

NOTICE OF MEETING



HERITAGE PANEL MEETING

A Heritage Panel Meeting of Byron Shire Council will be held as follows:

Venue	Conference Room, Station Street, Mullumbimby
Date	Thursday, 17 June 2021
Time	11.30am

Shannon Burt
Director Sustainable Environment & Economy

*12021/1024
Distributed 10/06/21*

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL
BUSINESS OF MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

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4. STAFF REPORTS

Sustainable Environment and Economy

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ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

Report No. 3.1 Minutes from Previous Meeting held on 18 March 2021

5 **Directorate:** Sustainable Environment and Economy
Report Author: Noreen Scott, EA Sustainable Environment and Economy
File No: I2021/1023

10

RECOMMENDATION:

That the minutes of the Heritage Panel Meeting held on 18 March 2021 be confirmed.

<Section5>

15 **Attachments:**

1 Minutes of Heritage Panel Meeting 18 March 2021, E2021/65659 , page 7 [↓](#)

BYRON SHIRE COUNCIL

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

3.1

Report

The attachment to this report provides the minutes of the Heritage Panel Meeting of 18 March 2021 .

5

Report to Council

The minutes were reported to Council on 27 May 2021

Comments

10

In accordance with the Committee Recommendations, Council resolved the following:

21-229 Resolved that Council notes the minutes of the Heritage Panel Meeting held on 18 March 2021.

MINUTES OF MEETING



HERITAGE PANEL MEETING

Venue **Conference Room, Station Street, Mullumbimby**
Date **Thursday, 18 March 2021**
Time **2.00pm**

*I2021/433
Distributed 11/03/21*

BYRON SHIRE COUNCIL

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

3.1 - ATTACHMENT 1

BYRON SHIRE COUNCIL

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

3.1 - ATTACHMENT 1

BYRON SHIRE COUNCIL

HERITAGE PANEL MEETING MINUTES

18 MARCH 2021

Minutes of the Heritage Panel Meeting held on Thursday, 18 March 2021

File No: I2021/433

PRESENT: Cr B Cameron, Cr A Hackett, Cr J Martin, Cr A Hunter

Staff: Chris Larkin, (Manager Sustainable Development)

Nancy Tarlo (Planner)

Deborah Wray (Council's Heritage Advisor)

Noreen Scott (Minute Taker)

Members: Chris Cooney (Mullumbimby/Brunswick Valley Historical Society)

Don Osborne (Bangalow Historical Society)

Vivienne Gorec (Bangalow Historical Society)

Caroline Lloyd

Gae Laverty

Joe Vescio (via Zoom left the meeting at 3.15pm)

Cr Cameron (Chair) opened the meeting at 2.05 and acknowledged that the meeting was being held on Bundjalung Country.

APOLOGIES:

There were no apologies.

DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

There were no declarations of interest.

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

Report No. 3.1 Minutes from previous meeting held 11 June 2020 adopted by Council 27 August

File No: I2020/1349

Committee Recommendation:

That the Heritage Panel note the minutes of the 11 June 2020 meeting as adopted by Council 27 August.

BYRON SHIRE COUNCIL

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

3.1 - ATTACHMENT 1

BYRON SHIRE COUNCIL

HERITAGE PANEL MEETING MINUTES

18 MARCH 2021

(Cooney/Laverty)

The recommendation was put to the vote and declared carried.

Note: The minutes of the meeting held on [meeting date] were noted, and the Committee Recommendations adopted by Council, at the Ordinary Meeting held on [date]. (this note is only required if relevant ie a Panel meeting does not necessarily need to be reported to Council.)

BUSINESS ARISING FROM PREVIOUS MINUTES

There was no business arising from previous minutes.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 4.1 **Notes from the previous Heritage Panel meeting 10 September 2020**

File No: I2021/379

Committee Recommendation:

That the Heritage Panel confirms the notes from the 10 September 2020 meeting.

(Cameron/Laverty)

The recommendation was put to the vote and declared carried.

Report No. 4.2 **Heritage Panel Member Updates**

File No: I2021/381

Committee Recommendation:

1. That the Heritage Panel notes the member updates.
2. That the Heritage Panel receives a report on development approval processes for state heritage items at the next meeting.

(Cameron/Hackett)

The recommendation was put to the vote and declared carried.

Report No. 4.3 **Discussion Piece - "Stuck in the past: why Australian heritage practice falls short of what the public expects"**

File No: I2021/382

Committee Recommendation:

HER Heritage Panel Meeting

page 4

BYRON SHIRE COUNCIL

ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

3.1 - ATTACHMENT 1

BYRON SHIRE COUNCIL

HERITAGE PANEL MEETING MINUTES

18 MARCH 2021

1. That the Heritage Panel notes the discussion piece “Stuck in the past: why Australian heritage practice falls short of what the public expects” and the Victorian Heritage Council: State of Heritage Report 2020.
2. That the Heritage Panel receives reports which include articles and published papers and the like for discussion at future meetings.

(Cameron/Cooney)

The recommendation was put to the vote and declared carried.

Report No. 4.4 **Heritage Program Update**
File No: I2021/383

Committee Recommendation:

1. That the Heritage Panel notes the heritage program update report as presented by staff.
2. That the Heritage Panel request an extra meeting before September 2021 if the meeting schedule allows.

(Cooney/Hackett)

The recommendation was put to the vote and declared carried.

There being no further business the meeting concluded at 4.12.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 4.1 Heritage Panel Member Updates
Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
Nancy Tarlao, Planner
File No: I2021/773

Summary:

The nominated Heritage Panel members are invited to provide a brief update on matters and activities undertaken by their respective group / organisation relevant to the Panel and its terms of reference.

RECOMMENDATION:

That the Heritage Panel notes the member updates.

REPORT

Member representatives from nominated Historical Societies, Arakwal, Aboriginal Land Councils and community are invited to provide a brief update to the Panel on matters and activities undertaken by their group / organisation relevant to the Panel and its terms of reference. (These updates should be 10 minutes maximum).

The Panel Terms of Reference are as follows:

The purpose of the Heritage Panel is to provide support and advice to Council to assist its operations on heritage matters.

Actions of the Heritage Panel that can assist to achieve this include:

- a) Assisting Council in the development of policies and strategies including the preparation of a Heritage Strategy and the management of natural and cultural heritage generally in Byron Shire local government area.
b) Advising Council staff, the Heritage Adviser and the Council on matters relating to the ongoing implementation of the Heritage Strategy (once completed).
c) Assisting Council to procure and allocate funding assistance and to recommend projects for which funding should be sought in line with the Heritage Strategy (once completed).
d) Providing access to the general community to distribute information and for public input into heritage management, eg, to nominate additional properties for assessment of heritage significance.
e) Advising Council on a range of heritage-related matters which are of interest to the community, in particular, by providing expertise, local knowledge and guidance on heritage matters and in relation to heritage assessments.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective L2 CSP Strategy L3 DP Action L4 OP Activity

Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.5	Encourage community appreciation of cultural vitality and diversity	2.5.2	Recognise and support the heritage of Byron Shire	2.5.2.1	Administer the Heritage Advisory Panel
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Legal/Statutory/Policy Considerations

Nil

5 *Financial Considerations*

Nil

Consultation and Engagement

N/A

Report No. 4.2 Heritage Program Update

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development
Nancy Tarlao, Planner

5 **File No:** I2021/774

Summary:

This report provides an update on the status of (certain) heritage program actions progressed this financial year.

10

RECOMMENDATION:

That the Heritage Panel notes the heritage program update report as presented by staff.

15

Attachments:

1 Heritage Advisors Annual Report 2020-2021, E2021/78238 , page 19 [↓](#)

20

Report

Heritage Advisory service

25 Attached to the report is the Heritage Advisor’s annual report 2021-2021 as submitted to the Office of Environment and Heritage for grant acquittal purposes.

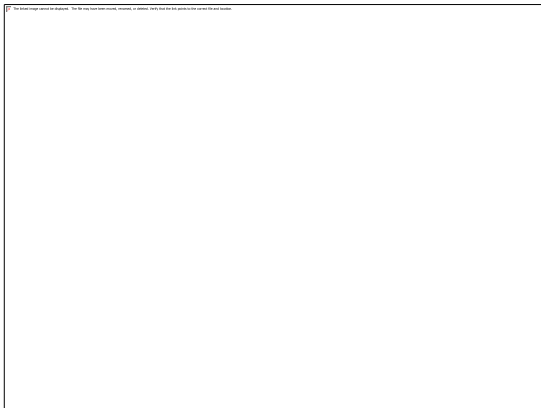
Byron Shire Local Places Heritage Grants 2020-21

As part of the annual Local Places Grants program two projects were completed: one for the Byron Community Centre, the other for the Old Masonic Hall at Bangalow.

30 *Byron Community Centre window hood replacement and façade maintenance*



5 *Old Masonic Hall tree removal, façade maintenance and window repairs*



Local Environmental Plan amendments to list new heritage items

5 Various resolutions are being actioned separately. Most are in consultation stage with the landowner and OEH. Further report/s to Council for formal consideration will follow as required by the process.

Brunswick Heritage Conservation Area

In response to [NOM 9.1 Brunswick Heads Heritage Conservation](#) at the Planning Meeting 11 February 2020, Council's Heritage Advisor has been engaged to undertake:

- 10
- Research of historical and other background information and early photographs for contextual history
 - Liaison and meetings with Brunswick Valley Historical Society, Brunswick Heads Progress Association, Chamber of Commerce and local community members as available.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.2

- Preparation of a detailed report consistent with the Guidelines 'Assessing Heritage Significance' by NSW Heritage Office 2001 for inclusion in a formal Planning Proposal to be prepared by BSC.

5 This work has been progressed and a verbal update is to be provided by Council staff at the Panel Meeting.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.5	Encourage community appreciation of cultural vitality and diversity	2.5.1	Ensure Aboriginal and other cultural heritage management reflects legislative requirements as well as community expectations and values	2.5.1.1	Scope Aboriginal Cultural Heritage Management Project
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.5	Encourage community appreciation of cultural vitality and diversity	2.5.2	Recognise and support the heritage of Byron Shire	2.5.2.1	Coordinate the Heritage Advisory Panel
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.5	Encourage community appreciation of cultural vitality and diversity	2.5.2	Recognise and support the heritage of Byron Shire	2.5.2.2	Conduct the Local Heritage Places Grant Program

Legal/Statutory/Policy Considerations

N/A

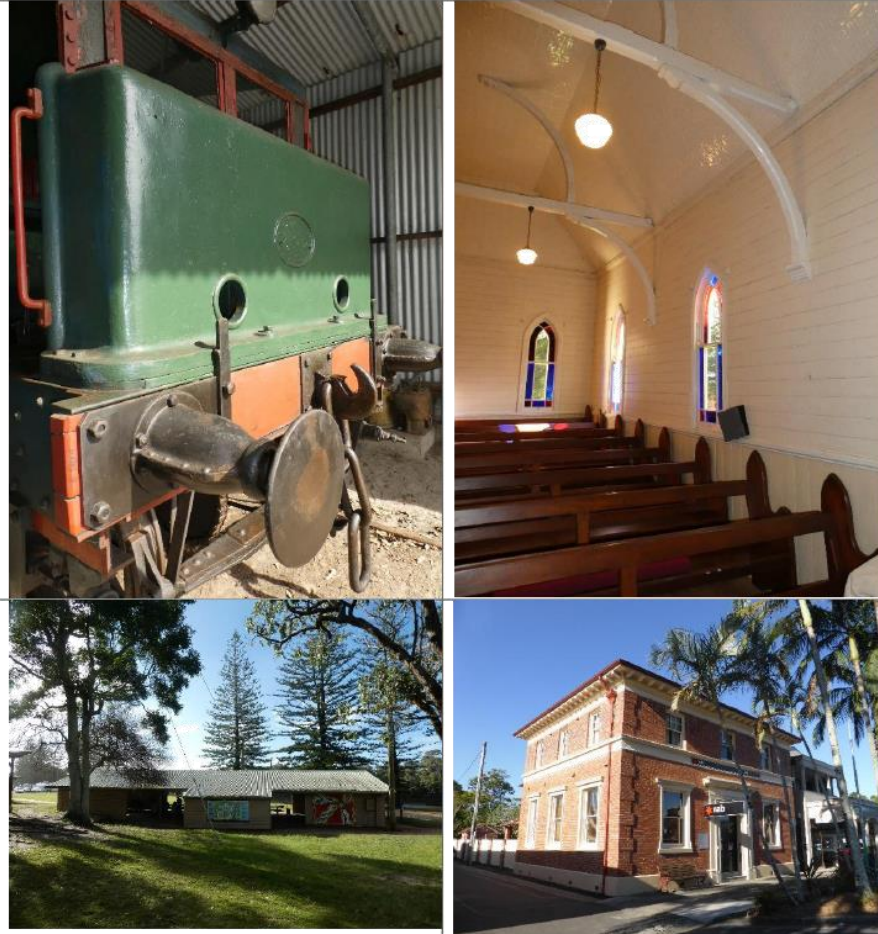
10 Financial Considerations

N/A

Consultation and Engagement

N/A

Heritage Advisor Annual Report 2020-21 Byron Shire Council



May 2021

Prepared by
CLARENCE HERITAGE
for Byron Shire Council

1. General Overview

2020-21 saw high rate of activity in the development sector with an associated demand for advice on developments affecting heritage items, or within heritage conservation areas. Work was provided in the following key areas:

- 8 visits to Council
- 11 pre-Development Application assessments (similar to 13 in previous year)
- 48 Development Applications (more than double the 21 applications in previous year) as part of statutory management of development in relation to heritage items and Conservation Areas in the shire.
- 22 conservation/general advice meetings to assist in heritage management. (nearly double the 13 in previous year)
- Assistance and support to owners with grant applications under the Local Heritage Places grants
- Attendance at Heritage Panel meetings.
- Use of conservation incentives clause to promote heritage conservation.
- Preparation of heritage Assessment of several places for proposed inclusion as potential heritage items.

2. Site Visits and Advice

I have carried out 66 site visits up to mid-April 2021, (compared to 41 in the previous year) and provided advice on a range of heritage matters outlined above. The take up of pre DA, and conservation advice is shown in the site visit table and shows increasing awareness of the availability of the free heritage advisory service and prior approval requirements. These meetings commonly address

- questions about heritage listing and what it means,
- the use of correct materials approaches for conservation works,
- appropriate use of traditional heritage colour schemes,
- The exemptions clause which allow a range of 'minor' works and maintenance which can be authorised by written advice through a 'no fee' application.
- Advice on alterations and additions are which are permissible with consent.
- Discussion of pre DA proposals to identify any potential issues.

3. Pre DA Advice

11 pre DA proposals were discussed in relation to heritage items or Conservation Areas. The free heritage advisory service and early advice is strongly encouraged as it helps to identify issues and explain the consent processes before any work is carried out and before applicants embark upon the preparation of detailed plans. Pre DA/ISEPP discussions included the NAB Bank in Mullumbimby which retains a high degree of original fabric to both the exterior and interior. Minor alterations were discussed to potentially isolate the residence in the future from the ground floor offices with no impact on historic fabric.

Annual Heritage Summary Report 2020-21



Discussions were held at **Byron Bay Water Tower** and telecommunication equipment and associated recommendations for conservation of the 1988 bicentennial mural, both of which are heritage items in Byron LEP. The mural has been painted over with graffiti on the lower level but some upper level elements are still intact. Grants could be explored to repaint and restore the mural.



Annual Heritage Summary Report 2020-21



4. Development Applications

Due to property prices, and pressure for development, infill development is an ongoing challenge to the retention of historic contributory, mostly timber dwellings, their scale, form and appropriate settings within the Heritage Conservation Areas, particularly if they are not individually listed. The careful retention of these buildings is important to retain the significance of these precincts and their collective values. All proposals result in a cumulative impact, therefore every positive action helps to reinforce the character whilst every unsympathetic work has a cumulative negative impact on the integrity of the whole.

Examples of non-listed buildings included a DA to relocate the dwelling, Dickibusch at 19 Campbell Street at Bangalow on the allotment to facilitate an infill block. Research and assistance from the Bangalow Historical society provided important information about the significance of this house. The property was bought by John Nestor Ferguson the auctioneer in Bangalow and the house built circa 1914. It was named "Dickibusch after the place where his son Lieutenant Thomas Karl Ferguson died 11/10/1916 aged 23. He was with 47th Battalion. AIF and is buried at Ridge Wood Military Cemetery in West-Vlaanderen, Belgium, 1 mile S.E. of Dickebus and 2.5 miles S.W. of Ypres. Increasing awareness of the significance of places is something that public forums can contribute to through the consultation on DAs and role of local historical societies.



Annual Heritage Summary Report 2020-21



5. Byron Shire Local Places Heritage Grants 2020-21

Heritage grants are an important incentive and are often the catalyst to carry out conservation works to heritage properties. The Local Heritage Assistance Fund supported xxx successful projects in 2020-21. Projects included guttering, removal of graffiti, restumping, repainting, verandah restoration, and window joinery repairs. All projects helped to raise awareness of appropriate materials, colour schemes, and approaches to conservation and cumulatively enhance the conservation within the shire. The grant fund of \$15,000 supported a total value of projects of approx. \$xxxx000 showing a multiplier of over xx times. Local awareness of positive support for heritage owners also contributes to better public awareness and the building of a positive image for Council in nurturing a supportive governance of heritage conservation.

Examples of completed projects 2020-21	
Byron Community Centre Reconstruction of verandah	
Repainting of exterior of building	
Former Masonic Hall, Antique store Bangalow	

6. Heritage Panel

The Heritage Panel meets three times per year and discusses a range of current issues and matters which are part of the adopted Heritage Strategy. The Heritage Panel is positive forum which reflects a keen community interest and desire to highlight concerns, protect and promote heritage in the Shire. The allocation and distribution of funding for the 2020-21 heritage grant applications was considered by the Panel.

A notification of all Development Applications in relation to Heritage Items and within Heritage Conservation Areas is also sent by e mail weekly to panel members. The panel does not have a decision role in development applications meetings but members may make individual submissions.

Following the heritage field day in Brunswick Heads to consider the heritage values of the village area, Council has now resolved to prepare a formal report to consider a potential Heritage Conservation Area in this village...

Several additional items of significance have also been put forward through the panel and there are proposals to include these in future LEP amendments. See Item 8.

7. Aboriginal Heritage Study

The Bundjalung of Byron Bay Arakwal people are the Traditional Owners and custodians for parts of the Byron Shire. The need for an Aboriginal Heritage Study of Byron Shire is a current gap in knowledge and considered to be a priority in terms of heritage studies. The AHMNs database can be used to search records of known Aboriginal sites in association with development proposals and works, however this is not necessarily comprehensive and collaboration with LALC to further record sites of Aboriginal cultural significance. Council has applied under Heritage NSW Funding Programme for 2020-22 for funding for an Aboriginal Heritage Study and awaits the result.

8. Non-Indigenous Heritage

The heritage study which underpins the current LEP was conducted in 2004 and includes a fairly comprehensive inventory database. Additional potential heritage items have been put forward by the community and highlighted through the heritage committee, and any member of the community may write in to express interest in the protection of a place for assessment.

Places that have been suggested including from owners include:

- Carabene Farmhouse, Ewingsdale
- Brunswick Picture Palace
- Bingo Housie Building Brunswick Heads
- 9, 11, 13, 15, 17, 25, Lismore Rd, Bangalow. Group of Workers Cottages associated with George Reading.

Annual Heritage Summary Report 2020-21

Council has endorsed the recommendations of the Heritage Committee to prepare a proposal for a future LEP amendment.

9. Heritage Interpretation Signage

There is scope to enhance an understanding of the heritage places within the Shire with a suite of co-ordinated heritage interpretation signage. Samples could be prepared for a selection of buildings for the towns and villages and rural areas of the shire. This would require funding and grant sources could be explored together with tourism and economic development. This would be an excellent project for collaboration with the Heritage Panel and could draw on expertise of local community members.

10. Conclusion

Byron Shire Council continues to show strong support and commitment to heritage conservation and recognises the intrinsic value of conserving heritage, both built and natural, to the identity of the shire.

It has been an objective to focus advice at the pre DA and Conservation stage to provide more proactive advice than reactive. Although the past year was dominated by Development Application review each application presents an opportunity to review the item, and provide individual recommendations to assist in future conservation.

Development is not a question of 'one or the other', but about managing change in positive manner which retains those values. I look forward to another year ahead of positive work and projects with the Shire.

CLARENCE HERITAGE

Deborah Wray B.A Hons, M.P.I.A. M. ICOMOS

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Report No. 4.3 Discussion Piece - Heritage Act Review and Discussion Paper

Directorate: Sustainable Environment and Economy

5 **Report Author:** Chris Larkin, Manager Sustainable Development
Nancy Tarlao, Planner

File No: I2021/775

Summary:

On 7 April 2021, the NSW Government announced a major review of the *Heritage Act 1977* (**'the Act'**).

10 This review is the first since 2007. Major reforms to the Act have not been made since 1999.

15

RECOMMENDATION:

That the Heritage Panel notes the discussion piece Heritage Act Review and Discussion Paper.

20

Report

On 7 April 2021, the NSW Government announced a major review of the *Heritage Act 1977* ('**the Act**').

5 This review is the first since 2007. Major reforms to the Act have not been made since 1999.

The intention of the review is to make heritage properties '*easier, more affordable and more desirable to own*'. It is governed by three key themes:

- making heritage easier by making ownership and administration simple and cost effective;
- 10 • making heritage a viable opportunity for economic growth, employment and community enjoyment; and
- making heritage relevant by reviewing the objectives of the Act.

15 The review will report on the effectiveness of the Act and the State's heritage regulatory system. This will lay the foundations of a Government White Paper and a proposed new heritage law.

Heritage NSW has prepared a **discussion paper** as the first stage of the review. It states the key question as follows:

[W]hat sort of regulatory model would facilitate the preservation, activation, and celebration of our State's heritage?

20 Reform Proposals

The discussion paper breaks this down into 19 focus questions. These cover a wide range of issues including Aboriginal cultural heritage, environmental planning, enforcement, the listing process and the categories for listing of heritage items, and ways to incentivise the ownership, activation, and adaptive reuse of heritage items.

25 Some of the identified reform proposals include:

- the introduction of a set of four heritage listing categories, being heritage of exceptional and iconic value, State significant heritage landscapes, State significant heritage, and local heritage;

- the introduction of a community-driven nomination process;
- a process of periodic review and amendment of listed items aimed at addressing site changes and ensuring the site's full significance is protected, and an '*abridged*' delisting process which may be used where an item has been destroyed (for example, by bushfire or flood);
- the introduction of standard exemptions, fast-track applications, and standard applications for permits to undertake work to a heritage item; and
- the power to issue penalty notices if there is a non-compliance with heritage requirements for listed items and the introduction of investigative powers to enable Heritage NSW to gather sufficient evidence to prove an offence under the Act.

No changes are proposed to be made to the listing of items of local heritage significance under councils' local environmental plans.

Review Process

The review will be undertaken in Parliament by the NSW Legislative Council's **Social Issues Standing Committee**. The Committee is expected to announce the process for review presently, including how stakeholders and the general public will be able to participate and make submissions.

You can find out more about the review from Heritage NSW by following **this link**.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.5	Encourage community appreciation of cultural vitality and diversity	2.5.2	Recognise and support the heritage of Byron Shire	2.5.2.1	Coordinate the Heritage Advisory Panel

Legal/Statutory/Policy Considerations

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

4.3

N/A

Financial Considerations

N/A

Consultation and Engagement

5 N/A

Report No. 4.4 Legislative framework for heritage items in NSW

Directorate: Sustainable Environment and Economy

5 **Report Author:** Nancy Tarlao, Planner
Chris Larkin, Manager Sustainable Development

File No: I2021/966

Summary:

10 This report provides the Panel members with a presentation regarding the legislative framework that applies to heritage items in NSW as requested at the previous meeting 18 March 2021.

RECOMMENDATION:

15 **That the Heritage Panel notes the presentation update provided on the legislative framework that applies to heritage items in NSW.**

20

Report

Local government responsibility for heritage management is contained within two acts – the Heritage Act 1977 and the Environmental Planning and Assessment Act (EP&A) 1979.

5 Together, they establish the legislative framework for heritage management in New South Wales.

Heritage Act 1977

The NSW Heritage Act 1977 provided the first systematic means of protecting heritage in the State. It was drafted in response to community concern over the loss of items in the 1970s.

10 Under the Heritage Act 1977 the Minister, on the recommendation of the Heritage Council, can place Interim Heritage Orders on items, places and areas, which on further investigation may be found to be of State or local significance and are under threat.

15 An Interim Heritage Order provides temporary protection from demolition or mismanagement. Places found to be of State significance and listed on the State Heritage Register are required to have ongoing conservation.

The consent of the Heritage Council must be obtained before development of the item, place or area can be carried out.

20 The Act also requires that an excavation permit be obtained before any relic can be disturbed, whether or not a conservation order is in place. Interim Heritage Orders are commonly used in emergency situations where urgent protection of items, places and areas is needed.

25 Under the Act, state government agencies have the same obligations as private owners of heritage items, places and areas, and must list them in a conservation register as a requirement of section 170 of the Heritage Act. Items of State significance in state government ownership are also listed on the State Heritage Register.

The Heritage Act 1977 provides that the owner of a building, work or relic, listed, or located in a precinct, listed on the State Heritage Register, must ensure that the building, work or relic is maintained and repaired to the minimum standards imposed by the regulations.

30 The standards cover the following matters: a) the protection of the building, work or relic from damage or deterioration due to the weather (including such matters as the weatherproofing of roof, doors and windows) b) the prevention of, and the protection of the building, work or relic from destruction by fire c) security (including fencing and surveillance measures to prevent vandalism) d) essential maintenance and repair (being maintenance and repair necessary to prevent serious or irreparable damage or
35 deterioration).

Under the Heritage Act 1977 the Heritage Council can issue an order to the owner of a building, work or relic listed on the State Heritage Register, if it is not being maintained or repaired in accordance with the minimum standards imposed by the regulations. There are

5 significant penalties for owners who fail to meet these standards; they are: • the land on which the building, work or relic is situated may be resumed • no development or use of the land shall occur for up to ten years, other than the conservation of the building or work • no development or use of the land shall occur, other than development or use of the building envelope, at the time that the order was served.

Environmental Planning and Assessment Act 1979

10 Under the Environmental Planning and Assessment Act 1979 councils may prepare local environmental plans which incorporate standard heritage provisions and which contain schedules of items and places of heritage significance, previously identified through a heritage study process.

The provisions relate to items and places listed in a schedule, as well as unlisted items and places located in the area.

15 The provisions perform a number of functions, they: • set out any requirements that council has for development that involves listed and unlisted items • identify the protocol to be followed by a council when it assesses a proposal • identify any incentives that council may offer. Heritage items may also be identified in State Environmental Planning Policies and Regional Environmental Plans.

20 Development consent must be obtained from the local council for work that may impact on the heritage significance of items listed. Council must also take into account the impact of a proposal on the heritage significance of an item, before making a decision about it.

Councils also prepare development control plans to specify more detailed management policies for those items and places listed in the schedule of a local environmental plan.

25 These, together with any other heritage issues, must be considered by the council when assessing development applications, as required by section 4.15 (Matters for Consideration) of the Environmental Planning and Assessment Act 1979.

State Heritage Register

The State Heritage Register is a list of items of particular importance to the people of New South Wales. It includes items important to specific groups in the community such as Aboriginal communities, religious groups, or people with a common ethnic background.

30 The State Heritage Register was created in 1999 and includes items and places in public and private ownership. Items are only listed on the Register when the Minister agrees to the Heritage Council's recommendation that they are of State heritage significance.

The process of listing items and places allows for a high level of owner and community comment.

35 Listing protects and conserves the items and places because approval for alteration, damage, demolition and development must be obtained from the Heritage Council under section 60 or section 140 of the Heritage Act 1977, before the commencement of any work. The Minister may direct that an item be removed from the State Heritage Register if

he considers that the item concerned is not of State significance and the Heritage Council recommends its removal. The procedure for removal of a listing is the same as the procedure for listing. See link below for more information.

[State Heritage Register items | Heritage NSW](#)

5 Financial Implications

Not applicable.

Statutory and Policy Compliance Implications

As discussed in the report.