Poll of Citizen Lottery

5 A poll of the Citizen Lottery was undertaken to gather insights about the likely behavioural change that might occur as a result of the free parking permit system. The poll targeted a representative sample of community members selected from the Citizen Lottery.

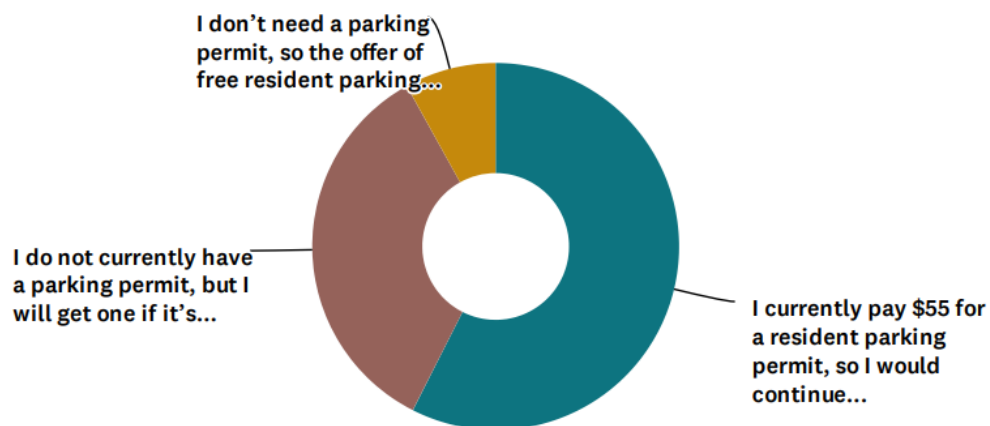
This poll indicates that:

- 34% of respondents do not currently hold a parking permit but would obtain one if it was free,
  - 73% would require 1 - 2 permits and 27% would require more than 2 permits (3 – 4 permits).
- 10

*Council has resolved to reduce the fee for “Shire Resident and Ratepayer Parking Permits” from \$55 to \$0 when the Brunswick Heads Pay Parking Scheme becomes operational. This will enable eligible permit holders to park for free in pay parking areas within the Byron Shire which will include Byron Bay and Brunswick Heads.*

15 *We would like to understand how this change would affect your decision regarding obtaining a parking permit.*

*Please indicate which option best reflects your likely response:*



ANSWER CHOICES	RESPONSES	
I currently pay \$55 for a resident parking permit, so I would continue to obtain one for free.	57.47%	50
I do not currently have a parking permit, but I will get one if it's free.	34.48%	30
I don't need a parking permit, so the offer of free resident parking permits would not affect my decision.	8.05%	7
TOTAL		87

20

If respondent selected option 1 or 2 they were asked: ***How many permits does your household require?***

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.20



The anticipated impacts are outlined in the table below:

	Anticipated number of permits	Revenue Impacts
Current system - \$55 per permit, available to residents and ratepayers	<b>12,401</b> 43% of adult population 54% of registered vehicles	Generates \$ 682,055
Unlimited free permits – resident only	Number of registered vehicles in Byron Shire: <b>22,848</b>	Lost revenue \$1,256,640 + additional resourcing Impacts
Unlimited free permits – residents and ratepayers	Estimated <b>29,167</b> Based on adult population to account for non-resident ratepayers	Lost revenue \$1,604,185 + additional resourcing Impacts
Capped at 1 per property free, additional permits can be purchased	Maximum <b>16,164</b> free based on number of rateable properties Anticipated <b>7,881</b> purchased based on the number of households with >1 car	Lost revenue \$889,020 Revenue generated from additional permits \$433,455
Capped at 2 per property	Maximum <b>32,328</b> free, however conservatively estimate <b>29,167</b> based on adult population to account for non-resident ratepayers Possible <b>2,801</b> purchased based on the number of households with >2 cars	Lost revenue \$1,604,185 + additional resourcing Impacts  Revenue generated from additional permits \$154,055

Data in this table only considers income from parking permits. There will also be losses to parking meter income as a result of loss of available spaces taken up by free permits.

## 5 Resourcing Impacts

As outlined above, the increased volume of permits that require processing will have significant resourcing impacts. The audit of permits is currently undertaken by Customer Service staff on a daily basis, with at least 1 person rostered to this role each day. It is expected that the influx of permit applications will require an additional resource, at least at the outset. Orikan have advised that they can administer permits for a fee, however this will need further consideration based on cost and whether there are efficiencies in providing in-house processing.

### Software Options

*“advising of different software options to improve the usability and efficiency of the permit application process”*

5 Some of the challenges of the current system are related to the evidence required to be uploaded alongside a permit application. Streamlining these requirements will improve user experience and slightly decrease the administration of the daily audit.

10 The audit of each permit will need to continue due to the high percentage of applicants that do not supply correct documentation (approximately 20%). With permits becoming free, the need to audit each permit for proof of residency and vehicle ownership will be imperative to ensure that only eligible customers receive the free permit.

Future system enhancements could automate the audit process, to confirm the correct information has been supplied, however, this is not currently possible. Unfortunately, Service NSW does not allow integration with our system to verify car registration status. Therefore, manual auditing will need to continue.

15 Over the past 2 years, staff have been working closely with Orikan to improve the usability of the software system for customers. Customer surveys and the recording of issues has led to extensive feedback being provided to Orikan. Many issues have been rectified, however further enhancements on usability will be implemented in a new version (V8) which is due for release end of June 2024. We are hoping this will address the many  
20 issues our customers and staff face on a regular basis.

Orikan have also advised they have the capability of providing their staff to complete or assist with the audit process, we are currently waiting on costing information for this.

### Recommendation:

25 The most appropriate, equitable, and manageable system is for a fee to continue to apply to permits.

However, to meet the objectives of Council’s resolution to *“reducing the resident permit fee from \$55 to \$0 when the Brunswick Heads scheme becomes operational”* and to ensure equitable access to parking resources and prevent abuse of the free parking permit system, it is recommended that:

- 30
- The resident permits only apply to residents of the Byron Shire
  - A cap be placed on the number of free permits issued per address. Once the cap is reached, permits could be made available for a fee, as they are now.

35 For the reasons outlined in the previous section, the recommended number of free permits per property is **one**. This measure aims to promote fairness, prevents inequitable distribution of permits, avoids misuse and exploitation, and attempts to manage the availability of parking spaces so as not to undermine the pay parking system and reduce its profitability. It strikes a balance between providing a benefit to residents and maintaining the integrity of the pay parking system.

The more permits that are provided per household, the less effective the scheme will become in terms its original aim to manage traffic. With each additional permit per household the less incentive there is for people to leave their cars at home, creating additional burden on the available parking, and the environment.

- 5 Accordingly, consideration could be given in future fees and charges to a tiered pricing system, for example:

First Permit	Free
Second Permit	\$55
Third Permit	\$110
Fourth Permit	\$165

### Terms and conditions

Some suggested strengthening of the terms and conditions will support the implementation of the free permit system, such as:

- 10
- One free resident permit per rateable property, per financial year.
    - (NB: A transfer of permit system would need to be included to handle changes of address)
  - Evidence required to be stricter demonstrating proof of vehicle ownership and Byron Shire address:
    - 15 ○ Proof of vehicle ownership: **Vehicle registration**
    - Proof of address: **Vehicle registration or licence with Shire address**
    - For company owned vehicles, proof that they have full legal use through documents identifying owner of the company vehicle and signed letter confirming they are an employee with full private use
  - 20 • Service NSW requires that address details should be updated on licence and registration within 14 days. Terms should be strengthened to no longer permit a rental agreement or a letter from landlord stating residency of more than 6 months.
  - Permit expiry date to be linked to the registration date, rather than for a set 12-month period. This will assist with administration and serve as a reminder for people to renew their permit when they renew the registration of their vehicle.
    - 25 • **Pensioner permits** to continue to be free and not limited to one per property. Eligibility to be demonstrated through one of:
      - Current Centrelink Pension Card
      - DVA Gold Card
      - 30 ○ Vehicle registration or rates notice stating pensioner status
    - No refunds will be processed for any permits purchased prior to implementation of the free permit system.
    - Permits cannot be used for vehicles over 6m in length.



- Permits cannot be used until they are in an *approved* state, there will no longer be a 'grace period' while customer service undertake the audit.

## 5 Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure	5.2: Connect the Shire through integrated transport services	5.2.4: Parking - Manage parking through effective controls that support Movement and Place Plans and are coordinated with other initiatives such as park and ride	5.2.4.1	Undertake regular and frequent parking patrols to increase availability and turnover in the town and village centres and compliance with mobility parking

### Recent Resolutions

- **22-534** - allocated \$140,000 to fund an updated parking study including expansion of pay parking to include Brunswick Heads
- 10 • **23-652** – Endorsed the implementation of Brunswick Heads pay parking regime scenario 4 (extended boundary) and resolved to update the fees and charges to change the 'Shire Resident or Ratepayer Exemption, or Resident Interim Parking Permit' from \$55 to \$0 at the time that the scheme becomes operational in Brunswick Heads.
- 15 • **24-114** – Local Traffic Committee endorses the proposed of Brunswick Heads pay parking regime in principle as scenario 4 (extended boundary), subject to Council approval.
- 20 • **24-131** - Endorsed for inclusion in the draft 2024/25 Fees and Charges, a fee of \$5 per hour for the Brunswick Heads Pay Parking scheme and reiterated the commitment (Resolution 23-652) to reducing the resident permit fee from \$55 to \$0 when the Brunswick Heads scheme becomes operational.

### Legal/Statutory/Policy Considerations

As outlined in this report.

### Financial Considerations

The potential financial impacts of the various options are outlined in the report.

## Consultation and Engagement

Communications regarding the free resident permit eligibility, criteria and application process will need to start in July 2024.

- 5 A holding message has been displayed on the Brunswick Heads Parking Scheme web page stating that: *“The criteria and eligibility for the free resident permit is currently being investigated. More detail will be available soon.”*

10 The communications plan addressed the key messages: the pay parking scheme is aimed at improving parking accessibility and reducing overflow impacts to nearby residential areas. To ensure that Byron Shire residents are not unfairly impacted by the introduction of pay parking in Brunswick Heads, Council is committed to reducing the resident permit fee from \$55 to \$0 when the Brunswick Heads scheme becomes operational.

15 It is anticipated that the new scheme will have a significant impact on the operation and success of the existing scheme. Some of the challenges that will need to be addressed in the communications plan include:

- Ensuring people are aware of the proposed commencement date for free permits, to ensure they make an informed decision between July – September as to whether they want to purchase one for the interim period. Requests for refunds will not be processed.
- 20 • Addressing questions about the how money from pay parking will be spent, distribution across the Shire, and how it will impact services and infrastructure, and equity across the Shire.
- Potential impact of the free parking permit on traffic and congestion in already busy areas.
- 25 • Eligibility and enforcement of the free permit system.
- Revenue impacts on Council by removing the fee for resident parking permit.
- Providing clear instructions on how to apply using the current permit portal, that many customers find challenging to use.

30 The communication plan identifies wide ranging methods to ensure a broad reach across the Shire. This includes:

- Web page
- Emails and letters to permit holders
- Media releases
- eNews
- 35 • Social media posts
- Print advertising
- Bay FM advertising
- Posters/signage in customer service and Community Halls

## Report No. 13.21 Renaming Hottentot Crescent, Mullumbimby

**Directorate:** Infrastructure Services

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

**File No:** I2024/806

### 5 Summary:



*This item was deferred from the 23 May Ordinary Meeting of Council.*

That Council endorse the renaming of Hottentot Crescent (Image 1) and submit the chosen name to the NSW Geographical Names Board (GNB) for concurrence and Gazettal.

### RECOMMENDATION:

1. That Council endorses the renaming of Hottentot Crescent, Mullumbimby to "Moonlight Close".
2. Staff will undertake the following actions:
  - a) Submit the endorsed name to the NSW Geographical Names Board for concurrence, advertising, and Gazettal in accordance with regulation requirements.
  - b) Coordinate new street name signs be erected and funded from the General Fund Budget for Sign Maintenance.
  - c) Coordinate a gazettal notice with the NSW Geographical Names Board to streamline the timing of the renaming process on behalf of residents.
  - d) Notify State / Federal Government Agencies, Australia Post, and Internal Council Depts.
  - e) Provide residents a letter confirming the renaming details to assist with their personal address updating.

### Attachments:

- 1 Submission Letter to the residents\_Renaming Hottentot Crescent, Mullumbimby\_ March 2024, E2024/36261 
- 2 Echo Advertising\_ Proposal for Renaming Hottentot Crescent Mullumbimby, March 2024, E2024/29163 
- 3 Confidential - Emailed Name Change Submissions\_Hottentot Crescent Mullumbimby\_April 2024, E2024/46694

## Report

Council resolved at the 23 November 2024 meeting as follows:

**Report No. 13.23**      **Possible change of road name Hottentot Crescent,  
Mullumbimby**

**File No:**                      I2023/1755

**23-548**      **Resolved:**

*That Council commences the name change process for Hottentot Crescent,  
Mullumbimby.*

*(Lyon/Westheimer)*

5

Council commenced the renaming process in consultation with Geographical Names Board (GNB) regulations.

Staff proposed two names in recognition of the local flora theme in the area. A third name was proposed by the local community. All three (3) names were pre-approved by the GNB.

10

**Image 1 – Location of Hottentot Crescent, Mullumbimby.**



## Consultation and Engagement

Residents affected directly by the renaming were sent letters informing them of three (3) potential names and were requested to forward submissions *Attachment 1 (E2024/36261)*.

- 5 The renaming proposal was advertised in both the Byron Echo on 15 March 2024, and Council notices *Attachment 2 (E2024/29163)*.

Throughout the 28-day consultation period fourteen (14) submissions *Attachment 3 (E2024/46694)* were received with Option 2 receiving the highest nomination.

- 10
- |                                 |   |
|---------------------------------|---|
| Option 1 – Tussock Court        | 3 |
| Option 2 – Moonlight Close      | 5 |
| Option 3 – Drunken Parrot Place | 1 |
- 15 Three (3) submissions were received from residents suggesting five (5) additional names.
- 20
1. Macaranga
  2. Quandong
  3. Finger lime
  4. Parrot Tree
  5. Currawong

All five (5) suggested additional names were rejected by the GNB due to:

- 25
- 1 & 3 – similar sounding names located within a 30km radius.
  - 2 – duplication of the name located within a 30km radius.
  - 4 & 5 – names already existing within Byron Shire.

One (1) submission received requested the existing name remain.

- 30
- One (1) submission received did not choose any options or suggest a legible option.

## 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	1.3.3: 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

Byron Shire Council Street Name Register.

- 5 Council is able to name roads in accordance with the authority provided in Part 10, Division 4, Section 162 of the *Roads Act 1993*.

The procedure of naming roads, is dictated by Sections 7 to 10 within Part 2, Division 7 of the *Roads Regulation 2018*, which is available in detail at:

- 10 <https://www.legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2018-0512>

Council is the authority to name this road and has done so in line with the below regulations:

- 15
- *Road Regulations 2018* - Part 2 - Division 1 - Section 7 – Procedure for naming roads
  - *Roads Act 1993* - Division 4 - Section 162 - Naming of public roads
  - New South Wales Address Policy – March 2015
  - New South Wales Addressing User Manual – September 2016
  - New South Wales Online Naming System – Geographical Names Board of New South Wales – June 2015

## 20 Financial Considerations

The funds for the erection of the sign/s will come from the General Fund Budget allocation for Sign Maintenance.

- 25 Council will be required to pay for amendments to street name signage from the existing budget – approximately \$500.

## Report No. 13.22 Ewingsdale Slash Pine Plantation

**Directorate:** Infrastructure Services

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

**File No:** I2024/864

### 5 **Summary:**

Council, via Resolution **23-389**, requested budget adjustment to allow a Bush Regeneration Program to be extended to cover the Utilities operational lands on Ewingsdale Road.

10 Council also requested a report on the options to address the adjacent Slash Pines plantation within the Cavanbah Centre Community land. Initial cost estimate for removal of the pines has been received, however planning for redevelopment of the site is recommended to be completed prior to removal.

15

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### **RECOMMENDATION:**

**That Council:**

1. **Notes the initial cost estimate for removal of slash pine plantation; and**
  2. **Considers within the 2025/26 budget, all options for funding design for development of the slash pine area as overflow car parking.**
- 20



## Report

The Land adjoining the Cavanbah Centre at 249 Ewingsdale Road, Byron Bay (Lot 3 in DP706286) was purchased by Byron Shire Council May 2003 to enable the Cavanbah Centre and associated sporting fields. The western portion of the land was identified as an extension of Council's West Byron Effluent Reuse Wetland Project;

An existing Slash Pine plantation on the land has been providing an ongoing seed source for wilding pines which are establishing across the sedgeland area. Bush regeneration and weed control works across the sedgelands to remove wildling pines are now funded and underway however the Slash Pine plantation area itself requires separate consideration.

The Slash Pine Forest is of very low to no ecological value. This area has very few to no native species of flora and will support a very limited number of native fauna species. Due to the acidic nature of the Slash Pines, the majority of this area has very limited or no ability to naturally regenerate and would be very difficult and expensive to revegetate with native species.

If removal of the Slash Pine Forest is to be pursued, it would essentially be a logging operation utilizing large machinery. Removing the Slash Pine Forest would create an on-going maintenance issue of the area. As large Slash Pine stumps decompose, they have been known to create large and dangerous holes in the ground which can be hidden by pine needles.

Quote of \$215,000 was received in late 2023 for full removal of the plantation area within Cavanbah Land. Currently there is no identified funding for this removal. Should this option be pursued, it will be necessary to initiate a public Tender process to ensure compliance with Council Procurement Policy should prices have increased beyond the \$250,000 threshold.

Staff recommendation is that any removal would be aligned with a planning exercise for the future development of this land. Failure to develop the site following removal of the pines will create an ongoing weed problem. Design to facilitate supplementary car parking to increase capacity of the Cavanbah Centre is currently favoured as an option.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure	5.4: Provide accessible community facilities and open spaces	5.4.4: Sporting facilities and swimming pools - Ensure ongoing maintenance and upgrade of inclusive sporting facilities and swimming pools	5.4.4.1	Deliver management and operations of Cavanbah Centre and associated maintenance and Capital Works programs

## **Financial Considerations**

Future development of the Slash Pine area of Cavanbah will require initial capital budget allocation of around \$30,000 to enable design and costing of proposed works.

**Report No. 13.23 Part Road Reserve Closure and sale adjoining Lot 1 DP 577281, 860 Coolamon Scenic Drive, Coorabell, NSW 2479**

**Directorate:** Infrastructure Services

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

**File No:** I2024/865

**Summary:**

This report is being presented to Council to endorse the closure of Council's Road Reserve adjoining Lot 1 DP 577281.

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 1 DP 577281.

Land size is approximately 162m2.

15

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**RECOMMENDATION:**

**That:**

1. Council endorses the closure of Part Road Reserve adjoining Lot 1 DP 577281 as detailed in the report.
- 20 2. Council accepts the valuation as per *Attachment 1 E2024/63301*, that has been agreed upon by the landowners.
3. The applicant pays all remaining costs associated with the part road closure and consolidation, including:
  - 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 13060 Lot 1 DP 577281.
- 30 5. 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:**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.23

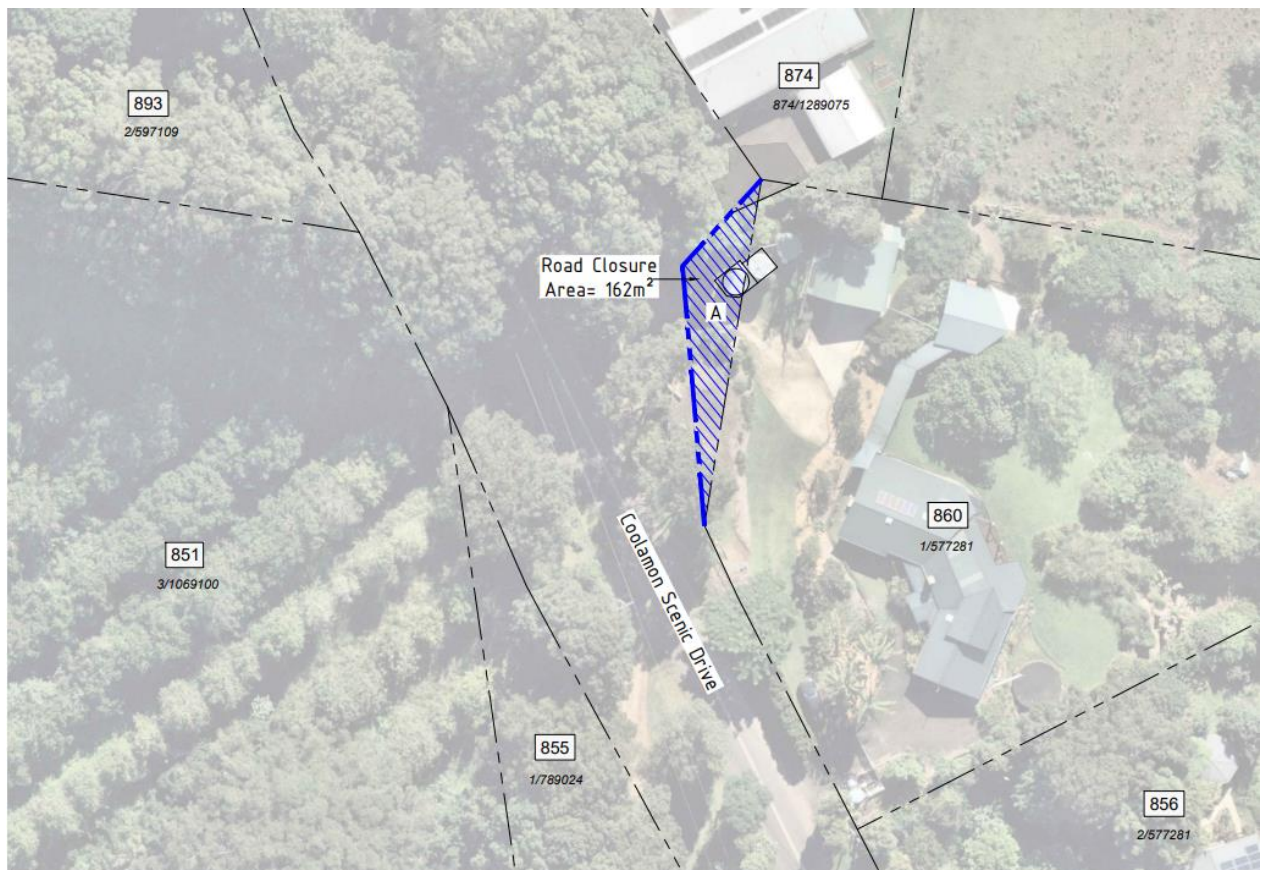
- 1 Confidential - Valuation\_860 Coolamon Scenic Drive\_Coorabell NSW 2479\_June 2024\_002, E2024/63301
- 2 Confidential - Authorities submissions\_ 860 Coolamon Scenic Drive\_Coorabell NSW 2479\_June 2024\_001, E2024/63290

5

## Report

Council was approached by the owners of Lot 1 DP 577281, 860 Coolamon Scenic Drive, Coorabell for closure and sale of Council Road Reserve adjoining their property (Image 1). This road reserve closure and sale is to rectify building (water tanks) encroachments (Image 2 & 3). The survey plan (Image 4) shows the proposed 162m<sup>2</sup> of Road Reserve adjoining part Lot 1 DP 577281.

There are no likely impacts from closure of this section of Council Road Reserve (Table 1). A valuation was carried out and agreed upon by the landowners (*Attachment 1 E2024/63301*).



Blue indicates section of Road Reserve to be closed.

**Image 1 Location of the proposed road closure adjoining Lot 1 DP 577281**





**Image 2 – Arrow indicates location of encroachments adjoining Lot 1 DP 577281**



**Image 3 – Building encroachments on road reserve adjoining Lot 1 DP 577281**

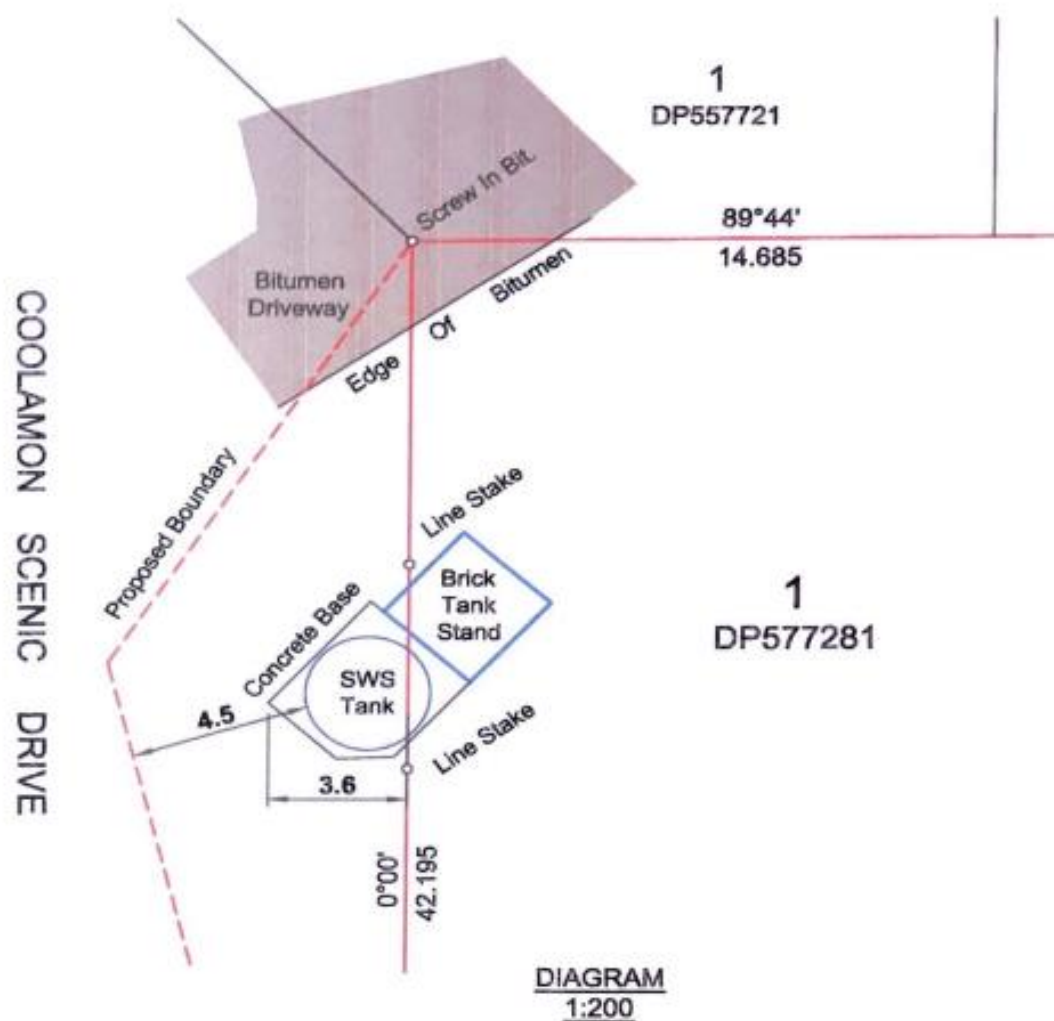


Image 4 - Survey of Part of Road Reserve adjoining Lot 1 DP 577281

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

Table 1 - Likely impacts from closure of this section of Council Road Reserve.



### 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.

A Notice was placed in The Byron Shire Echo on 25 April 2024 and could be viewed on Council website. Notifications went out to adjoining landowners and all authorities advising closure of the section of road reserve off Coolamon Scenic Drive outlined in Image 1 highlighted red 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 for objection by authorities *Attachment 2 (E2024/63290)*. There were no submissions by the community.

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

## 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	1.3.3: 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*

#### 5 *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:

- 10 (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.

##### 15 **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:
  - 20 (i) all owners of land adjoining the road, and
  - (ii) all notifiable authorities, and
  - (iii) any other person (or class of person) prescribed by the regulations.
- (2) The notice:
  - (a) must identify the road that is proposed to be closed, and
  - (b) must state that any person is entitled to make submissions to the council with respect to
  - 25 the closing of the road, and
  - (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

##### **38C Public submissions and formal objections**

- 30 (1) Any person may make submissions to the council with respect to the closing of the road in the manner and within the period specified in the notice published under section 38B.
- (2) Without limiting subsection (1), a notifiable authority in relation to the road may include a statement in the authority's submission to the effect that the authority formally objects to the closing of the road. The authority may withdraw the objection any time by written notice given
- 35 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.

- 40 (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.
- 45 (5) In deciding whether to affirm or set aside the objection, the Land and Environment Court must have regard to the public interest.

**38D Decision of proposal**

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

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

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

**38E Effect of notice of closure**

(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.

(2) The land comprising a former road:

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

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

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

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

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

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

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

**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 zero objections were received.

## Report No. 13.24 Shire Wide Aquatic Strategy

**Directorate:** Infrastructure Services

**Report Author:** Malcolm Robertson, Manager Open Space and Facilities  
Pattie Ruck, Manager Open Space & Facilities

5 **File No:** I2024/866

### Summary:

The Shire Wide Aquatic Strategy has progressed to a stage where two (2) preferred options have been prepared to concept stage to allow for public exhibition.

10

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### RECOMMENDATION:

**That:**

- 15
1. Council places the concept designs from the Draft Options Report on public exhibition for a minimum of 28 days; and
  2. The Final Options Report to be returned to a future meeting of Council with consideration of Community feedback.

### Attachments:

- 20 1 Byron Shire Aquatic Options Report, E2024/63733 

## Background

Both Mullumbimby and Byron Bay pools are approaching the end of their functional life and are requiring significant renewal or upgrade works. The Byron Bay swimming pool was built in 1966 and the Mullumbimby swimming pool in the 1950's. Cost of maintaining these facilities continues to increase and current infrastructure is not accessible for people with a disability.

Council in 2018 initiated concept planning for options to refurbish the Byron Bay Pool, however this project has been delayed as Council works through issues with the Crown regarding alignment of boundaries.

Feasibility Study on the upgrade of the Mullumbimby Memorial Centre - Petria Thomas Pool was completed to draft stage in August 2022. The study had been completed for a stand-alone facility without consideration of Shire-wide pool provision.

Decision on upgrading one pool facility within the Shire has long-term impact on future decisions for wider aquatic recreation provision across the Shire. To ensure that Council considered broader Shire-wide strategic planning for provision of public pools prior to committing funding to upgrade a single existing facility, Council resolved to place the Mullumbimby feasibility study on hold pending completion of this Shire-wide study.

The Open Space and Recreation Needs Assessment and Action Plan 2017-2036 suggested only one pool was required for the Byron Shire based on the ratio of 1:60,000 population, however this strategy suggests two pool facilities will be required to meet Council objectives. Review of the Recreation Needs Assessment is now underway.

## Report

The market and public expectation for public swimming pools has changed significantly since the 1950s/1960s when the Byron Shire pools were first built by the community. It is now expected that a public pool can provide a wider range of programs and are inclusive of all abilities.

Trends across modern aquatic facilities include:

- Inclusive Design. Specific features such as "changing places" change rooms, access ranging from stairs, ramps, hoists and suitable edges for transfers direct from a mobility device.
- Wellness Hubs - allied health components that provide holistic life-style activities and warm water pools with a high degree of accessibility to facilitate health and rehabilitation programs.
- Water play - amenities focused on fun for families and children such as zero-depth splash parks that encourage lifelong participation.
- Sustainability - renewable energy sources and storage with emphasis on insulated pools and building components with low embodied carbon.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

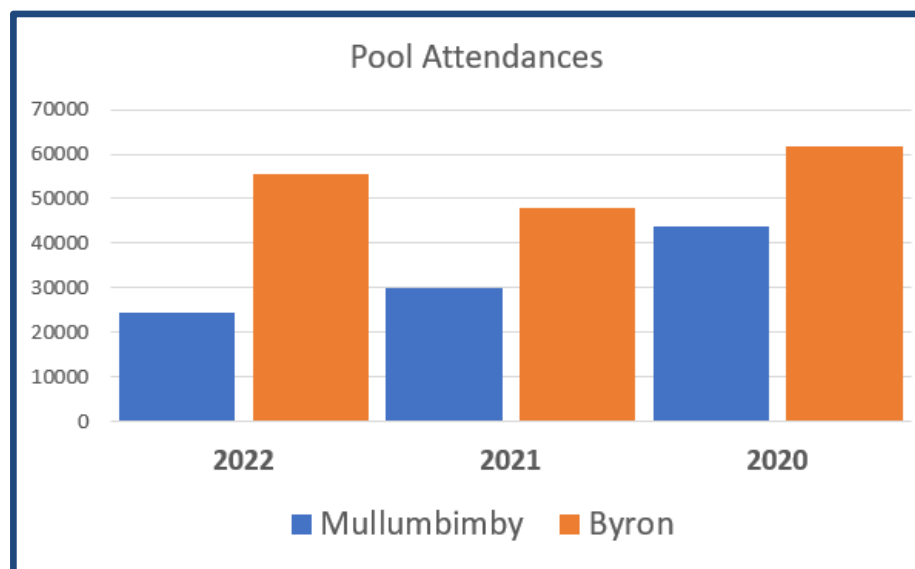
13.24

A key part of the study was comparison against the University of South Australia's 'Centre for Environmental and Recreation Management' databases which measure and allows comparison of key operational management performance and efficiency for aquatic and leisure centres.

- 5 Expenditure costs for operating public swimming pools are relatively fixed in relation to staffing costs, utilities, chemicals etc. so can only be offset by greater visitations, which is difficult in a smaller catchment. The two facilities are effectively competing for population share.
- 10 Data for last season shows Byron pool performing better than national average, especially regarding subsidy per visit (\$2.90) and energy cost. Mullumbimby pool has a much higher subsidy per visit (\$14.11).

Category	CERM - Outdoor Pools	Byron Bay Swimming Pool	Mullumbimby Swimming Pool
Gross receipts	\$318,135	\$114,582	\$79,810
Gross expenditure	\$582,254	\$275,329	\$425,018
Net result	(\$264,119)	(\$160,745)	(\$345,208)
Fees per visit	\$4.32	\$2.06	\$3.26
Subsidy per visit	(\$3.65)	(\$2.90)	(\$14.11)
Total visits	59,165	55,358	24,463
Catchment population (5km)	33,000	9,321	4,945
Catchment multiple	1.4	5.9	4.9
Adult swim fee	\$6.00	\$5.00	\$5.00
Child swim fee	\$4.50	\$4.40	\$4.40
Energy cost	\$50,282	\$27,501	\$30,468

Current Pool attendances



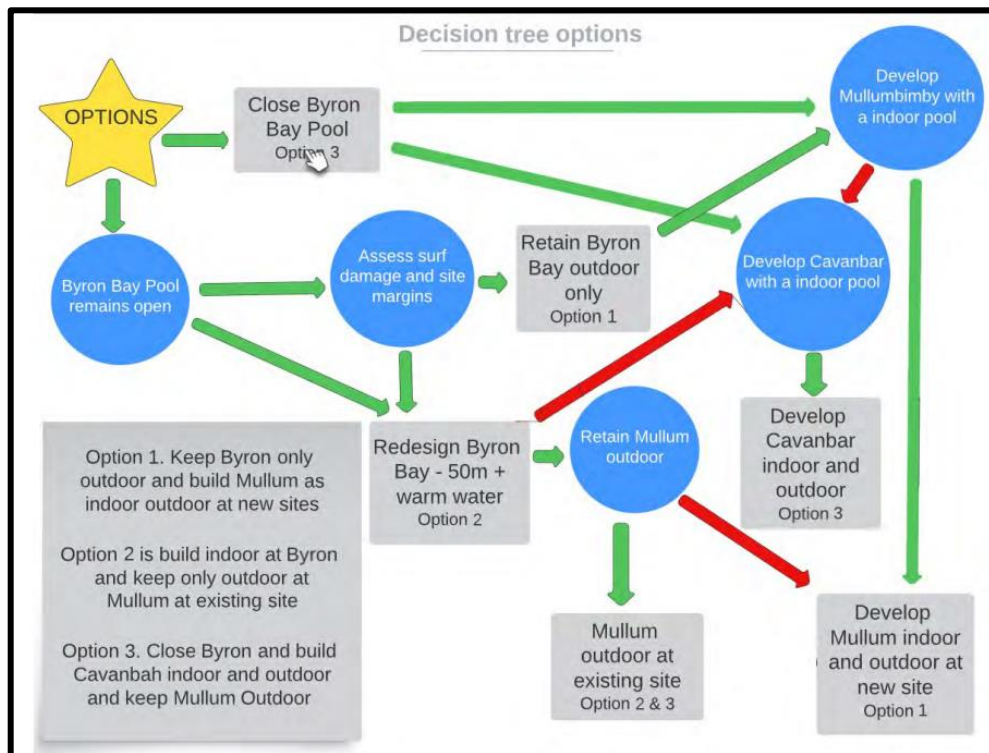
## Site Refinement

Within the study initial identification of potential sites was undertaken, with these then refined to five. Key criteria for site selection included:

- 5
  - Size of land – up to 4500m<sup>2</sup>
  - Adequate buffer from residential areas
  - Long term Council tenure
  - Vehicle access and car parking availability
- 10
  - Topography and underlying geomorphology
  - Central to maximum population
  - Pedestrian and cycle access
  - Planning constraints
  - Access to services
- 15
  - Central to catchment

Following consideration of advantages and disadvantages of each site, the preferred options were determined to be one facility at both Byron Bay and Mullumbimby. The below decision tree was workshoped with Councillors to determine the final two preferred options for progression to concept design.





The preferred option to progress were:

- Mullumbimby – new facility
- Byron Bay – retain and existing, within current footprint

5

### Byron Bay – Renewal of existing

It was assessed that due to age and visual condition, the existing pool shell will need to be replaced. This allows opportunity to increase lane capacity within existing footprint, whilst upgrading amenities. All pool plant will also need to be replaced to bring up to current standard.

10

Proposed Renewal:

- 50m pool extended to 8 lanes to cater for increased programming.
- Removable starting blocks - depth for diving blocks 1.35m and Water Polo 1.8m
- Program pool
- Splash pad
- New pool plant to meet current standards.
- Entry from southwest corner providing best exposure.

15

- Cafe and reception together saving staff costs.
- Change rooms and toilets separated for supervision.
- Gender neutral access facility to bolster family friendly changing options.
- Buildings along south boundary to create break from prevailing wind.

- 5
- Glazing on east side provide a visual connection with the park.

### Key Components

- 50m Pool:
  - Design shows World Aquatics compliant 8 lane solution,
  - 10 ○ Removable starting blocks.
  - A split swim wall with recess in pool floor
  - 50m start from east end with finish at west, spectator seating this end, and 25m start from west with finish at centre.
  - Wet edge and ramp access.
  - 15 ○ Pool covers reside on concourse at the west end.
- Program Pool and Splash Pad
  - Splash pad at eastern end near entry and wet lounge areas, separation from pools via a fence from the program pool.
  - Direct connection to the proposed multi-purpose/party room to the north for supervision
  - 20 ○ Option for school and other carnivals to have competitor entry directly from coaches via the loading hardstand directly onto the concourse.
  - Pool control has a clear view to all pools and wet areas.
- Concourses and Shade
  - 25 ○ Minimum clearances for all concourses
  - Lightweight fabric roof over the spectators.
  - Shade structure over the program pool and splash pad
  - Wide eave canopy off the building along the south edge.

- Incidental umbrella shades for seating
- Lockers at the entry and concourse showers in front of change rooms



### 5 Mullumbimby – New facility

Preferred site within Lot 22 adjacent to Mullumbimby Skate Park

10 From review of flood prone mapping the proposed site will become submerged in a 1% Annual Exceedance Probability (AEP) event and will need to be filled to raise the floor level to the required minimum of Reduced Level (RL) 4.99 for a Probable Maximal Flood (PMF) event.

The recent Post 2022 Event Flood Analysis commissioned by the NSW State government identified some issues in the hydraulic model upstream of this proposed site - [Post 2022 Event Flood Behaviour Analysis - Brunswick River Report - Datasets - NSW Flood Data Portal](#)

15 Flood Engineers have recommended that the proposal be built to at least the 2100 control of RL 4.99m AHD with space provisions for bunding/levee adaption to future proof larger rarer events to key components of the facility. This recommended level would be slightly higher than the recorded 2022 flood event based on the recorded data compiled by the NSW Public works.

20 A fine-grained flood model will be developed to support this location through the next detail design stage of the project- given the issues identified in the NSW State government Post 2022 review.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

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The site at its highest point is at about RL4.00 and lowest at about RL3.2. With the flood planning level at RL 4.99 the entire site will need to be filled with an average depth of 1.4m to raise the floor level above the flood level. This will involve more than 20,000 cubic metres of fill material with the proposal put forward, making allowance for the pool shells and balance tanks. This can be accomplished without affecting no fill zones and will ensure that risk of inundation is minimised.

### Proposed Facilities:

- Outdoor 50m pool x 8 lanes
- Split wall to divide to 25m when required
- Accessible ramp entry
- Lights and grandstand
- Learners / program pool (incl. swim lesson depth)
- Fully accessible indoor warm water pool
- Splash pad
- Change rooms and toilets
- Pool plant
- Multipurpose room
- Cafe and reception

### Key Components

- 50m Outdoor Pool:
  - World Aquatics compliant 8 lane solution
  - Minimum water depth for diving blocks will be 1.35m and water depth for Water Polo @ 1.8m.
  - Removable starting blocks.
  - Split swim wall with recess in pool floor for 50m option.
  - 50m start from north end with finish at south, spectator seating to the west.
  - Wet edge and ramp access.
  - Pool covers reside on extended concourse at the south end.
- Warm Water Pool
  - Direct access from amenities and unisex change booths for gender diversity in addition to the female, male and Access facilities.
- Program Pool and Splash Pad
  - Splash pad nearest entry and wet lounge areas

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- Separation from pools is via a fence from the program pool and by distance between the splash pad and shallow end of the 50m. This provides for best supervision in this zone.
- Splash pad with various water spray and kept clear to allow for expansion

### 5 • Entry

- Central reception which can be staffed at low patron times by a single person who can also handle café and merchandise. Admin located is directly behind.
- Multipurpose room directly off the lobby has connections to the aquatic areas but can be used stand-alone.

### 10 • Concourses and Shade

- Minimum clearances for all concourses
- Lightweight fabric roof over the spectators and shade structure over the program pool and splash pad with very wide eave canopy off the building along the southern edge.

- 15
- Incidental umbrella shades for seating and turfed areas and BBQ's and ample opportunity for shade tree.
  - Lockers at entry and concourse showers to be located in detailed design.

### • Amenities

- 20
- Amenities directly off the entry and lead to the indoor warm water pool which has lift up doors connecting this space to the outdoor pools.
  - Two 'unisex' change booths accessed directly off the Warm Water Pool concourse.



## Next steps

Council place concept designs from options report on public exhibition and receive Community feedback to be considered and report be returned to Council on findings.

- 5 Finalised Options Report would then be used to inform detailed design and costing that would be used to leverage grant opportunities or funding sources, detail economic/social sustainability and management models..

## Strategic Considerations

### Community Strategic Plan and Operational Plan

- 10
  - Both Mullumbimby and Byron Bay pools are approaching the end of their functional life and are requiring significant upgrade.
  - Issues with the Crown regarding alignment of boundaries at Byron Bay have yet to be resolved.
- 15
  - The Open Space and Recreation Needs Assessment and Action Plan 2017-2036 suggested only one pool was required for the Byron Shire based on the ratio of 1:60,000 population. Review of the Recreation Needs Assessment is now underway.

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure	5.4: Provide accessible community facilities and open spaces	5.4.4: Sporting facilities and swimming pools - Ensure ongoing maintenance and upgrade of inclusive sporting facilities and	5.4.4.5	Progress planning of renewal / upgrades of Byron Bay Memorial Pool



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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
		swimming pools		
5: Connected Infrastructure	5.4: Provide accessible community facilities and open spaces	5.4.4: Sporting facilities and swimming pools - Ensure ongoing maintenance and upgrade of inclusive sporting facilities and swimming pools	5.4.4.7	Pursue funding opportunities to allow implementation of adopted recommendations within Shire-wide aquatic recreation study

### Recent Resolutions

- 5 February 2018 ( **18-039**) Concept plans for options for possible refurbishment of the Byron Bay Pool be prepared for community consultation to ascertain community priorities and preferences. This project is ongoing but has been delayed as Council seeks resolution with the Crown regarding alignment of boundaries.
- 10 February 2020 (**20-061**) Council resolved to conduct a feasibility study into the financial viability of converting the Petria Thomas Swimming Pool in Mullumbimby into a year-round, solar heated facility along with addition of a disability access ramp, a splash children's pool and a rehabilitation pool.
- 15 August 2022 (**22-422**) Council resolved that the Current Mullumbimby Memorial Centre – Petria Thomas Pool feasibility study be placed on hold pending consideration of Shire-wide Aquatic Facility requirements.
- May 2024 (**NOM 9.3**) Council moved to explore and implement options to heat the Mullumbimby Swimming Pool. This project is underway.

### Legal/Statutory/Policy Considerations

- 20 Adopted Open Space and Recreation Needs Assessment and Action Plan 2017-2036 is currently under review.

### Financial Considerations

- 25 Concept designs have been to undertake quantity survey to allow indicative costs for both Byron Bay and Mullumbimby options. Consultants have suggested that a staged approach is possible for Mullumbimby as funds become available, however would create duplication of operational and management costs across two facilities. Single stage construction will allow economies of scale and is the recommended approach.



## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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Based on feedback received from the public exhibition of the concept design will inform a more detailed economic sustainability projection.

#### **Byron – Renewal of existing**

##### Estimated Cost

5	• Aquatic Centre	\$19,835,826
	• contingencies	<u>\$ 8,431,174</u>
	• <b>TOTAL</b>	<b>\$28,267,000</b>

#### **Mullumbimby New Pool**

10

##### Estimated Cost

• Aquatic Centre – Stage 1 Indoor Infrastructure	\$24,549,909
• Plus contingencies	<u>\$ 11,153,091</u>
• <b>TOTAL Stage 1</b>	<b>\$ 35,703,000</b>

15

• Aquatic Centre – Stage 2 Outdoor Infrastructure	\$10,257,246
• Plus contingencies	<u>\$ 4,449,975</u>
• <b>TOTAL Stage 2</b>	<b>\$14,707,000</b>

20

• <b>Complex TOTAL</b>	<b><u>\$50,410,000</u></b>
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#### **Consultation and Engagement**

Consultation to provide an options report, initially included stakeholders for the Mullumbimby Pool Feasibility Study including:

25	• Water Polo, Swimming Schools, Swim Teachers, Pool Managers, local primary and secondary schools, resident associations, Access Consultative Working Group, Neighbouring Council's, Petria Thomas and current pool patrons.
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30 Further consultation was undertaken when the scope was broadened to the Shire Wide Aquatic Study. Face-to face or telephone conversations and a written questionnaire were used to consult with stakeholders including:

- Shire Wide primary & high schools, swimming clubs, water polo, surf clubs, aqua fitness programs, learn to swim, pool managers, aquatic management businesses and other relevant stakeholders.

## BYRON SHIRE COUNCIL

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- Councillors were provided a workshop briefing on option details prior to finalisation of options within the report.

Public exhibition of draft concepts is now recommended to inform detail design.

## Report No. 13.25 Brunswick Heads Pay Parking - Implementation Update

**Directorate:** Infrastructure Services

**Report Author:** James Flockton, Infrastructure Planning Coordinator

5 **File No:** I2024/885

### Summary:

10 This report provides an update to the current resolution relating to the consultation for Brunswick Heads Pay Parking and is seeking Council endorsement for the purchase of the new meters for the Brunswick Heads Parking Scheme through the current pay parking contract with provider Orikan as a variation to the existing pay parking contract.

The report also recommends that the purchase and implementation costs be funded from the Pay Parking Meter Replacement Reserve.

The report concludes with an update on the program implementation timeline.

15

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### RECOMMENDATION:

- 20 1. That Council endorses the purchase of new meters and the related system operational costs for the Brunswick Heads Pay parking system, through the current pay parking contract with provider Orikan, as a variation to the existing pay parking contract based on the extenuating circumstances detailed within the Report.
- 25 2. That Council funds the initial costs required in recommendation 1 from the Pay Parking Meter Replacement Reserve.

## Report

Council have endorsed the implementation of the Brunswick Heads pay parking scheme. This endorsement includes a fee of \$5 per hour and commitment to reducing the resident permit fee from \$55 to \$0 when the Brunswick Heads scheme becomes operational.

- 5 Council supported the use of cash meters, pay by plate cashless parking meters and virtual payment methods to ensure the scheme is modern and flexible to user needs.

The purpose of this report is to update Council on actions relating to the Brunswick Heads Pay Parking Scheme and resolution number **24-131**, as detailed below.

*That Council:*

- 10 1. *Endorses for including in the draft 2024/25 Fees and Charges, a fee of \$5 per hour for the Brunswick Heads Pay Parking Scheme and reiterates its earlier commitment (Resolution 23-652) to reducing the resident permit fee from \$55 to \$0 when the Brunswick Heads scheme becomes operational;*
- 15 2. *Supports Brunswick Heads Pay Parking scheme using a combination of existing cash meters and Pay by Plate cashless parking meters and other options such as phone apps;*
3. *Receives further report;*
  - a) *discussing how the funds generated from the Brunswick Heads Pay Parking scheme could be distributed in Brunswick Heads and the Shire*
  - 20 b) *advising of different software options to improve the usability and efficiency of the permit application process*
  4. *Receives further reports on discussions with relevant Brunswick Heads community groups on [to be advised in a separate report]*
    - 25 a) *impacts on of likely overflow from avoidance of parking charges. [to be advised in a separate report]*
    - b) *impacts on possible revenue from various options on permits and exemptions*
    - c) *unsealed parking areas.*

## Key issues

- 30 Discussing how the funds generated from the Brunswick Heads Pay Parking scheme could be distributed in Brunswick Heads and the Shire

The first year of revenue from the new Pay Parking system will be used to fund the implementation of the system. Once these costs have been recouped the revenue will be used in a similar manner to the revenue from the Byron Bay system, but with the funds directed to different areas.

## BYRON SHIRE COUNCIL

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A separate report will be provided to discuss this matter with the above resolution to remain open until this has been reported to Council.

#### Advising of different software options to improve the usability and efficiency of the permit application process.

- 5 Council's Pay Parking contractor Orikan are currently working on a number of updates that staff would like to see operational before making further comments because the updates are proposed to resolve all current concerns.

A separate report will be provided to discuss this matter upon the completion of the above work.

- 10 The resolution will remain open until this has been reported to Council.

#### Impacts of likely overflow from avoidance of parking charges.

Staff have been concentrating on the delivery of the Pay Parking scheme to agreed timeframes, therefore, this item has not been thoroughly investigated. A further report will be provided to the August Council meeting on this item.

- 15 The resolution will remain open until this has been reported to Council.

#### Impacts on possible revenue from various options on permits and exemptions

Based on the endorsed free resident parking permit and \$5 per hour parking rate to a maximum total daily rate of \$15 per day, the following cost and revenue ranges are estimated for Brunswick Heads Pay Parking.

- 20
- Cost per year (implementation and operational costs): \$401,319 to \$430,606
  - Total Revenue per year: \$1,843,957 to \$2,820,205

Finalised costs are still subject to final supply and install costs which is subject to a current procurement process and only time will prove the actual revenue generation.

- 25 It is difficult to accurately estimate parking revenue until the uptake and use of locals' parking permits is known when the scheme becomes operational.

- 30 The lower revenue range is estimated assuming 80% weekday and 60% weekend parking activity being Byron Shire residents with permits, therefore reducing the revenue generating potential from pay parking from visitors. The upper range is currently estimated assuming a 60% weekday and 50% weekend parking activity being Byron Shire residents with permits.

- 35 *The multi-criterion assessment factors in an overall weighted average parking occupancy of 70%. This weighting is to account for fluctuations in peak parking occupancy between seasonal and non-seasonal periods. Parking revenue generated each year will be subject to a range of factors such as weather events, number of rainy days per year and visitor numbers which while growing can fluctuate.*

## BYRON SHIRE COUNCIL

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- 5 A 50% local to visitor parking split is consistent with intercept surveys undertaken by Bitzios on Friday 23 June 2023 and Council on Thursday to Saturday 28-30 November 2019, which found 50% to 54% of respondents were from the Bryon Shire. The consensus from Brunswick Community Groups, however, based on anecdotal experiences is that local parking splits, particularly on weekdays are much higher with more locals.

A further report on Council resident permit scheme will be provided separately to the June Council meeting.

#### Unsealed parking areas

- 10 Refer to the Table 1 for a summary of unsealed areas that are proposed to be upgraded based on the Pay Parking scheme revenue; Table 1 also presents the works priority and their respective indicative costs and scope of works.

### Options

#### Proposed Initial Projects to be completed with Initial Revenue

**Table 1: Summary of Initial Projects to be Completed**

Priority	Street Name	Street Section	Summary of Works	Indicative Cost
1	South Beach Road and South Beach Lane	Entire section	Road realignment, resealing, linemarking and footpath provision	\$4,778,300
2	Park Street West	Fawcett Street to Fingal Street	Road resealing and linemarking	\$231,000
2	Mullumbimby Street North	Brunswick Terrace to Tweed Street	Road resealing, linemarking and footpath provision	\$575,000
3	Mullumbimby Street South	Brunswick Terrace to Tweed Street	Road resealing and linemarking	\$275,000
4	Fawcett Street	Tweed Street to Park Street	Road resealing, linemarking and footpath provision	\$1,235,000
5	Fingal Street	Brunswick Terrace	Road resealing and	\$359,000

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		to Tweed Street	linemarking	
6	Tweed Street	Fawcett Street to Fingal Street	Road resealing and linemarking	\$661,000
8	Park Street (optional outside paid parking area)	Fingal Street to Booyun Street	Road resealing and linemarking	\$165,000
9	Booyun Street (optional outside paid parking area)	Park Street to Tweed Street	Road resealing and linemarking	\$866,000

### Next steps

The updated program to bring the scheme to an operational status is as follows:

Action	Delivery Date
Place parking meter order	Late June
LTC endorsement for parking signage changes	June
Implement communications plan, advertising and Variable Message Signs to ensure users are prepared for when the Pay Parking system is switched on.	Late August
Install all signage and parking meters	Late August
System operational	August / September
All proposed parking upgrades added into 10 year plan as part of 2025/26 budget process	December 2024



## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure	5.2: Connect the Shire through integrated transport services	5.2.4: Parking - Manage parking through effective controls that support Movement and Place Plans and are coordinated with other initiatives such as park and ride	5.2.4.1	Undertake regular and frequent parking patrols to increase availability and turnover in the town and village centres and compliance with mobility parking

### Recent Resolutions

24-131

#### 5 Legal/Statutory/Policy Considerations

Council and Council's Local Traffic Committee have endorsed Pay Parking being implemented into Brunswick Heads. However, Council and Council's Local Traffic Committee still need to endorse the new sign layouts required to enforce the parking scheme.

#### 10 Financial Considerations

Costs for meters and operations at the time of writing this report are being confirmed through liaison with the current contractor Orikan. It is proposed that the meter purchase, system set up and ongoing operational system management will be carried out by Orikan as a variation to the existing pay parking contract.

- 15 It is recommended that Council note this variation is expected to be beyond the tender threshold of \$250,000 incl GST, however, staff consider this acceptable given we have a current contract with a Pay Parking provider. Under section 55(3)(i) of the Local Government Act.

- 20 *a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.*

The reasons for 'extenuating circumstances' are:

1. The proposed variation is consistent with the original scope of the contract, it purely expands the area covered.
  2. We intended to extend the Pay Parking area in the future, and this was noted as being planned in the tender document for the current contract. Therefore, this expansion is part of the current contract intentions.
  3. the contract will continue to provide value for money, through review of variation costs against existing contract costs that have been through a formal open tender process.
  4. tendering is questionable because we have a current contract that has been through a tender process. It could waste other providers time, or it would risk having two providers to manage (staff may not be able to engage Orikan if we received a cheaper tender price from a suitable provider)
  5. the whole system will get tendered in the next 12-18 months.
- System revenue will cover costs; however, accurate quantification of surplus revenue (above costs) cannot be determined until the scheme is operational and the uptake of permits are known.

**Comment from Manager Finance**

- Council will need to provide a funding source for the purchase of the parking meters and initial system setup for the Brunswick Heads parking scheme. Budgetary provision for the establishment of the Brunswick Heads Pay Parking scheme is contained in the Draft 2024/2025 Budget also to be considered by Council at this Ordinary Meeting funded from the Pay Parking Meter Replacement Reserve.
- This reserve will then need to be reimbursed the cost of implementation of the Brunswick Heads scheme prior to any revenue that is surplus to scheme operational costs if derived being allocated to any projects.

**Consultation and Engagement**

- Consultation is ongoing between Council and Brunswick Heads community groups through direct engagement. At the time of writing this report, the project information website is under review and will likely be published prior to this Council Meeting.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

**Report No. 14.1      Report of the Finance Advisory Committee  
Meeting held on 9 May 2024**

5      **Directorate:**                      Corporate and Community Services

**File No:**                              I2024/730

**Summary:**

10      The Finance Advisory Committee met on 9 May 2024. The Minutes are attached for  
noting by Council.

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**RECOMMENDATION:**

15      1.      **That Council notes the minutes of the Finance Advisory Committee Meeting  
held on 9 May 2024.**

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

**Report No. 3.1 Adoption of Minutes of the Finance Advisory Committee  
Meetings held 16 November 2023 and 15 February 2024**

File No: I2024/253

**Committee Recommendation 3.1.1**

**That the minutes of the Finance Advisory Committee Meetings held on 16  
November 2023 and 15 February 2024 be confirmed.**

3.      **That Council adopts the following Committee Recommendations:**

**Report No. 4.1 Budget Review - 1 January 2024 to 31 March 2024**

File No: I2024/679

**Committee Recommendation 4.1.1**

**That Council:**

# BYRON SHIRE COUNCIL

## REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

14.1

1. **Authorises the itemised budget variations as shown in Attachment 2 (#E2024/48670) which include the following results in the 31 March 2024 Quarterly Review of the 2023/2024 Budget:**
  - a) **General Fund - \$250,000 increase to the Estimated Unrestricted Cash Result**
  - b) **General Fund - \$7,008,200 increase in reserves**
  - c) **Water Fund - \$1,321,800 increase in reserves**
  - d) **Sewerage Fund - \$952,900 increase in reserves**
2. **Adopts the revised General Fund Estimated Unrestricted Cash of \$0 for the 2023/2024 financial year as at 31 March 2024.**

### **Attachments:**

5

- 1 Minutes 09/05/2024 Finance Advisory Committee, I2024/692 

## Report

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 9 May 2024 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Finance Advisory Committee Meeting - Thursday, 9 May 2024](#)

The following items were considered by the Committee:

### **Report No. 4.1      Budget Review - 1 January 2024 to 31 March 2024**

- 10 This Report was 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 31 March 2024.

The Committee recommendations are supported by management and are provided in the attachment to this report.

## Financial Implications

- 15 As per the Reports listed within the Finance Advisory Committee Meeting of 9 May 2024.

## Statutory and Policy Compliance Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 9 May 2024.

**Report No. 14.2      Report of the Audit, Risk and Improvement  
Committee Meeting held on 9 May 2024**

**Directorate:** Corporate and Community Services

**File No:** I2024/887

5

**Summary:**

This report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 19 May 2024 for determination by Council.

10

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**RECOMMENDATION:**

1. That Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 9 May 2024.

2. That Council adopts the following Committee Recommendation:

**Report No. 3.1 Minutes of the Audit, Risk and Improvement Committee Meeting  
held 15 February 2024**

File No: I2024/554

**Committee Recommendation 3.1.1**

**That the minutes of the Audit, Risk and Improvement Committee Meeting held  
on 15 February 2024 be confirmed.**

15

3. That Council adopts the following Committee Recommendations:

**Report No. 4.2 ARIC Term and Draft Terms of Reference - Outstanding items of  
the OLG Guidelines**

File No: I2023/1624

**Committee Recommendation 4.2.1**

**That Council:**

1. Adopts the Audit, Risk and Improvement Committee Terms of Reference

**(Attachment 1 E2024/2652) and;**

- 2. Endorses the conclusion of the Audit, Risk and Improvement Committee term following the 9 May 2024 Committee meeting.**

- 4. That Council adopts the following Committee Recommendation:**

**Report No. 5.1 2023-2024 External Audit Engagement Plan**  
**File No: I2024/201**

**Committee Recommendation 5.1.1**

**That Council notes the External Audit Engagement Plan prepared by the Audit Office of New South Wales for the year ended 30 June 2024 as outlined in Confidential Attachment 1 (#E2024/12864).**

- 5. That Council adopts the following Committee Recommendations:**

**Report No. 5.2 Internal Audit Report Quarter 3 2023-2024**  
**File No: I2024/553**

**Committee Recommendation 5.2.1**

**That Council:**

- 1. Notes the Internal Auditors Summary of Internal Audit Recommendations for Quarter 3 2023-2024 and the status of audit recommendations at Attachment 1 (E2024/46545) and their Internal Audit Status Update May 2024 at Attachment 2 (E2024/46558)**
- 2. Endorses the recommendations from the Executive Team to close off nine internal audit recommendations from Quarter 3 2023-2024 as listed in Table 1 of this report (a summary from Attachment 1).**
- 3. Endorses the implementation by Management of the recommendations made in the following internal audits:**
  - a) Waste Management (Attachment 3 E2024/36640)**
  - b) Work Health and Safety (Attachment 4 E2024/46592)**
  - c) Property Services (Community Buildings) (Attachment 5 E2024/40570).**



## Report

This report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 9 May 2024 for determination by Council.

The minutes for this meeting can be located on Council's website at:

- 5 [Minutes of Audit, Risk and Improvement Committee Meeting - Thursday, 9 May 2024](#)

The agenda for this meeting can be located on Council's website at:

[Agenda of Audit, Risk and Improvement Committee Meeting - Thursday, 9 May 2024](#)

- 10 The attachment numbers included in the recommendations to this Report follows the numbering of the Audit, Risk and Improvement Committee Meeting Agenda. Confidential attachments from that Agenda are available to Councillors by viewing the Agenda on the Hub.

## Financial Implications

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 9 May 2024.

- 15 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 9 May 2024.

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 14.3      Report of the Climate Change and Resource  
Recovery Advisory Committee Meeting held  
on 9 May 2024**

5

**Directorate:** Sustainable Environment and Economy

**File No:** I2024/878

**Summary:**


- 10 This report provides the minutes of the Climate Change and Resource Recovery Advisory Committee meeting held on 9 May 2024.

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**RECOMMENDATION:**

- 15 **That Council notes the minutes of the Climate Change and Resource Recovery Advisory Committee Meeting held on 9 May 2024.**

**Attachments:**

- 20 1 Minutes 09/05/2024 Climate Change and Resource Recovery Advisory Committee,  
I2024/704 

## Report

The attachment to this report provides the minutes of the Climate Change and Resource Recovery Advisory Committee Meeting of 9 May 2024 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [https://byron.infocouncil.biz/Open/2024/05/CCRR\\_09052024\\_AGN\\_1904\\_AT.PDF](https://byron.infocouncil.biz/Open/2024/05/CCRR_09052024_AGN_1904_AT.PDF)

The following items were considered by the Committee:

### **Report No. 3.1 Confirmation of minutes of the meeting held on 15 February 2024**

The Committee confirmed the minutes of the previous meeting, held on 15 February 2024.

### **Report No. 4.1 Sustainability Team - project updates**

- 10 This report provided the Committee with an update on the following current key projects and operational activities being undertaken within the Sustainability team:
- a) 2022/23 Annual Emissions Inventory
  - b) Urban Cooling / Heat Resilience Plan
  - c) Grant applications underway
  - 15 d) Northern Rivers Joint Organisation Electric Vehicle and Plant Day
  - e) Electric vehicle fast chargers in the Shire
  - f) Climate Conversations
  - g) Car share
  - h) Community gardens
  - 20 i) "Speaking 4 the Planet" competition for high schools in the Shire
  - j) Support for Community College Ingrained Grant Application

### **Report No. 4.2 Future Discussion Items for Climate Change and Resource Recovery Advisory Committee**

- 25 This report provided information from staff on the electrification of homes, as requested by the Committee at the meeting held on 15 February 2024.

### **Report No. 4.3 Resource Recovery Projects Update**

5 This report provided the Committee with an update on current key projects, programs and operational activities being undertaken within the Resource Recovery team, in accordance with the Towards Zero Integrated Waste Strategy 2019 to 2029. It included updates on the:

- Implementation of the Single-Use Packaging and Materials Policy,
- Litter and Illegal Dumping Prevention Strategy,
- Education and engagement activities and capital projects.

### **Report No. 6.1 Update report from Committee representatives of Mullum Cares, ZEB and Plan C**

10 This report tabled updates from community organisation representatives on the Committee. The Committee advise Council of the success of this new item and request Plan C give and update as not in attendance.

### **Financial Implications**

15 As per the Reports listed within the Climate Change and Resource Recovery Advisory Committee Meeting of 9 May 2024.

### **Statutory and Policy Compliance Implications**

As per the Reports listed within the Climate Change and Resource Recovery Advisory Committee Meeting of 9 May 2024.

**Report No. 14.4      Report of the Biodiversity Advisory  
Committee Meeting held on 9 May 2024**

**Directorate:** Sustainable Environment and Economy

**File No:** I2024/880

5

**Summary:**

This report provides the minutes of the Biodiversity Advisory Committee meeting held on 9 May 2024.

10

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**RECOMMENDATION:**

**That Council:**

1. Notes the minutes of the Biodiversity Advisory Committee Meeting held on 9 May 2024.
2. Determines whether the Committee or Management Recommendation(s) be adopted regarding Report No. 4.3.

**Attachments:**

- 20    1    Minutes 09/05/2024 Biodiversity Advisory Committee, I2024/684 

## Report

The attachment to this report provides the minutes of the Biodiversity Advisory Committee Meeting of 9 May 2024 for determination by Council. The agenda for this meeting can be located on Council's website at:

5 [https://byron.infocouncil.biz/Open/2024/05/BAC\\_09052024\\_AGN\\_1903\\_AT.PDF](https://byron.infocouncil.biz/Open/2024/05/BAC_09052024_AGN_1903_AT.PDF)

The following items were considered by the Committee:

### **Report No. 3.1 Confirmation of minutes of the meeting held on 29 February 2024**

The Committee confirmed the minutes.

### 10 **Report No. 4.1 Brunswick Valley Landcare Support Officer quarterly report, January to March 2024**

This report tabled the activities of the Landcare Support Officer quarterly report, from 1 January to 30 March 2024 and were noted by the Committee.

### **Report No. 4.2 Biodiversity and Agriculture Projects and Operations Update**

15 This report provided the Committee with an update on current key projects and programs being undertaken by the Biodiversity and Agriculture team, in accordance with Council's Operational Plan, Biodiversity Conservation Strategy, Agriculture Action Plan, Koala Plan of Management, Pest Animal Management Plan and Flying Fox Camp Management Plan.

The Committee noted the update and requested an update to Council's website, which is already in progress.

### 20 **Report No. 4.3 Future Discussion Items for Biodiversity Advisory Committee**

**That Council adopts the following Committee Recommendation(s):**

#### **Committee Recommendation on Report 4.3**

**That the Biodiversity Advisory Committee:**

- 25
1. **Notes the report and requests to have its final meeting on Thursday 8 August 2024.**
  2. **Requests that a report be brought forward to the next meeting on the Byron Bay Bypass on Bio Banking Agreement and the outcomes of that agreement having regards to Attachment 2 in Report 4.3 (report David Milledge – Lilli Pilli Site).**
- 30

This report summarises requests from the Committee, and provided information from staff including resourcing and alignment with Council's Operational Plan for discussion by the Committee and to recommend whether these requests are taken to Council for consideration.

## Management Comments

That Council adopts the following Management Recommendation(s):

### Managements Recommendation on Report 4.3

- 5           1. Staff do not support the convening of an additional meeting on 8 August 2024.

10           In accordance with the Committee Recommendation, Management provide the following additional information and for the reasons given below alternatively recommend that Report No. 4.3 to the Biodiversity Advisory Committee is for noting only and that a resolution is not required for an additional meeting.

15           Staff do not have the capacity to take on additional actions and deliver the requested reporting. The team is short-staffed after recent resignation of the Koala Project Officer with other staff having to accommodate extra workload and delivery of koala conservation grants within allocated budgets and timeframes. Staff have a full work program including several grant funded projects.

20           In addition to a full program, staff are currently developing project proposals for two potential riparian restoration grants. There has been recent resurgence in State Government funding for river rehabilitation projects to improve catchment health, build flood resilience, and enhance biodiversity, which directly aligns with the delivery of Council's Biodiversity Conservation Strategy, Agriculture Action Plan and promoting restoration of Byron Shire Wildlife Corridors. Grant applications are being sought now, with very tight (18-24 month) timeframes for on-ground delivery. These projects will take up significant staff capacity in 2024-25.

25           The requested reports through future items to the 8 August 2024 meeting require staff to undertake analysis, research, assessment, and consultation with other staff within a short timeframe in addition to project managing and delivering current strategic and grant-funded projects, funding applications, and responding to community enquiries.

30           For note, a budget and Operational Plan Action is needed for the 24/25 Operational Plan and Budget if requested reports are to be progressed as a Council project by resolution.

If Council resolves to convene the meeting on 8 August, staff will only have capacity to provide update reports on current projects.

## Financial Implications

35           As per the Reports listed within the Biodiversity Advisory Committee Meeting of 9 May 2024.

## Statutory and Policy Compliance Implications

As per the Reports listed within the Biodiversity Advisory Committee Meeting of 9 May 2024.



**Report No. 14.5      Report of the Coast and ICOLL Advisory Committee Meeting held on 14 May 2024**

**Directorate:** Sustainable Environment and Economy

**File No:** I2024/886

5

**Summary:**

This report provides the minutes of the Coast and ICOLL Advisory Committee Meeting held on 14 May 2024

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**RECOMMENDATION:**

1. That Council notes the minutes of the Coast and ICOLL Advisory Committee Meeting held on 14 May 2024.

15

**Attachments:**

- 1 Minutes 14/05/2024 Coast and ICOLL Advisory Committee, I2024/716 

## BYRON SHIRE COUNCIL

### REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.5

#### Report

The attachment to this report provides the minutes of the Coast and ICOLL Advisory Committee Meeting of 14 May 2024 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/2024/05/CICOL\\_14052024\\_AGN\\_1855\\_AT.PDF](https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2024/05/CICOL_14052024_AGN_1855_AT.PDF)

The following items were considered by the Committee:

#### **Report No. 3.1 Discussion - Improvement of water quality at Baywood Chase Lake**

- 10 This report provided an update to and discussion with the Committee and Agency Representatives, who forwards advise to Council that:

- The project is being finalised,
  - feedback was provided,
  - there will be an opportunity to review a draft report which will also be reported to Council and a Committee if possible, and
- 15 • that the resulting report will be considered at Stage 3 of development of the Coastal Management Program for the Tallow Creek estuary.

#### **Report No. 3.2 Future Discussion Items for Coast and ICOLL Advisory Committee**

The Committee noted the report which included no discussion item requests.

#### **Report No. 4.1 Confirmation of minutes of the meeting held on 21 November 2023**

- 20 The Committee confirmed the minutes.

#### **Report No. 5.1 Update on the development of Coastal Management Programs (CMPs) for the Byron Shire Coastline**

This report is provided to the Committee for information only update on the progress of the development of CMPs and CMP projects for the Byron Shire coastline.

#### 25 **Financial Implications**

As per the Reports listed within the Coast and ICOLL Advisory Committee Meeting of 14 May 2024.

#### **Statutory and Policy Compliance Implications**

- 30 As per the Reports listed within the Coast and ICOLL Advisory Committee Meeting of 14 May 2024.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.6      Report of the Floodplain Management  
Advisory Committee Meeting held on 14 May  
2024**

5

**Directorate:** Infrastructure Services

**File No:** I2024/775

**Summary:**

- 10      The attachment to this report provides the minutes of the Floodplain Management Advisory Committee Meeting of 14 May 2024 for determination by Council.

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**RECOMMENDATION:**

- 15      1.      That Council notes the minutes of the Floodplain Management Advisory Committee Meeting held on 14 May 2024.

2.      That Council adopts the following Committee Recommendations:

**Report No. 4.1 Amendments to Byron Shire DCP 2014 Chapter C2: Areas  
Affected by Flood - Draft for Exhibition**

File No: I2024/661

**Committee Recommendation 4.1.1**

**That Council:**

1.      Notes the committee received a presentation by BMT and as contained in the report attachments; and
2.      Adds within the public exhibition version of the DCP, and note that the committee wishes to add the following sentence in C2.1.8 “Where a significant flood has occurred and studies require updating but that has not yet happened, flood data such as reported Flood Heights (where available) should be taken into account”.
3.      Notes that committee members are able to make submissions to the

**proposed amendments to Byron Shire DCP 2014, Chapter 'C2: Areas Affected by Flood', for Council's consideration prior to final adoption.**

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

**Report No. 4.2 Flood Levee Raising Investigation - South Golden Beach**  
**File No: I2024/161**

**Committee Recommendation 4.2.1**

**That Council, based on the reasons discussed in this report, it is recommended that raising the levee by either 300mm or 600mm is not undertaken.**

**Matthew Lambourne voted against.**

**4. That Council adopts the following Committee Recommendations:**

**Report No. 4.3 Flood Gate Upgrade Options Investigation - South Golden Beach**  
**File No: I2024/164**

**Committee Recommendation 4.3.1**

**That Council:**

- 1. Notes that the committee was presented with the Floodgate Upgrade Options Investigation prepared by JB Pacific March 2024– Attachment 1 (E2024/47404).**
- 2. Applies to the State for funding to carry out the recommendations contained in Section 4.2 and 5 of the report.**

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

**Report No. 4.4 Post 2022 Event Flood Behaviour Analysis - Brunswick River ,  
Belongil Creek and Tallow Creek - NSW Department of Planning  
& Environment**  
**File No: I2024/676**

**Committee Recommendation 4.4.1**

That the Floodplain Management Advisory Committee notes that the Department of Climate Change, Energy, the Environment and Water (DCCEEW) have finalised and published Post 2022 Flood Analysis Assessments for the three (3) main catchments contained within Byron Shire Council. These include the North Byron/Brunswick River, Belongil Creek and Tallow Creek catchments.

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

**Report No. 4.5 Community Education Strategy and Review of Flood Options /  
North Byron Flood Investigations - Projects Update**

File No: I2024/677

**Committee Recommendation 4.5.1**

That Council requests the NSW Department of Planning & Environment (DPE) to commission animation graphic models of the 2022 flood event and provide to Council to assist in future community engagement, with an extended area to the north.

**5 Attachments:**

- 1 Minutes 14/05/2024 Floodplain Management Advisory Committee, I2024/734 

### Report

The attachment to this report provides the minutes of the Floodplain Management Advisory Committee Meeting of 14 May 2024 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Floodplain Management Advisory Committee Meeting - Tuesday, 14 May 2024 \(infocouncil.biz\)](https://infocouncil.biz)

The following items were considered by the Committee:

#### **Report No. 4.1 Amendments to Byron Shire DCP 2014 Chapter C2: Areas Affected by Flood - Draft for Exhibition**

- 10 A report presenting draft amendments to the Byron Shire DCP 2014, Chapter 'C2: Areas Affected by Flood' was considered at the 18 April 2024 Council Meeting.

#### **Report No. 4.2 Flood Levee Raising Investigation - South Golden Beach**

- 15 The report documents the constraints and feasibility assessment to improve the levee flood protection by raising the levee by 300mm or 600mm. It also presents high level costings to repair and remediate the levee in accordance with a recent levee audit.

#### **Report No. 4.3 Flood Gate Upgrade Options Investigation - South Golden Beach**

- 20 This report provides update on potential upgrade options for floodgates at South Golden Beach NSW. The project scope includes twelve gates on the east bank, four gates along the west bank of Yelgun Creek and two along Redgate Road. The aim is to improve flood resilience of the area by investigating into the most effective upgrade options.

#### **Report No. 4.4 Post 2022 Event Flood Behaviour Analysis - Brunswick River , Belongil Creek and Tallow Creek - NSW Department of Planning & Environment**

- 25 The NSW Department of Planning & Environment (DPE) – now rebranded to NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) have finalised and published Post 2022 Flood Analysis Assessments for the three (3) main catchments contained within Byron Shire Council. These reports have been uploaded to the NSW State of Emergency Service – NSW Flood Data Portal.

#### **Report No. 4.5 Community Education Strategy and Review of Flood Options / North Byron Flood Investigations - Projects Update**

- 30 This report provides an update to the Floodplain Advisory Committee requested in their recommendation of Report 4.2 tabled at the Friday 8 December 2023 committee meeting.

### Committee Recommendation

### Management Comments

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

**Financial Implications**

As per the Reports listed within the Floodplain Management Advisory Committee Meeting of 14 May 2024.

**Statutory and Policy Compliance Implications**

- 5 As per the Reports listed within the Floodplain Management Advisory Committee Meeting of 14 May 2024.



**Report No. 14.7      Report of the Moving Byron Advisory  
Committee Meeting held on 30 May 2024**

**Directorate:** Infrastructure Services

**File No:** I2024/888

5

**Summary:**

The attachment of this report provides the minutes of the Moving Byron Advisory Committee Meeting of 30 May 2024 for the determination by Council.

10

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**RECOMMENDATION:**

1. That Council notes the minutes of the Moving Byron Advisory Committee Meeting held on 30 May 2024.

2. That Council adopts the following Committee Recommendation:

**Report No. 3.1 Adoption of Minutes from Previous Meeting**

File No: I2024/751

**Committee Recommendation 3.1.1**

**That the minutes of the Moving Byron Advisory Committee Meeting held on 11 April 2024 be confirmed.**

15

3. That Council adopts the following Committee Recommendations:

**Report No. 4.1 Bus Shelter & Bus Stop Strategic Planning Update**

File No: I2023/1644

**Committee Recommendation 4.1.1**

**That Council:**

1. Notes the 10-year delivery program for shire wide bus stop upgrades in principle, noting that it is subject to funding availability and Council operational capacity.

# BYRON SHIRE COUNCIL

## REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

14.7

2. **Supports staff seeking funding opportunities to deliver the bus stop upgrade program.**
3. **Notes that Resolution 20-448 Part 2 to call for Expressions of Interest for locals to maintain some rural bus shelters cannot be implemented because of legal and insurance implications of Council delegating the responsibility to maintain assets which have been constructed on Council road reserve.**
4. **Notes that the old timber bus shelters at Huonbrook and Upper Main Arm cannot be brought up to a compliant standard without changing the current look and feel of the shelters.**
5. **Accepts the old timber bus shelters at Huonbrook and Main Arm remaining in their current layout and be removed once they are deemed to have become a public hazard, with a minimum of two weeks' notice to those communities.**
6. **Writes to the Premier Christopher Minns and Minister for Transport Jo Haylen explaining the back log of upgrades to meet Disability Discrimination Act compliance and the inadequacy of funding for construction and maintenance of bus shelters and bus stops in the Byron Shire and seeks more funding.**

### **Attachments:**

5

- 1 Minutes 30/05/2024 Moving Byron Advisory Committee, I2024/862 

## Report

The attachment to this report provides the minutes of the Moving Byron Advisory Committee Meeting of 30 May 2024 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Moving Byron Advisory Committee Meeting - Thursday, 30 May 2024](#)

The following items were considered by the Committee:

### Report No. 4.1 Bus Shelter & Bus Stop Strategic Planning Update

- 10 To comply with the Disability Standards for Accessible Public Transport, our Council staff recommendation entails implementing a 10-year plan for enhancing the accessibility of existing bus stops.

## Financial Implications

As per the Reports listed within the Moving Byron Advisory Committee Meeting of 30 May 2024.

## Statutory and Policy Compliance Implications

- 15 As per the Reports listed within the Moving Byron Advisory Committee Meeting of 30 May 2024.

**Report No. 14.8      Report of the Water and Sewer Advisory  
Committee Meeting held on 30 May 2024**

**Directorate:** Infrastructure Services

**File No:** I2024/889

5

**Summary:**

The attachment to this report provides the minutes of the Water and Sewer Advisory Committee Meeting of 30 May 2024 for determination by Council.

10

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**RECOMMENDATION:**

1. That Council notes the minutes of the Water and Sewer Advisory Committee Meeting held on 30 May 2024.

2. That Council adopts the following Committee Recommendation:

**Report No. 3.1 Adoption of Minutes from Previous Meeting**

File No: I2024/752

**Committee Recommendation 3.1.1**

**That the minutes of the Water and Sewer Advisory Committee Meeting held on 21 March 2024 be confirmed.**

15

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

**Report No. 4.1 Infrastructure Services Utilities Monthly status Report -  
February - April 2024**

File No: I2024/750

**Committee Recommendation 4.1.1**

1. That the Water and Sewer Advisory Committee notes the report.
2. That Council writes to the Federal Minister for Communications and

**Minister for Emergency Management, with a copy to the Australian Local Government Association, asking for changes in federal legislation to reduce the stranglehold that Telcos have on Council's infrastructure such as critical water supply reservoirs.**

**4. That Council adopts the following Committee Recommendations:**

**Report No. 4.2 Incident Response Plan and Information Update**

File No: I2024/763

**Committee Recommendation 4.2.1**

- 1. That the Water and Sewer Advisory Committee notes the report.**
- 2. The Water and Sewer Advisory Committee thank staff for detailed reporting.**

**Attachments:**

- 5    1    Minutes 30/05/2024 Water and Sewer Advisory Committee, I2024/863 

## Report

The attachment to this report provides the minutes of the Water and Sewer Advisory Committee Meeting of 30 May 2024 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Water and Sewer Advisory Committee Meeting - Thursday, 30 May 2024](#)

The following items were considered by the Committee:

### **Report No. 4.1 Infrastructure Services Utilities Monthly status Report - February - April 2024.**

- 10 This report summarises the performance of Utilities Department delivery for February – April 2024.

### **Report No. 4.2 Incident Response Plan and Information Update**

This report summarises the incident response plan and associated response in January and February 2024 rain events.

- 15 **Committee Recommendation**

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

## **Financial Implications**

- 20 As per the Reports listed within the Water and Sewer Advisory Committee Meeting of 30 May 2024.

## **Statutory and Policy Compliance Implications**

As per the Reports listed within the Water and Sewer Advisory Committee Meeting of 30 May 2024.

25

CONFIDENTIAL REPORTS - GENERAL MANAGER

**Report No. 16.1      CONFIDENTIAL - Neighbourhood Dispute, Talofa**

**Directorate:** General Manager

5    **Report Author:** Jennie Stephenson, Solicitor

**File No:** I2024/643

**Report purpose:**

10    This report responds to Council resolution 23-593. The resolution – passed on 7 December 2023 – was that Council:

“1.    **Receives a report on the access issues at 656 and 660a Bangalow Road Talofa that includes:**

- a)    **whether the current road works are authorised or require a development application**
- 15    b)    **whether the current works meet Council standards for road building and are appropriate to be used as a joint accessway for the properties**
- c)    **how Council can ensure that its own future needs and rights are preserved over the road reserve**
- 20    d)    **options for Council to resolve the issue over the works in the road reserve.”**

This report addresses issues a) – d) above.



**RECOMMENDATION:**

- 5      1.    That pursuant to Section 10A(2)(b) of the Local Government Act, 1993, Council resolves to move into Confidential Session to discuss the report Neighbourhood Dispute, Talofa.
2.    That the reasons for closing the meeting to the public to consider this item be that the report contains:
- a)    discussion in relation to the personal hardship of a resident or ratepayer
- 10    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:

**Discussion is in relation the personal hardship of a resident or ratepayer.**

**Attachments:**

- 15    1      Confidential - Attachment 1, E2024/64389
- 2      Confidential - Attachment 2, E2024/67503
- 3      Confidential - Attachment 3, E2024/67510
- 4      Confidential - Attachment 4, E2024/64395
- 5      Confidential - Attachment 5, E2024/67522
- 20    6      Attachment 6, E2024/64392