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## **Final Report**

### **Byron Shire Council**

Process for Tree Removals in Railway Park Byron Bay

9 March 2018

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## Executive Summary

On 12 December 2017, Byron Shire Council (BSC) engaged SINC Solutions to provide an independent report regarding tree removals in Railway Park Byron Bay, following a report to Council (7.12) by Infrastructure Services Directorate on 28 November 2017. Council subsequently resolved (17-555T) to seek a more comprehensive report, including consideration of the matters raised and omissions, and detailed these through a series of nine (9) questions as part of the Council Resolution.

The Infrastructure Directorate Staff Report No. 7.12 – Tree Removals Railway Park Byron Bay, outlined the decision-making process and background to the relevant works, and process used to obtain relevant approvals prior to the works (including tree removals). Specifically, the report was requested to explain process for the removal of three (3) trees described by staff as:

1. Eucalyptus Dunnii – approximately 12m tall and estimated thirty (30) years old,
2. Archontophoenix Cunninghamiana – approximately 12m tall and estimated thirty (30) years old, and
3. Sterculia Quadrifida – estimated 6m and estimated as eight (8) years old.

Council considered that the information contained in the report did not adequately address their questions and concerns, and was, in parts, contradictory or unclear. The report also contained background information on matters closely related to the works within Railway Park related to ‘Tree Removal’ including;

- The relocation notification issued to Byron Environment Centre (BEC), and
- The Tourism Demand Driver Infrastructure (TDDI) funded redevelopment of Railway Park.

Given Council’s resolution, an independent review and report on the process and approvals has been conducted and a significant number of Council documents were received and a total of nine (9) telephone discussions occurred with various persons.

The reaction from the community over the Tree Removal in Railway Park was exacerbated by the related matters of:

- The proposed relocation of the BEC away from Railway Park;
- Coincidental erection of security fencing for the purpose of ensuring safety while undertaking operational works in the Park (including tree removal), which resulted in temporary barriers to entering the BEC;
- Lack of clarity around consultation undertaken and approval process with respect to the removal of the trees; and
- Importantly, the species of the tree had been identified as three (3) different types and each type had different processes to be followed.

The decision to remove the tree from Railway Park was made by the former General Manager on 12 October 2017. The basis for the removal was the concept plan for landscape works in Railway Park as designed by Plummer and Smith. In order to allay pressure that Railway Park was running behind the other projects, as articulated by the Leadership Team, the former General Manager identified that the work could be progressed through site maintenance utilizing the BBC. As such, in the circumstances, the basis for this decision was sound.

The tree removed from Railway Park was a Eucalyptus Dunnii (whitegum).

The process followed the infrastructure services Tree Removal Approval Pathways. The process undertaken by Council staff for the removal of this species of tree associated with infrastructure works to be undertaken in the park was the correct process.

The process undertaken was followed appropriately up until the point where consideration of the level of community consultation was required. This was a consideration issue, and not mandatory. Council staff held the view that in the circumstances, and given prior history, community consultation was not required at this time. However, this consultation should have occurred. Then, and in accordance with the Pathways, any issues from the consultation resolved, documented and signed off.

Similarly, the maintenance work being undertaken in the park, including explicitly the tree removal and reasoning, should have been advised to the Leadership Team prior to the actions occurring. The main focus of the Leadership Team in relation to the trees in the park at that time had been the Cottonwood and correctly so, as this tree is a significant feature of the park.

The process undertaken can be strengthened through:

- The decision makers responsible for issuance of Permits are provided full information;
- Ensuring the species to be removed is agreed upon by the relevant parties, if there are differing opinions between the parties;
- Notification of tree removal to the community is made a mandatory requirement under the Tree Removal Approval Pathway; and
- More rigour is enacted in the engagement of advice received from external consultants/experts in fields of work which impact the broader community.

In summary, the key tree in dispute was a Eucalyptus Dunnii. The correct pathway process for removal of trees as part of infrastructure works was completed with the exception of notification to members of the community. This should have occurred. There was confusion on this aspect, given the level of involvement of the Byron Bay Town Centre Masterplan Leadership Team (BBTCM), also known as the Leadership Team. The governance of this group is being separately addressed by Council.

It is recommended that notification of tree removal is a mandatory process in the Tree Removal Approval Pathways. Further, the Executive team are to ensure more rigour is applied to consultant advice received and those who require the information upon which to base decisions, have the full information provided to them at that time.

## Report Outline

Given the complexities of the matter, the report commenced with a detailed background which contributes significantly in establishing the decision-making process undertaken, including the approvals process prior to the works commencing. The report then addresses the nine (9) points raised in the Council resolution. A conclusion along with recommendations complete the report.

## Background

In **early 2017**, Council received a Tourism Demand Driver Infrastructure (TDDI) Program grant to the value of \$260,750 with 50/50 council contributions, total of \$521,500 (ex GST). Projects within the program included:

- Railway Park Upgrade: \$237,500
- Byron St Connection Upgrade: \$139,000
- Visitor Centre refurbishment: \$100,000
- Visitor Centre Technology Project: \$45,000

The timeframe for the project was April 2017 to April 2018, to be carried out in stages as follows:

- Phase 1 – Consultation for input into design (June-Aug)
- Phase 2 – Consultation on design concepts (Sept-Nov)
- Phase 3 – Construction (End Jan - April)

On **7 June 2017**, the Executive Team endorsed the Communication and Engagement plan for the program of works with the objective as follows:

1. To gather input into the design phase of the program,
2. To arrive at an agreed outcome for the spaces, and
3. To keep residents, neighbouring businesses and park users informed of works.

One of the project challenges identified by the plan was potential *“negative reaction to vegetation trimming or removal”*. Council listed ‘Our Promise’ *“Inform – we will keep you informed when construction is in progress to minimise impacts”*. As part of the ‘inform’ matrix, the actions in relation to the tree contained no *“essential”* actions that had to occur (based on level 4 – lower impact on local area or group). There is one *“desirable”* action listed as ‘street signage’. There are a variety of ‘optional’ methods that could have been considered.

The plan did not outline any mandatory consultation process specific to works in Railway Park for potential tree or vegetation removal other than that detailed as ‘desirable’ above.

In about **July/August 2017** Council engaged Landscape Architect, Mr Dan Plummer of Plummer, and Smith, to prepare a concept design for the upgrade of Railway Park in relation to the TDDI Program grant, and more broadly in the context of implementation of the Byron Bay Town Centre Master Plan (BBTCMP).

A key stakeholder group for the project was the *Byron Bay Town Centre Masterplan (BBTCM) Leadership Team*, which was established for 12 months, at which time it would be subject to review and extension by Council.

The Leadership Team was to:

- *“Provide advice and direction on the delivery of the BBTCMP actions;*
- *Identify and actively facilitate, where appropriate, opportunities for partnerships and community collaboration;*
- *Provide oversight on the timely delivery of actions that are responsive to community needs, acknowledging that the actions of the BBTCMP are flexible and adaptable.”*

The Council selected 22 members of the Community to comprise the Leadership Team.

The BBTCM Leadership team met on **9 August 2017** and discussed the Railway Park concept design which is detailed in the minutes (or comments) of the meeting as follows:

“...

*Tree in the park. Best outcome. Sculpt and prune to improve the sightlines, look good. There is actually other plants growing on the tree that are protected?*

- *In its current state it is considered by some as an eyesore.*
- *Its part of the ‘heritage’ of the place. Arboreal expert – can we shape it.*
- *Dan’s view prefers to retain the tree. In sculpted form.*
- *GM can get an arborists report for the trees.*
- *Old trees are part of Byron Bay.*
- *Design uses under it. Activating the space for its branches and shade. It needs to consider the use. It needs to serve the future generations.*
- *...*
- *We all agree modifying the tree first and if it is reviewed.*
- *Allows connection through. Tree and the fence make the space unsafe.*
- *...*
- *Suggest a representative – Deacon? Byron Environment Centre.*
- *...*
- *Opportunity to just do something. We are the community we represent them someone is always going to dislike it we need action. Having once we have got the plan and agree to it and take action.*

- *Once we have a plan. This is what is going to happen. Come from the masterplan committee not council. We have to own this.*
- *If we genuinely believe this. We do need to get things done. Funds have to be spent by April next year.”*

An action agreed at the meeting was that an arborist would be engaged to review the trees in Railway Park and provide a report to inform the planning work being undertaken by Dan Plummer.

Further, with respect to communication of the group’s deliberations, and in particular, with respect to consideration of trigger points and language to be used when communicating with the public about the trees in Railway Park, the minutes of the meeting included:

“...

*Trigger points. Image of trees being cut down...be prepared so that there are no surprises and so the group knows these trigger points.*

*Language is very important. We are not going to cut down but will sculpt the tree.”*

The minutes reflected that the *“Council communications officer to be invited to the next meeting.”*

On **29 August 2017** Council’s Director Sustainable Environment and Economy (SEE), contacted Dr Rob Kooyman of Earth Process Ecological Services requesting expert advice on *“a number of vegetation management matters in the corridor and also a tree in Railway Park that we would like to see sculpted into a play feature.”*

The Director SEE advised the review that Dr Kooyman was subsequently engaged by Council to assess the trees in Railway Park in consultation with Mr Dan Plummer, Landscape Architect.

Dr Robert Kooyman is an ecologist and a botanist and has been engaged by Macquarie University and the Royal Botanic Gardens.

The Director SEE advised the review that she was in attendance at an on-site meeting on **1 September 2017**, along with the former General Manager; Mr Dan Plummer; Mr Chris Athas; and Ms Toni Graham in relation to discussions on the Old Byronian. She advised that the discussion was not related to a Development Application which was, at that time, before Council for assessment. She stated that the meeting was a discussion on what would be required should the café open up towards the park and what use, if any, the café would be allowed given it was community land. She indicated to the review, that it was advised that use of the park would not be allowed without approval and an explanation of the process required then occurred.

The Director SEE further advised the review that consent for the Development Application for the Old Byronian was later granted and this consent was, in no way, related to the tree which was subsequently removed from the park.



On **5 September 2017**, Mr Dan Plummer, and Dr Robert Kooyman met and conducted a site inspection of Railway Park. An email from Mr Plummer dated **6 September 2017** at 12.00pm to the Director SEE, states as follows:

*“Rob and I met up yesterday morning for a yarn in the park. There was nothing of significant concern regarding what we’re planning and the trees.*

*We both agree that it is probably for the best that the Eucalypt (River Red Gum) near the northern boundary of the park be removed. We both like this tree but given the intended use in that area (outdoor dining) we think it would be prudent to remove now before it becomes significantly bigger and limb drop becomes a concern.*

*The two Tuckeroos in this area we will endeavour to keep.*

*Regarding the Hibiscus tiliacius (Cottonwood) in the middle of the park. The advice was that this seems largely healthy (with some signs of stress). Rob had some concerns about encouraging too much climbing on the trunks and the impacts that this might have on bark and on-going tree health. We may have to consider detailing elements in ways that keep people off the trunk in most cases.*

*Rob was not really in favour of thinning out the canopy. Aesthetically we agree that this is one of the great assets of the tree- it provides a ‘roof’ and shade in the middle of the park. From a botanical perspective it is more a view resulting from concerns for tree strength. Essentially it will always attempt to fill in the canopy holes as quickly as possible- this will result in tree stress and continual pruning.*

*Rob also made the good point that the canopy is dense enough to discourage climbing- which will help us protect the tree from being flogged basically.*

*Ideally, we are thinking a sand softball would be good.*

*Rob- please add or differ from my summary above as/if required.*

*Thanks  
Dan”*

A further email dated **6 September 2017** at 3.37pm from Dr Robert Kooyman to Mr Plummer and the Director SEE stated as follows:

*“Largely agree that is a reasonable recap of our discussions. Basically, the Hibiscus tiliaceus is capable of horizontal growth and taking root where it has contact with soil. Which explains its current shape. The horizontal branching and thick canopy keep it dense enough to discourage climbing much higher. Stem pruning techniques need to be improved a little, and wear and tear on the main stems resulting in bark loss should be avoided where possible. Overarching steel and climbing mesh could be a solution, at least in part. It is a rainforest type tree, so it will seek canopy closure continuously.*

*Sand would make the ideal infill as this will not stress the tree or change the site chemistry of the soil surrounding the trees.*

*Agree the Forest Red Gum is a nice sound tree but will provide complications in the near future as it is a limb shedding species.*

*The other trees are all sound and worth protecting where possible. Along the road is a judgement call.*

*Currently high in the Nightcap. Can discuss more later if needed.*

*Regards*

*Rob”*

It should be noted that in discussion with Mr Dan Plummer as part of this review, he advised in relation to the tree identification as a river red gum that:

- He is not a tree specialist. He can recognise some species if they are in flower etc.
- In his email dated 6 September 2017, he wrote that the type of species, being a river red gum, as it was his understanding of what Dr Rob Kooyman had stated in their walk around the park on 5 September 2017. He advised the review he may have misheard what Rob stated.

On **10 September 2017** at 4.52pm, the Director SEE forwarded the emails from Mr Dan Plummer and Dr Robert Kooyman to the former General Manager, and stated as follows:

*“FYI the discussion so far between Dan and Rob.*

*How would you like me to progress?”*

The Leadership Team minutes of **13 September 2017** meeting in relation to Railway Park indicated that the *“Leadership Team would still like to get a copy of Dan’s plan.”*

And further:

*“Since last meeting: Chris from old Byronion Café – agreed he would like to open it up. Arborist has given preliminary report on sculpting the trees and is also working with Dan”*

It was also noted by the Leadership Team that: *“Railway Park is a bit behind the rail corridor in terms of progress.”*

The action was listed as follows:

**“Action”:** *Dan will be in a position to report that back in the coming weeks.”*

On **13 September 2017**, the Mayor, emailed the former General Manager, and Director, SEE and stated as follows:

*“Hi [former General Manager and Director SEE]- can I receive some info asap on the discussions with the owner of this site-it would be better for us to be on the same page and moves to allow a new arrival who has already shown a willingness to put in a chain burger joint to move into a public space will be resisted by me and a majority of councillors. I presume and hope that decisions aren’t being made that would undermine my discussions already had with the owner et al.”*

On **14 September 2017**, the former General Manager, emailed the Mayor, with a cc to Director SEE and advised as follows:

*“Our meeting with the property owner and his architect reflected the sentiments expressed by you and others at the BBTCMP meeting regarding the food operator offering being either local, unique or otherwise in keeping with the Byron ethos (definitely not a chain offering). Chris (owner) acknowledged and accepted this and expressed a desire for his business to be accepted and supported by locals. He was left in no doubt as to the Council’s (and the BBTCMP Leadership Group) preferences for the site. Dan Plummer also attended and is liaising with the owner’s architect to ensure that there is a meeting of the minds over design issues and interface with Railway Park. Dan is now close to completing his concept design for the Park (Dan’s Plan) and this will be shared with the Leadership Group at their next meeting on 25<sup>th</sup> October. We may get a sneak preview today at the marketeers walkabout. Should the (former) Byronian building owner pursue the park encroachment proposal he will have to lodge a s96 application with Council to modify the current DA consent condition/s prohibiting opening onto the Park. I have also spoken with Ralph and the Park is Council owned and classified as Community Land. We can enter a lease with the building owner for the outdoor dining platform area for up to 5 years and we can insert termination clauses that can be triggered by Council should the nature of the food business change/become undesirable. I believe that we have acted entirely in accordance with our brief.  
Cheers”*

On **12 October 2017**, directions were given to proceed with works to remove trees and other vegetation in Railway Park, by the former General Manager. It should be noted that the former General Manager was on leave from 25 September 2017 to 18 October 2017 and was emailing during this time. In his email to Manager Open Space and Resources Recovery, with a copy to various council staff, he stated as follows:

*“Hi all*

*I'm not sure where things are at with Railway Park refurb but I want these works to go well beyond the tddi funded project. We need to do all of the works identified in Dan's Plan. To start [Manager Open Space and Resources Recovery] can you please start the following works immediately:*

- 1. Remove the playground*
- 2. Have the BBC remove the garden bed along Jonson Street between the cafe and the Exeloos*
- 3. Remove the two large metal barriers in the car park near the Countrylink building*
- 4. Under the supervision of the arborist and Dan Plummer have a tree doctor/men with chain saws sculpt the trees in the Park to create a play feature*
- 5. Remove the designated tree adjacent to the cafe (with TPO cert) as agreed at a site meeting with Dan and [Director SEE].*

*These actions can be undertaken as site maintenance without any planning approval and will allay any concerns that we are dragging the chain with this project. Please undertake these works urgently as a priority under my instruction. If any problems, please email me straight away.*

*Please also talk with Peter Rees about installing recycled watering for the Park. Can you please advise what the earliest time frame would be for installation ASAP.*

*Can someone also advise whether the Mooney's have been back in touch with Dan P about the proposed rail platform deck to be utilized for outdoor dining?”*

The below plan is taken from the “Railway Square Landscape Concept” dated October 2017 by Plummer and Smith (page 5). The plan identifies as detailed below “existing vegetation- trees marked with a X are probable removals (to be confirmed in detailed phases)”.

## VEGETATION



Existing vegetation- trees marked with a X are probable removals (to be confirmed in detailed phases)

The Eucalyptus Dunnii is one of the trees marked X for removal on this plan.

A series of events occurred from this email.

On **13 October 2017**, the Technical Officer, Open Space and Resources, received a direction from his Manager, Open Space and Resources Recovery. In the Technical Officer's memo dated 2 November 2017, it stated as follows:

*Fri 13 Oct 2017.* I was asked by my manager to prepare an urgent report enabling the removal of a Eucalypt in the northern section of Railway Park in preparation for major landscaping that would be starting soon. I attended the park on this day and photographed the tree and looked for fruit or flowers for positive identification of the tree, I failed to find these and consequently identified the tree as *E. dunnii* based on the evidence available.

*Sat 14 Oct 2017.*

*Commenced writing the report based on guidelines for use of the Infrastructure SEPP, I came to the conclusion that a REF would be required to allow removal of the tree.*

*Mon 16 Oct 2017.*

*Consulted Councils Ecologist about format of REF to remove *E.dunnii* and was told that I could use Infrastructure Services Approval pathway and form to streamline the process without an REF as we were the approving agency.*

*I completed the form had the Ecologist sign it (in the understanding that it was *E.dunnii*), signed it myself and then took back to my manager so that he could get the signature of the Director.*

*I told my manager that this had been an easier process than I had expected based on my earlier research.*

*At this point I had no knowledge of the proposal to remove the rotunda and had not seen the landscape plan.*

*Mon 23 Oct 2017.*

*Noted that security fencing had gone up in park suggesting that work was imminent, tree was still present.*

*Wed 25 Oct 2017.*

*I heard that tree removal was programmed for this day from parks Team Leader.*

*Thur 26 Oct 2017.*

*I drove by the site early in the morning, tree was gone. I talked to the Better Byron Crew about methodology required to transplant a large Cycad from near the toilet block, received a call from my manager to urgently prepare another tree removal permit allowing removal of smaller material in garden beds fronting Jonson St. I prepared the report before lunch using the same Infrastructure Services Approval pathway, I signed this form and handed it to my manager for approval by the Director.*

*Fri 27 Oct 2017.*

*I drove by site and saw that gardens had been removed. I now became aware of complaints from the public about the removal of the tree.*

*At approximately 1.30pm I took a call from my manager who told me of a previous report that had come to light by Forest Ecologist Rob Kooyman who had identified the tree as a Forest Red Gum (*E. tereticornis*). If I had known this was a Koala food tree and consequently identified as significant I would have alerted management and used a different instrument including an REF to gain approval for the trees removal."*

The Tree Removal for Public Infrastructure Permit Form prepared by the Technical Officer, Open Space and Resources was for the removal of three (3) trees being:

1. Eucalyptus Dunnii – approximately 12m tall and estimated thirty (30) years old,
2. Archontophoenix Cunninghamiana – approximately 12m tall and estimated thirty (30) years old, and
3. Sterculia Quadrifida – estimated 6m and estimated as eight (8) years old.

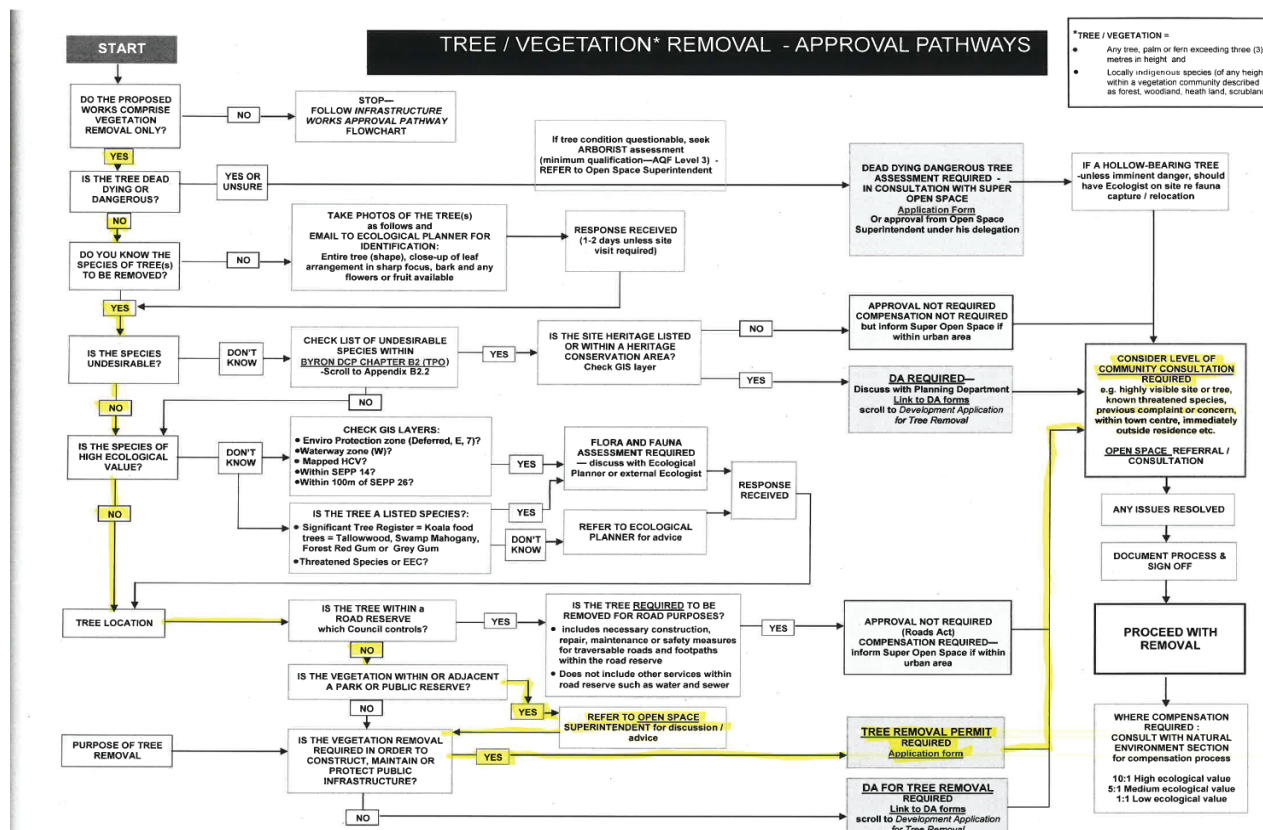
The Technical Officer, Open Space and Resources provided an image of the relevant tree as shown below:



The permit was signed by the Technical Officer, Open Space and Resources dated 16 October 2017. It was signed by Council's Ecologist, dated 16 October 2017. Council's ecologist advised the review that she did not specifically recall signing this particular permit. However, she did recall the discussion with the Technical Officer regarding as to whether the REF was required, and she stated she advised the Technical Officer that it was not required and further, that he should follow the pathway for the Infrastructure Services Approval Pathway which allowed for removal on council land. Her email records indicate that Council's Ecologist provided the Technical Officer with two documents by email on 16 October 2017 at 10.08am being:

- BSC Permit to remove trees; and
- Final Tree Removal approval pathways

Council’s Ecologist provided to the review the Tree Removal Approval Pathways as provided to the Technical Officer on 16 October 2017. The pathway with the highlighted process relevant in this matter is shown below:



The permit was subsequently signed by the Director Infrastructure Services dated 16 October 2017 and is identified as permit number 10.1, Parcel No: 187200,

The permit approved on **16 October 2017**, stated that *“In their current form they do not contribute much visually to the park and are very close to a new development being built next door.”*

State Environmental Planning Policy (Infrastructure) 2007 – Reg 65 at Division 12 – Parks and other public reserves and in particular at Clause 6.5 – Development permitted without consent, states at 3(a)(v) as follows:

*“(3) Any of the following development may be carried out by or on behalf of a council without consent on a public reserve under the control of or vested in the council:*

*(a) development for any of the following purposes:*

....

*(v) landscaping, including landscape structures or features (such as art work) and irrigations systems,*



...”

The removal of vegetation in Railway Park is guided by Byron Shire Development Control Plan 2014, Chapter B2 Preservation of Trees and Other Vegetation.

Within table B2.1 of Chapter B2 “Vegetation removal required to construct, maintain or protect public infrastructure” is detailed below.

An approval pursuant to the Tree Removal for Public Infrastructure Permit Form, issued under Chapter B2 – Preservation of Trees and other vegetation of the Byron Shire Development Control Plan 2014 is required for this process.

***Development Control Plan (DCP) 2014 Chapter B2, Preservation of trees and other vegetation***, table B2.1 of Chapter B2 relevant section is as follows (note table has been reduced to relevant section only):

**Table B2.1. – Types of vegetation removal to which this Chapter does not apply**

Type of vegetation removal	Standards and requirements to warrant exclusion
Works authorised under other Acts, Regulations and State Environmental Planning Policies including: <ul style="list-style-type: none"> <li>• <i>Native Vegetation Act 2003</i>,</li> <li>• <i>Forestry Act 2012</i></li> <li>• <i>Plantations and Reafforestation Act 1999</i>,</li> <li>• <i>Electricity Supply Act 1995</i>,</li> <li>• <i>Roads Act 1993</i>,</li> <li>• <i>Surveying and Spatial Information Act 1995</i>,</li> <li>• <i>Rural Fires Act 1997</i>,</li> <li>• <b><i>SEPP (Infrastructure) 2007</i></b></li> <li>• <i>Water Management Act 2000</i></li> </ul>	<ul style="list-style-type: none"> <li>• Works may be carried out if authorised or otherwise permitted under Acts, Regulations or State Environmental Planning Policies,</li> <li>• This abovementioned exemption does not apply to <b>vegetation removal</b> in the R5 zone that is permitted under Part 3, Division 2 and 3 of the <i>Native Vegetation Act</i> (i.e. RAMA’s). Development consent will still be required under this Chapter.</li> <li>• Must be carried out to the minimum extent necessary.</li> <li>• The onus is on the landholder to demonstrate that <b>vegetation removal</b> is lawful.</li> </ul>

The Team Leader, Open Space, in an email to the Manager Open Space – Resource Recovery, on 3 November 2017 stated as follows regarding the decision process – tree removals railway park between **12 October 2017 and 20 October 2017**:

*“On 12<sup>th</sup> Oct Ken instructed staff to immediately undertake works.*

*A site meeting was held on Wednesday 18<sup>th</sup> to discuss plans for the early works with Arakwal. I requested to attend the meeting to discuss in greater depth the scope of the works. I wanted to ensure we were not duplicating and/or creating rework and also to ensure that what we were going to carry out was in alignment with the overall planning. We had been directed to undertake immediately following works;*

- *Remove the garden bed along Jonson Street between the cafe and the Exeloo (clarify what existing vegetation need to be retained / any intended future use of the use of landscape rocks etc.)*
- *Sculpt the trees in the Park to create a play feature (artistic direction required from Dan )*
- *Remove the two large metal barriers in the car park near the Countrylink building*
- *Remove the playground*
- *Remove the designated tree adjacent to the cafe*

*That meeting was attended by;*

- *Dan Plummer*
- *A Representative from Arakwal*
- *Acting General Manager*
- *Manager Assets and Major Projects*
- *Project Officer*
- *Project Officer*
- *Team Leader Open Space*

*At the meeting the scope of works required to meet the GM’s intent was discussed, and the intended works identified.*

*The three trees that were included within then Arborist’s report were discussed on site along with all other impacted vegetation.*

*It was discussed on site that in order to open the park as intended within Dan Plummer’s plan, all the vegetation in the garden beds was to be removed.*

*The Eucalypt was identified as being required to be removed (the designated tree).*

*The garden beds between the Exeloo and the Café were to be removed, **along with all vegetation contained within.***

*The vegetation in the garden beds included a number of trees, such as four tuckeroos, several Callistemon, a Peanut tree, a number of Bangalow Palms etc.*

*I was tasked with documented the agreed early works, and disseminating these so that they could be discussed again on site with the GM at his planned walk through on Friday 20<sup>th</sup> Oct.*

*The attached program was used in the GMs walk around, and then redistributed with comments following the meeting.*

*There was no feedback indicating any change from the works discussed on site any distributed through the proposed program.*

*A Tree Removal approval was drawn up for the eucalypt. A decision must have been taken by the arborist to include the larger of the two other trees also being taken out within the approval.*

*The three larger trees were taken out in by the Contractor (CERT V in Arboriculture qualified) undertaking the pruning of the Norfolk Palms through Byron.*

*The other smaller trees were intended to be removed as part of the garden removal works, however prior to works commencing direction was given firstly to keep all vegetation higher than head level, which included the bottle brushes, tuckeroos bangalow palms etc.”*

A copy of the Early Works Proposed – Railway Park map and progress program including timeline was provided and reviewed. This program initially indicated the trees to be removed (subject to formal approval) was to occur on 27 October 2017. The trees indicated for removal aligned to the subsequently issued Tree Permit.

It should be noted that at this time action was also occurring regarding the BEC kiosk and its possible relocation. These actions whilst occurring at Railway Park were not related to the tree issue and should not be considered in relation to this review.

On **20 October 2017**, a walk around of the whole town centre and various specific projects occurred. A site inspection of Railway Park was undertaken as part of that walk around. Approximately ten (10) staff were present including the former General Manager, and Mr Plummer. The plan for the park, including the tree removal (with permission) was part of that site inspection.

The removal works were undertaken by an external party being Asplundh Tree Expert Australia. The review spoke with Mr Henry King, Senior Operations Manager Northern who advised the following:

- He was on site on the day of the removal. It was a high-profile site.
- The certified arborist on site on the day was Mr David Clarke. Mr King also holds Cert V in Arboriculture.
- Mr King reviewed the permit that had been issued by council.
- Mr King retained the permit with him on site.
- An inspection of the tree agreed with the permit, that is, that the tree was a Eucalyptus Dunnii.
- Mr King stated that it is difficult to tell when there are no flower/seed pods evident.
- He further stated that it was very evident when they took the first limb and started to dismount the tree that it was a Eucalyptus Dunnii.

- He was firm that the tree was not a Forest Red Gum or a River Red Gum as this would have been evident from the timber when the tree was being dismantled. He indicated that “*with the red gum you can see it through the bark when cutting and dismantling. This tree was clearly not that.*”
- He advised that a member of the public (female) came over to him on site and wanted to scrutinise the paperwork. He provided it to her and let her take a photo of the permit. He stated she had no issue when she saw the permit.
- He indicated that had the tree/process not appeared to be correct, their usual procedure is to make a phone call to the Council to advise of concerns. There was no requirement to do that with this site as the permit matched the tree being removed.

The removal works were carried out on **25 October 2017**.

The Byron Bay Town Centre Leadership Team meeting of **25 October 2017** commenced at 4pm and the unpublished minutes of that meeting stated in part as follows:

***“Opening comments from Chair***

*Press release and statements made on behalf of this committee or council this week. The community feels ignored and the Leadership Team is been associated with actions they know nothing about.*

*Mary did speak to Byron Environment Centre as asked to do on behalf of the group at previous meeting [Wednesday 13 September]. We are working together and we need to know what is going on.*

*Donald stated that strategic timing is of importance. Communication is a frustration. Information goes out the next day after meeting that the group was told is not ready. There is confusion between railway square and railway corridor and the Leadership Team see it as one precinct. Mayor sought to clarify that fences are about clearing the vegetation on the edge of Jonson Street at Railway Park.*

*Press release attributed the removal of Rotunda to leadership team and to a charette. Leadership Team are playing catch up – we should be on the front foot. Council is running the communication. There is a failure of communication. Chair feels used in negotiations about the rail corridor. Masterplan group should have been told simply fence going up and what it is actually about. The group deserves basic respect.*

*Vicki recalled that the first question of the group was about power and that they would have limited decision making role and that Council still needed to go about business. And that a communication strategy is needed.*

*Communication is a symptom not a cause - if [leadership team] processes are to continue, this needs to be resolved with people making decisions. A lot is going on at Railway Park and this is a very public sphere. There is a perception that other stakeholders not being informed. We need to make it work and be more transparent.*

*Mayor confirmed that what is going on is preparatory work, although it may not like preparatory work but confirmed consultation hasn't finished. Comment from Chair that if the Leadership Team knows what is going on they can get the word out.*

*Meredith suggested all press releases relating to the project needs to be run past Leadership Team if it is stating the process involves them. All in the Leadership Team have been involved with key stakeholders but it's not smart if treated like we don't exist.*

*Leadership Team chose as a group the whole rail corridor being the precinct in the heart of town with less public conjecture because Main Beach we chose it and we want to learn from it.*

*This group shrinks because it is slow; communication is not making us happy. Council progressing faster with what they can because group and wider community want to see things happen. It is acknowledged that the intention of everyone including Council is good and the same.*

**Action:**

*There is a need to have a workshop fully about communication at some stage – this message need to be taken back to the GM. It's [Leadership Team] on the edge of breaking up.*

*Can council issue a statement correcting the status- gets on the same page we all want the same thing? We have a group that is trying to develop a communication strategy.*

**Dan Plummer Presentation (remainder of meeting 4:30PM -6.30 pm) – Open discussion throughout:**

.....

Railway square

*Image of kids climbing in the trees at the artisans market. Goal is to design a reinvigorated park as a community meeting and gathering space and connecting open space areas.*

*Jonson Street edge is a barrier to visual surveillance not the tree. The toilets block entry to the park - you have about three seconds to make up your mind before going into the park - plus there are bins, signs, telephones, cctv etc. that clutter the Jonson Street edge. Plan to make park an open space.*

*Cottonwood is the centerpiece for the design. There are generally always people under this. Central feature- Play and gather around the tree. On these plans rotunda has been removed. We have been in a lot of meetings and it needs to be discussed further.*

*There is potential to extend the public space into the car park zone. Really important the Countrylink building gets a forecourt. We will need to work through with stakeholders, owners and lease holders. Key links across the park from Butler Street side, along the back of the park to the Country link building then across park to the zebra crossing.*

*Byronian – idea to open the edge a bit creates a mini path within the park includes planting seating and general hard stand space – this would be like a footpath dining lease. This addresses the blank wall along this edge that has become unused and degraded. This is a key issue raised at charette – increasing passive surveillance and activates the edge. The key is to activate all edges, increasing*

*footprint into car park is also critical – and the link coming in from rail corridor and Butler – every part then has passive surveillance*

*One of the only functions of rotunda space is because it has power and artisan markets use it. Environment Centre used it when they are open once a week. Artisan markets don't know why it is there but all they know is it provides power. Removing the rotunda is one thing but where does it move to is the question. It is a community orientated park. If council upgrade the park and if it is still sitting there would still need to be negotiation to keep the function, or an alternative structure that can be used.*

*History- Rotunda started as busking stage and no-one used it. Council planned to remove it and then the environment group started to use it. It is highly unlikely to be structurally sound. And there is no license or agreement or formal committee or website etc. It used to get grants - funded the wetlands at the back of Butler St and could be doing better.*

*How we handled this could be done better. Mary got a good response when she met them. Who did Mary speak to? John and someone else. Mayor emailed them to ask if there is anywhere else we can locate you – we can find a solution. Mayor is keen to meet them.*

**Action:** *We need to get Environment Centre in the room and consult with them.*

**Action:** *We want to get rid of the telephone speak to Telstra to relocate.*

*The toilet block is proposed to be relocated across from the other side of entry to the car park. Increasing path, narrowing the access and losing some car spaces. Obviously very different view from people who have a stake in the car park. We could still get the same amount of spaces if car park reconfigures and resurfaced and still gain forecourt.*

*Lawson Street South Car Park- new plans will need to work around with a board walk. Question from Charlie– why are we adjusting the design for cars? Regards car parking and state rail we need to understand other business play a role speaking to the actual owners – do they have a requirements for a min. no car spaces for a railway station especially Lawson street.*

*Technicality - includes the leases and licenses over. Where is it? Dan knew that Council doesn't own all of it. Who has a lease and license?*

**Action:** *Request from Chair that Council find out who has what leases over John Holland land or council land that may be affected by the plans.*

*Dan discussed idea of thinning the tree with botanist – this wasn't well received – it is closed canopy tree and every time you cut you stress the tree and it just keeps filling in. Thinning as suggested by the Leadership Team doesn't stand up to technical advice. Activating every edge of the park addresses the idea that it blocks visual access. This will be less of a concern. The tree is the hub of the park. Furniture play and gathering at a scale that doesn't get lost. Propose to create a space that provides seating, a climbing space, flat in some sections etc.*

*Lighting types will vary, public art will be interpretive – similar to the Newtown art seat - not a static piece of art but a rotating gallery that is lit and allows locals to get their art into the community. Finally, potential for water play – pop up in nature not massive fountains.*

**Any general business**

**Action:** *Need a timeframe – grant to spend money on this. Where to from here? When are the community going to see this when are we going to start spending the grant.*

*Dan would like feedback from the Leadership Team’s opinion for the best possible solution. If park is going into the car parking space- the plan is negotiating tool to go to John Holland. We need to use the plan to be in a position to say look at the amazing space and how it links to the rest of their spaces – there is a good community story. If there is a story and the community is passionate. What parts really need to be a car park and let us do what we want on the land and only have truck access.*

*At the walk around regards car parking –there was an assumption that business won’t engage if they have what they want. We do need a concept. And we need more information on the value and the economics of increasing pedestrians – armed and ready with these for negotiations.*

**Action:** *Chairs will collect the feedback and send it to Council for Dan and then we have to have a feedback discussion and get everyone together.*

**Meeting ended at .6.20 pm”**

Council considered an urgency motion at an Extra-Ordinary Meeting of Council on **2 November 2017** and resolved in relation to Works in Railway Park, Byron Bay as follows:

*“Urgency No. 1 Matter of Urgency - Works at Railway Park, Byron Bay*

*17-555 Resolved that Council:*

*1. Withdraw the relocation notice to the BEC from the rotunda inside Railway Park.*

*2. Receive a report at the next Ordinary meeting, outlining the decision making process to undertake the works and the process in obtaining all relevant approvals and requirements prior to works (including tree removal), and this review be completed and reported back to Council, with any forthcoming recommendations.*

*3. Do not undertake any further infrastructure or landscaping works in Railway Park until formal adoption of a railway square beautification plan at an Ordinary Council Meeting.”*

An extraordinary meeting of the BBTC Leadership Team was held on **15 November 2017** with the Mayor; a number of Councillors; the Acting General Manager; a number of senior staff and key staff; as well as the majority of the Leadership Team in attendance.

There was significant discussion in relation to all aspects of Railway Park including the tree removal issue. It is noted that the unpublished minutes (with comments) states in relation to the tree removal that *“there had been absolutely no discussion in the Leadership Team Meeting about other tree removals.”* Governance of the Leadership Team was a key focus as was ensuring council were *“... answering questions and sharing information to the community.”* It was also noted that it was *“timely to revisit communications plan and what we are going to say about railway park to communicate about action.”*

Council considered a report at the Council Meeting of 28 November 2017. The report author was Manager Open Space and Resource Recovery. The report was in response to the Urgency motion resolved by Council on 2 November 2017. The report will not be repeated in this report for brevity purposes.

Council on **28 November 2017** resolved to seek a more comprehensive report and detailed the resolution as follows:

1. *Does not accept the report provided due to:*
  - i. *a failure to provide the necessary information pertaining to the decision-making process, and processes in obtaining all relevant approvals and requirements.*
  - ii. *an overabundance of irrelevant and potentially distracting information not relevant to the report requirements, for example the approximately three (3) pages dedicated to an overview of the work of the Better Byron Crew across the Byron CBD*
  - iii. *the lack of clarity of the reasons behind the tree removal, and contradiction between one expressed reason, “These directions were given on the basis of routine renewal maintenance activities that aligned with the scope of works that the BBC regularly performed”, and, “it would be desirable for trees to be removed as part of the redevelopment.”*
  - iv. *a failure to explain the whether the communication and engagement plan concerning the tree removal was fully applied as endorsed by the Executive Team on June 7, 2017 and a failure to provide this plan in the report*
  - v. *failure to provide any evidence that the botanist engaged supported or recommended the removal of the tree*
  - vi. *a failure to outline the reasons for no flora and fauna assessment reports being completed prior to the removal of the Eucalyptus Dunnii.*
  - vii. *a failure to explain why when the tree was considered ‘a limb shedding species’, it was not considered to be classified as dead, dying, or dangerous and thus requiring a dead, dying, or dangerous assessment report as required in Council’s tree removal approval pathways process.*



- viii. *a failure to explain why as part of the required 'consider level of community consultation required' section of Council's tree removal approval pathways process, none appeared to occur.*
  - ix. *a failure to explain why a flora and fauna assessment was not required as stipulated in the Chapter B2—Preservation of Trees and other vegetation of the Byron Shire Development Control Plan 2014, under B2.2.1 8(a)*
2. *Engages an independent consultant to provide the report, including recommendations as outlined in 17-555 and also consider the matters raised and omissions listed in 1.*

Each of these points are addressed in the following section of the report and the responses are based in the main, on detailed background provided in this section of the report.

The *Draft Railway Park Concept Design Plan* prepared by Dan Plummer and dated **6 December 2017** refers to consultation having occurred as:

“...

#### **Community Engagement**

*As previously noted- there was significant community consultation undertaken by the Byron Bay Town Centre Master Plan team. The outcomes of that consultation have provided valuable information for the initiation of this project. Focused consultation has been undertaken to refine the community's needs and expectations for Railway Square. In the design phase of this project commenced with a design workshop involving community members. Participants in this workshop included the community representatives that make up the Master Plan Leadership Team and several key stakeholders. Throughout the design process several key stakeholder groups have also been consulted including Arakwal representatives, representatives of the various markets taking place on and nearby the site, and Byron Community Centre representatives. Draft design presentations have been made to stakeholders and community representatives with some modifications being made to the design as a result.”*

Further it is noted that at the Council Meeting held on **22 February 2018**, the following Question with Notice (no. 15.12) was responded to, which had arisen from the Council Meeting held on 23 November 2017:

**“Question With Notice No. 15.12 Council Compliance regarding Tree Removal  
File No: I2017/1847**

*At Council's Ordinary Meeting held on 23 November 2017, John Lazarus asked the following question which was taken on notice:*

*Regarding the removal of trees in Railway Park. What is the proposed Council compliance action against the developer regarding the developers breach of his DA Consent Conditions to protect the adjacent park trees, and what is the proposed compliance action against Council for Council cutting down the trees in breach of Councils own DA Consent Conditions?*

**Response Director Sustainable Environment and Economy:**

*Railway Park is zoned RE 1 (Public Recreation) under the Byron Local Environmental Plan 2014.*

*The removal of vegetation in Railway Park is guided by Byron Shire Development Control Plan 2014, Chapter B2 Preservation of Trees and Other Vegetation.*

*Within table B2.1 of Chapter B2 "Vegetation removal required to construct, maintain or protect public infrastructure" does not require development consent.*

*There is no development consent relevant to the land in which works were performed. Therefore, no consent conditions were breached.*

*Council carried out tree works in accordance with an approval pursuant to the Tree Removal for Public Infrastructure Permit Form, issued under Chapter B2 – Preservation of Trees and other vegetation of the Byron Shire Development Control Plan 2014.*

*No compliance (enforcement) action is presently contemplated."*

For ease of reference the **Development Control Plan (DCP) 2014 Chapter B2, Preservation of trees and other vegetation**, table B2.1 of Chapter B2 relevant section is as follows (note table has been reduced to relevant section only):

**Table B2.1. – Types of vegetation removal to which this Chapter does not apply**

Type of vegetation removal	Standards and requirements to warrant exclusion
Works authorised under other Acts, Regulations and State Environmental Planning Policies including: <ul style="list-style-type: none"> <li>• <i>Native Vegetation Act 2003,</i></li> <li>• <i>Forestry Act 2012</i></li> <li>• <i>Plantations and Reafforestation Act 1999,</i></li> <li>• <i>Electricity Supply Act 1995,</i></li> <li>• <i>Roads Act 1993,</i></li> <li>• <i>Surveying and Spatial Information Act 1995,</i></li> <li>• <i>Rural Fires Act 1997,</i></li> <li>• <i>SEPP (Infrastructure) 2007</i></li> <li>• <i>Water Management Act 2000</i></li> </ul>	<ul style="list-style-type: none"> <li>• Works may be carried out if authorised or otherwise permitted under Acts, Regulations or State Environmental Planning Policies,</li> <li>• This abovementioned exemption does not apply to <b>vegetation removal</b> in the R5 zone that is permitted under Part 3, Division 2 and 3 of the <i>Native Vegetation Act</i> (i.e. RAMA's). Development consent will still be required under this Chapter.</li> <li>• Must be carried out to the minimum extent necessary.</li> <li>• The onus is on the landholder to demonstrate that <b>vegetation removal</b> is lawful.</li> </ul>

The nine (9) points resolved by Council at the Meeting held on 28 November 2017 and the responses to those points are now addressed.

## Question I – Failure of provision of information

***[Does not accept the report provided due to] (i) A failure to provide the necessary information pertaining to the decision-making process, and processes in obtaining all relevant approvals and requirements***

In determining the question regarding “a failure to provide the necessary information pertaining to the decision-making process, and processes in obtaining all relevant approvals and requirements,” the report by staff prepared for the meeting of 28 November 2017 was reviewed.

The Manager Open Space and Resource Recovery was the report author and it was identified that a number of council staff contributed to the development of the report, which is not unusual given the nature of the report.

In discussion with the Manager and others, the intention of the report to Council on 28 November 2017 was to provide council with as much information as possible in relation to the matter, including the information in relation to the Better Byron Crew who were responsible for carrying out most of the initial works to be completed. The information provided in the report was the information known at the time of writing and it is evident that further information was available and subsequently provided to this review.

The information relevant to this review was provided from page five (5) onwards and was in the main, correct information, albeit more details have now been clarified and available to this report.

It is important to note that the relevant approval process and requirements in this matter have been very confusing given the three (3) different identifications made in relation to species of the tree. This is a significant contributory factor in how information in this matter has been relayed and reported.

***Question ii – Irrelevant and potentially distracting information.***

***[Does not accept the report provided due to] (ii) an overabundance of irrelevant and potentially distracting information not relevant to the report requirements, for example the approximately three (3) pages dedicated to an overview of the work of the Better Byron Crew across the Byron CBD***

The review is of the view that the initial information in the report of 28 November 2017 in relation to the detailed overview of the work of the Better Byron Crew across the Byron CBD does not actively contribute to the report requested through the urgency motion of 2 November 2017 in relation to the Works in Railway Park, Byron Bay.

It is noted that the BBC were the group responsible for the initial works including the removal of the garden bed along Jonson Street, between the Café and the Exeloos as the work was to be completed as part of the routine renewal maintenance activities.

In discussion with relevant staff, this information was included at the direction of the former General Manager who, as they understood it, wanted to ensure council and the community, had the full information in relation to the group who would be undertaking the initial works in Railway Park.

### ***Question iii – Lack of clarity and contradictions in reasons behind tree removal.***

***[Does not accept the report provided due to] (iii) The lack of clarity of the reasons behind the tree removal, and contradiction between one expressed reason, “These directions were given on the basis of routine renewal maintenance activities that aligned with the scope of works that the BBC regularly performed”, and, “it would be desirable for trees to be removed as part of the redevelopment.”***

The Draft Concept for Railway Park dated October 2017, prepared by Plummer and Smith, identified a number of trees for ‘probable removals’ which were to be confirmed.

The decision to remove the tree, subject to TPO approval, was made by the former General Manager on 12 October 2017 in an email to various staff. It is evident from various correspondence that there was pressure to have some works started. The former General Manager indicated in the email that some of the work could be completed *“well beyond the tddi funded project. We need to do all of the works identified in Dan’s Plan”*.

Further, he stated that the works could be, *“undertaken as site maintenance without any planning approval and will also allay any concerns that we are dragging the chain with this project”*.

The Director SEE was in attendance at a meeting on 1 September 2017 with the former General Manager; the owner and architect of the Old Byronian; and Mr Plummer. Amongst other things, the Director advised that the development consent, which was later granted for the Old Byronian, was in no way, related to the tree subsequently removed in the park.

Mr Plummer in his email to Director SEE of 6 September 2017 states in part as follows *“We both agree that it is probably for the best that the Eucalypt (River Red Gum) near the northern boundary of the park be removed. We both like this tree but given the intended use in that area (outdoor dining) we think it would be prudent to remove now before it becomes significantly bigger and limb drop becomes a concern.”*

The basis for the removal was the concept plan for landscape works in Railway Park as designed by Plummer and Smith. In order to allay pressure that Railway Park was running behind the other projects, as articulated by the Leadership Team, the former General Manager identified that the work could be progressed through site maintenance utilizing the BBC. As such, in the circumstances, the basis for this decision was sound.

### ***Question iv – Whether the Communication and Engagement Plan was fully applied.***

***[Does not accept the report provided due to] (iv) A failure to explain whether the communication and engagement plan concerning the tree removal was fully applied as endorsed by the Executive Team on June 7, 2017 and a failure to provide this plan in the report***

On **7 June 2017**, the Executive Team endorsed the Communication and Engagement plan for the program of works with the objective as follows:

1. To gather input into the design phase of the program,
2. To arrive at an agreed outcome for the spaces, and
3. To keep residents, neighbouring businesses and park users informed of works.

One of the project challenges identified by the plan was potential “*negative reaction to vegetation trimming or removal*”. Council listed ‘Our Promise’ “Inform – we will keep you informed when construction is in progress to minimise impacts”. As part of the ‘inform’ matrix, the actions in relation to the tree contained no “essential” actions that had to occur (based on level 4 – lower impact on local area or group). There is one “desirable” action listed as ‘street signage’. There are a variety of ‘optional’ methods that could have been considered.

The plan did not outline any mandatory consultation process specific to works in Railway Park for potential tree or vegetation removal other than that detailed as ‘desirable’ above.

It is important to note though that while the Communication and Engagement Plan was not specific to the works being undertaken in relation to tree or vegetation removal in Railway Park, consultation should have occurred given the objectives of the plan.

Further, the Tree Removal Approval Pathways includes as a key component of the pathway as follows:

**“CONSIDER LEVEL OF COMMUNITY CONSULTATION REQUIRED**

**e.g. highly visible site or tree, known threatened species, previous complaint or concern, within town centre, immediately outside residence etc.**

**OPEN SPACE REFERRAL / CONSULTATION”**

The next step is **“ANY ISSUES RESOLVED”**

This action under the Pathways process did not occur.

The Technical Officer advised the review that normally the removal of significant trees, such as the Norfolk Pines, would be advertised to the public, along with a notification to the Executive and to Councillors. He stated that this did not occur with the Eucalyptus Dunnii (and associated trees) in Railway Park as the matter was completed in a hurry upon direction from the former General Manager. Further, he was also conscious that:

- there had been very little contention when a similar species of tree in the park had been removed a few years earlier;
- the tree was not contributing significantly to the site;
- it had exposed roots; and
- the removal was urgent to allow for landscaping works to proceed.

As such, he advised he completed the process in good faith.

The Technical Officer also advised that since this issue occurred, the system has been changed to include additional steps in the approvals pathways to ensure this notification occurs for any vegetation or trees being removed in public areas. This action has been included as a recommendation in this report.

It is noted by the review that the level of community consultation in the Pathways is a consideration and is not a mandatory requirement. It is noted that various staff were of the view that the Leadership Team and their engagement in the project was a form of community consultation in this process. Whilst the Leadership Team is engaged in various process and the governance of that group is currently under review, this would not be considered community consultation specific to this tree removal. Further, it is noted through the various meeting minutes of the Leadership Team that their focus was primarily on the Cottonwood tree. Their initial discussion at the Charrette included whether this tree should be retained. When determined it was of significance, the best uses, activation and design for the tree and surrounding area were considered. As such the Leadership Team was not focussed or aware of the tree removal of the Eucalyptus Dunnii and other less significant trees at this point in time.

A significant contributing factor was that the work was required to be completed by Saturday 28 October 2017 for the Artisan markets, so no negative impacts were encountered for the public.

It would have been appropriate for the tree removal to have been subject to an appropriate level of community consultation, for example, by giving seven (7) days' notice prior to the removal period. The work should have been delayed to allow notification to occur and any issues raised to be resolved. This would have met the intent of the Communications and Engagement Plan and complied with the Tree Removal Approval Pathway and also allowed for consideration by the Leadership Team on the Draft Landscape Concept which was detailed at their meeting on 25 October 2017, post the removal of the tree earlier that day.



### ***Question v – Evidence of Botanist support for tree removal.***

***[Does not accept the report provided due to] (v) Failure to provide any evidence that the botanist engaged supported or recommended the removal of the tree.***

As detailed in the minutes, the Leadership Team were told at the meeting on **9 August 2017** that the former General Manager could get an arborist's report on the trees in Railway Park. An action agreed at the meeting was that an arborist would be engaged to review the trees in Railway Park and provide a report to inform the planning work being undertaken by Dan Plummer.

On **29 August 2017** Council's Director SEE, contacted Dr Rob Kooyman of Earth Process Ecological Services requesting expert advice on *"a number of vegetation management matters in the corridor and also a tree in Railway Park that we would like to see sculpted into a play feature."* Dr Robert Kooyman is an ecologist and a botanist and has been engaged by Macquarie University and the Royal Botanic Gardens. The Director SEE advised the review that Dr Kooyman was subsequently engaged by Council to assess the trees in Railway Park in consultation with Mr Dan Plummer, Landscape Architect.

On **5 September 2017**, Mr Dan Plummer, and Dr Robert Kooyman met and conducted a site inspection of Railway Park. An email from Mr Plummer dated **6 September 2017** at 12.00pm Mr Burt, states as follows:

*"Rob and I met up yesterday morning for a yarn in the park. There was nothing of significant concern regarding what we're planning and the trees.*

***We both agree that it is probably for the best that the Eucalypt (River Red Gum) near the northern boundary of the park be removed. We both like this tree but given the intended use in that area (outdoor dining) we think it would be prudent to remove now before it becomes significantly bigger and limb drop becomes a concern. (emphasis added)***

*The two Tuckeroos in this area we will endeavour to keep.*

*Regarding the Hibiscus tiliacius (Cottonwood) in the middle of the park. The advice was that this seems largely healthy (with some signs of stress). Rob had some concerns about encouraging too much climbing on the trunks and the impacts that this might have on bark and on-going tree health. We may have to consider detailing elements in ways that keep people off the trunk in most cases.*

*Rob was not really in favour of thinning out the canopy. Aesthetically we agree that this is one of the great assets of the tree- it provides a 'roof' and shade in the middle of the park. From a botanical perspective it is more a view resulting from concerns for tree strength. Essentially it will always attempt to fill in the canopy holes as quickly as possible- this will result in tree stress and continual pruning.*

*Rob also made the good point that the canopy is dense enough to discourage climbing- which will help us protect the tree from being flogged basically.*

*Ideally, we are thinking a sand softball would be good.*

*Rob- please add or differ from my summary above as/if required.*

*Thanks”*

A further email dated **6 September 2017** at 3.37pm Dr Robert Kooyman to Mr Plummer and Director SEE stated as follows:

*“Largely agree that is a reasonable recap of our discussions. Basically, the Hibiscus tiliaceus is capable of horizontal growth and taking root where it has contact with soil. Which explains its current shape. The horizontal branching and thick canopy keep it dense enough to discourage climbing much higher. Stem pruning techniques need to be improved a little, and wear and tear on the main stems resulting in bark loss should be avoided where possible. Overarching steel and climbing mesh could be a solution, at least in part. It is a rainforest type tree so it will seek canopy closure continuously.*

*Sand would make the ideal infill as this will not stress the tree or change the site chemistry of the soil surrounding the trees.*

***Agree the Forest Red Gum is a nice sound tree but will provide complications in the near future as it is a limb shedding species. (emphasis added)***

*The other trees are all sound and worth protecting where possible. Along the road is a judgement call.*

*Currently high in the Nightcap. Can discuss more later if needed.*

*Regards”*

On **10 September 2017** at 4.52pm, the Director SEE forwarded the emails from Mr Dan Plummer and Dr Robert Kooyman to the former General Manager, for his review and consideration.

As detailed in the minutes, the Leadership Team were told at the meeting of **13 September 2017** an “Arborist has given preliminary report on sculpting the trees and is also working with Dan”

By email dated **12 October 2017**, the former General Manager, gave directions to key staff to commence works and included the following at points 4 and 5:

*“4. Under the supervision of the arborist and Dan Plummer have a tree doctor/men with chain saws sculpt the trees in the Park to create a play feature*

*5. Remove the designated tree adjacent to the cafe (with TPO cert) as agreed at a site meeting with Dan and SB.”*

The species of tree has been identified differently by various persons and is detailed as follows:

Mr Dan Plummer (Contract Landscape Planner) - ***Eucalypt (River Red Gum)***

Dr Rob Kooyman (Botanist) - ***Forest Red Gum***

Technical Officer, Open Space – Resources – ***Eucalyptus Dunnii***

Mr Henry King (Asplundh Tree Expert Australia) - ***Eucalyptus Dunnii***

Mr Plummer advised the review that he is not a tree specialist; and it was his understanding of what Dr Kooyman said was a river red gum but he may have misheard him.

The process and removal completed was based on the tree being a *Eucalyptus Dunnii* as determined by the Technical Officer, Open Space – Resources and this assessment was supported by Council’s Ecologist although it is noted that she did not personally observe the tree but rather observed it through photographs and through discussion with the Technical Officer. This assessment was also supported by Mr King who subsequently dismantled the tree on 25 October 2017 following an independent assessment of the species of the tree to be removed.

It is important to note that both Mr Plummer and Dr Kooyman identified the species of tree as a River Red Gum and a Forest Red Gum respectively, but both also stated that the tree should be removed albeit for different reasons. Both parties included in their emails that the species was a “limb drop” and a “limb shedding species” respectively. Further, that it was ‘prudent to remove now’ and ‘it will provide complications in the future’.

### ***Question vi – Reasons for no Flora and Fauna Assessment reports.***

***[Does not accept the report provided due to] (vi) A failure to outline the reasons for no flora and fauna assessment reports being completed prior to the removal of the Eucalyptus Dunnii.***

Ecologist provided the Technical Officer with advice that the appropriate process to follow was the pathway for the Infrastructure Services Approval Pathway which allowed for removal on council land. This is provided for through the State Environmental Planning Policy (Infrastructure) 2007 – Reg 65 at Division 12 – Parks and other public reserves and in particular at Clause 6.5 – Development permitted without consent, states at 3(a)(v) as follows:

*“(3) Any of the following development may be carried out by or on behalf of a council without consent on a public reserve under the control of or vested in the council:*

*(a) development for any of the following purposes:*

*....*

*(v) landscaping, including landscape structures or features (such as art work) and irrigations systems,*

The series of questions asked in the pathway and council’s response to those questions detail why no flora and fauna assessment was required. The questions and council’s responses from the Technical Officer and Council’s Ecologist based on the tree being a Eucalyptus Dunnii, are as follows:

1. *Do the proposed works comprise vegetation removal only? **Yes***
2. *Is the tree dead, dying or dangerous? **No***

[Note if this response had been YES a dead, dying or dangerous assessment would have been required to be completed]

3. *Do you know the species of the tree to be removed? **Yes***
4. *Is the species undesirable? **No***
5. *Is the species of high ecological value? **No***

**[Note if this response had been DON’T KNOW (from response choice of No/Don’t know), a number of actions would have needed to be completed including:**

- **Check GIS Layers (Enviro Protection Zone; Waterway Zone; Mapped HCV’ Within SEPP 14; Within 100m of SE26)**
- **Is the tree a listed species (Significant tree register – Koala food tree = Tallowwood, Swamp Mahogany, Forest Red Gum or Grey Gum; Threatened Species or EEC)**

**If any of the above actions were responded to with YES, then a Flora and Fauna assessment would have been required including a discussion with the ecological planner or external ecologist]**

6. *Tree Location – is the tree within a road reserve which council controls? **No***
7. *Is the vegetation within or adjacent a park or public reserve? **Yes***
8. *Refer to open space/superintendent for discussion/advice*
9. *Is the vegetation removal required in order to construct, maintain or protect public infrastructure? **Yes***
10. *Tree removal permit required*
11. *Consider the level of community consultation required (discussed as a separate issue)*

As such, given the Pathway followed, no Flora and Fauna Assessment was required to be completed for the Eucalyptus Dunnii.

### ***Question vii – Explanation of why not classified as dead, dying or dangerous.***

***[Does not accept the report provided due to] (vii) A failure to explain why when the tree was considered ‘a limb shedding species’, it was not considered to be classified as dead, dying or dangerous and thus requiring a dead, dying or dangerous assessment report as required in Council’s tree removal approval pathways process.***

Council’s Ecologist provided the Technical Officer with advice that the appropriate process to follow was the pathway for the Infrastructure Services Approval Pathway which allowed for removal on council land. This is provided for through the State Environmental Planning Policy (Infrastructure) 2007 – Reg 65 at Division 12 – Parks and other public reserves and in particular at Clause 6.5 – Development permitted without consent, states at 3(a)(v) as follows:

*“(3) Any of the following development may be carried out by or on behalf of a council without consent on a public reserve under the control of or vested in the council:*

*(a) development for any of the following purposes:*

*....*

*(v) landscaping, including landscape structures or features (such as art work) and irrigations systems,*

The series of questions asked in the pathway and council’s response to those questions detail why no dead, dying and dangerous assessment was required. The questions and council’s responses from the Technical Officer and Council’s Ecologist based on the tree being a Eucalyptus Dunnii are as follows:

1. *Do the proposed works comprise vegetation removal only? **Yes***
2. *Is the tree dead, dying or dangerous? **No***

**[Note if this response had been YES a dead, dying or dangerous assessment would have been required to be completed]**

3. *Do you know the species of the tree to be removed? **Yes***
4. *Is the species undesirable? **No***
5. *Is the species of high ecological value? **No***

[Note if this response had been DON’T KNOW (from response choice of No/Don’t know), a number of actions would have needed to be completed including:

- Check GIS Layers (Enviro Protection Zone; Waterway Zone; Mapped HCV’ Within SEPP 14; Within 100m of SE26)
- Is the tree a listed species (Significant tree register – Koala food tree = Tallowwood, Swamp Mahogany, Forest Red Gum or Grey Gum; Threatened Species or EEC)

If any of the above actions were responded to with YES, then a Flora and Fauna assessment would have been required including a discussion with the ecological planner or external ecologist]

6. *Tree Location – is the tree within a road reserve which council controls? **No***
7. *Is the vegetation within or adjacent a park or public reserve? **Yes***
8. *Refer to open space/superintendent for discussion/advice*

9. *Is the vegetation removal required in order to construct, maintain or protect public infrastructure? **Yes***
10. *Tree removal permit required*
11. *Consider the level of community consultation required (discussed as a separate issue)*

As such, given the Pathway followed, the dead, dying or dangerous assessment was not required to be completed as the tree was a Eucalyptus Dunnii and was not classified as dead, dying or dangerous.

***Question viii – Explanation of why tree removal pathway process not followed regarding community consultation.***

***[Does not accept the report provided due to] (viii) A failure to explain why as part of the required ‘consider level of community consultation required’ section of Council’s tree removal approval pathways process, none appeared to occur.***

As detailed in part in Question (iv):

The Tree Removal Approval Pathways includes as a key component of the pathway as follows:

**“CONSIDER LEVEL OF COMMUNITY CONSULTATION REQUIRED**

**e.g. highly visible site or tree, known threatened species, previous complaint or concern, within town centre, immediately outside residence etc.**

**OPEN SPACE REFERRAL / CONSULTATION”**

The next step is **“ANY ISSUES RESOLVED”**

This action under the Pathways process did not occur.

The Technical Officer advised the review that normally the removal of significant trees, such as the Norfolk Pines, would be advertised to the public, along with a notification to the Executive and to Councillors. He stated that this did not occur with the Eucalyptus Dunnii (and associated trees) in Railway Park as the matter was completed in a hurry upon direction from the former General Manager. Further, he was also conscious that:

- there had been very little contention when a similar species of tree in the park had been removed a few years earlier;
- the tree was not contributing significantly to the site;
- it had exposed roots; and
- the removal was urgent to allow for landscaping works to proceed.

As such, he advised he completed the process in good faith.

The Technical Officer also advised that since this issue occurred, the system has been changed to include additional steps in the approvals pathways to ensure this notification occurs for any vegetation or trees being removed in public areas. This action has been included as a recommendation in this report.

It is noted by the review that the level of community consultation in the Pathways is a consideration and is not a mandatory requirement. It is noted that various staff were of the view that the Leadership Team and their engagement in the project was a form of community consultation in this process.



Whilst the Leadership Team is engaged in various process and the governance of that group is currently under review, this would not be considered community consultation specific to this tree removal. Further, it is noted through the various meeting minutes of the Leadership Team that their focus was primarily on the Cottonwood tree. Their initial discussion at the Charrette included whether this tree should be retained. When determined it was of significance, the best uses, activation and design for the tree and surrounding area were considered. As such the Leadership Team was not focussed or aware of the tree removal of the Eucalyptus Dunnii and other less significant trees at this point in time.

A significant contributing factor was that the work was required to be completed by Saturday 28 October 2017 for the Artisan markets so no negative impacts were encountered for the public.

## ***Question ix – Explanation of why Flora and Fauna Assessment was not required.***

***[Does not accept the report provided due to] (ix) A failure to explain why a flora and fauna assessment was not required as stipulated in the ChapterB2–Preservation of Trees and other vegetation of the Byron Shire Development Control Plan 2014, under B2.2.1 8(a)***

As detailed in Question (vi):

Council’s Ecologist provided the Technical Officer with advice that the appropriate process to follow was the pathway for the Infrastructure Services Approval Pathway which allowed for removal on council land. This is provided for through the State Environmental Planning Policy (Infrastructure) 2007 – Reg 65 at Division 12 – Parks and other public reserves and in particular at Clause 6.5 – Development permitted without consent, states at 3(a)(v) as follows:

*“(3) Any of the following development may be carried out by or on behalf of a council without consent on a public reserve under the control of or vested in the council:*

*(a) development for any of the following purposes:*

*....*

*(v) landscaping, including landscape structures or features (such as art work) and irrigations systems,*

The series of questions asked in the pathway and council’s response to those questions detail why no flora and fauna assessment was required. The questions and council’s responses from the Technical Officer and Council’s Ecologist based on the tree being a Eucalyptus Dunnii are as follows:

***12. Do the proposed works comprise vegetation removal only? Yes***

***13. Is the tree dead, dying or dangerous? No***

[Note if this response had been YES a dead, dying or dangerous assessment would have been required to be completed]

***14. Do you know the species of the tree to be removed? Yes***

***15. Is the species undesirable? No***

***16. Is the species of high ecological value? No***

**[Note if this response had been DON’T KNOW (from response choice of No/Don’t know), a number of actions would have needed to be completed including:**

- **Check GIS Layers (Enviro Protection Zone; Waterway Zone; Mapped HCV’ Within SEPP 14; Within 100m of SE26)**
- **Is the tree a listed species (Significant tree register – Koala food tree = Tallowwood, Swamp Mahogany, Forest Red Gum or Grey Gum; Threatened Species or EEC)**

**If any of the above actions were responded to with YES, then a Flora and Fauna assessment would have been required including a discussion with the ecological planner or external ecologist]**

***17. Tree Location – is the tree within a road reserve which council controls? No***

***18. Is the vegetation within or adjacent a park or public reserve? Yes***

***19. Refer to open space/superintendent for discussion/advice***

20. *Is the vegetation removal required in order to construct, maintain or protect public infrastructure? **Yes***

21. *Tree removal permit required*

22. *Consider the level of community consultation required (discussed as a separate issue)*

As such, given the Pathway followed, no Flora and Fauna Assessment was required to be completed for the Eucalyptus Dunnii.

## Conclusion

The decision to remove the tree from Railway Park was made by the former General Manager on 12 October 2017. The basis for the removal was the concept plan for landscape works in Railway Park as designed by Plummer and Smith. In order to allay pressure that Railway Park was running behind the other projects, as articulated by the Leadership Team, the former General Manager identified that the work could be progressed through site maintenance utilizing the BBC. As such, in the circumstances, the basis for this decision was sound.

The tree removed from Railway Park was a *Eucalyptus Dunnii* (whitegum).

The process followed the infrastructure services Tree Removal Approval Pathways. The process undertaken by Council staff for the removal of this species of tree associated with infrastructure works to be undertaken in the park was the correct process.

The process undertaken was followed appropriately up until the point where consideration of the level of community consultation was required. This was a consideration issue, and not mandatory. Council staff held the view that in the circumstances, and given prior history, community consultation was not required at this time. However, this consultation should have occurred. Then, and in accordance with the Pathways, any issues from the consultation resolved, documented, and signed off.

Similarly, the maintenance work being undertaken in the park, including explicitly the tree removal and reasoning, should have been advised to the Leadership Team prior to the actions occurring. The main focus of the Leadership Team in relation to the trees in the park at that time had been the Cottonwood and correctly so, as this tree is a significant feature of the park.

The Technical Officer – Open Space completed the correct permit form entitled “*Tree Removal for Public Infrastructure Permit Form*” and clearly identified description of trees; reasons for proposed tree removal works; included relevant photographs; identified replacement tree species; and provided further information regarding the *Eucalyptus Dunnii*’s current state, location and environment.

Council’s Ecologist discussed the matter with the Technical Officer – Open Space and reviewed the completed Tree Removal for Public Infrastructure Permit form which included photographs of trees to be removed. No comments were documented by the ecologist and the ecologist signed the permit form.

The Director Infrastructure Services also reviewed and signed the permit form. This permit process was correctly followed.

The process undertaken can be strengthened through:

- The decision makers responsible for issuance of Permits are provided full information;
- Ensuring the species to be removed is agreed upon by the relevant parties, if there are differing opinions between the parties;
- Notification of tree removal to the community is made a mandatory requirement under the Tree Removal Approval Pathway; and
- More rigour is enacted in the engagement of advice received from external consultants/experts in fields of work which impact the broader community.

## Recommendations

It is recommended that:

### Recommendation 1

The contents of the investigation report into the process for Tree Removal in Railway Park be received and noted by the General Manger, with either the whole or relevant parts of the report being provided to the Elected Council.

### Recommendation 2

Any Council works whereby tree removal is required through permit, is to be notified for a minimum of seven (7) days to the public:

- a. At the site location;
- b. On Council's website; and
- c. In any other way Council deems appropriate.

This will be a mandatory requirement under the Infrastructure Tree Removals Approvals Pathway

### Recommendation 3

The changes enacted by the Technical Officer – Open Space with regard to improved community notification for vegetation and tree removal, in the Infrastructure Tree Removals Approvals Pathway, are also to be oversighted by the Director Infrastructure Services on a regular basis.

### Recommendation 4

When Council engages external parties, for example, ecologist, botanist, arborist and the like, formal processes should be adopted for the receipt of advice from those parties. Council should ensure more rigour is adopted when receiving advice from such parties. These processes are to be regularly oversighted by the Executive for their area of responsibility.

### Recommendation 5

Changes are made to the process to ensure that those decision makers responsible for the issuance of Permits are provided with full information prior to making any decisions. In this example, the Team Leader – Open Spaces and the Council Ecologist were not aware of the previous species identifications that had been made by Mr Plummer and Dr Kooyman in relation to the tree. Any differences should be resolved prior to any Permit being issued. This should be oversighted by the Executive for their area of responsibility.

### Recommendation 6

Council's Ecologist should review either photographs or the tree itself in person, and note these actions or documents reviewed in the relevant comments section prior to sign off on any Permit issued. This should be oversighted by the Director Infrastructure Services.

Report prepared and authorised by SINC Solutions Pty Ltd:



Kath Roach  
Managing Director  
9 March 2018

Attachment A – Investigation Procedures

Attachment B – Limitations

## Attachment A – Investigation Procedures

The following persons provided information to the investigation by way of a telephone interview.

Person/Position	Interview Date
Acting General Manager	21 December 2017
Mayor	22 December 2017
Director Infrastructure Services	3 January 2018
Technical Officer, Open Space – Resources	17 January 2018
Director Sustainable Environment and Economy	18 January 2018
Manager Open Space and Resources Recovery	18 January 2018
Henry King Asplundh Tree Expert Australia	19 January 2018
Council Ecologist	19 January 2018
Dan Plummer Plummer and Smith Landscape Architect	6 March 2018

Numerous council records and documentation associated with the matter were reviewed, both from publicly available sources and through provision from either Council directly or provided by the persons spoken to as part of the review.



## **Attachment B - Limitations**

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