

Agenda Ordinary Meeting

Thursday, 15 December 2022

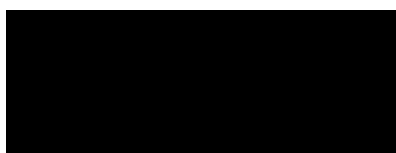


BYRON
SHIRE
COUNCIL

Agenda Ordinary Meeting

held at the Conference Room, Station Street, Mullumbimby
commencing at 9.00am

Public access relating to items on this agenda can be made between 9:00 and 10:30 am on the day of the meeting. Requests for public access should be made to the General Manager or Mayor no later than 12:00 midday on the day prior to the meeting.



Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

OATH AND AFFIRMATION FOR COUNCILLORS

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

BYRON SHIRE COUNCIL

BUSINESS OF ORDINARY MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. ATTENDANCE BY AUDIO-VISUAL LINK / REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 6.1 Ordinary Meeting held on 24 November 2022
7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
8. MAYORAL MINUTE
 - 8.1 Declaration of Statewide Road Emergency 9
9. NOTICES OF MOTION
 - 9.1 Busking Policy Amendment 11
10. PETITIONS
 - 10.1 Request to change traffic flow from two way to one way in Bayshore Lane Byron Bay 13
11. SUBMISSIONS AND GRANTS
12. DELEGATES' REPORTS
 - 12.1 Tallowood walk around 30 November 2022 15
13. STAFF REPORTS
 - General Manager**
 - 13.1 Lease for Massinger Street Children's Treehouse Artwork 16
 - 13.2 Request to change market day 20
 - 13.3 Draft Community Engagement Strategy 24
 - Corporate and Community Services**
 - 13.4 Request for financial assistance from the Bangalow Historical Society Incorporated 30
 - 13.5 Council Advisory Committee Meeting schedule 2023 34
 - 13.6 Presentation of 2021-2022 Financial Statements 37
 - 13.7 Council Investments - 1 November 2022 to 30 November 2022 40

BYRON SHIRE COUNCIL

13.8	Submission to Local Government Remuneration Tribunal - Mayor and Councillor Remuneration and Categories - 2023/24 Fees	49
------	--	----

Sustainable Environment and Economy

13.9	Planning Proposal 26.2020.1.1 Amendment to State Environmental Planning Policy (Housing) 2021 Short-term Rental Accommodation in Byron Shire - Submissions Report	51
13.10	After the Floods Discussion Paper - Submissions Report	77
13.11	Unsolicited Proposal to use and occupy Council owned land for a movable tiny house cluster and permaculture garden	84
13.12	PLANNING - Supplementary Report DA 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, FEDERAL 2480	92
13.13	PLANNING - 10.2022.165.1 Change of Use of Storage Area in The Basement of Level 1 to Restaurant at 139 Jonson Street BYRON BAY	104
13.14	Proposed Wildlife Protection Area - 'Old New Brighton Road, Ocean Shores'	120
13.15	Dogs in Public Spaces Strategy Submission Report	125
13.16	Former Mullumbimby Hospital - Land Use and Development Planning Update	129
13.17	Update Resolution 22-595 - State Imposed land use planning changes for Agritourism and Implications for Council	137
13.18	Annual Emissions Inventory and update on Net Zero Emissions goal	145
13.19	Update Resolution 22-552 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre)	158
13.20	PLANNING - Report of the Planning Review Committee held 1 December 2022	162

Infrastructure Services

13.21	Request For Tender Outcome - Rifle Range Road Intersection Upgrade	164
13.22	Planning agreement between Billinudgel Pty Ltd and Byron Shire Council	171
13.23	Preferred Alignment Mullum to Bruns Cycleway	175
13.24	Renaming of a Park in Bangalow	185

14. REPORTS OF COMMITTEES

Corporate and Community Services

14.1	Report of the Finance Advisory Committee Meeting held on 17 November 2022	188
14.2	Report of the Audit, Risk and Improvement Committee Meeting held on 17 November 2022	191

Sustainable Environment and Economy

14.3	Report of the Biodiversity Advisory Committee Meeting held on 17 November 2022	195
14.4	Report of the Climate Change and Resource Recovery Advisory Committee Meeting held on 17 November 2022	197

BYRON SHIRE COUNCIL

14.5	Report of the Housing and Affordability Advisory Committee Meeting held on 17 November 2022	200
------	---	-----

Infrastructure Services

14.6	Report of the Local Traffic Committee Meeting held on 30 November 2022 ..	202
14.7	Report of the Moving Byron Advisory Committee Meeting held on 2 December 2022	205

No table of contents entries found.

15. QUESTIONS WITH NOTICE

Nil

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

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

Mayoral Minute No. 8.1 Declaration of Statewide Road Emergency

5 **File No:** I2022/1716

I move:

10 **That Council joins with Local Government NSW and the Country Mayors Association of NSW in declaring a Statewide Road Emergency.**

15 **Background Notes:**

We are all well aware the Byron Shire has been hit by a seemingly relentless wave of flood events in the past 12 months.

And we are not alone. A total of 126 of New South Wales' 128 local government areas have had natural disaster declarations within the last 12 months, according to the
20 President of Local Government NSW, Darriea Turley.

On 3 November 2022, Local Government NSW declared a Statewide Roads Emergency.

The declaration – and urgent call for the NSW and Federal governments to increase their existing road funding commitments in the wake of the floods – comes on the back of an
25 estimated \$2.5 billion in road damages and a collapse of the local and regional road network.

I call on Byron Shire Council to show our support for this move and whole-heartedly endorse the Local Government NSW declaration of Statewide Road Emergency.

The declaration has already been publicly supported by our peak regional body, the Country Mayors Association of New South Wales.

30 As part of the Statewide Roads Emergency, LGA NSW and Country Mayors Association of NSW are calling for:

- An acceleration and significant increase in funding for the \$1.1 billion Fixing Local Roads and Fixing Country Bridges program from the New South Wales Government.

BYRON SHIRE COUNCIL

MAYORAL MINUTE

8.1

- A boost to Road Block Grant funding to compensate for the damage to the regional road network from the Federal Government.
- New funding to provide Councils with plant machinery and skilled workers to expedite road repairs from the Federal Government.

5 We have faced, and may continue to face, an unprecedented and unrelenting series of natural disasters that has seen residents and business owners cleaning up their premises, people isolated, workers unable to get to work, and students unable to get to training or school.

10 Add to this our very real and immediate concern for our primary producers impacted by the condition of the local and regional road network within the Shire and Northern Rivers as a result of the recent natural disaster events.

The local and regional road network is critically-enabling infrastructure. It is absolutely vital to our primary producers, and the key to keeping affordable food on the table across New South Wales and beyond.

15 Our road network, and the road network of Shires across the state, have disastrous damage. We are facing a task that is beyond the reasonable scope of any local government authority. We face an unprecedented disaster that requires an unprecedented response.

20 We need help. Our community needs help. Other regional and rural communities across the state and beyond need help. We desperately need our leaders to lead.

We need to support our peak bodies in their declaration of Statewide Road Emergency.

This is an emergency, and it is time to seek help, and by supporting this Mayoral Minute you are endorsing that I write to the Prime Minister of Australia Anthony Albanese and the Premier of New South Wales Dominic Perrottet pleading for immediate action.

25 **Signed: Cr Michael Lyon**

NOTICES OF MOTION

Notice of Motion No. 9.1 Busking Policy Amendment

File No: I2022/1780

5

10 I move that Council addresses the issues with busking in the town centre, specifically the use of large speaker systems and busking in non-designated areas, by revising the policy and providing better guidance for the benefit of all concerned.

Signed: Cr Michael Lyon

Councillor's supporting information:

15 Having read the Busking Policy, I find it confusing and somewhat poorly written. I cannot tell whether amplified music is allowed in the Byron town centre everywhere, or just at designated sites. I also cannot tell whether there are requirements for buskers to vary their content. I have been told there are guidelines like, you can't play the same songs over and over but I cannot see anything in the policy outlining this. I have received complaints from
20 residents in Jonson St, regarding the level of amplification and having stood there and listened to the speakers and seeing the size of them, tend to agree.

Staff comments

by Sarah Nagel, Manager Public and Environmental Services, Sustainable Environment and Economy:

25 Staff are currently progressing a review of Council's Busking Policy. The review intends to incorporate the Busking Policy into a comprehensive "commercial use of road reserves" policy. The review also aims to integrate feedback from local Police, reduce ambiguity that assists in the current policy and recommend removing or reducing the approval to use amplification.

30 **Financial/Resource/Legal Implications:**

None relevant to this report.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.1: Enhance trust and accountability through open and transparent leadership	1.1.1: Leadership - Enhance leadership effectiveness, capacity, and ethical behaviour	1.1.1.1	Coordinate Council's annual policy review program, update and publish adopted policies
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.2: Enhance safety and contribute to the physical, mental, and spiritual health and well being of our people	2.2.2: Public health - Protect, promote and control risks to public health	2.2.2.4	Monitor, investigate and respond to public and environmental health matters through proactive inspections and surveillance programs

PETITIONS

Petition No. 10.1 Request to change traffic flow from two way to one way in Bayshore Lane Byron Bay

5 **Directorate:** Infrastructure Services
Report Author: Judd Cornwall, Traffic & Transport Engineer
File No: I2022/1789

10 Council is in receipt of a Petition containing 23 signatures from residents who back-onto or front-onto Bayshore Lane Byron Bay (Attachment 1) which states:

“Residents who back-onto or front-onto Bayshore Lane Byron Bay have signed this petition.

23 Residents who have signed the petition are ticked in "red" in the photograph.

15 *Request to make a change to traffic flow from two way in Bayshore Lane to one-way Bayshore Lane South to North.*

20 *Change the two way traffic in Bayshore Lane to One Way" ingress opposite Wallum Place and egress opposite the North Byron Hotel. There are many residents who have garages on the laneway. Pedestrians and cyclists use it frequently. Children play in the laneway.*

Presently motorists driving in to Bayshore Lane opposite Wallum are having to back up over a pedestrian crossing when vehicles are coming the other way trying to exit in the narrow space between parked cars.

25 *With all of the extra traffic using the Wallum Place Intersection exiting the laneway at that point is problematic.*

The proposal will not affect the refuse trucks.

It will be safer and less troublesome for all concerned.

Please consider our request”

Comments from Director Infrastructure Services:

30 To investigate this matter Council staff will require traffic survey data.

BYRON SHIRE COUNCIL

PETITIONS

10.1

The best time to collect this data is a typical working week outside the holiday period. Accordingly, the survey will be booked for the second week of February 2023 to allow traffic time to normalise after the school holidays.

- 5 Generally, when a one-way scheme has been provided there can be issues with compliance depending on where residents are located in the street i.e., if a driver's house is closer to the ingress, then the egress drivers are more likely to take a risk when leaving and exit the wrong way.


Parking restrictions may be required to provide better access to the street without the need to one-way.

- 10 Council staff will also have to investigate the development conditions to understand the access arrangements (service vehicle movements etc.)

RECOMMENDATION:

- 15 **That the petition in Attachment 1 (E2022/119099) regarding Request to change traffic flow from two way to one way in Bayshore Lane Byron Bay be noted.**

Attachments:

- 20 1 Petition Received - Request to Change traffic flow from two way to one way in Bayshore Lane Byron Bay - Redacted, E2022/119099 

DELEGATES' REPORTS

**Delegate's Report No. 12.1 Tallowood walk around 30
November 2022**

5 **File No:** I2022/1802

10 Following a request at the Tallowood Village Community Group's meeting with Council on 21 November, I accompanied Group members to view two sites the group is considering for a Community Centre for their Village.

Both sites are public reserves on the downhill (east) side of the main drag Tuckeroo Avenue. Both are zoned Residential - the Group is asking whether this adequately protects their open spaces.

15 Both sites are flood prone and would require a building to be elevated but this could facilitate parking underneath. The southern of the two sites (Tallowood Park, near Corella Crescent) is deeper flooded than the northern one (with tennis & basketball courts, opposite Lorikeet Lane). Were the proposed Centre to function as a flood refuge, only the northern site would have access during flood (as experienced in 2022).

20 Existing uses at each site would be compromised by the addition of a community building. Those uses at Tallowood Park are good shade and a modern playground. The other site is more 'crowded' with those sports, a stormwater treatment pond and a Sewer Pump Station.

25 The Group will work up options at the sites and consider which best suits the community. They will bring a proposition to Council next year, for endorsement and partnering.

Signed: Cr Duncan Dey

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 Lease for Massinger Street Children's Treehouse Artwork

5 **Directorate:** General Manager
Report Author: Paula Telford, Leasing and Licensing Coordinator
File No: I2022/1535

Summary:


10 Council resolved **(22-546)** to grant a new one-year lease to Ms Mell Coppin (the Applicant) over a portion of the road reserve adjacent to 77 Massinger Street, Byron Bay for the purpose of children's treehouse artwork pending submissions received. Submissions were received. This report recommends that a one-year lease is granted.

15

RECOMMENDATION:

1. That Council considers all submissions received in attachment 1 (E2022/112642) from the Public Notice on the proposed lease to Ms Coppin over an unused portion of road reserve adjoining 77 Massinger Street, Byron Bay; and
2. That Council delegates the General Manager authority to enter into a lease with Ms Coppin over an unused section of Massinger Street adjoining the property at 77 Massinger Street, Byron Bay in accordance with Resolution (22-546).

25 **Attachments:**

- 1 Attachment 1: submission on lease for Children's Treehouse Artwork, E2022/112642 

30

BYRON SHIRE COUNCIL

STAFF REPORTS - GENERAL MANAGER

13.1

Report

Council resolved (**22-546**) at its 29 September 2022 meeting:

5 *that Council authorises the 28-day public exhibition of a twelve-month lease over the road reserve adjoining 77 Massinger Street Byron Bay for the purpose of a Children's Treehouse Artwork, and*

a) *If no submissions are received, then Council delegates to the General Manager the authority to grant a lease to Ms Mell Coppin over an unused portion of the road reserve adjoining 77 Massinger Street Byron Bay on the following:*

i) *term of twelve months with no holding over,*

10 ii) *annual rent of \$1 (excluding GST),*

iii) *purpose of a Children's Treehouse Artwork, and*

iv) *public liability cover to a minimum of \$20 million noting Byron Shire Council as an interested party.*

v) *not preclude public traversal through the road reserve*

15 b) *If submissions are received, then a further report be tabled at the next ordinary meeting of Council.*

20 Council staff undertook the 28-day public exhibition between 19 October and 22 November 2022 by way of notice in the local Echo Newspaper, notice on Council's website and letters to all landowners on Massinger Street. Council received the following two submissions:

Submission	Council response
In favour of proposal to lease the treehouse artwork as it adds character to the street. All safety issues exist due to the removal of the access rope making the treehouse inaccessible. The treehouse is built in a way that is safe for the trees and it will not fall from the tree. It is not play equipment but a piece of art. People who walk along the street enjoy the artwork and the artwork creates conversation and enjoyment.	Noted.
In favour of proposal to lease the treehouse as it provides some fun in a lovely, shaded area.	Noted

Council must duly consider all submissions received before deciding if to grant the proposed one-year lease.

Requirement for public liability insurance cover:

The Applicant has provided valid insurance cover for the treehouse to 31 October 2023.

Requirement to maintain the treehouse

The Applicant must maintain the treehouse for the term of the lease at her cost.

5 **Strategic Considerations**

Community Strategic Plan and Operational Plan

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

Recent Resolutions

- Resolution (18-271), (19-224), (19-423) and (22-564).

10 **Legal/Statutory/Policy Considerations**

Roads Act 1993 (NSW)

153 Short-term leases of unused public roads

- 15 (1) *A roads authority may lease land comprising a public road (other than a Crown road) to the owner or lessee of land adjoining the public road if, in its opinion, the road is not being used by the public.*
- (2) *However, a lease may not be granted under this Division with respect to land that has been acquired by RMS under Division 3 of Part 12 (being land that forms part of a classified road) except by RMS.*
- 20 (3) *A lease granted under this Division may be terminated by the roads authority at any time and for any reason.*

154 Public notice to be given of proposed lease

- (1) *Before granting a lease under this Division, the roads authority must cause notice of the proposed lease:*
- (a) *to be published in a local newspaper, and*
- 25 (b) *to be served on the owner of each parcel of land adjoining the length of public road concerned.*
- (2) *The notice:*
- (a) *must identify the public road concerned, and*

- (b) *must state that any person is entitled to make submissions to the roads authority with respect to the proposed lease, and*
- (c) *must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.*

5 **156 Decision on proposed lease**

- (1) *After considering any submissions that have been duly made with respect to the proposed lease, the roads authority may grant the lease, either with or without alteration, or may refuse to grant the lease.*
- (2) *If the roads authority grants a lease, the roads authority must cause notice of that fact to be published in a local newspaper.*

10

157 Special provisions with respect to short-term leases

- (1) *The term of a lease, together with any option to renew, must not exceed:*
 - (a) *except as provided by paragraph (b), 5 years, or*
 - (b) *in the case of a lease of land that has been acquired by the roads authority under Division 3 of Part 12, 10 years.*
- (2) *A person must not erect any structure on land the subject of a lease under this Division otherwise than in accordance with the consent of the roads authority.*

Maximum penalty: 10 penalty units.
- (3) *Such a consent may not be given unless the roads authority is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can easily be demolished or removed.*

15

20

Financial Considerations

No financial implications to Council.

Consultation and Engagement

- 25 Twenty eight day public consultation on the proposed one-year lease occurred between 19 October and 22 November 2022 by way of notice in the local Echo Newspaper, notice on Council's website and letters to all landowners on Massinger Street.

Report No. 13.2 Request to change market day

Directorate: General Manager

Report Author: Paula Telford, Leasing and Licensing Coordinator

File No: I2022/1560

5 **Summary:**

The Byron Bay Community Association Incorporated requests a variation to its Railway Park Artisan Market Licence to move the scheduled market day from Saturday 24 December 2022 to Friday 23 December 2022.

10

RECOMMENDATION:

15 **That Council, having considered any submissions received following public notice of the proposal, authorises a variation to the Railway Park Artisan Market Licence held by the Byron Bay Community Association Incorporation to move the scheduled Railway Park Artisan Market Day from 24 December 2022 to 23 December 2022.**

20

Report

Council resolved (**21-147**) to grant a Market Licence to the Byron Bay Community Association Incorporated ('the BBCA') to operate a weekly artisan market on each Saturday in Railway Park.

- 5 Council has previously approved by Resolutions (**20-377**), (**21-311**) and (**21-510**) a one-off change in the date of a Railway Park Artisan Market to avoid a clash with other markets in the Shire on the same day.

Request to move market day for one market only

- 10 The BBCA requests that Council consider varying the Railway Park Market Licence once again, to move the scheduled Artisan Market from Saturday 24 December 2022 to Friday 23 December 2022 to avoid a clash with the Bangalow Showground Christmas Eve market event.

Public Notice

- 15 In accordance with the *Local Government Act*, Council publicly advertised the proposed the change of market dates from 24 December 2022 to 23 December 2022 for twenty-eight days between 1 and 28 November 2022.

Council received no submissions.

- 20 As a result, this Report makes a recommendation to allow the one-off change to the Railway Park Artisan Market Day from 24 December 2022 to 23 December 2023, by a licence variation.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.1: Foster opportunities to express, celebrate and participate in arts and cultural activity	2.1.3: Events and festivals - Support and enable arts & cultural activity, festivals, projects, and events	2.1.3.8	Administer licences for weddings, events, activities and filming on council and crown land

Recent Resolutions

- (20-377), (21-311) and (21-510)

Legal/Statutory/Policy Considerations

Local Government Act

5 s47A Leases, licences and other estates in respect of community land—terms of 5 years or less

10 (1) *This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.*

(2) *If a council proposes to grant a lease, licence or other estate to which this section applies—*

(a) *the proposal must be notified and exhibited in the manner prescribed by section 47, and*

15 (b) *the provisions of section 47(3) and (4) apply to the proposal, and*

(c) *on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47(5)–(9) are to apply to the proposal.*

20 (3) *If the Minister, under subsection (2)(c), determines that the provisions of section 47(5)–(9) are to apply to the proposal—*

(a) *the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47(1)–(8), and*

(b) *section 47(9) has effect with respect to the Minister’s consent.*

25 s47 Leases, licences and other estates in respect of community land--terms greater than 5 years

(3) *Any person may make a submission in writing to the council during the period specified for the purpose in the notice.*

(4) *Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.*

30 **Financial Considerations**

Nil.

Consultation and Engagement

Public notice of proposed change in one Artisan Market Day was conducted between 1 and 28 November 2022. At the time of writing this report submissions had not closed.

Report No. 13.3 Draft Community Engagement Strategy

Directorate: General Manager

Report Author: Annie Lewis, Media and Communications Coordinator

File No: I2022/1738

5 **Summary:**

The purpose of this report is to provide the outcomes of the exhibition of the Draft Community Engagement Strategy with a recommendation the Strategy be adopted. Seven submissions were received, details of which are provided in the report.




The draft strategy was on public exhibition from 3 November 2022 to 1 December 2022.

10

RECOMMENDATION:

- 15
1. That Council notes the submissions received during the public exhibition of the Draft Community Engagement Strategy and responses as outlined in this report. (Attachment 1 E2022/119582)
 2. That Council adopts the Draft Community Engagement Strategy. (Attachment 2 E2022/119684)
 - 20 2. That the current Community Engagement Policy be deleted as it has been superseded by the Community Engagement Strategy. (Attachment 3 E2018/10445)

Attachments:

- 25
- 1 Combined submissions redacted information, E2022/119582 
 - 2 Community Engagement Strategy, E2022/119684 
 - 3 Community Engagement Policy, E2018/10436 

Report

The updated Integrated Planning and Reporting Guidelines from the Office of Local Government require every Council in NSW to adopt a Community Engagement Strategy before the end of 2022.

- 5 At the Ordinary Council meeting on 27 October 2022, it was resolved that the Draft Community Engagement Strategy be put on public exhibition. The closing date for the exhibition period was 1 December 2022.

Seven submissions were received (Attachment 1) and are summarised below.

- 10 Three of the seven submissions were generally supportive of the Strategy and with positive comments about Council’s work on fostering relationships with the community to support effective and ongoing engagement opportunities.

Note: detailed responses have been sent to each person/group.

Submission	Comments/Feedback
Response 1	<p>Council has not grasped the concept of community engagement with an example provided of a lack of community consultation in relation to emergency housing being built for people displaced by the floods.</p> <p>Staff response</p> <p>The community engagement relating to the development of emergency housing for people displaced by the floods is managed by Resilience NSW.</p>
Response 2	<p>Generally the Draft Community Engagement Strategy is a good representation of the levels and types of community engagement.</p> <p>Referring to the IPA2 Spectrum of Public Participation, Council generally does extremely well at the Inform and Consult levels and pretty good at the Involve level.</p> <p>Consideration should be given to how to improve at the Collaborate and Empower levels because this seems to differ between Council Directorates/Departments.</p> <p>A suggestion is to have a greater level of collaboration built into Council’s project management software system.</p> <p>Overall Council is congratulated on its genuine and sustained efforts to engage “our diverse and sometimes unruly community”.</p>

BYRON SHIRE COUNCIL

	<p>Staff response</p> <p>To move into the Collaborate and Empower levels of the IAP2 spectrum requires substantial planning and resourcing and these engagement pieces are often run over many months. Council does do this work, but it is targeted and often designed to get an informed and balanced direction from the community. Examples of recent projects include:</p> <ul style="list-style-type: none"> • Community Solutions Panels for prioritising infrastructure spending, the Byron Model’s “How to make democratic decisions in Byron Shire that can be widely supported”, and the Sustainable Visitation Strategy • Byron Arts and Industry Estate Enquiry by Design • Federal Masterplan
<p>Response 3</p>	<p>Well thought out and inclusive. The challenge lies in connecting the various groups in the Shire in positive interactions and dialogues.</p> <p>The more the community knows what is going on and how they can contribute proactively, the more opportunities there are to build cohesion and respect.</p>
<p>Response 4</p>	<p>Two suggestions to help with Community Engagement in the Byron Shire:</p> <ol style="list-style-type: none"> 1. Employ a full-time Community Engagement/Liaison Officer 2. Assign areas and towns in the Shire for each Councillor’s responsibility. <p>Staff response:</p> <p>Employment of Community Engagement/Liaison Officer</p> <p>Different Councils have different approaches to community engagement and in the last five years there has been a very considered approach to providing as many opportunities as possible for people to know about our projects and work, as well giving them confidence that we are open and transparent.</p> <p>Project Officers are responsible for the communication and engagement relating to the different projects, supported by expert advice from the Media and Communications team.</p> <p>The Community Engagement Strategy further strengthens this approach by outlining our commitment and methods for community engagement. It explains how we conduct community engagement activities and how people</p>

	<p>can be involved in decisions that are important to them.</p> <p>Councillor Community Engagement</p> <p>The feedback in relation to ideas for how Councillors can better represent communities has been identified in this report.</p> <p>IPA2 training</p> <p>This year at least 12 staff received IAP2 training.</p> <p>Ongoing dialogue</p> <p>Council’s Community Roundtable, which meets three to four times a year, and is attended by representatives of key community organisations is a valuable forum for learning and sharing information. Feedback from organisations that are involved is very positive.</p>
<p>Response 5</p>	<p>The Community Engagement Strategy is a welcome companion piece to the Community Participation Plan.</p> <p>Acknowledgement that Council has worked on creating an inclusive and accessible culture that considers all voices and opinions.</p> <p>Zoom meetings have their place but they should not replace physical workshops and information sharing sessions.</p> <p>Suggested change to wording to include “community working groups”.</p> <p>The strategy is a very useful reference document for describing the overall engagement framework.</p> <p>Staff Response</p> <p>The suggested change to wording on p.14 will be included.</p> <p>It is hoped that face-to-face meetings will replace some Zoom meetings when the Council Chambers are operational again.</p>
<p>Response 6</p>	<p>Far greater attention should be given to the collaborate and empower levels of the IPA2 spectrum particularly using co-design principles for major planning and strategy development rather than completing a draft document and asking for comments as is the case with the Community Engagement Strategy.</p> <p>There is minimal opportunity to provide feedback. There needs to be</p>

	<p>greater commitment from Council to engage early.</p> <p>More information needs to be provided on how feedback is considered and applied, and this help address the lack of trust in the engagement process.</p> <p>In relation to the When We Engage table – suggested more information about what the community engagement process might be used for.</p> <p>Suggestion that Council should have developed a questionnaire to find out how people want to be engaged or how they learn about engagement opportunities as well as workshops, drop-in sessions etc.</p> <p>Council relies too much on public submissions of documents as the primary method of engagement.</p> <p>Staff response</p> <p>The organisation has moved into the collaborate and empower levels of the IAP2 spectrum for a number of projects in recent years including several projects that have used the deliberative democracy model to come up with solutions to wicked problems. Examples of projects include:</p> <ul style="list-style-type: none"> • Community Solutions Panels for Prioritising infrastructure spending, the Byron Model “How to make democratic decisions in Byron Shire that can be widely supported”, and the Sustainable Visitation Strategy. • Byron Arts and Industry Estate Enquiry by Design • Federal Masterplan
<p>Response 7</p>	<p>People in the community are complaining that Council no longer advertises DAs in the Echo.</p> <p>The Draft Community Engagement Strategy does not address Level 2 advertising for certain development applications.</p> <p>Staff response</p> <p>The Council website and the DA Tracker provide continually updated information about development applications lodged in the Byron Shire.</p> <p>Engagement and consultation for planning matters, including development applications, is outlined in the Community Participation Plan.</p>

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.2: Engage and involve community in decision making	1.2.2: Communication - Provide timely information to the community about Council projects and activities through traditional and digital media	1.2.2.4	Develop a new Community Engagement Strategy to support the Community Strategic Plan

Legal/Statutory/Policy Considerations

- 5 Council currently has a Community Engagement Policy which is effectively superseded by the Community Engagement Strategy. It is recommended that the policy be deleted when the Strategy is adopted.

Financial Considerations

Nil.

Consultation and Engagement.

- 10 The Draft Community Engagement Strategy was on exhibition for 28 days to 1 December 2022.

A media release and social media supported the exhibition of the document, and it was shared with the Community Roundtable.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.4 Request for financial assistance from the Bangalow Historical Society Incorporated

5 **Directorate:** Corporate and Community Services
Report Author: Geeta Cheema, Manager Social & Cultural Planning
File No: I2022/1713

Summary:

10 The Bangalow Historical Society Incorporated has approached Council for additional financial assistance to cover fixed outgoings under its lease. This report is provided to Council to consider whether it wishes to provide financial assistance as recommended.

15 **RECOMMENDATION:**

That Council provides a loan of \$1,030.00 to the Bangalow Historical Society Incorporated to cover fixed outgoings under its lease for six months with the amount to be repaid to Council prior to the end of its lease on 30 June 2024.

20

Report

Council resolved **(19-162)** to grant a five-year lease to the Bangalow Historical Society Incorporated ('the Society') to occupy the Bangalow Heritage House. The Society has nineteen months remaining on the lease to end on 30 June 2024.

- 5 The lease permits the Society to operate a café/tea house and museum in the Bangalow Heritage House in accordance with development consent 08/349. However, due to COVID-19 restrictions and an ageing volunteer base, the Society was forced to close the Bangalow Heritage House to the public in early 2021.

- 10 The Society, not having the capacity to re-let the café, requested that Council run an expression of interest (EOI) to sub-lease the operation and management of the café/ tea house to a not-for-profit organisation. An EOI was run in August 2021 and Council received no submissions. Council's attempts to broker further sublease arrangements for the Society were unsuccessful.

- 15 Despite ongoing discussions between Council and the Society no resolution could be reached to assist the Society to re-open the Bangalow Heritage House café/tea house and museum. The Society's request for a commercial restaurateur to sub-lease the café/ tea house is currently not possible. This is due to the community classification of the land and associated development consent that demands that only not-for-profit organisations are permitted to operate from within the Bangalow Heritage House.

- 20 With the café/tea house closed and the Society with no means to generate income to pay fixed lease outgoings it sought a short-term loan from Council in October 2021. Council resolved **(21-159)** to loan \$2,100 to the Society with repayments to commence November 2022. Unfortunately, with the Bangalow Heritage House remaining closed, the Society has been unable to commence loan repayments. In a meeting with Society officers in
25 September, the General Manager requested the Society to consider hall hire arrangements to generate income. The Society declined to pursue this option. In October 2022 the General Manager authorised, under delegation, to write-off the Society's loan with Council.

- 30 A Councillor workshop was held in September 2022 to consider the situation for the Society and the future use of the Bangalow Heritage House. Upon considering a number of alternative uses for the Bangalow Heritage House, Councillors determined that a needs assessment was required to determine the future of the Bangalow Heritage House. A needs assessment will commence in 2023 with community consultation.

- 35 On 22 November 2022, the Society notified Council of its plans to reopen the museum in February 2023. They plan to attract volunteers through an EOI process in Feb 2023, and to grow the Society's membership at the AGM in February or March 2023. As fundraising efforts, they plan to host a community garage sale, and through book sales (book of old photographs of Bangalow currently underway with sponsorship). They will raise awareness of these plans through coverage in community newspapers.

40

Request for further financial support

Having exhausted its resources, the Society has contacted Council on 17 November 2022 for additional financial support to assist with payment of fixed outgoings under the lease. Fixed outgoings include:

- 5
- \$100 per month for contents insurance for the museum
 - \$250 to Telstra for the outstanding account balance and
 - a further \$30 per month to Telstra for directing calls to the Bangalow Heritage House to a private mobile.

10 Given the Society's current plans for fundraising, the arrangement could span six months. This timeframe will allow the Society to carry out their fundraising and growth activities as identified for early 2023.

For six months support, the total loan amount would be **\$1,030.00** comprised of \$600 insurance, \$180 call forwarding service, \$250 outstanding Telstra balance.

15 The Society provided evidence that it does not currently have available funds to cover these fixed outgoings. The Society, for its part, has taken steps to reduce fixed costs by ending a waste management service to the Bangalow Heritage House, turned off the water and electricity apart from one external veranda light and closed-circuit television and has returned or paid out equipment hired in the café.

20 Council currently provides in-kind assistance to the Society by maintaining the Heritage House, building and gutter cleaning, cleaning of a new access ramps and undertakes urgent maintenance when needed.

Risks

25 The Society is not presently financially viable. There is a risk that the Society will be unable to repay the loan by the end of the lease term if fundraising efforts are unsuccessful.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.3: Provide accessible, local community spaces and facilities	2.3.2: Support effective management of community buildings (SP)	2.3.2.1	Implement community building management improvements

Recent Resolutions

- 19-162
- 5 • 21-159

Legal/Statutory/Policy Considerations

Nil.

Financial Considerations

- 10 \$1,030 loan is proposed for the Society, to be repaid by the end of the Society's lease term at Bangalow Heritage House.

Consultation and Engagement

Person consulted	Comment
Leasing Coordinator	Contributor to this report.
Director Corporate and Community Services	Supportive of loan as per terms outlined in the report.

**Report No. 13.5 Council Advisory Committee Meeting
schedule 2023**

Directorate: Corporate and Community Services

Report Author: Amber Evans Crane, Governance Support Officer

5 **File No:** I2022/1719

Summary:


Council currently has 14 [Advisory Committees](#), as well as additional committees and panels which require Councillor attendance. A schedule has been prepared for the 2023 Calendar year which observes the following considerations:

- 10
- Councillor availability and time
 - Important reporting and implementation timelines
 - Staffing and resourcing
 - Key events in the calendar year including conferences
 - Recess periods
- 15 If adopted, all committee members will be notified, and internal scheduling processes will commence.
-

20 **RECOMMENDATION:**

1. That Council adopts the schedule of Advisory Committee Meetings shown in Attachment 1 (Record #E2022/117305), with meetings generally held in the Conference Room, Mullumbimby.
 2. That Committee meetings are generally held on the third or fifth Tuesday or
25 Thursday of the month, excluding during Council recess, at the following times:
 - 9:00am
 - 11.30am
 - 2.00pm
 - 4.30pm
- 30

Attachments:

- 1 Draft 2023 Council and Committee Meeting schedule - 15 December 2022 Council Report Attachment, E2022/117305 

5

Report

10 The constitution of each committee sets out the frequency meetings are to be held and is generally every quarter except for the Local Traffic Committee which is ten times per annum. Due to the large number of committees, the Heritage Advisory Committee and Arakwal Memorandum of Understanding Committee will convene twice per year which is permissible under the current wording in the affected committees' constitutions: *'Meetings will be held as required, generally every quarter'*.

15 Councillors discussed the Committee meeting schedule at the 3 November 2022 Councillor Workshop. Councillors provided their availability for times and days of the week for meetings to be held and this has been incorporated into the scheduling. Wherever possible, Committee meetings continue to be held on the third or fifth Thursday of each month however, due to the number of committees, there is a requirement to hold some meetings on a Tuesday in the same week.

20

The following factors have also impacted scheduling:

- The Audit, Risk and Improvement and Finance Advisory Committees have specific dates set to meet key reporting timelines.
- The Local Traffic Committee and Communication Panel have been moved forward a week from their usual pattern to accommodate the Local Government NSW 2023 Annual Conference.

25

30 The 4.30pm meeting time was identified as not ideal for meetings however it may be preferred for some community members. Avoiding Committee meetings at 4.30pm would require meetings to be held on another day during the week and demand a greater level of Councillor availability.

35

For the full list of Advisory Committees, Constitutions, and membership details, please see [Advisory Committees - Byron Shire Council](#).

35

Strategic Considerations

Community Strategic Plan and Operational Plan

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

Recent Resolutions

- **22-653** – 2023 Council Meeting Schedule

5 Legal/Statutory/Policy Considerations

Each committee is governed by a constitution adopted by the committee and endorsed by Council.

Financial Considerations

There are no financial implications with this meeting schedule.

10 Consultation and Engagement

Committee members will be notified of the 2023 meeting schedule.

Report No. 13.6 Presentation of 2021-2022 Financial Statements

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2022/1776

Summary:

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

15 The Financial Statements for the financial year ended 30 June 2022 were reported to the Ordinary Meeting on 24 November 2022, where Council adopted the 2021-2022 Financial Statements through Resolution **22-635**. This same Resolution resolved to present the 2021-2022 Financial Statements and Auditor's Reports to the public at this Ordinary Meeting of Council.

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

RECOMMENDATION:

25 **That the Audited Financial Statements and Auditors Report for the 2021-2022 financial year be presented to the public in accordance with Section 419(1) of the Local Government Act 1993.**

30

Report

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

At the Ordinary Meeting of Council on 24 November 2022, Council resolved:

Resolution 22-635:

- 10
1. *That Council adopts the Draft 2021/2022 Financial Statements incorporating the General Purpose Financial Statements (#E2022/112363) and Special Purpose Financial Statements (#E2022/112364).*
 - 15 2. *That Council approves the signing of the "Statement by Councillors and Management" in accordance with Section 413(2)(c) of the Local Government Act 1993 and Section 215 of the Local Government (General) Regulation 2021 in relation to the 2021/2022 Draft Financial Statements.*
 - 20 3. *That the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 15 December 2022 in accordance with Section 418(1) of the Local Government Act 1993.*

25 In accordance with Council's Resolution above, this report is provided to present the 2021-2022 Financial Statements and Auditor's Reports to the public.

At the Ordinary Council Meeting held on 24 November 2022, Council received copies of the Financial Statements as outlined in Attachments 1 to 2 of Report 13.3 – Draft 2021-2022 Financial Statements to that Meeting.

30 Council's published 2021-2022 Financial Statements can be found at the following link:

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

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

40 The Financial Statements and Auditor's Reports have been placed on public exhibition and advertised in accordance with Section 418(1) of the *Local Government Act 1993* with a closing date for submissions of 22 December 2022. Should any submissions be received they are required to be forwarded to Council's Auditor and will be advised to Councillors via memo.

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

Strategic Considerations

Community Strategic Plan and Operational Plan

5

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.3	Provide completion of Council's statutory annual financial statements for 2021/2022.

Legal/Statutory/Policy Considerations

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

15

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

20

Financial Considerations

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

Consultation and Engagement

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

35 accordance with Section 420(3) of the *Local Government Act 1993*.

Report No. 13.7 Council Investments - 1 November 2022 to 30 November 2022

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2022/1797

Summary:

This report includes a list of investments and identifies Council's overall cash position for the period 1 November 2022 to 30 November 2022 for information.

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

RECOMMENDATION:

15 **That Council notes the report listing Council's investments and overall cash position as of 30 November 2022.**

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Report

Council has continued to maintain a diversified portfolio of investments. As of 30 November 2022, the average 90-day bank bill rate (BBSW) for the month was 3.07%. Council's performance for November 2022 was 2.47%.

- 5 As investments mature Council should begin to see increased rates due to the recent Reserve bank increase in cash rates. The table below identifies the investments held by Council as at 30 November 2022:

Schedule of Investments held as at 30 November 2022

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
15/11/18	1,000,000.00	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	Y	B	3.00%	955,540.00
20/11/18	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	22/03/24	Y	B	1.78%	1,001,340.00
28/03/19	1,000,000.00	National Housing Finance & Investment Corporation	Y	AAA	28/03/29	Y	B	2.38%	910,610.00
21/11/19	1,000,000.00	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	Y	B	1.25%	946,200.00
27/11/19	500,000.00	National Housing Finance & Investment Corporation	Y	AAA	27/05/30	Y	B	1.52%	413,040.00
15/06/21	500,000.00	National Housing Finance & Investment Corporation	Y	AAA	01/07/31	Y	FRN	1.99%	501,515.00
06/09/21	1,000,000.00	Northern Territory	N	Aa3	15/12/26	Y	B	1.40%	1,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
		TCorp							
16/09/21	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	02/03/32	Y	B	1.50%	928,180.00
17/12/21	2,000,000.00	NAB	P	AA-	19/12/22	N	TD	0.72%	2,000,000.00
20/01/22	1,000,000.00	Westpac (Tailored)	P	AA-	20/01/23	N	TD	0.79%	1,000,000.00
07/06/22	2,000,000.00	NAB	N	AA-	05/12/22	N	TD	3.05%	2,000,000.00
15/06/22	2,000,000.00	NAB	N	AA-	12/12/22	N	TD	3.25%	2,000,000.00
23/08/22	2,000,000.00	AMP Bank	P	BBB	23/02/23	N	TD	3.70%	2,000,000.00
29/08/22	1,000,000.00	NAB	N	AA-	27/12/22	N	TD	3.11%	1,000,000.00
30/08/22	2,000,000.00	NAB	N	AA-	28/12/22	N	TD	3.15%	2,000,000.00
01/09/22	1,000,000.00	Macquarie Bank Ltd	P	A	01/12/22	N	TD	3.20%	1,000,000.00
06/09/22	2,000,000.00	MyState Bank	P	BBB	05/01/23	Y	TD	3.30%	2,000,000.00
06/09/22	1,000,000.00	Macquarie Bank Ltd	N	A	06/12/22	N	TD	3.26%	1,000,000.00
09/09/22	1,000,000.00	Macquarie Bank Ltd	N	A	08/12/22	N	TD	3.43%	1,000,000.00
09/09/22	2,000,000.00	NAB	N	AA-	09/01/23	N	TD	3.32%	2,000,000.00
14/09/22	1,000,000.00	Macquarie Bank Ltd	N	A	14/12/22	N	TD	3.43%	1,000,000.00
29/09/22	2,000,000.00	AMP Bank	N	BBB	27/01/23	N	TD	3.95%	2,000,000.00
04/10/22	2,000,000.00	NAB	N	AA-	01/02/23	N	TD	3.75%	2,000,000.00
21/10/22	1,000,000.00	AMP Bank	N	BBB	21/02/23	N	TD	3.90%	1,000,000.00
26/10/22	1,000,000.00	AMP Bank	N	BBB	23/02/23	N	TD	3.85%	1,000,000.00
26/10/22	1,000,000.00	Macquarie Bank Ltd	N	AA-	24/01/23	N	TD	3.68%	1,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Purch Date	Principal (\$)	Description	CP*	Ratin g	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
16/11/22	1,000,000.00	AMP Bank	N	BBB	16/03/23	N	TD	3.95%	1,000,000.00
N/A	17,633,163.29	CBA Business Saver	P	AA-	N/A	N	CALL	2.45%	17,633,163.29
N/A	4,680,434.20	CBA Business Saver – Tourism Infrastructure Grant	N	AA-	N/A	N	CALL	2.45%	4,680,434.20
N/A	10,167,230.60	Macquarie Accelerator Call	N	A	N/A	N	CALL	1.60%	10,167,230.66
Total	67,480,828.09						AVG	%	67,137,253.15

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Note 1. CP = Capital protection on maturity

N = No Capital Protection

Y = Fully covered by Government Guarantee

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

Note 2. No Fossil Fuel ADI

Y = No investment in Fossil Fuels

N = Investment in Fossil Fuels

U = Unknown Status

Note 3.	Type	Description
	B	Bonds Principal can vary based on valuation, interest payable via a fixed interest, payable usually each quarter.
	FRN	Floating Rate Note Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.
	TD	Term Deposit Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.
	CALL	Call Account Principal varies due to cash flow demands from deposits/withdrawals. Interest is payable on the daily balance.

Environmental and Socially Responsible Investing (ESRI)

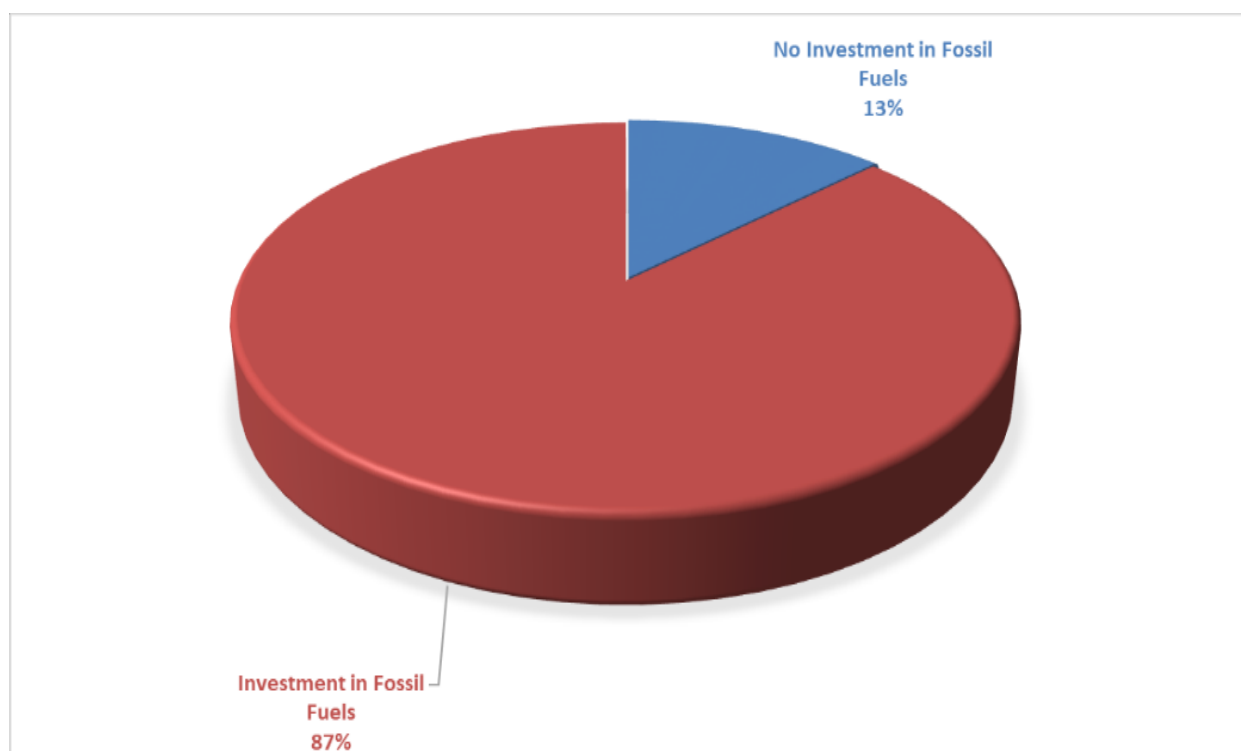
An additional column has been added to the schedule of Investments to identify if the financial institution holding the Council investment has been assessed as a 'No Fossil Fuel' investing institution. This information has been sourced through

5 www.marketforces.org.au and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below highlights the percentage of each classification across Council's total investment portfolio in respect of fossil fuels only.

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

Council has one investment with a financial institution that invests in fossil fuels but is nevertheless aligned with the broader definition of Environmental and Socially Responsible investments i.e.:

15 1. \$1,000,000 investment with Westpac Bank maturing on 20 January 2023 is a tailored term deposit and certified green investment.



Investment Policy Compliance

- 5 The below table identifies compliance with Council’s Investment Policy by the proportion of the investment portfolio invested with financial institutions, along with their associated credit ratings compared to parameters in the Investment Policy. The parameters are designed to support prudent short and long-term management of credit risk and ensure diversification of the investment portfolio. Note that the financial institutions currently offering investments in the ‘ethical’ area are still mainly those with lower credit ratings (being either BBB or not rated at all i.e., credit unions).
- 10

Investment policy compliance			ACTUAL		
% should not exceed the following					
AAA to AA	A1+	100%	64%		Meets policy
A+ to A-	A1	60%	23%		Meets policy
BBB to NR	A2,NR	40%	13%		Meets policy

NSW Treasury Corporation Compliance – Loan Borrowing Conditions

- 15 Council has borrowed loans through NSW Treasury Corporation under the Local Government Low Cost Loans Initiative. As part of these loan borrowings, NSW Treasury Corporation has placed restrictions on where Council can invest based on the credit rating of the financial institution, the term of the investment and counterparty limit.

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

NSW Treasury Corporation has reviewed Council's Investment Portfolio and reminded Council it needs to remain within the investment parameters outlined in the accepted loan agreements. Council currently complies with T Corp Borrowing conditions as indicated in the table below:

Tcorp compliance			Counterparty Limit	Tenor	ACTUAL	Variance
% should not exceed the following						
Tcorp	100%	100%	100%	N/A	0%	Meets policy
AAA	100%	100%	100%	N/A	7%	Meets policy
AA+ to AA-	100%	100%	100%	5Y	57%	Meets policy
A+ to A	100%	100%	100%	3Y	23%	Meets policy
A-	40%	40%	40%	3Y	0%	Meets policy
BBB+		10% 3 Years	10% 3 Years	3Y	3%	Meets policy
BBB	30%	5% 12 Months	5% 12 Months	1Y	10%	Does not meet policy
BBB- and below (local ADI'S)		5% 12 Months	5% 12 Months	1Y	0%	Meets policy
BBB- and below (other)	5%	250,000	250,000	1Y	0%	Meets policy

Council had discussions with NSW Treasury Corporation and indicated it would start reporting the compliance in the monthly investment report to Council. Council is able to hold existing investments not in compliance until maturity but must ensure new investments meet the compliance requirements.

- 10 Meeting the NSW Treasury Corporation compliance means Council will be limited in taking up investments that may be for purposes associated with Environmental and Socially Responsible outcomes. Investments which do not comply with NSW Treasury Corporation requirements and investments with financial institutions that do not support fossil fuels will have to be decreased due to their credit rating status or lack of credit rating.
- 15 The investment portfolio is outlined in the table below by investment type for the period 1 November 2022 to 30 November 2022:

Dissection of Council Investment Portfolio as at 30 November 2022

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
28,000,000.00	Term Deposits	28,000,000.00	0.00
1,500,000.00	Floating Rate Note	1,502,855.00	2,855.00
17,633,163.23	CBA Business Saver	17,633,163.23	0.00
4,680,434.20	CBA Business Saver – Tourism Infrastructure Grant	4,680,434.20	0.00
10,167,230.60	Macquarie Accelerator	10,167,230.60	0.00
5,500,000.00	Bonds	5,153,570.00	(346,430.00)

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.7

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
67,480,828.03		67,137,253.03	(343,575.00)

Council's overall 'cash position' is not only measured by funds invested but also by the funds retained in its consolidated fund or bank account for operational purposes. The table below identifies Council's overall cash position for the month of November 2022 as follows:

Dissection of Council's Cash Position as at 30 November 2022

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	28,000,000.00	28,000,000.00	0.00
Floating Rate Note	1,500,000.00	1,502,855.00	2,855.00
CBA Business Saver	17,633,163.23	17,633,163.23	0.00
CBA Business Saver – Tourism Infrastructure Grant	4,680,434.20	4,680,434.20	0.00
Macquarie Accelerator	10,167,230.60	10,167,230.60	0.00
Bonds	5,500,000.00	5,153,570.00	(346,430.00)
Total Investment Portfolio	67,480,828.03	67,137,253.03	(343,575.00)
Cash at Bank			
Consolidated Fund	7,910,215.44	7,910,215.44	0.00
Total Cash at Bank	7,910,215.44	7,910,215.44	0.00
Total Cash Position	75,047,468.47	75,047,468.47	(343,575.00)

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership We have effective decision making and community leadership that is open and informed	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.6	Maintain Council's cash flow

Legal/Statutory/Policy Considerations

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

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

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

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

Financial Considerations

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

25

Report No. 13.8 Submission to Local Government Remuneration Tribunal - Mayor and Councillor Remuneration and Categories - 2023/24 Fees

5 **Directorate:** Corporate and Community Services
Report Author: Heather Sills, Manager Corporate Services
File No: I2022/1805

Summary:

10 This report seeks Council endorsement to provide a submission to the Local Government Remuneration Tribunal on the fees payable to Mayors and Councillors in 2023/24.




It is proposed that Council make a submission to the Tribunal seeking the maximum allowable increase to the fees payable (2.5%) and for Byron Shire to be recategorised to 'Regional Centre' as it meets many of the criteria applicable.

15

RECOMMENDATION:

20 **That Council endorses the submission to the Local Government Remuneration Tribunal on the fees payable to Mayors and Councillors in 2023/24 and seeks recategorisation to 'Regional Centre,' as provided in Attachment 3 (E2022/119329).**

Attachments:

- 1 Local Government Remuneration Tribunal - 2023 Annual Review - Invitation Letter to Councils seeking submissions, E2022/120077 
- 25 2 Local Government Remuneration Tribunal - 2022 Annual Determination Mayor and Councillor Remuneration, E2022/38254 
- 3 Submission to Local Government Remuneration Tribunal - Mayor and Councillor Remuneration and Categories - 2023/24 Fees, E2022/119329 

30

Report

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

- 5 The Tribunal is responsible for the review of the minimum and maximum fee levels for each category, as outlined in the [2022 determination](#) (Attachment 2).

The Local Government Remuneration Tribunal has commenced its review for the 2023 annual determination and has written to councils seeking submissions (Attachment 1).

- 10 It is proposed that Council make a submission to the Tribunal seeking the maximum allowable increase to the fees payable (2.5%) and for Byron Shire to be recategorised to 'Regional Centre' as it meets many of the criteria applicable. The detailed submission is provided in Attachment 3.

Strategic Considerations

Community Strategic Plan and Operational Plan

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

15 **Legal/Statutory/Policy Considerations**

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

Financial Considerations

- 20 Based on the 2022/23 fees payable, the recategorisation of Byron Shire to 'Regional Centre' would entitle Byron Shire Councillors to an additional \$4,210 each annually, and a further \$16,470 for the Mayor. This would potentially impact the amount council needs to allocate to the 'Mayoral Allowance' and 'Councillor Fees' budget allocations in future years. Council would have a further opportunity determine their fees from within the range set by the Tribunal, prior to finalisation of the 2023/24 budget.

Consultation and Engagement

- 25 Not applicable.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.9 Planning Proposal 26.2020.1.1 Amendment to State Environmental Planning Policy (Housing) 2021 Short-term Rental Accommodation in Byron Shire - Submissions Report

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy
Sharyn French, Manager Environmental and Economic Planning
Natalie Hancock, Senior Planner
Ben Grant, Planner

File No: I2022/1432

Summary:

This report provides a summary of the findings of the recent exhibition of Byron Shire Council's Planning Proposal for short-term rental accommodation (STRA).

It also provides specific commentary on how Council has met the requirements of the gateway determination (a prerequisite for Council to move forward with its consideration of this planning proposal), and what further advocacy to State Government is required to enable the state created framework for STRA regulation to be reviewed to address anomalies and inadequacies in it as identified through the engagement process.

It needs to be acknowledged that Byron Shire, is the only local government area in NSW that has been given the opportunity to lodge a Planning Proposal that could identify or reduce the number of days that non-hosted STRA may be carried out in parts of its local government area.

This report recommends that Council adopt a Planning Proposal which amends State Environmental Planning Policy (Housing) 2021 to:

- increase the number of days of non-hosted short term rental accommodation in part of the Byron Shire Local Government Area from the current 180 day cap to a 365 day cap for areas in set precincts in the Brunswick Heads and Byron Bay localities; and
- reduce the number of days of non-hosted short term rental accommodation for the balance of the Byron Shire Local Government Area from the current 180 days cap to a 90-day cap.

This recommendation has considered the feedback from the engagement activities and submissions received as documented in the **Engagement with target stakeholders and**

BYRON SHIRE COUNCIL

community Report (Attachment 2), and that of the **Consideration of Economic Impacts of the Planning proposal** (Attachment 8).

If the changes are supported by Council, there will be a 12-month transition period for any changes to commence. This means any changes will not come into effect until 2024.

- 5 Council has been delegated authority to make the plan subject to the proposal not being amended to reduce non-hosted STRA period on any land to less than 90 days.
-

10 **RECOMMENDATION:**

That Council:

1. **Amends the planning proposal to:**

- a) **include in the 365-day cap precinct, the area as per the maps in the body of this report, namely:**

15 i. **Shirley Lane and south of Shirley Street and precinct west of bus interchange around Sommerset Street, Byron Bay**

ii. **Byron Bay central business area**

- b) **remove from the 365-day cap precinct the areas as per the maps in the body of this report, namely:**

20 i. **Suffolk Park**

ii. **area south of Booyun Street, Brunswick Heads**

2. **Adopts the amended planning proposal to amend State Environmental Planning Policy (Housing) 2021 to:**

25 a) **increase the number of days of non-hosted short term rental accommodation in part of the Byron Shire Local Government Area from the current 180-day cap to a 365-day cap for areas in set mapped precincts in the Brunswick Heads and Byron Bay localities; and**

30 b) **reduce the number of days of non-hosted short term rental accommodation for the balance of the Byron Shire Local Government Area from the current 180-days cap to a 90-day cap.**

3. **Forwards the adopted planning proposal to NSW Parliamentary Counsel's Office (PCO) requesting that the amendment to the Housing SEPP 2021 be finalised.**

4. **Notes staff will report to Council in early 2023 on:**

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

a) an updated STRA risk mitigation and monitoring strategy that reflects the finalised planning proposal and mapped precincts; and

b) STRA enforcement strategy.

5 5. Notes should the planning proposal be adopted by Council, there will be a 12-month transition period for any changes to commence. This means any changes will likely not come into effect until 2024.










6. Requests staff write to the NSW government advocating for changes in response to the alternative policy measures shared by many stakeholders including:

10 a) differential rating of STRA properties

b) establishing a levy to generate funds to cover enforcement and infrastructure demands

c) assigning the STRA register to Council to administer with appropriate fees for servicing

15 **Attachments:**

- 1 Timeline summary Short term rental accommodation planning proposal - current to Sept 2022 - 26.2020.1.1., E2022/84003 
- 20 2 Locale Consulting, Engagement Report - Short Term Rental Accommodation Planning Proposal exhibition, E2022/118657 
- 3 Combined submissions without form letters, E2022/115754 
- 4 Combined form letter submissions from business owners, E2022/115661 
- 5 Combined form letter submissions from ASTRA, E2022/115638 
- 6 Combined form letter submissions from bookings@byronbayaccom, E2022/115641 
- 25 7 Combined form letter submissions from others, E2022/115662 
- 8 Peter Phibbs, Epic Dot Gov - Report on Byron Shire's Planning Proposal on Short-Term Rental Accommodation, E2022/119043 
- 9 Gateway determinations and letters 24 June 2021 and 3 June 2022, E2022/67974 

30

Report

Background

5 The [Planning Proposal](#) is the result of a “Local Planning Direction” originally issued by the Minister for Planning on 15 February 2019. The Direction gave Byron Shire Council the opportunity to lodge a Planning Proposal that could identify or reduce the number of days that non-hosted STRA may be carried out in parts of its local government area.

The project has had a long project history dating back to 2003 (Attachment 1).

There have been reports to Council more recently on STRA which have provided a detailed background and rationale for the current approach and position of Council.

10 Report No. 13.21 Update - Impacts of and management options for short term rental accommodation (STRA) in Byron Shire [Agenda of Ordinary \(Planning\) Meeting - Thursday, 19 November 2020 \(infocouncil.biz\)](#)

15 Report No. 13.13 Economic Impact Assessment of Planning Proposal for Short-Term Rental Accommodation [Agenda of Ordinary Meeting - Thursday, 24 February 2022 \(infocouncil.biz\)](#)

It is not proposed to repeat or revisit in detail these reports unless necessary.

What does the Planning Proposal do?

At the current time, non-hosted STRA is limited to 180-days per year. This rule is set by the NSW Government and has applied to the Byron Shire since 31 January 2022.

20 If the Planning Proposal is adopted, non-hosted STRA will be limited to 90-days per year in most of the Byron local government area. Exceptions to this are proposed. As exhibited these areas included four mapped precincts in parts of Byron Bay (East and West), Suffolk Park and Brunswick Heads where it would be permitted 365-days per year.

[26.2020.1.1-STRA-Planning-Proposal-Appendix-4-Mapping \(1\).pdf](#)

25 However, changes are now proposed to these indicative mapped precincts, as discussed in detail in section **Precinct Map Methodology**.

Key issues

An altered gateway determination was issued by the Minister for Planning 3 June 2022, which altered the earlier gateway issued 24 June 2021 (Attachment 9).

30 In his issuing of the gateway determination the Minister advised Council of the following:

- Acknowledged Byron Shire’s unique and exceptional circumstances in relation to housing availability, affordability and the 2022 Flood events impact on local housing.

- 5
- Acknowledged the high proportion of STRA compared to permanent rental accommodation.
 - Concerned about the impact of the proposal on the economy and as such stated that any mapped precinct could not go below 90 days and that amendments to expand the 365 days should be explored.
 - Council must receive and assess submissions and respond accordingly.
 - Council must make public any justification for changes to the mapped precincts prior to proceeding to make the plan.

Response to Gateway Determination and Minister's requirements

- 10
- **Engagement with target stakeholders and community**

Locale Consulting was engaged by Council to assist with the design and delivery of a range of engagement activities during and following the exhibition period including the preparation of an Engagement Report, Attachment 2.

- 15
- It was important to engage an independent facilitator to provide impartiality to the process, especially as Council has been delegated to act as the Local Plan Making Authority.

In undertaking these engagement activities, Locale's role has been to listen and document the views of stakeholders and to report on these to Council for consideration in its decision-making process.

- 20
- Locale have not undertaken a review of the merits of the planning proposal, nor does the Engagement Report make any recommendations to Council about how the planning proposal should progress.

The Engagement Report documents the feedback received through the engagement activities and provides a high-level summary of this feedback to highlight any key themes as well as the different perspectives and views of stakeholder groups.

- 25
- The Report is being used to inform Council in its post-exhibition decision making process about the planning proposal. This being a requirement of the Minister as stated above.

Below is an extract from Locale Consulting's Engagement Report which can be viewed in full in Attachment 2.

The results of each engagement activity are summarised in the report as follows.



In total, over 1,500 forms of feedback were received whilst the planning proposal was on exhibition, refer to Attachments 2 to 7.

5 An online survey on the planning proposal was available on Council's Your Say webpage between 1 September and 31 October 2022. The survey sought to obtain information on:

- Where people lived, either within or outside the Byron Shire LGA
- Whether they owned residential property within the Shire
- Whether they used their property for STRA purposes
- Whether they lived or owned property within the proposed 365-day precincts
- 10 • Whether they agreed or disagreed with the proposed precinct boundaries, including how and why changes should be made to the boundaries
- What other interests they may have in the area and/or subject matter if not living or owning property in the Byron Shire
- How they believed they will be impacted by the changes
- 15 • Any other comments that they would like to make, and
- Whether they had made or were intending to make a written submission

The survey received a total of 766 responses.

784 written submissions were received over the exhibition period. 530 identified as STRA property owners and the majority of those submissions being pro-forma letters (379).
20 There was also an online petition submitted via Change.org under the banner of 'Byron Deserves Balance'. The petition received 981 signatures online and 142 signatures offline.

Six one-to-one stakeholder interviews were undertaken during the exhibition period. This includes interviews with the STRA industry, online travel platforms and advocacy groups that campaign to regulate the STRA industry.

25 The interviews were based on a common set of questions which were provided in advance of the meetings. The interviews were attended by two representatives of Locale Consulting.

30 Eight focus group sessions were undertaken during the exhibition period. This included in-person and online sessions with a diverse range of stakeholders who represented various perspectives. This included local workers, local property industry, local property owners,

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

5 local accommodation providers (who are not STRA operators), local community, local businesses, local tourism organisations and local renters / displaced people. A total of 130 stakeholders were invited to attend the sessions, plus an open invitation was made to local property owners via Council's Your Say page and e-news. A total of 69 stakeholders registered to attend a session, and a total of 46 stakeholders shared their feedback across the eight focus groups. The focus groups were facilitated by two representatives of Locale Consulting.

10 Overall, the feedback showed general support for some form of regulation of the STRA industry and that better management of STRA is required, particularly to address amenity impacts.

Many also agreed that it is important to provide more housing stock that is affordable for people in the Shire, particularly essential and frontline workers.

15 However, many felt that the planning proposal will not address the issues relating to housing affordability, availability and security in the Byron Shire and that housing supply is a separate issue (requiring different policy responses) to regulating STRA.

The lack of support for the planning proposal was often related to the significant changes that have occurred in recent years that stakeholders feel need to be considered in any policy response to STRA in the Byron Shire. These include:

- 20 • The introduction of a new regulatory framework by the NSW Government which took effect in the Byron Shire on 31 January 2022
- The professionalisation of the STRA industry and increasing reliance on third-party booking platforms since the arrival of Airbnb
- The impacts of COVID on travel patterns and visitation numbers, as well as housing prices
- 25 • The impacts of the flood events in early 2022 particularly concerning housing availability and affordability.

30 There was also concern about the potential for negative impacts on the local economy and employment. Many saw the local economy as intrinsically linked to tourism and the STRA industry, and that the proposed changes would create seasonal tourism and result in job losses, particularly for those industries that service STRA or indirectly benefit from STRA visitors.

35 There was, however, a difference of perspective between STRA property owners and other property owners or residents about the proposed changes. STRA property owners often raised concerns about the adverse impacts of the changes on their personal situations. Despite this concern, many stated they would retain their property for personal use rather than changing it to long-term rental. More broadly, the proposed changes and precinct model were often seen as inequitable and unfair, particularly for STRA property owners subject to a 90-day cap.

40 On the other hand, residents shared stories and lived experiences about the unpleasant impacts of STRA on their neighbourhood and the sense of community. These stakeholders

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

welcomed the proposed changes as a way of addressing these impacts and some felt the changes could go further. At the same time, concern was expressed by some that the 365-day precincts would exacerbate the loss of a sense of community in those areas, particularly in areas such as Suffolk Park and Brunswick Heads.

5 There was also concern expressed that the proposed changes could result in a change in the demographic of residents and visitors alike, changing the fabric of the community and making holidaying in the area unaffordable for the average person and families. Others felt that the changes were long-overdue and would bring a sense of balance back to the community.

10 Overall, there was limited support for the proposed precinct model. Concerns were raised about its underlying basis, the data used, equity issues and financial implications for STRA property owners. Others were concerned about its practical implementation and how the rules will be enforced. The broader STRA industry (including STRA property managers and booking platforms) would prefer for there to be no cap at all or for the current
15 regulatory framework to continue. Others, often residents of the area, want stricter controls in residential areas.

There was also a wide range of views expressed about the proposed precinct boundaries. Some people want the precincts to be removed completely, whilst others asked for the precincts to be expanded or reduced. Generally, STRA property owners asked for the
20 boundaries to be expanded to include their property for equity reasons, whilst residents wanted them to be reduced due to amenity concerns.

Despite these differences of opinion, across the various engagement activities, there was some relatively consistent feedback about the precinct boundaries including the expansion of Byron Bay (East) and Byron Bay (West), the reduction or removal of Suffolk Park and
25 reduction of Brunswick Heads. There was also commentary about expanding STRA opportunities to other towns/villages and hinterland areas.

Alternative policy measures were also shared by many stakeholders. These measures were often aimed at addressing STRA management, along with housing affordability and access to housing. These were generally considered to be outside the scope of, or in
30 addition to, the current planning proposal and included:

- Differential rating of STRA properties
- Addressing housing affordability and availability through other interventions e.g., affordable housing supply, new land release etc.
- Restricting STRA properties based on zoning e.g., excluding STRA from residential
35 zones
- Increasing enforcement to better control STRA impacts and poor operators
- Creating a stronger tourism focus within the Byron Bay township
- Enabling a STRA approval process for quality / long-term operators
- Establishing a levy to generate funds to cover enforcement and infrastructure
40 demands

- Improving public transport to enable local workers to live across the Shire.

Separate commentary is provided on these in the **Other Issues** section below.

In summary, the exhibition process and engagement activities highlighted the wide diversity of views on both STRA and broader housing matters within the Byron Shire.

- 5 Views between different stakeholder groups varied widely, with highly passionate perspectives provided both in favour and against restrictions on STRA properties.

The issues raised during the exhibition process and engagement activities about Council's planning proposal have otherwise been considered and addressed in the report.

- **Consideration of Economic Impacts of the Planning proposal**

- 10 Dr Peter Phibbs previously provided an independent peer review of the Urbis EIA that the DPIE had required council to consider in its planning proposal.

As part of the process of finalising the planning proposal, Dr Peter Phibbs was engaged to provide further advice on aspects of the planning proposal. Issues considered:

Gateway requirement 1(b) Risk and Risk Mitigation

What has changed since the Urbis EIA was completed

The 365 day precinct boundaries

Respond to submissions which cover EIA

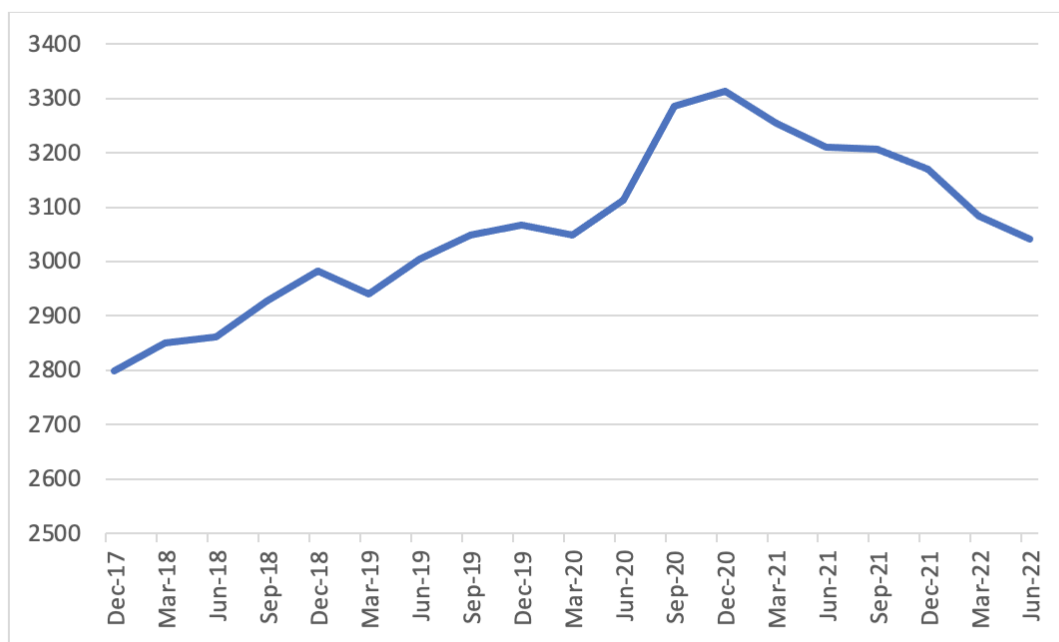
Comment on claims re the \$267 million hit to the economy

- 15 Below is an extract from Dr Phibb's report which can be viewed in full in Attachment 8.

The rental market has deteriorated significantly since the Urbis EIA report. A key statistic here is the size of the private long-term rental market which can be measured by the total number of active rental bonds. These are shown in Figure 1 and are based on figures from the NSW Rental Bond Board. Since the last reporting period from the Urbis EIA (March 2021), the rental market has continued to shrink, losing over 200 rental properties by the June quarter 2022. As supply has shrunk rents have risen – with the median rent rising from \$710 per week to \$775, or by about 9 percent, over this period.

- 20

Figure 1. The total size of the Byron long term rental market 2017-2022



Source: Department of Communities and Justice (2022)

Reliable estimates of the number of properties that will convert to the long-term market are difficult to produce. However, it must be remembered that even small changes in the number of rental properties available on the market can have a significant impact on rents. Rents are influenced by the size of the vacancy rate. In a market of about 3,000 long-term rental properties, a change as small as 30 properties can move the vacancy rate by 1%. This can have a significant impact on private rental rates. For example, the addition of only 70 properties can move rents from significant increases to stable rents.

5

A further point is that the planning proposal is not just about encouraging the conversion of existing STR properties to long-term rentals but also to provide a signal to future investors in the Byron residential property market that long-term rental is a better option. Without this signal the long-term rental market may continue to deteriorate (ie the shrinking long-term rental market trends shown in Figure 1 might continue).

10

This report is being used to inform Council in its post-exhibition decision making process about the planning proposal. This being a requirement of the Minister as stated above.

15

The general conclusions from the report show that Council has, and or can address all the requirements of the Gateway determination.

- **Risk Mitigation and Monitoring Report**

A matrix framework has been included in the planning proposal which:

20

- summarises the key potential risks of maintaining a 180-day per year cap versus a 90-day/365-day cap model on certain market segments.
- aims to minimise the potential risks associated with reducing the short-term rental accommodation day cap on certain key groups.

5 Comments have been provided in the Dr Peter Phibbs report about the matrix framework and monitoring strategy being fit for purpose.

10 However, a further update on the risk mitigation and monitoring strategy will be required following the finalisation of the planning proposal and its precinct maps. This will be reported separately to Council early 2023. Notwithstanding this Council intends to commit to a monitoring and review period of a minimum 3- 5 years to align with the ABS census cycles.

- **Precinct Map Methodology**

15 A key question that has come up time and time again during the planning proposal progression has been: *Are the boundaries shown on the indicative STRA precinct maps contained in the planning proposal appropriate? Should additional areas be added?*

The Minister also asked Council to consider the mapped precinct boundaries in issuing his revised gateway determination.

20 It is important to understand that the indicative precinct maps that were exhibited, were formed at a point in time, 2018/9 based on the data and information available to Council, as well as informed by earlier iterations of similar precinct map models endorsed by Council.

25 Previous reports to Council discussed this. In the absence of relevant stakeholder feedback, and other data i.e., data being made available from the online platforms like Airbnb to inform a review in between times, the precincts maps have remained static and as determined by Council back then.

Another point worth mentioning, and in response to feedback during the engagement activities about the precinct map model, is that it had been Council's preference prior to now to not apply a precinct map model. Instead, a 90-day cap on non-hosted across the Byron Shire was sought.

30 *"As reported to Council in February [sic] 2020, after considering community feedback and the results of further research, Council opted for a more simplified approach for STRA that seeks **to introduce a 90 day limit for non-hosted STRA in all areas as an initial planning control response**. The reason for this is that a proposed precinct model apart from being difficult to define in Byron Shire with hard boundaries, if done,*

35 *has the potential to create an unequal distribution of benefits and burdens across the community.*

40 *We also seek **to introduce a 'zero (0) day cap' on Council managed land and new release areas identified in a strategy**. The reason for this was to address our housing deficit (the result of STRA occupations) necessary to achieve strategic*

planning objectives for residential dwelling targets and to meet the needs for permanent housing stock for our resident community and key workers. This also has not been accepted by the DPIE.”

Links to reports in full:

5 [Agenda of Ordinary \(Planning\) Meeting - 20 February 2020 \(infocouncil.biz\)](#)

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 19 November 2020 \(infocouncil.biz\)](#)

The DPIE rejected this approach to STRA leaving Council with no other option but to default to a mapped precinct model.

10 Moving forward, a robust set of criteria is needed to demonstrate that the final mapped precincts to be adopted by Council for the application of non-hosted 365-day caps are suitable and appropriate to the local context of Byron Shire.

So, to address the above question, and the Minister’s requirements, a set of criteria have been established.

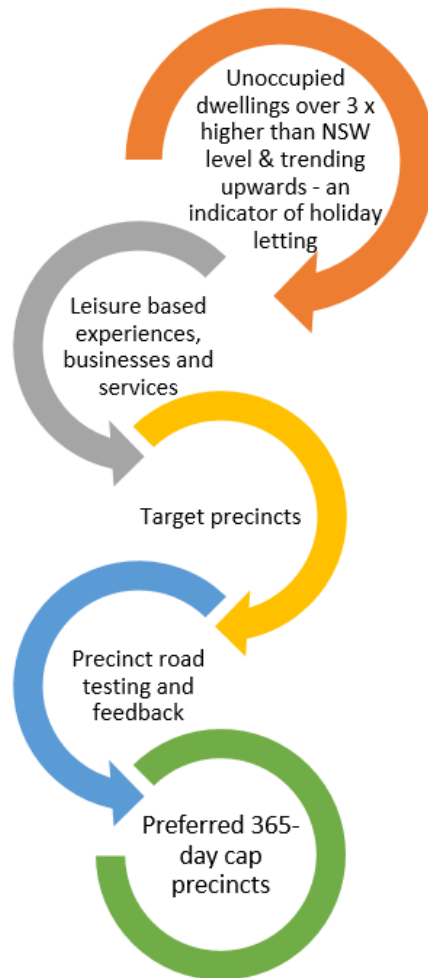
Three key attributes have been used to inform the criteria:

- 15
- visitors to Byron Shire do so predominantly for leisure-based activities
 - as a coastal holiday hotspot, holiday homes may not necessarily have been attractive for holidaying in August* hence are unoccupied (* census month)
 - the community seeks to maintain and enhance the sense of community and minimise the amenity impacts neighbours.

20 As shown in Diagram 1, a series of steps have been applied using the quantitative and qualitative data to then identify localities and mapped precincts:

- with relatively high levels of unoccupied dwellings; and
 - with leisure-based experiences, attractions and services including safety and evacuation; and
- 25
- with correlated feedback received from engagement undertaken to inform the planning proposal including the most recent, in Oct- Nov 2022.

Diagram 1. Criteria assessment




On application of this criteria the following localities and mapped precincts have resulted.

5 Key

- 365-day cap precincts

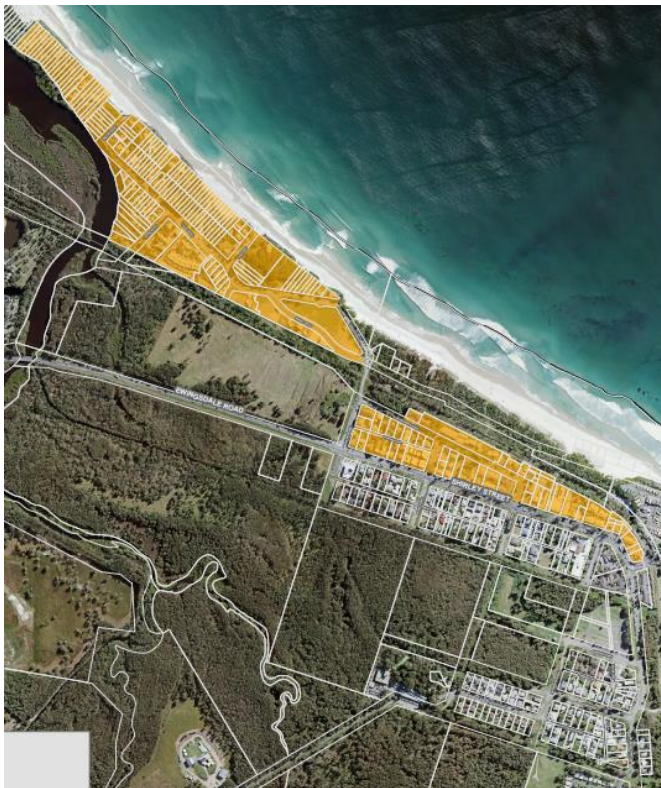
BYRON SHIRE COUNCIL

Byron Bay West

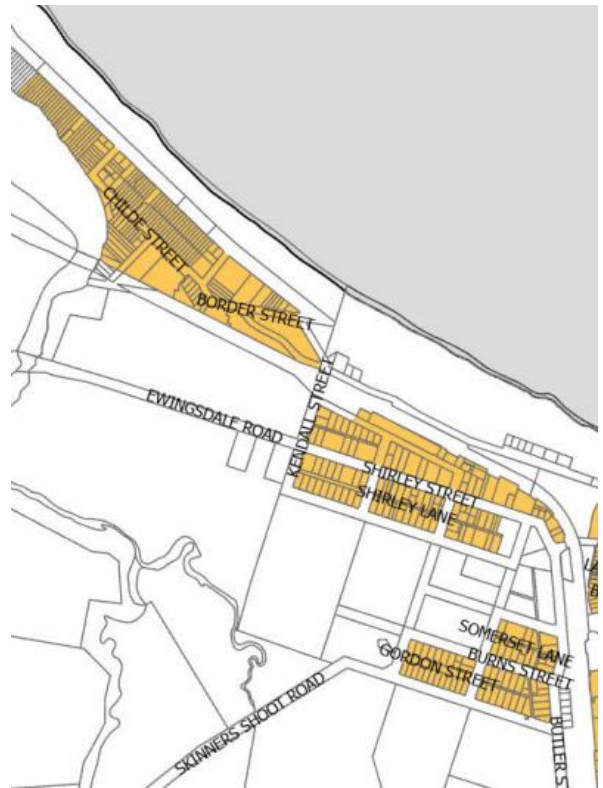
Unoccupied dwellings (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	Leisure based experiences & attractions 1: available 2: somewhat	Tourist services 1: available 2: somewhat 3. limited 4. none	Relative safety, evacuation 1: manageable 2: precautionary	Feedback dominant view 1: include 2: not definitive 3: remove/reduce
<div style="text-align: center;">  ~ 50% Up ~25% </div>	1	1	1	1 expand to include south of Shirley St and Sommerset St area

Recommendation: Expand to include Shirley Lane and south of Shirley Street and precinct west of bus interchange around Sommerset Street.

Exhibited




Proposed



BYRON SHIRE COUNCIL

Byron Bay East

Unoccupied dwellings (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	Leisure based experiences & attractions 1: available 2: somewhat	Tourist services 1: available 2: somewhat 3. limited 4. none	Relative safety, evacuation 1: manageable 2: precautionary	Feedback dominant view 1: include 2: not definitive 3: remove/reduce
 ~51% Up 11%	1	3	1	1 some concerns regarding Wategos Beach inclusion

Recommendation: no change

Exhibited




Proposed



BYRON SHIRE COUNCIL

Byron Bay Central

This area is being included for consideration as a new precinct because of public feedback and its assessment against the quantitative criteria.

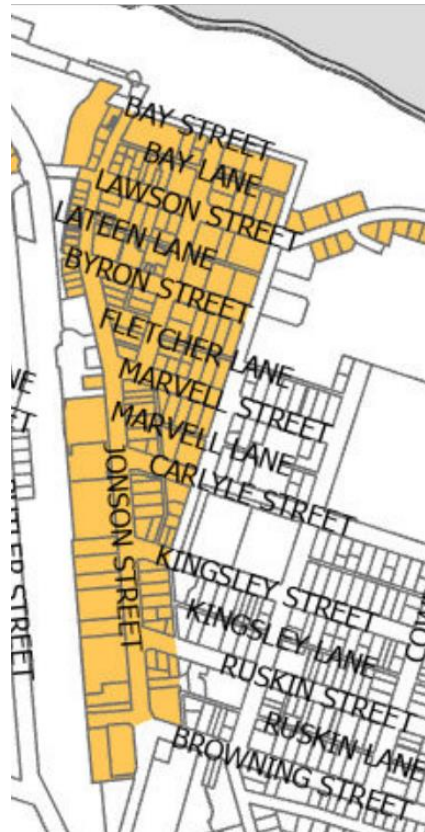
Unoccupied dwellings (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	Leisure based experiences & attractions 1: available 2: somewhat	Tourist services 1: available 2: somewhat 3. limited 4. none	Relative safety, evacuation 1: manageable 2: precautionary	Feedback dominant view 1: include 2: not definitive 3: remove/reduce
 ~72% Up ~30%	1	1	1	1 expanded to include the CBD

Recommendation: include CBD

Exhibited


N/A

Proposed



BYRON SHIRE COUNCIL

Brunswick Heads

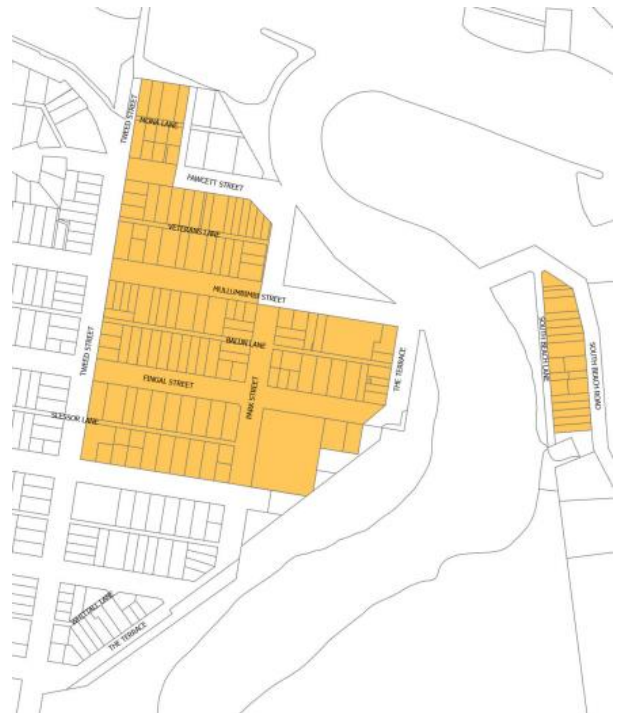
Unoccupied dwellings (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	Leisure based experiences & attractions 1: available 2: somewhat	Tourist services 1: available 2: somewhat 3. limited 4. none	Relative safety, evacuation 1: manageable 2: precautionary	Feedback dominant view 1: include 2: not definitive 3: remove/reduce
<div style="text-align: center;">  ~ 30% Up ~13% </div>	1	1	1	3 more accepted areas - main town centre, north of Booyun Street, and east of Simpsons Creek

Recommendation: remove area south of Booyun Street

Exhibited




Proposed



BYRON SHIRE COUNCIL

Suffolk Park

Unoccupied dwellings (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	Leisure based experiences & attractions 1: available 2: somewhat	Tourist services 1: available 2: somewhat 3. limited 4. none	Relative safety, evacuation 1: manageable 2: precautionary	Feedback dominant view 1: include 2: not definitive 3: remove/reduce
<div style="text-align: center;">  </div> <p style="text-align: center;">Varies ~17% - 29%</p> <p style="text-align: center;">Trend mixed ~2% down to ~8% up</p>	2	2	2 evacuation routes	3 residents seeking intervention to avoid the deterioration of the community essence

Recommendation: remove Suffolk Park precinct

Exhibited




Proposed



New Brighton

Whilst New Brighton was not exhibited as a precinct, it did record an unoccupied dwelling rate of 34% which is greater than 3 times the NSW level of 9.4%. Hence, this location has been assessed against the criteria.

Unoccupied dwellings (dw) - an indicator of holiday let % unoccupied dw @ 2021 % change 2016- 2021	Leisure based experiences & attractions 1: available 2: somewhat	Tourist services 1: available 2: somewhat 3. limited 4. none	Relative safety, evacuation 1: manageable 2: precautionary	Feedback dominant view 1: include 2: not definitive 3: remove/reduce
 ~34% up ~9%	2	3	2 flooding and evacuation routes	2

5 **Recommendation:** No change – remains 90 days and include as a focus area for monitoring and review.

• **Statutory Matters**

10 Council as the planning proposal authority is authorised to exercise the function of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:

a) the planning proposal authority has satisfied all the conditions of the gateway determination

The planning proposal has satisfied all of the conditions as discussed in the report.

15 b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified

The planning proposal is consistent with all applicable directions.

20 c) there are no outstanding written objections from public authorities

Both NSW Rural Fire Services and NSW Fair Trading were consulted.

The planning proposal will not facilitate additional development on bushfire prone land compared to the existing provisions in the Housing SEPP

Further consultation with the Secretary will occur as and if required to finalise the Plan.

25

- d) that the proposal is not at any time amended to reduce non-hosted STRA periods on any land to less than 90 days

The minimum period non-hosted STRA can be let on any land is 90 days.

Other issues

5 Response to the alternate policy options follow:

- **Differential rating of STRA properties**

Differential rating applies different rates to different land use categories. Under the Local Government Act 1993 the categories of rates are:

- farmland
- 10 ○ residential
- mining
- business

15 STRA as defined under the Local Government Act is rated as residential. This is despite non-hosted STRA for 365 days being considered by many as a commercial use of residential land. Council has raised this as a concern previously with State Government.

There is support from other councils to look at a new rating category for this land use. See Shoalhaven Council link here:

[Shoalhaven Council investigates higher rates for holiday home owners - ABC News](#)

20 Further advocacy to, and support of State Government is required to recognise the need for a change in the Local Government Act 1993 for this to occur.

- **Addressing housing affordability and availability through other interventions e.g., affordable housing supply, new land release etc.**

There are many resolutions, actions and initiatives that Byron Shire has current to address housing affordability and availability.

25 [Housing Affordability Initiatives - Byron Shire Council \(nsw.gov.au\)](#)

Council also has a Housing and Affordability Advisory Committee

[Advisory Committees - Byron Shire Council \(nsw.gov.au\)](#)

The scope of the Housing and Affordability Advisory Committee is:

- Monitor and promote the implementation of Council's Affordable Housing Policy and other relevant policies and plans related to affordable housing for very low-, low- and moderate-income households, including essential
- 30

workers, boarding house residents, homeless people and others experiencing housing stress.

- 5 ○ Serve as a resource for Council in relation to the housing market, trends and community impacts, including supporting access to and opportunities for affordable, sustainable and accessible housing options where relevant.
- Suggestions on improving the development of housing options that support the retention of a diverse and inclusive community and an accessible and sustainable place to live.
- 10 ○ Assist in the development of programs and initiatives to highlight the importance of housing to the well-being and dynamism of the community.
- [Agenda of Housing and Affordability Advisory Committee Meeting - Thursday, 18 August 2022 \(infocouncil.biz\)](#)
- [Agenda of Housing and Affordability Advisory Committee Meeting - Thursday, 17 November 2022 \(infocouncil.biz\)](#)
- 15 ● **Restricting STRA properties based on zoning e.g., excluding STRA from residential zones**

[\(Housing SEPP\) commenced on 26 November 2021](#) now includes STRA. Because of this policy position councils are unable to exclude STRA from residential zones.

The Housing SEPP web page states the following:

Short-term rental accommodation (STRA)

What is short-term rental accommodation (STRA)?

Short-term rental accommodation refers to the leasing of all or part of a legally constructed dwelling for a period of less than three months. The Housing SEPP defines STRA as either hosted or non-hosted accommodation and includes additional fire and safety standards which all STRA dwellings must meet. All STRA dwellings must be registered on the STRA register to confirm they meet the new fire and safety standards.

- 20 Examples of other councils that have resolutions looking at options to manage or restrict STRA in residential areas:

Ballina [Agenda of Ordinary Meeting of Ballina Shire Council - Thursday, 28 July 2022 \(nsw.gov.au\)](#)

- 25 Shoalhaven [Agenda of Ordinary Meeting - Monday, 12 September 2022 \(infocouncil.biz\)](#)

- **Increasing enforcement to better control STRA impacts and poor operators**

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

The need for an STRA enforcement strategy is acknowledged and will be the subject of a separate report to Council in early 2023.

- **Creating a stronger tourism focus within the Byron Bay township**

5 The proposed precinct maps address this issue directly. Council otherwise has strategies, plans and policies in place to support Byron Bay Township in this way.

- **Enabling a STRA approval process for quality / long-term operators**

A review of the State implemented STRA registration system and Code of Conduct is needed for this to occur.

10 There are many issues with these that need to be addressed for both to work transparently and with accountability. Further details will be reported in early 2023 as part of the Council's STRA enforcement strategy.

For example, other states enable councils to oversee the registration system. Council has requested this to be the case on numerous occasions.

[Short Stay Letting and Home Hosted Accommodation Local Law – Noosa Shire Council](#)

- 15
- **Establishing a levy to generate funds to cover enforcement and infrastructure demands**

The State Government recently removed Council' ability to levy for enforcement purposes.

Report No. 13.25 Prohibition on Compliance Levy Changes [Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](#)

20 Councils in NSW are otherwise restricted by the Local Government Act as to what levies can be imposed under what circumstances.

By comparison, other states like Queensland and Tasmania have imposed rates and levies on STRA recently:

25 [Brisbane City Council to hike rates on short-stay properties like Airbnb to tackle rental crisis - ABC News](#)

[Dorset Council hikes Airbnb waste levy by more than \\$2,000 to 'level the playing field' - ABC News](#)

- **Improving public transport to enable local workers to live across the Shire.**

30 Council has strategies, plans and policies in place that acknowledge the need to improve public transport across the Shire.

[Moving Byron - Byron Shire Council \(nsw.gov.au\)](#)

[Pedestrian Access and Mobility Plan - Byron Shire Council \(nsw.gov.au\)](#)

Next steps

- This report recommends that Council amends the planning proposal to:
 - include in the 365-day cap precinct, the area as per the maps in the body of this report, namely:
 - 5 ▪ Shirley Lane and south of Shirley Street and precinct west of bus interchange around Sommerset Street, Byron Bay
 - Byron Bay central business area
 - remove from the 365-day cap precinct the areas as per the maps in the body of this report, namely:
 - 10 ▪ Suffolk Park
 - area south of Booyun Street, Brunswick Heads
- adopts the Planning Proposal to amend State Environmental Planning Policy (Housing)2021 to:
 - increase the number of days of non-hosted short term rental accommodation in part of the Byron Shire Local Government Area from the current 180-day cap to a 365-day cap for areas in set precincts in the Brunswick Heads and Byron Bay localities; and
 - 15 ○ reduce the number of days of non-hosted short term rental accommodation for the balance of the Byron Shire Local Government Area from the current
 - 20 180-days cap to a 90-day cap.
- Council has been delegated authority to make the plan subject to the proposal not being amended to reduce non-hosted STRA period on any land to less than 90 days.
- If the changes are supported by Council, there will be a 12-month transition period for any changes to commence. This means any changes will not likely come into effect until 2024.
- 25 • A further update on the risk mitigation and monitoring strategy will be required as a result of the finalisation of the planning proposal and its mapped precincts. This will be reported separately to council early 2023.
- Development of and subsequent implementation of a STRA enforcement strategy will be required also and will be reported separately to council in early 2023.
- 30 • Further advocacy to State Government is needed in response to the alternative policy measures shared by many stakeholders including:
 - differential rating of STRA properties
 - 35 ○ establishing a levy to generate funds to cover enforcement and infrastructure demands

- return of the STRA register to council to administer with appropriate fees for servicing

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.7	Progress Short Term Rental Accommodation planning proposal
4: Ethical Growth We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.3: Legislation changes - Establish planning mechanisms and advocate for changes to legislation to support housing that meets the needs of our community	4.2.3.1	Prepare submission/s on draft changes to State government planning policy or legislative reforms.

5 Recent Resolutions

- 22-060

Legal/Statutory/Policy Considerations

Extract from Planning Circular, Delegation of plan making decisions (PS 22-002):

Drafting and notifying LEPs for which council is the local plan-making authority

Under section 3.36(1) of the Act the department requests the Parliamentary Counsel's Office (PCO) to draft the legal instrument to give effect to a planning proposal. However, when a council has been made the local plan-making authority, council will deliver its instructions directly to PCO.

The council will concurrently copy the instructions to the department for monitoring and reporting only. Council will then deal directly with PCO to negotiate and agree the final wording of the instrument, prior to making the LEP.

When a planning proposal relates to changes to LEP maps only (i.e. where there are no changes to the written instrument), council will deliver its instructions to the department (instead of PCO). The department will draft the legal instrument to give effect to a planning proposal.

When a plan is made, the department currently requests PCO to 'notify' the plan on the NSW Legislation webpage. The day the plan is notified on that webpage is the day the LEP becomes effective. This process will continue.

When a council has made an LEP it will be forwarded to the department. The department will request notification through PCO and will record the dates of making by the council and notification on the NSW Legislation web page. Changes to LEP maps resulting from this notification will be reflected on the planning portal.

Financial Considerations

Resourcing implications for Council to consider in its development and subsequent implementation of its enforcement strategy for STRA.

- 5 Further advocacy to State Government is required in response to the alternative policy measures shared by many stakeholders including:
 - differential rating of STRA properties
 - establishing a levy to generate funds to cover enforcement and infrastructure demands
- 10
 - return of the STRA register to council to administer with appropriate fees for servicing

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

These are within the remit of State Government to enable Local Government to do.

Consultation and Engagement

As discussed in the report and attachments.

Report No. 13.10 After the Floods Discussion Paper - Submissions Report

Directorate: Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy
Sharyn French, Manager Environmental and Economic Planning

File No: I2022/1433

Summary:

10 In response to the devastating floods of early 2022, Council resolved **22-249** to develop an 'After the Flood Discussion Paper' to rethink how our communities and their built environments exist and can grow in the future.

[After the Floods Discussion Paper - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/after-the-floods-discussion-paper)

The Discussion Paper will mark a point in time in the complex recovery journey of our community.

15 This report presents the consultation feedback and findings from our community engagement during October and November 2022.

Ultimately, this consultation feedback will inform Council's long-term 'settlement' strategies.



BYRON SHIRE COUNCIL

RECOMMENDATION:

That Council:

- 5 1. Notes the 'After the Floods: Settlement Discussion Paper, Engagement Report' in Attachment 1 (E2022/119447).
2. Accepts the consultation feedback received in the 'After the Flood: Settlement Discussion Paper, Findings Report' in Attachment 2 (E2022/119445).
- 10 3. Notes the 'After the Flood Discussion Paper' Findings Report will now be used to set a platform for the review of Council's strategic land use planning framework. It will directly inform the preparation and or review of the:
 - Residential Strategy
 - Rural Land Use Strategy
 - Business and Industrial Lands Strategy
 - Place Plans
- 15 4. Thanks all who participated in the 'After the Flood Discussion Paper' engagement process.

Attachments:

- 20 1 After the floods - Settlement Discussion Paper - Engagement Report, E2022/119447 
- 2 After the floods - Settlement Discussion Paper - Findings Report, E2022/119445 

Report

Council resolved **22-249** to prepare a Discussion Paper '*Working out the possibilities together After the floods: settlement discussion paper*'.

- 5 The purpose of the Discussion Paper to start the conversation with our community about long-term planning for how and where people will live and work in the future given the wider consideration of climate change and natural disaster management.

The Discussion Paper was focused around four key pillars:



Build back better: building or reconstructing in a way that is more resilient to future events and the weather extremes from climate change

Where appropriate and possible to do so, how can we build back better to reduce our vulnerability to future events?



Build different: rethinking our planning and building controls such as height and density, typology, form and materials to respond to a changing climate and weather patterns

Acknowledging that areas for new development are limited, how can we provide housing differently in existing areas to meet future needs?



Build elsewhere: future proofing settlement locations through potential new greenfield areas to support local housing and business needs

Thinking about potential new areas for people to live and work, where would these areas be and what needs to be considered in choosing them?



Build supporting infrastructure: building infrastructure / services appropriate for local circumstances and proportionate to need and available resources.

What are the communities' priorities in building supporting infrastructure to recover from recent events and to mitigate the impacts of future ones?

- 10 [Four key pillars of the After the Floods Discussion paper - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au)

Engagement activities

Community consultation on the Discussion Paper commenced 15 October 2022 and concluded 18 November 2022.

- 15 A range of engagement activities were held to directly inform and involve our community including:



- Awareness raising – 4 information sessions with around 50 participants
 - Hosted kitchen table conversations – 11 community groups with 24 participants
 - Online and hard copy survey – 117 responses from 17 different localities
- 5
- Café conversations – 4 locations with around 30 participants

In addition to the above we received submissions from 9 individuals and 3 community organisations. Some of the individual submissions will require further follow up from staff due to the specifics raised in them. Some of the submissions will also be considered further in the Residential Strategy refresh currently progressing.

10 Attachment 1 provides a copy of the Engagement Report.

Engagement findings

15 The consultation process has resulted in the feedback received being consolidated and distilled into several principles in the Findings Report. The Findings report recognises that the four pillars in the Discussion Paper are interconnected. Attachment 2 provides a copy of the Findings Report.

More detail about each of the principles can be found in the Findings Report. A summary of each follow:

Overarching principles

20 The overlapping issues and opportunities identified from the engagement activities have been identified as four overarching principles.

- **Overarching Principle 1: Communication is key** - This keeps people informed about public infrastructure build back efforts, provides public education and assists in preparedness planning
- 25 • **Overarching Principle 2: Enable local responses** - Listening and responding to the local context is important, these are lived experiences and this localised understanding of circumstance is paramount to supporting outcomes
- **Overarching Principle 3: Options are necessary** - Outcomes across Pillars 1 to 3 are needed to support options for impacted communities so that they are not forced into any set form of response

- **Overarching Principle 4: Coordination is needed** - A comprehensive program and coordinated response from all levels of Government is needed rather than a myriad of isolated outcomes

Key principles

5 Pillar 1 Build Back Better

This pillar recognised the link between where people live, land ownership and the desire for many to remain in their neighbourhood, even following natural disasters.

- **Principle 1.1: The scaffold is missing** - Building back better can only occur when information, resources and funding are available
- 10 • **Principle 1.2: Rebuild bottom up** - Community empowerment can assist communities to help each other, building resilience and trust
- **Principle 1.3: Government has a role** - Building back better needs to be supported by public infrastructure that provides confidence that the effort is worthwhile
- 15 • **Principle 1.4: Outcomes are everything** - Council's staff need to use their skills to focus on outcomes from a people perspective rather than a process perspective

Pillar 2 Build Different

20 This pillar recognised that Council and its communities have traditionally resisted changes to planning controls that enable increases in height and or density. However, the current housing crisis, demographic changes and need to find new long-term solutions may necessitate building differently.

- **Principle 2.1: It's time for change** - More of the same can only result in worsening impacts on communities over the long-term
- **Principle 2.2: Focus on the town centre** - Height and density within key centres, e.g. Byron Bay, is needed to reduce urban sprawl
- 25 • **Principle 2.3: We can change too** - Growing the population within existing areas is possible if we're prepared to live differently
- **Principle 2.4: Flood prone land has its place** - Urban settlements can benefit from repurposing flood prone land

Pillar 3 Build Elsewhere

30 This pillar recognises that growth within established urban areas may be limited in the future, potentially necessitating the identification of new future urban growth areas elsewhere.

- **Principle 3.1: Well sited future settlements** - Fundamental to siting future settlements is that they are not flood prone and they are well-connected

- **Principle 3.2: Built-in sustainability** - Greenfield expansion must encapsulate core principles of sustainability and community outcomes
- **Principle 3.3: Balanced rural land take** - Retaining the best agricultural land can be balanced with growth and expansion on poorer quality lands
- 5 • **Principle 3.4: Leadership is needed** - Whilst a regional approach is supported, the need for local leadership to progress new settlements is here and now

Pillar 4 Build Supporting Infrastructure

10 This pillar recognises that resilient communities need to be supported by appropriate infrastructure and services. However, it also establishes that rebuilding infrastructure is costly, complex and can take an extended period to deliver.

- **Principle 4.1: Communicate 'making it better'** - Communities deserve quality, robust infrastructure, but this takes time, so progress needs to be well communicated
 - **Principle 4.2: Review before expanding** - Ensure that existing infrastructure is fit for purpose and working to capacity
 - 15 • **Principle 4.3: Empower local communities** - With relatively small contributions, risk tolerant communities can be well supported
 - **Principle 4.4: Educate and prepare** - Future events are inevitable, learning lessons, providing education and preparing will reduce the impacts
- 20 More information on [Roads impacted by flood - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/roads/roads-impacted-by-flood) can be found here.

Next steps

The Discussion Paper was developed to rethink how our communities and their built environments exist and can grow in the future.

- 25 The Findings Report will now be used to set a platform for the review of Council's strategic land use planning framework. It will directly inform the preparation and or review of the:
- Residential Strategy
 - Rural Land Use Strategy
 - Business and Industrial Lands Strategy
 - 30 • Place Plans

It is also to be used to communicate our approach to other levels of government and to our communities on same.

To this end a copy of the Engagement Report and Findings Report are available on our web page [After the Floods Discussion Paper - Byron Shire Council \(nsw.gov.au\)](#)

More information on our Flood Recovery Response can be found here [Flood recovery - Byron Shire Council \(nsw.gov.au\)](#)

5

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.2: Growth Management Strategies - Implement Local Growth Management Strategies	4.1.2.5	Revise and update Residential Strategy
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.2: Growth Management Strategies - Implement Local Growth Management Strategies	4.1.2.1	Review Rural Land Use Strategy

Recent Resolutions

- 22-249

10 Legal/Statutory/Policy Considerations

Council adopted a [Recovery Action Plan](#) 2022-2024 at the 24 November 2022 meeting.

The Recovery Action Plan describes the whole-of-Council approach to disaster recovery and describes what Council will deliver to support recovery and build disaster resilience.

Financial Considerations

15 None relevant to this report.

Consultation and Engagement

As discussed in the report.

Report No. 13.11 Unsolicited Proposal to use and occupy Council owned land for a movable tiny house cluster and permaculture garden

Directorate: Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy
Esmeralda Davis, Director Corporate and Community Services
Celeste Harris, Project Officer - Rough Sleeping

File No: I2022/1633

Summary:

- 10 A proposal has been received from One Roof Byron for consent to use and occupy Council owned land at 1/125 Vallances Road for the purpose of a movable tiny house cluster development prototype. The proposal may be captured by Council's Supporting Partnerships Policy under the definition of an 'unsolicited proposal' and has been preliminarily assessed as such.
- 15 The positive intent of the proposal is recognised and acknowledged, and commentary has been provided in response to the request with respect to the suitability of the proposed site, the robustness of the service model for temporary housing for vulnerable community groups, the criteria for 'unsolicited proposals' in accordance with Council's policy and, planning related matters.

20

RECOMMENDATION:

That Council:

- 5 1. Declines to progress with the One Roof Proposal for the reasons outlined in this report but acknowledges the positive intent of the proposal and encourages the organisation to continue to develop their service delivery model to consider and incorporate best practice approaches.
- 10 2. Notes staff will undertake an audit of Council owned or managed properties which may meet the stated requirements for crisis and transitional supported accommodation, to be able to give due consideration to future opportunities or proposals in a holistic manner.
- 15 3. Notes the proposed amendments to the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) will, when in effect, streamline consideration of Temporary Supported Accommodation on Council operational land/buildings to provide for housing for people experiencing, or at risk of homelessness, managed by an appropriate provider.
- 20 4. Notes subject to 2 and 3 above, if suitable properties are identified, it may be possible to undertake an Expression of Interest to identify and assess (based on robust criteria) appropriate uses by suitable organisations of these properties, which could include One Roof.

20 Attachments:

- 1 One Roof Byron Proposal to Council, E2022/117972 

Report

5 A request has been received from One Roof Byron for consent to use and occupy Council owned land at 1/125 Vallances Road for the purpose of building a proof-of-concept prototype movable tiny house cluster, permaculture garden and community (Attachment 1 E2022/117972)

The proposal seeks to provide housing for a socially diverse group of residents at risk of or experiencing homelessness and essential workers, in the form of four movable 6.5m diameter Yurts with food gardens for each housing recipient.

A rudimentary indicative budget has been provided and is included in the proposal.

10 Key issues

Site Suitability Vallances Road

The land is currently designated as 'Operational', meaning it serves a commercial or operational function, or is retained for commercial or strategic reasons.

15 The site currently hosts the Brunswick Valley Sewage Treatment Plant (BVSTP), which has been the primary treatment plant since the closure of the Mullumbimby and Brunswick Heads STP in Mullumbimby in 2011.

The new BVSTP, which was constructed in 2009 has delivered improved wastewater management for Mullumbimby and nearby Brunswick Heads, while assisting in better water quality outcomes for the Brunswick River Estuary.

20 Vehicle access to site is restricted. While Vallances Road is a sealed road, it is unpainted and relatively narrow in the context of regular 2-way traffic, with the centre of the site only accessible by a narrow dirt driveway. There is a decommissioned railway bridge to the south-west of the site, however it requires significant investment to reinstate function for pedestrian and small vehicle uses

25 The Brunswick Valley, Vallances Road Vision and Roadmap charts the future use and long-term development of the Council-owned land at Vallances Road, Mullumbimby. This site was formerly known as the "Brunswick Valley Sustainability Centre".

30 For more details, download [Adopted-2021-Brunswick-Valley-Vallances-Rd-Vision-and-Roadmap-24-June-2021-Res-21-250-includes-Addendum-for-the-Natural-Burial-Ground.pdf](#)

35 The Vision and Road Map provide for a range of future use and development on the site that is complementary to the existing operational role while providing an economically, socially, and environmentally sustainable future for the site. The Vision and Road map do not include or provide for a movable tiny house cluster development as envisaged by One Roof Byron.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

Council considered Report No. 13.13 Vallances Road Options and Next Steps [Agenda of Ordinary Meeting - Thursday, 24 November 2022 \(infocouncil.biz\)](#) and Resolution **22-658** resolved that Council considers this report at the next available Councillor Workshop.

5 The Councillor workshop will assist Council in their decision making of which land uses should be investigated and progressed further on this site. Until then it would be pre-emptive to support this request.

Service model for providing temporary housing to vulnerable community groups

10 The proposal aims to provide “*temporary emergency relief accommodation with a pathway to long term accommodation*” for “*residents experiencing homelessness*” and “*essential workers*”.

Council agrees that there is a critical need for emergency accommodation and affordable housing provision in the Byron Shire.

15 This proposal begins to articulate an innovative response to this unmet need, that brings together local not-for-profit partners with diverse skill sets but does not provide adequate information about the model of service delivery proposed to support vulnerable community members; in this case, people experiencing homelessness.

Research shows that people experiencing homelessness and those at risk of homelessness are among Australia’s most socially and economically disadvantaged (Australian Institute of Health and Welfare, 2021).

20 Byron Shire has the second highest number of people sleeping rough in NSW. The Byron Shire By-Name List uses survey data to provide detailed information about the experience of primary homelessness in our LGA. There are 195 people on this list and 55% of those surveyed (89 people) have measured high levels of health and social vulnerability. All persons have experienced a form of substance abuse, and 47% are identified as having a tri-morbidity (physical ill-health, mental ill-health and substance abuse) (End Street Sleeping Collaboration, 2022).

30 Best practice housing delivery for people experiencing homelessness requires access to affordable, permanent housing coupled with flexible, quality supports to address disadvantage and reduce vulnerability (NSW Department of Communities and Justice, 2019).

The proposal states that the project will provide temporary housing with “*wrap around services and continuity of care*”. Further detail is required on the proposed delivery of support services, the organisation’s governance framework and demonstrated housing/service delivery experience to ensure safe and effective project delivery.

35 Additional information is also needed on the model of emergency/temporary accommodation provision and the stated pathway to long term accommodation.

The proposal articulates some broad project outcomes but further detail is required to understand how the organisation will measure, monitor, and evaluate project impact to improve participant outcomes.

At a minimum, in considering any similar proposal, Council would be seeking demonstrated evidence of:

- 5 • High quality service delivery model/s for people experiencing homelessness, drawing upon up-to-date evidence of best practice in housing and homelessness service provision. Accreditation against relevant quality standards and demonstrated alignment with industry practice guidelines is recommended.
- Collaboration with mainstream support services with demonstrated experience in best practice, quality service delivery for people experiencing homelessness. Partnership approaches are highly regarded.
- 10 • An evidence informed outcomes framework, articulating the measurement, monitoring, and reporting of outcomes for project participants and demonstrating continuous improvement.

15 One Roof are encouraged to continue to develop their service delivery model to move towards alignment with best practice approaches, or alternatively reconsider the intended recipients of this temporary housing model and project outcomes.

Supporting Partnerships Policy

The proposal may be captured by Council's Supporting Partnerships Policy under the definition of an unsolicited proposal.

[Supporting Partnerships Policy - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/supporting-partnerships-policy)

20 [Guideline-Partnership-Proposals](#)

Council's Supporting Partnerships Policy and Guidelines establish a framework to assess if there is a genuine benefit to the community to deliver projects that will provide economic, social, environmental and civic leadership outcomes.

25 Council recognises that it needs to be open to partnerships and opportunities to deliver great project outcomes for our community. Partnerships can either be solicited or unsolicited.

To ensure Council operates in an open and transparent manner, any unsolicited proposal is assessed, and a summary of the proposal published on Council's website.

30 In order for a proposal to be considered by Council the proposal must be consistent with the objectives of Byron Shire Community Strategic Plan and be considered unique or innovative. The Guidelines also state that proposals are not considered unique where they are *seeking to directly purchase, lease, use or otherwise acquire a Council owned or Council-managed property or asset* and that Council will not consider unsolicited proposals *seeking Council support for a "pilot" program*.

35 Based on the two above guiding principles, the One Roof proposal does not meet the requirements of an 'unsolicited proposal' and as such, is unable to be supported under this policy, at this time.

Instead, it is recommended that One Roof continue to develop their service delivery model in partnership with service providers. Also to consider looking for land or building opportunities to house their proposal with private landholders, until such time as public land may become available through an appropriate procurement process.

5 Planning pathways for temporary supported accommodation – flood impacted residents

State Government has made changes to legislation to provide temporary accommodation options for residents displaced from their homes due to the 2022 floods.

On privately owned land these options include:

- 10
- Extended stays in caravan parks or camping grounds.
 - Installing a movable dwelling.
 - Extension of the two-year exemption period for moveable dwellings.
 - Councils can modify conditions for camping grounds.
 - At-home caravan program (Resilience NSW and Camplify)

15 On public land

The State Environmental Planning Policy (Housing) 2021 (Housing SEPP) allows caravan parks or camping grounds to be established without development consent to provide temporary, emergency accommodation for people who have been displaced by a natural disaster. The sites will be established by or on behalf of a public authority.

- 20 Temporary emergency caravan parks and camping grounds are not subject to the usual requirements for caravan parks and camping grounds under the planning system or local government framework, including the need to obtain section 68 approval under the Local Government Act 1993 (LG Act) or comply with the requirements of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable
- 25 Dwellings) Regulation 2021 (LG Regulation). However, the public authority establishing the site must ensure that the development:
- is carried out within five years of the natural disaster occurring
 - is carried out on land that is supplied with water and electricity
 - is carried out on land that is provided with sewerage and drainage services
 - is carried out on land that has access to communal amenities
- 30 While temporary emergency caravan parks must be established on or on behalf of a public authority, they will be managed by an operator under agreement with the public authority. The operator is responsible for the management of the sites, including admission and turnover of occupants, and closing the sites.

Temporary housing sites

- 35 Three sites in Byron Shire have been identified by the NSW Government as locations for temporary housing for people who had their homes damaged by the floods.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

- 125 Tweed Street on the remediated former Sewage Treatment Plant site, behind the sports fields.
 - Torakina Road and Kingsford Drive, Bayside, Brunswick Heads. Extended into privately owned land next to and behind Lilly Pilly Preschool.
- 5 • Station Street, Mullumbimby, in the rail lands behind Woolworths.

Housing SEPP Temporary Supported Accommodation

The DPIE is currently seeking feedback on proposed amendments to the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

10 The changes include but are not limited to – pathways for temporary supported accommodation (TSA) in certain circumstances.

These changes largely mirror those previously proposed by Council in its Tiny Homes planning proposal, not supported by the DPIE.

These changes are not expected to take effect until 2023.

15 Once in place, these changes will enable consideration of TSA on Council operational land/buildings to provide for housing for people experiencing, or at risk of homelessness, managed by an appropriate provider.

20 As such, it is recommended that staff undertake an audit of Council owned or managed properties which may meet the stated requirements for crisis and transitional supported accommodation on operational land, to be able to give due consideration to future opportunities or proposals in a holistic manner.

Strategic Considerations

Community Strategic Plan and Operational Plan

There are no relevant activities identified in the current Operational Plan, although there is alignment with CSP and DP objectives.

CSP Objective	CSP Strategy	DP Action
4: Ethical Growth We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.1 People experiencing housing insecurity - Seek opportunities that provide fair, appropriate, and affordable housing for people experiencing housing insecurity
4: Ethical Growth We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.2: Partnerships and pilots to address housing needs - Investigate partnerships and pilots that deliver an innovative and affordable housing model for the Shire

5 Legal/Statutory/Policy Considerations

[Supporting Partnerships Policy - Byron Shire Council \(nsw.gov.au\)](https://www.byrongov.au/Supporting-Partnerships-Policy)

[Guideline-Partnership-Proposals](#)

Financial Considerations

None relevant to this report.

10 Consultation and Engagement

N/A

**Report No. 13.12 PLANNING - Supplementary Report DA
10.2021.114.1 - 'Fed Sheds' Light Industry
Excluding Artisan Food & Drink Premises at
467 Federal Drive, FEDERAL 2480**

5 **Directorate:** Sustainable Environment and Economy

Report Author: Patricia Docherty, Planner

File No: I2022/1658

Summary:

10 Council considered Report No 13.11 - PLANNING - 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, Federal at the [Council \(Planning\) Meeting of 11 August 2022](#). Council Resolved:

22-374 Resolved:

- 15 1. *That a decision on the DA be deferred in the public interest, given the extent of community opposition, the need to consider social impact and specific queries raised with the proposal (consistent with section 4.15 of the EPAA 1979 - old section 79C), and that the developer be requested to conduct a workshop with invited representatives from the Federal community and the Federal Village Masterplan Committee.*
- 20 2. *That a report come back to Council within 28 days to consider the Development Application including any modifications.*
3. *That Infrastructure Services staff assess the drainage system in Coachwood Court in the next 4 weeks.*

25 Further, Council considered Report No 13.9 - Update - Resolution 22-374 - PLANNING - 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, Federal at [Council \(Planning\) Meeting of 8 September 2022](#). Council resolved:

22-447 Resolved:

That Council:

1. *Notes that points 1 and 3 of Resolution 22-374 are being progressed.*
- 30 2. *Notes a report as per points 2 and 3 of Resolution 22-374 will be presented to Council at the next available meeting following their completion. (Lyon/Hunter)*

The motion was put to the vote and declared carried.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.12

This report responds to the above Resolutions of Council as per points 1 and 2 of Resolution **22-374** and updates Council on the status of progress of point 3 of Resolution **22-374**.

5 In terms of the proposed development the applicant conducted a further workshop with representatives of the Federal Community on 29 August 2022. The plans were amended further with changes made to the development by way of setting back the central building "B" further from the Federal Drive from 1.5 metres to a minimum of 7 metres and lowering it so that it sits well within the 9 metre height limit. These changes were made in response to concerns the development takes away from the prominence of the Church and hall
10 opposite. Other changes were also proposed with a reduction in three car parking spaces and a minor re-siting of the buildings to the north west to further reduce shadow and amenity impacts on the immediate neighbour to the south east.

15 Council also engaged HMC Consulting to further independently review the proposed OSSM system for the development, and associated documentation. In summary they found that the proposed system for the disposal of effluent onsite as "sound with very conservative design factors and sufficient protection from trade waste and stormwater impacts", and concurring "with the findings of the peer review by Whitehead & Associates".

The proposed amendments to the design of the development raise no additional issues and the proposal remains recommended for approval subject to conditions of consent.










20 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

- 5 That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, Federal, be granted consent subject to the updated conditions of approval in Attachment 2 (# E2022/115565) to this report.

10 **Attachments:**

- 1 DA10.2021.114.1 - Updated Design Plans, E2022/119307 
- 2 DA10.2021.114.1 - Amended Recommended Conditions of Consent, E2022/115565 
- 3 DA10.2021.114.1 - Council Commissioned Independent Peer Review of OSMS by HMC
- 15 HMC2022.1162 FINAL ISSUE C, E2022/99555 
- 4 DA10.2021.114.1 - Federal Community Document Submission to Byron Shire Council staff and Councillors and Additional Documents Received., E2022/119297 
- 5 DA10.2021.114.1 - Email from Developer dated Thursday 20 October 2022 response to workshop of Monday 29 August 2022 _PAN-70196, E2022/103604 
- 20 6 DA10.2021.114.1 - 22.01.11 - Updated Wastewater Management Report_PAN-70196 19313_ww Revision E complete with correct page ordering and appendices, E2022/86478 
- 7 DA10.2021.114.1 - AWS Peer review general letter of support OSSMS (WMS)_PAN-70196 (1), E2022/103606 
- 25 8 DA10.2021.114. - Updated Stormwater Management Report_PAN-70196, E2022/110655 
- 9 DA10.2021.114.1 - Acoustic Report_PAN-70196 referred to in recommended condition 1, E2021/40088 

Report

1. Introduction

5 Resolution **22-374** deferred **Development Application (DA) No. 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, Federal** and asked that the developer be requested to conduct a workshop with invited representatives of the Federal community and that a report come back to Council within 28 days to consider the DA including any modifications.

An update reported to Council (Planning) Meeting of 8 September 2022 that all items were being progressed and this was noted by Council Resolution **22-447**.

10 This report concludes the final response to Resolutions **22-374** and **22-447** to the extent it relates to determination of DA 10.2021.114.1.

15 Council staff communicated with the applicant representing the owner and developer of 467 Federal Drive, Federal to advise of Council Resolution **22-374**. As such, the developer was requested to conduct a workshop with the Federal community. Council staff advised the applicant that Council officers must remain independent and impartial and therefore could not participate in or facilitate the delivery of the workshop.

Council commissioned Helen Tunks of HMC Environmental Consulting to undertake a further independent peer review of all information provided to Council by the applicant and the community with regards to on-site sewage management (OSMS).

20 Council's Infrastructure Services Engineers commenced further investigation of the drainage system in Coachwood Court.

2. Workshop with Federal Community Representatives

25 The developer hired a room and facilitator and held the workshop as requested by Council at the Cavanbah Centre on Monday 29 August 2022. The developer's response to the workshop including amended plans and further submissions made by the Federal community are all attached.

It is noted that all correspondence from the Federal community, represented at the consultation workshop and referred to in these attachments comprises volunteer representatives, as follows:

30 *The FCC Steering Group is comprised of representatives from the following Federal organisations and groups:*

- *Federal Community Centre*
- *Federal Masterplan Steering Committee*
- *Federal School of Arts Association Inc (FSAAI), Jasper Corner facility*
- 35 • *Coachwood Court and nearby residents' group*

In summary, the Federal community made the following recommendations in a submission addressed to the developer, dated 28 August 2022:

Recommendations:

- 5 1. *Remove Building B from the proposal to reduce the building footprint by approximately 1/3. This would provide natural ground for an approvable onsite sewage management system.*
2. *In addition, by providing a central common courtyard area, Fed Sheds could integrate positively with Jasper Corner producing a 'town square' effect.*
- 10 3. *Review the cost of the development in relation to more current costs of building. The existing estimate of costs could cover two sheds and contain the proposed eight spaces, with smaller provisions for start-up enterprises.*
4. *That Council seek an urgent independent review of the feasibility of this onsite sewage treatment system on this site, or the developer is willing to reduce a shed and revert to a more conventional system proven to work in the area.*

15 The Federal Community made a further submission to Council, dated September 2022, that raised the following concerns:

1. *Concerns and questions regarding the Onsite sewerage management system (OSMS)*
2. *Concerns and questions regarding the stormwater plan*
- 20 3. *Concerns and questions regarding the risk with liquid trade waste*
4. *Concerns with the DA documentation and Council's recommendation to approve the proposal.*
5. *Concerns with the Heritage Report and Council's Heritage advisor.*
- 25 6. *Concerns over impact on the community amenity - the Hall and Church at Jasper Corner*
7. *Concerns with exacerbation of traffic volumes and parking issues in Federal as a result of this DA*
8. *The context of the Masterplan in this DA recommendation. Community led planning and its relationship with the DCP and LEP: The fear of litigation*
- 30 9. *Concerns and questions regarding Council's legal requirements*
10. *Miscellaneous concerns regarding Council's approach to planning and the assessment process for this development application*

3. Response from Applicant - Amended Plans

35 The developer reported in writing by email to Council on 20 October 2022 on their response to the workshop of 29 August 2022. The outcomes were summarised as follows:

Issues raised were parking, bulk and scale, wastewater and stormwater.

I have had discussions with Council's stormwater team and Derek Mc Kenzie, our stormwater consultant, and believe that Council is satisfied with our design.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.12

In order to improve Community Engagement and address other concerns raised we have made the following changes to the original submission, please see plans attached.

- 5 • *Moved Building B back between 7m and 10m from boundary to the face of the building to create more space between the deconsecrated Church and Hall. Parking on site is thus reduced to 19, which is still 3 more than required to be compliant.*
- 10 • *As per Councils prior condition issued in the recommendation for approval, we have moved Buildings A, B & C by 750mm to the NW to minimize overshadowing of the neighbor [sic] to the South. The distance to the South boundary is now 4750mm.*
- 10 • *We have attached a proposed Community Access Plan 20.2 which reflects the above and in addition provides for the following: Community Accessible Garden along Coachwood Court 151m² Forecourt Deck 173m² Landscaped Forecourt 326m² Total Community accessible area on our site 650m² Community accessible area as relates to site area 16.25% Community accessible area to building footprint 60.35%*
- 15 • *I have also attached a letter from AWS who are highly experienced in OSSMS in remote areas all over Australia. They endorse the system as designed.*

A full set of the amended plans are found in Attachment 1 and an extract of the amended site plan is provided in Figure 1 below.

4. Section 4.15 Considerations

- 20 The previous assessment of DA 10.2021.114.1 carried out as published in Report No 13.11 - PLANNING - 10.2021.114.1 - 'Fed Sheds' Light Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, Federal at the [Council \(Planning\) Meeting of 11 August 2022](#) remains valid and relevant for the development, with the following additional comments provide below.

a design generally relies upon evaporation from transpiration beds whereas the proposed design is for absorption under the car park area with high degree of treatment in terms of managing phosphorous and nutrients.

5 Council commissioned an independent peer review of the proposed OSMS, undertaken by Helen Tunks of HMC Environmental Consulting (See attachment 3). The findings of this peer review concluded that the proposal is satisfactory, as follows

10 *Overall, the concept of the absorption based effluent drainage cell is sound with very conservative design factors and sufficient protection from trade waste and stormwater impacts. The site and soil assessment adequately addressed the relevant issues including impact on groundwater and surrounding properties. Based on the information presented above, the OSSM report by Greg Alderson & Associates (Revision E, 9/12/2021) is supported. I concur with the findings of the peer review by Whitehead & Associates (10/1/2022).*

15 The independent peer review also considered other matters separate to the OSMS design that affect site feasibility, including Hydraulic Loading/Wastewater Flow Allowance, Water Balance/Soil Loading, Trade Waste, Stormwater. These matters were raised to the extent it is applicable to the OSMS design. The independent review also provided suggested wording for conditions of consent to provide for a primary point of collection for Trade Waste to overcome any concerns that this would be managed on an ad-hoc basis by
20 future tenants (if any Trade Waste was in fact required).

In conclusion it is considered that the site including the soils is capable of managing effluent onsite. The system is appropriate for the industrial development as proposed in terms of the objectives under this design element in the DCP.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

25 Further assessment, by Council's Development Engineer considered the amended plans with regards to parking, access, manoeuvring, and loading and the proposal is supported, subject to amended conditions of consent. The amended proposal removed three car parking spaces. The development generates a need for 16 spaces with 19 provided plus 4
30 motor bike spaces and bike racks. The proposal as amended, complies with Councils requirements for parking.

Chapter E6 Federal Village

The proposal in response to concerns raised by the community in terms of the development's context with the Village Hall and Church increased the setback of Building B from Federal Drive enabling the area to be landscaped and more inviting to the public.
35 Building B has also been lowered in terms of its height above natural ground level and now sits well within the 9 metre height limit as there was an issue raised that its height somehow took away from the importance of the Community facilities opposite. It is considered the proposal, is compatible with the bulk, scale, and character of the village in terms of built form, landscaping, materials and setbacks to the street.

40

Environmental Impacts and Site Suitability

5 Council staff also investigated concerns raised that the development may impact on platypus habitat reported in the yard of a property at 20 Coachwood Court. Council can be satisfied that that the development will have no direct or indirect impacts on platypus habitat.

The pond is approximately 220 metres from the site and approximately 110 metres to the lawful point of discharge on Coachwood Court. Refer to Figure 2 below.

10 Council staff considered whether the development with stormwater run-off post detention/ treatment in accordance with Council’s design specifications would have any impact on the Platypus Habitat a couple of hundred metres downstream. Considering this pond is fed by rainwater/ stormwater runoff from all directions including a watercourse that directs water into the pond from the north, and looking at the size of the catchment, any additional stormwater run-off post development should not have an impact on platypus habitat. Figure 3 below indicates this catchment is likely to have an area of approximately 25 hectares.

15



Figure 2: Location of pond

Council staff also considered if the development with the proposed OSMS would impact on the platypus habitat. If the OSMS is constructed in accordance with what's proposed and regularly maintained like all OSMS should be, the proposal should not have an impact on the platypus habitat.

It is considered the site is suitable for the proposed development and appropriate conditions of consent are recommended in relation to the construction of the development and for the operation of the Federal Shed to mitigate and manage any potential impacts that could arise once the buildings are occupied. This includes hours of operation, lighting, limitations on the type of future uses, noise management and the like.



Figure 3. Catchment area of the pond

Additional Matters raised by the Community

5 Other matters raised by the community are noted, particularly those that relate to procedures for development assessment and relevant matters for consideration. All development assessment procedures, which Council must follow at all times in accordance with NSW planning legislation (namely Environmental Planning and Assessment Act and Regulation) have been undertaken, as required.

For example, cost of works for the purposes of lodging a DA are calculated at the time the DA was submitted and fees calculated accordingly in accordance with the NSW Environmental Planning and Assessment Regulation, not at the time the DA is approved.

10 Other concerns raised by the Federal community were either already assessed and addressed under the original DA report to Council or by way of recommended conditions of consent.

Masterplan Integration

15 The proposal has also been designed to integrate with the Federal Masterplan in terms of upgrading Federal Drive. If approved the applicant will be required to construct a footpath for the frontage of the site with a ramp to facilitate pedestrians crossing the road and widen the road with parallel parking across the frontage of the site. This provides a saving to the ratepayers of the Shire whilst also improving the public amenity of the street in terms pedestrian and parking accessibility.

20 **Public Interest**

As originally assessed the proposal is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

5. Part 3 of Resolution 22- 374

25 **That Infrastructure Services staff assess the drainage system in Coachwood Court in the next 4 weeks.**

30 Council Infrastructure Service Staff have carried out an assessment of the drainage system in Coachwood Court including a site inspection of the system. It is a mix of overland swales and surface inlet pits that convey stormwater flows to the discharge location. Such stormwater includes overland flows from the broader catchment as well as hard stand areas (e.g., roof, driveway, road runoff). The system is considered atypical for a village in the Shire and would have been designed to the standards of the day as the village developed.

35 In normal rain events the system will cater for minor flows but in heavy rainfall like the 2022 flood events and or heavy short downpours (e.g. thunderstorms) the system will fail to cope. This is not unusual for many of the older urban and village areas in Byron Shire.

Infrastructure Services over the next 12-24 months (following a successful NSW Government Grant) will be assessing all drainage infrastructure across the Shire to identify

critical problem areas to be prioritised for future capital works project based on available Council budgets.

6. Conclusion

- 5 It is considered the proposed Development Application satisfactorily addresses Council's planning controls and is suitable for the site. The proposed amendment to the plans improves the development in terms of its context with the Village Hall and Church and the application is recommended for approval.

BYRON SHIRE COUNCIL

Report No. 13.13 PLANNING - 10.2022.165.1 Change of Use of Storage Area in The Basement of Level 1 to Restaurant at 139 Jonson Street BYRON BAY

5 **Directorate:** Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
File No: I2022/1688

Proposal:

DA No:	10.2022.165.1		
NSW PP	PAN-215680		
Proposal description:	Change of Use of Storage Area in Basement of Level 1 to Restaurant at 139 Jonson Street, Byron Bay		
Property description:	LOT: 29 DP: 1270920		
	139 Jonson Street, BYRON BAY		
Parcel No/s:	270510		
Applicant:	JD Property Group Pty Ltd		
Owner:	JD Property Group Pty Ltd		
Zoning:	B2 Local Centre		
Date received:	22 April 2022		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
Concurrence required	No		
Public notification or exhibition:	– Level 2 advertising under Council’s Community Participation Plan. – Exhibition period: 4 – 17 May 2022		

BYRON SHIRE COUNCIL

	– Submissions received: Thirteen (13)
Variation request to Development Standards under an EPI	Clause 4.6 Variation to the Floor Space Ratio
Estimated cost	\$257,763.00
Issues	<ul style="list-style-type: none">• Further variation to the floor space ratio (FSR) controls being sought.

Summary:

5 The DA proposes a Change of Use of the Storage Area in the Basement of Level 1 to a Restaurant and provision of an additional three car parking spaces in Level 2. The subject development is located on the property known as “Jonson Lane” which is located on the corner of Jonson Street and Browning Street in Byron Bay. The development has been approved with a floor space ratio exceeding the 1.3:1 by 10.2%. The proposed restaurant will result in a further increase in floor area by 159 m² resulting in a floor space ratio (FSR) of 1.488:1, representing a 14.5% variation.

10 The applicants have submitted a Section 4.6 variation to further vary the FSR ratio for the development. In support of the proposed variation, the restaurant is located below ground, adds no further bulk, scale, or height to the development as approved.

15 The proposal is unlikely to have an adverse impact on the amenity of the neighbourhood considering its location and is consistent with the objectives of the B2 Business zone by value adding to the development which has limited commercial purpose at present. Further, the proposal may result in an interesting food and drink premise being subterranean offering a different experience to other venues in Byron Bay.

20 This proposal in terms of its commercial context has merit for the reasons outlined in the report and on review of the applicants Clause 4.6 variation, the development application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:




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

BYRON SHIRE COUNCIL

RECOMMENDATION:

5 That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.165.1 for Change of Use of Storage Area in Basement of Level 1 to Restaurant, be approved subject to the conditions of consent in Attachment 2 (#E2022/118594).

Attachments:

- 10
- 1 DA10.2022.165.1 Proposed Plans, E2022/112338 
 - 2 DA10.2022.165.1 Conditions of Consent, E2022/118594 
 - 3 Confidential - DA10.2022.165.1 Submissions, E2022/112344
 - 4 DA10.2022.165.1 Clause 4.6 variation request, E2022/113800 

Assessment:

INTRODUCTION

History/Background

The following development approval history is noted:

DA 10.2017.510.1	Mixed use development comprising demolition of all existing structures, removal of vegetation and construction of commercial premises, cafe, childcare centre, shop top housing, serviced apartments and associated basement car parking and landscaping.	Refused (NRPP) 14/11/2018
DA 10.2019.616.1	Demolition of Existing Buildings and Construction of Mixed-Use Development	Approved 21/05/2020
DA10.2019.616.2	Modify design of basement car park; raise ground floor level by 300mm; extend lift to provide roof access; modify roof to reduce thickness; and minor internal modifications	Approved 19/11/2020
DA 10.2019.616.3	Modify design to include roof top pool and facilities	Approved
DA 10.2019.616.4	Modify design for the layout and uses of approved retail shops and gym and alter design of internal courtyard	Approved 5/1/22
DA 10.2019.616.5	Alter hours of operation of gym, modify services, ducting and roof top toilet	Approved 8/9/22
DA 10.2022.146.1	Two lot stratum subdivision – to separate residential uses from commercial uses	Approved 11/10/22

5

Description of the proposed development

This application seeks approval to Change the Use of Storage Area in the Basement of Level 1 to Restaurant (see Figure 1) and to reconfigure a Storage Area in the Basement of Level 2 to create three (3) additional car parking spaces.

10



Figure 1. Basement 1 Plan – Showing location of new restaurant (highlighted yellow)



Figure 2. Location of proposed restaurant in the Basement

The restaurant has a floor area of approximately 159 m² and is proposed to be open between the hours of 5pm and midnight seven days a week. The restaurant will have a maximum capacity of 80 patrons and employ up to 8 staff.

5 **Description of the site**

Property	137-138 Jonson Street, Byron Bay Lot 29 DP 1270920
Area:	2,835m ²
Land is zoned:	B2 Local Centre
Property is constrained by:	Acid Sulfate Soils (Class 5)

The property is located at the southern fringe of the Byron Bay Town Centre. It is zoned B2 Local Centre, as is land immediately north and on the opposite side of Jonson Street. Land on the eastern side of Ruskin Lane is zoned R2 Low Density Residential. (See Figure 3 below).

- 10 Land in the vicinity of the property on the eastern side of Jonson Street is largely residential in nature with a two-storey dwelling neighbouring the property to the north.

15

20



Figure 3. Image of the Jonson Lane Building from the street

On the opposite side of Jonson Street, land uses comprise of ground floor shops and commercial with shop-top housing. The recently completed Byron Bypass roundabout is located at the front of the property, at the Jonson/ Browning Streets intersection, and Council has approved the Harris Farm Development to the south west in the old Wicked Weasel Factory building.

5

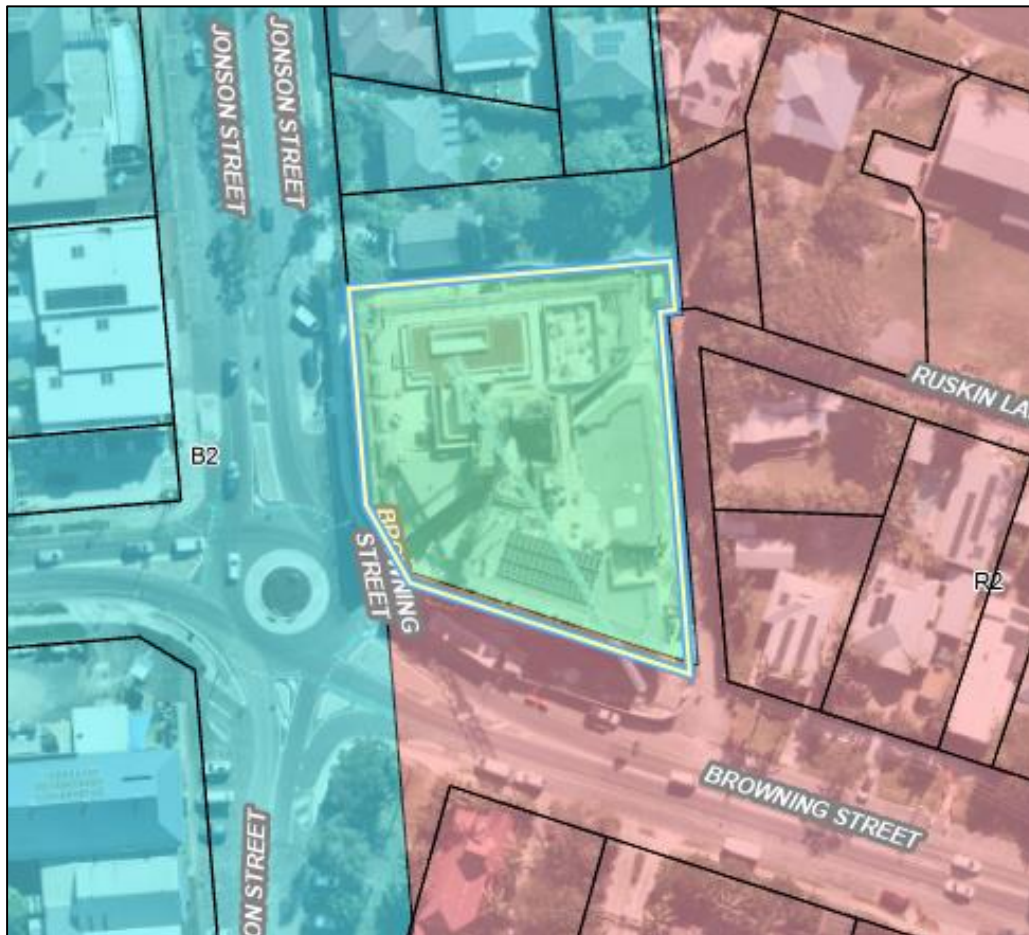


Figure 4. Aerial photo with land zoning overlay (property highlighted)

SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	Insufficient parking – See comments under DCP 2014.
Building Surveyor	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.

State Environmental Planning Policies (SEPP)

Consolidated SEPPs 2021

Considerations	Satisfactory	Unsatisfactory
<p><i>Transport and Infrastructure SEPP 2021</i></p> <p>Consideration:</p> <p>The subject property has frontage to a classified road however no changes to vehicular access are proposed and the development is not sensitive to traffic noise and emissions being in the basement (cl.2.119).</p> <p>The proposed restaurant is below the threshold that would require the proposal to be considered as “traffic-generating development” (cl.2.122).</p>	☒	☐

Byron Local Environmental Plan 2014 (LEP 2014)

- 5 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 Dictionary as “restaurant or café” being a category of “food and drink premises” being a category of “retail premises” being a category of “commercial premises”;
 - (b) The land is within the B2 Local Centre Zone;
- 10 (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective – B2	Consideration
<ul style="list-style-type: none"> • To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. • To encourage employment opportunities in accessible locations. • To maximise public transport patronage and encourage walking and cycling. • To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises. 	<p>The proposed basement restaurant is consistent with the zone objectives to provide a range of retail uses. Operation of the restaurant will provide employment opportunities and will add further to town centres vibrancy.</p>

Clause 4.4 Floor space ratio

5 The applicable floor space ratio (FSR) for the property is 1.3:1. The proposal will add a further 159 m² of floor area to the development resulting in a floor space ratio of 1.488:1. The applicants have submitted a Section 4.6 Variation to further amend the development standard as discussed below.

Clause 4.6 Exceptions to Development Standards

10 The restaurant will result in a further increase in floor area by 159 m² resulting in a floor space ratio (FSR) of 1.488:1 in an area of Byron Bay where the floor space ratio controls for the property are set at 1.3:1. The development already has a floor space ratio of 1.432:1. enjoying a 10.2% variation from previous approvals granted by council.

The applicants have submitted a Section 4.6 variation to further vary the FSR ratio for the development (see attachment 4 for details) with the following reasons being provided:

15 In summary the environmental planning grounds justifying the proposed development are:

1. The proposed use is consistent with the zoning of the land and does not change the height, scale, size, character, bulk and mass of the approved development.
2. All necessary public and private infrastructure services are or can be provided to the proposed development and there will be no unreasonable increase in demand on those services.
3. There will be no substantive or adverse impacts on the environment neither of the land nor to the amenity of adjoining lands or the locality.
- 20 4. The result will be a land uses that is permissible and consistent with the objectives of the B2 zone.
5. The proposed development is consistent with all other relevant local environmental planning controls of the BLEP 2014 and does not raise any matter of significance for state or regional planning.
6. Approval of the proposed development does not create any apparent adverse social, environmental and economic impacts in the zone and on development in the locality.

25 Council, in assessing variations under Clause 4.6, must consider the following:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

30 In this instance the proposal will have minimal impacts on the environment and in particular the built environment through the use of this space as a restaurant. The reasons for this are provided below:

- The restaurant is located below ground;
- Adds no further bulk, scale or height to the development as approved;
- 35 • Is unlikely to have an adverse impact on the amenity of the neighbourhood considering its location;

- Is consistent with the objectives of the B2 Business zone by value adding to the development and utilising part of the site which has limited commercial purpose at present; and
- The proposal will result in an interesting food and drink premise being subterranean offering a different experience to other venues in Byron Bay.

As such and having regards to the commercial context and zoning of this property, it is considered there are sufficient environmental planning grounds to vary the development standard and that strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. A variation to the floor space ratio is supported in this instance.

Clause 5.21 Flooding

The subject site is not identified as being prone to flooding on Council's mapping, and the provisions of this clause do not apply.

Clause 6.6 Services

- The subject property is adequately serviced with all necessary infrastructure to cater for the proposed restaurant. Conditions of consent would apply in terms of additional headworks charges for water and sewer infrastructure.

Clause 6.13 Design Excellence – Byron Bay Town Centre

- The subject property is identified on the design Excellence Map for the Byron Bay town Centre. The proposal raises no issues under the clause being a DA for the use of an existing part of the building and construction work limited to internal fitout.

Clause 6.14 Active Street Frontages in Byron Bay Town Centre

- The subject property is identified under this clause. The proposed subterranean restaurant provides no additional opportunities to present to the street. Access however is via the central courtyard area which brings customers into the development from the Corner of Jonson and Browning Street. It is considered access to the development is satisfactory in terms of this clause.

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

- No draft environmental planning instruments affect the proposed development.

Byron Shire Development Control Plan 2014 (DCP 2014)

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

The proposed basement restaurant has a floor area of 159m² which generates a need for 8 additional car parking spaces (1 space per 20m² GFA). The proposal includes a further

3 spaces on the lower-level basement for parking and also includes car share space and additional motor bike spaces.

5 The development as proposed will have a total of 119 car parking spaces but remains 5 spaces short. The proposal is not supported by Council's Development Engineer due to the shortfall in this instance. Further, the car share space is of little benefit for the proposal as opposed to a tourist and visitor accommodation development whereby a car share is available for guests staying at the hotel/ motel/resort, whilst the development already includes a sufficient number of motor bike spaces.

10 Notwithstanding the above, a number of retail uses on the site operate during the day only and are closed by 6 pm. In this regard the applicant has submitted further detail to justify the parking onsite and notes that Tenancies G.O2, G.O3 and G.O4 have a combined floor area of 305.m² and have 15.2 spaces allocated to them combined based on the car parking rate of 1 space per 20 m².

15 Further, the Gym Yoga facility in Tenancies G.01B with an area of 231 m² also has some 11.5 spaces allocated to it. Once closed, these tenancies actually free up these spaces for other uses. There appears to be no specific conditions of consent for the retail tenancies regarding operating hours, but the gym is conditioned under DA10.2019.616.5 to operate as follows:

- 20 • Monday to Friday Saturday, from 7am to 7pm.
- Sunday (and public holidays) from 8am to 4pm.

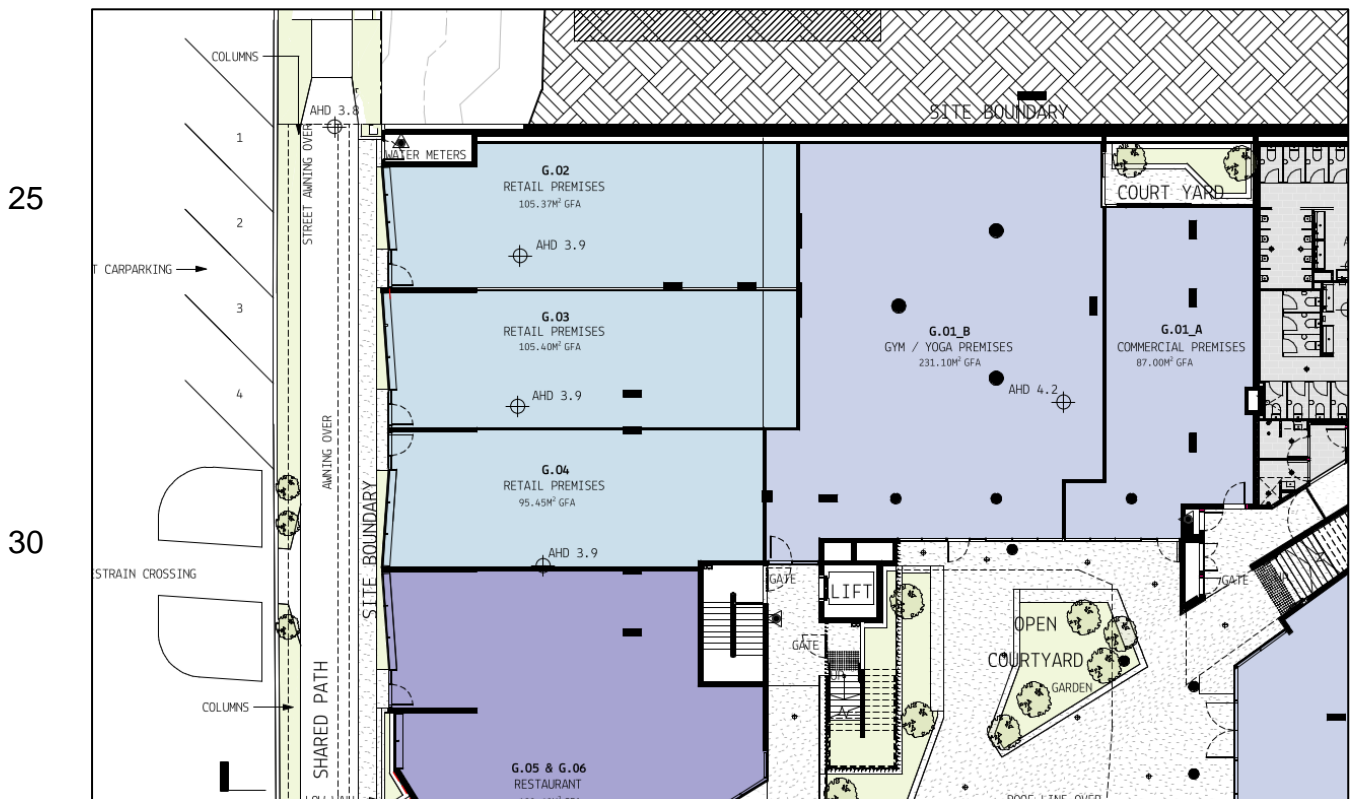


Figure 5. Retail Shops and Gym on the ground level

The applicants have submitted the retail tenancies are closed by 6 pm and would be happy for a condition of consent to be imposed limiting their hours to the following:

- Monday to Saturday 7am to 6pm
- 5 • Sundays 10am to 4pm.

Although there is some crossover between the proposed restaurant opening and the closing of the retail shops and the Gym, it would be highly unlikely that all 5 tenancies are operating at 100% capacity in terms of car parking utilisation. Having regards to the quantum of parking provided for this development overall it is submitted that this is satisfactory to cater for the (numerical) shortfall of 5 spaces. Conditions of consent are to apply for the operating hours of the restaurant and the abovementioned retail premises.

B8 - Waste Minimisation and Management

The proposed restaurant will generate additional waste. The development site includes a large garbage storage area and collection area at ground level and accessible from the rear lane for the standard garbage truck operating in Byron Shire. It is considered this is adequate for the proposed development and for the additional waste that is generated the restaurant.

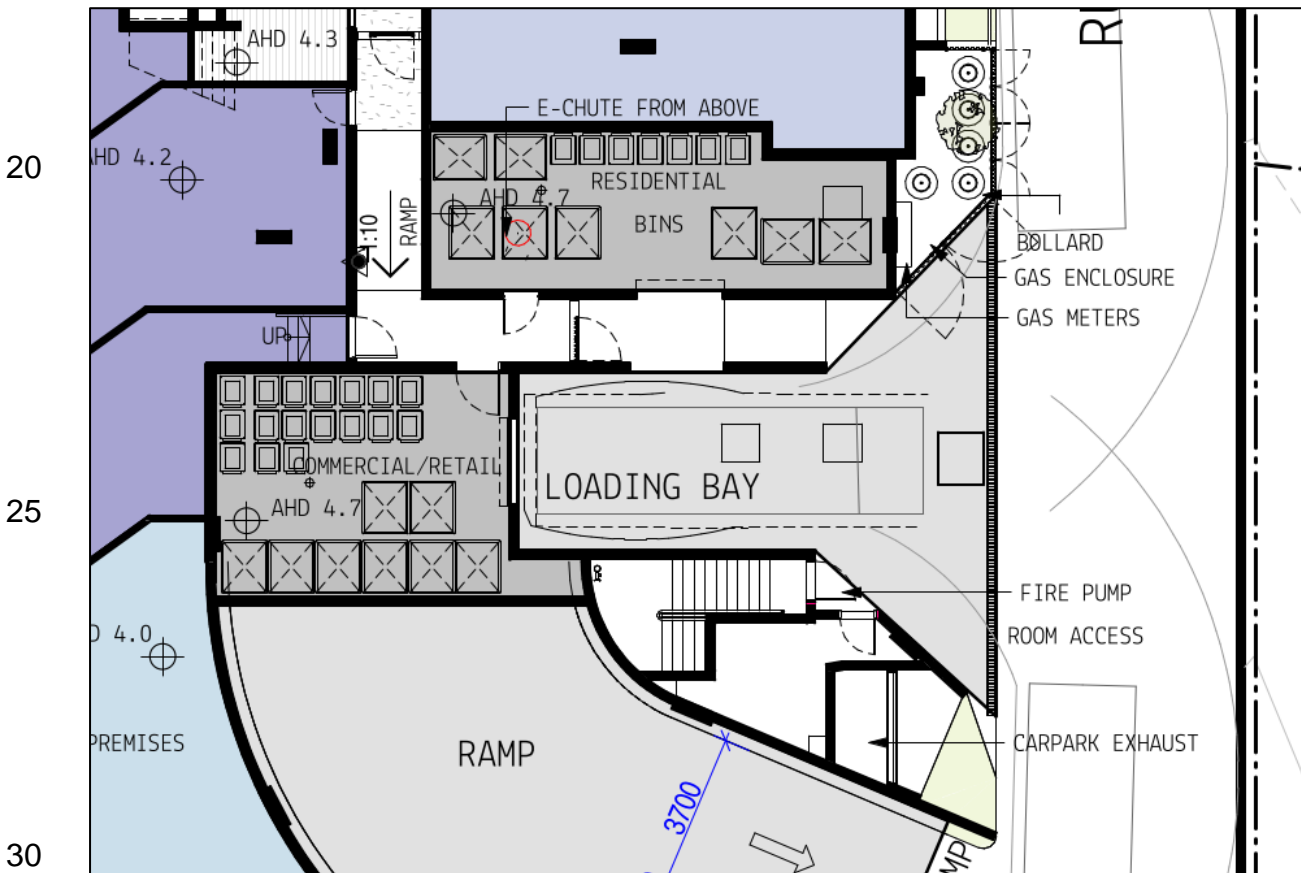


Figure 6. Bin storage and loading area of Ruskin Lane

Chapter D4 Commercial and Retail Development

5 As no changes to the building form and/or external appearance are proposed, many of the criteria under Chapter D4 are not relevant to this proposal. Notwithstanding this, the applicant has submitted a management plan which is to be utilised for all the food and drink premises within this development to provide guidance to tenants in terms of limiting or minimising the likelihood of amenity impacts on the site residents and the neighbourhood.

10 The plan has been based on the DCP provisions under D4.2.10 and adequately addresses the criteria managing complaints, measures to limit noise impacts, staffing, security servicing of alcohol, patron behaviour and the like. The proposal is considered satisfactory subject to conditions of consent in terms of hours of operation, noise management, and patron numbers.

E10 - Byron Bay Town Centre

15 The proposal raises no issues under Chapter E10 of DCP 2014, considering the restaurant is located below ground level and has no impact on the appearance of the development to the street or the public domain areas.

Environmental Planning and Assessment Regulation 2021 considerations

	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
Section 61 - Additional matters that consent authority must consider	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 62 - Consideration of fire safety	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 64 - Consent authority may require upgrade of buildings	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Section 63 - Considerations for erection of temporary structures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

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

Impact on:	Likely significant impact/s?
Natural environment	The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	Potential for impacts on the built environment exist primarily from noise from the restaurant. However, such impacts if generated will impact directly on residents within the facility itself and it is highly likely the development will be self-managed through the body corporate for the development. Notwithstanding conditions of consent to apply in terms of patron numbers, noise management and hours of operation.
Social Environment	The proposal will not have a significant social impact on the locality.
Economic impact	The proposal will utilise an existing area of the building that has no other commercial purpose at present providing a boutique food and drink premise being a restaurant. The proposal will generate additional economic impacts by way of employment in the hospitality sector on an ongoing basis and short term impacts through the fit out of the restaurant.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

The suitability of the site for the development

- 5 The site is considered suitable for the proposed development subject to conditions of consent.

Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited

- 10 There were **thirteen (13)** submissions made on the development application:
 - twelve (12) in support
 - one (1) in objection

Most submissions in support were received from nearby business owners and/or investors in the development on the property.

Key matters raised in submissions	Consideration
Underground restaurant will provide something unique	Noted
Opening of the restaurant from 5:00pm will reduce parking issues	Noted – Conditions to apply
Insufficient information on hours of operation	Hours of operation are specified in the SEE as 5pm – midnight daily Conditions to apply

Public interest

5 There remains a risk that this application could be perceived by the development sector as a means to manoeuvre around Council's planning controls. Such applications like the proposal will need to be considered on a case by case basis and it should not be viewed as the controls being abandoned by Council.

10 In the circumstances the proposal is considered to have merit and the proposed restaurant is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

DEVELOPER CONTRIBUTIONS

Water & Sewer Levies

Section 64 levies will be payable.

15 Developer Contributions

Section 7.12 Contributions will be payable.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

5 The proposed restaurant is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The restaurant will result in a further increase of floor space ratio, however for the reasons as outlined in this report a variation to the floor space ratio is supported and the application is recommended for approval subject to Conditions of Consent.

Report No. 13.14 Proposed Wildlife Protection Area - 'Old New Brighton Road, Ocean Shores'

Directorate: Sustainable Environment and Economy

Report Author: Sarah Nagel, Manager Public and Environmental Services

5 **File No:** I2022/1539

Summary:

Council resolved to create a 'Dogs in Public Spaces Strategy' (DiPS) that reflects a balanced policy approach to this issue.

10 A draft DiPS was placed on public exhibition for 6 weeks.

During that process, six submissions identified 'Old New Brighton Road, Ocean Shores' as a proposed Wildlife Protection Area.

15 This report therefore seeks Council endorsement for the public exhibition of a proposed Wildlife Protection Area on the area known as 'Old New Brighton Road', Ocean Shores.

Council may declare a location as a Wildlife Protection Area pursuant to the Companion Animals Act, following a period of public exhibition to allow for community feedback.

20

RECOMMENDATION:

25 **That Council:**

1. **Endorses the public exhibition of a proposed Wildlife Protection Area on the area known as 'Old New Brighton Road, Ocean Shores' for a minimum 6 weeks to allow for community feedback and submissions.**

30 2. **Receives a submissions report following the public exhibition referred to in point 1.**

35

Report

5 Council resolved via **18-362** that a 'Dogs in Public Spaces Strategy' (DiPS) be prepared instead of a revised Companion Animal Exercise Area Policy: [Minutes of Ordinary Meeting - 21 June 2018](#) that reflects a balanced policy approach to the use of public spaces in the Shire.

10 The progress of DiPS was noted in Resolution **22-208**:[Minutes of Ordinary Meeting - Thursday, 26 May 2022](#) and Resolution **22-420**: [Minutes of Ordinary Meeting - Thursday, 25 August 2022 \(infocouncil.biz\)](#)

15 A draft DiPS was prepared which aims to consider the needs of dog owners, as well as members of the public, who all use and enjoy these spaces. The draft builds on feedback received from the community about improving dog exercise areas in the Shire whilst also balancing dogs with the environment.

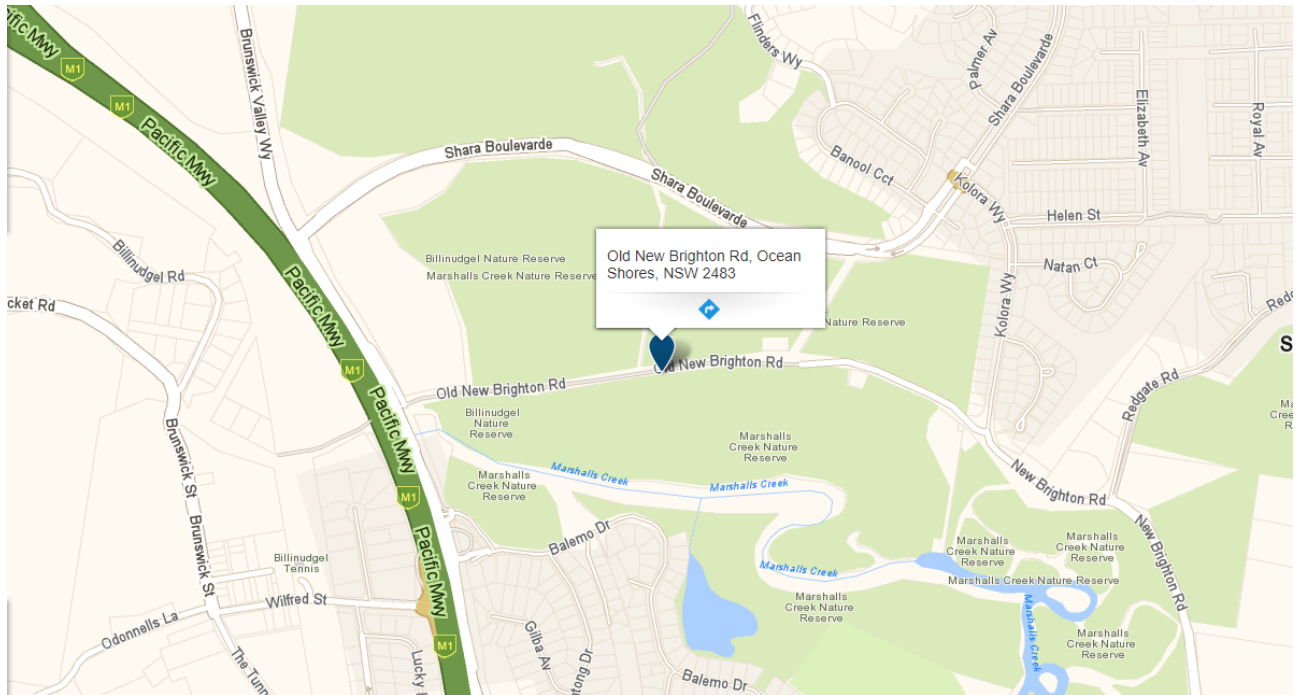
20 Council resolved that the DiPS be placed on public exhibition for a minimum of 6 weeks to allow for community feedback and submissions. During that process, the following location was identified by six submissions as being suitable of being declared as a Wildlife Protection Area. One of those submissions was a formal submission from National Parks and Wildlife Service (NPWS).

The DiPS submission report is on this Council meeting agenda as a separate report.

Proposed Area

25 The area known as 'Old New Brighton Road, Ocean Shores', is a small section of Billinudgel Nature Reserve between Kolara Way and Brunswick Valley Way in North Ocean Shores. The former road is managed by Council as a shared cycle and pedestrian path. The area is surrounded on both sides by Marshalls Creek Nature Reserve.

30



National Parks and Wildlife Submission

5 Old New Brighton Road bisects Marshalls Creek Nature Reserve, and this secluded area has a historic problem with compliance.

10 Koalas used to frequent the area. Sightings have dwindled as the population declines due to habitat loss, bushfires, vehicle collision, disease and the impact of dogs (scent, noise and predation).

Two thirds of this section of path and surrounding NPWS estate was mapped by Council as Primary koala habitat. The remainder is Secondary koala habitat (Byron Coast Comprehensive Koala Plan of Management 2016).

15 Koalas in this area are part of the ‘Endangered Koala Population between the Tweed and Brunswick Rivers east of the Pacific Highway’ (Biodiversity Conservation Act 2016). Koalas are listed as Endangered at the State level (Biodiversity Conservation Act 2016) and National level (Environment Protection and Biodiversity Conservation Act 1999).

20 Many other native animals including swamp wallabies, bandicoots and ground-feeding rainforest pigeons also use this area.

25 As in all public spaces where dogs are permitted, but which are not designated as off-lead areas, dogs must always be leashed. However, for many years people have let their dogs off-lead in this area. Anecdotal evidence suggests that non-compliance is increasing. The off-lead dogs often leave the Council path and roam into the surrounding forest, which is NPWS estate. Old New Brighton Road seems to have become an unofficial off-lead area. Even when dog walkers do keep their dogs leashed, the scent and sounds of dogs will affect feeding and breeding behaviours of wildlife in this area, including key species such as koalas.

30

Recommendation

To protect koalas and other native fauna, NPWS strongly recommends that Council designates the section of Old New Brighton Road, North Ocean Shores, that is surrounded on both sides by NPWS estate as a dog prohibited area. NPWS is willing to work with Council on a communication Strategy, signage and compliance to introduce and manage the new dog prohibited area.

Wildlife Protection Areas

Section 14(1) of the Companion Animals Act specifies that dogs are prohibited in the following places...*(h) Wildlife Protection Areas (meaning any public place or any part of a public place set apart by the local authority for the protection of wildlife and in which the local authority has ordered that dogs are prohibited for the purposes of the protection of wildlife and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that dogs are prohibited in or on that public place).*

Council may declare a location as a Wildlife Protection Area pursuant to the Companion Animals Act, following a period of public exhibition to allow for community feedback.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.2: Enhance safety and contribute to the physical, mental, and spiritual health and well being of our people	2.2.4: Companion animals - Promote awareness of the requirements of the Companion Animals Act with respect to the ownership of companion animals	2.2.4.4	Develop Dogs in Public Space Strategy

Recent Resolutions

- Resolution 18-362
- Resolution 20-727
- Resolution 22-208

- Resolution 22-420

Legal/Statutory/Policy Considerations

- Biodiversity Conservation Act 2016
 - Companion Animals Act 1998
- 5
- Environment Protection and Biodiversity Conservation Act 1999
 - Byron Coast Comprehensive Koala Plan of Management 2016

Financial Considerations

None relevant to the report.

Consultation and Engagement

- 10 Public consultation and engagement have been undertaken via the DiPS public exhibition process.

A submission was received from National Parks and Wildlife Services and is outlined in this report.

- 15 The Wildlife Protection Area proposal be placed on public exhibition for a minimum of 6 weeks to allow for community feedback and submissions.

Report No. 13.15 Dogs in Public Spaces Strategy Submission Report

Directorate: Sustainable Environment and Economy

Report Author: Sarah Nagel, Manager Public and Environmental Services

5 **File No:** I2022/1606

Summary:

Council resolved to create a 'Dogs in Public Spaces Strategy' (DiPS) that reflects a balanced policy approach to this issue.

10 A draft DiPS was placed on public exhibition for six weeks, during which 120 submissions were received.

As a result of the submissions received, the Draft DiPS has been amended to include a number of requests made by the public.

This report recommends that Council adopt the DiPs as amended.

15




RECOMMENDATION:


- 20
1. That Council adopts the Dogs in Public Space Strategy (E2022/106874) and Guide to Dog Areas in the Byron Shire (E2022/106845), amended as a result of submissions received during public exhibition.
 2. That Council endorses the Companion Animal Exercise Area Policy – as updated and show in track changes at E2022/103808 - to be placed on public exhibition for 28 days to allow for submissions.

25

 3. That:
 - a) Should there be no submission received for the policy listed in 2 above, the update be endorsed for this policy; and
 - b) Should submissions be received on the policy listed in 2 above, that the policy be reported back to Council noting the submissions and any
- 30

Attachments:

- 1 Dogs in Public Spaces Strategy_Final Version, E2022/106874 
- 2 Guide to dog areas in Byron Shire_Final Version, E2022/106845 
- 35 3 DRAFT Policy: Companion Animal Exercise Areas 2022, E2022/103808 

- 4 Submissions Report - Public, E2022/113364 
5 Confidential - Confidential Submissions and summary, E2022/113365

Report

5

Background

10 Council resolved via **18-362** that a 'Dogs in Public Spaces Strategy' (DiPS) be prepared instead of a revised Companion Animal Exercise Area Policy: [Minutes of Ordinary Meeting - 21 June 2018](#) that reflects a balanced policy approach to the use of public spaces in the Shire.

15 The progress of DiPS was noted in Resolution **22-208**:[Minutes of Ordinary Meeting - Thursday, 26 May 2022](#) and Resolution **22-420**: [Minutes of Ordinary Meeting - Thursday, 25 August 2022 \(infocouncil.biz\)](#)

20 A draft DiPS was prepared which aims to consider the needs of dog owners, as well as members of the public, who all use and enjoy these spaces. The draft builds on feedback received from the community about improving dog exercise areas in the Shire whilst also balancing dogs with the environment.

Council resolved that the DiPS be placed on public exhibition for a minimum of six weeks to allow for community feedback and submissions.

25 The DiPS was placed on public exhibition for a period of six weeks, ending 11 October 2022. During that period, Council received 120 submissions which are contained in the attached submissions report.

Response to submissions

❖ A summary of recommendations has been compiled for:

- 30
- Strategic Direction 9: Prioritise the provision of bins and dog waste bags
 - Strategic Direction 10: Implement clear, consistent and engaging signage across the Shire
 - Strategic Direction 11: Where necessary, implement site specific upgrades
 - Strategic Direction 14: Develop a network of new dedicated dog off-lead areas
 - Strategic Direction 15: Trial timeshare arrangements for selected sportsgrounds
- 35

❖ A list of electronic links has been prepared to add to the electronic version of the document when it is uploaded to Council's website (including a summary of dog-owner responsibilities, associated offences and fines, dog effects on biodiversity and the

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.15

NPWS Pets in Parks Policy (December 2021)). A QR code will also be added to the final Strategy document.

- 5 ❖ One area was identified as a proposed Wildlife Protection Area pursuant the Companion Animals Act. A separate report on this proposed Wildlife Protection Area is on this Council meeting's agenda.
- ❖ Changes have been made to the DiPS documents as follows:
- 10 • Typographical errors throughout the documents have been corrected
- The language used to describe Council's compliance approach and dog-owners' responsibilities has been strengthened throughout the documents
- References to Marine Parks have been increased throughout document
- 15 • Theme 1 has been reworded from '*Manage negative impacts of dogs on our wildlife and environment*' to '*Protect environment and wildlife from negative impacts of dogs*'
- Additional street names have been added to maps
- The Mullumbimby Arboretum and the Brunswick Heads Riverside Parks have been removed as dog on-lead areas (returned to no-dog areas)
- 20 • The Suffolk Park area of former settlement ponds, south of Byron Bay High School, has been removed as a location for investigation as a dog exercise area
- The Mullumbimby Showground map has been amended to match Mullumbimby Showground's advice on that location
- 25 • Belongil Creek, Ti-Tree lakes in Suffolk Park and Broken Head/Seven Mile Beach have been more clearly identified as no-dog areas in the mapping

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.2: Enhance safety and contribute to the physical, mental, and spiritual health and well being of our people	2.2.4: Companion animals - Promote awareness of the requirements of the Companion Animals Act with respect to the ownership of companion animals	2.2.4.4	Develop Dogs in Public Space Strategy

Recent Resolutions

- Resolution 18-362
- 5 • Resolution 20-727
- Resolution 22-208
- Resolution 22-420

Legal/Statutory/Policy Considerations

- Companion Animals Act 1998
- 10 • Companion Animal Exercise Area Policy

Financial Considerations

Council has received grant funding under the Local Council Support Package Companion Animals to support implementation of the DiPS (Resolution 22-378).

Consultation and Engagement

- 15 Public consultation and engagement have been undertaken via the DiPS public exhibition process.

Report No. 13.16 Former Mullumbimby Hospital - Land Use and Development Planning Update

Directorate: Sustainable Environment and Economy

5 **Report Author:** Andrew FitzGibbon, Place Planning Coordinator
Isabelle Hawton, Place Liaison Officer
Kristie Hughes, Planning Projects Officer

File No: I2022/1640

Summary:

10 This report provides an update on the land use and development planning for the former Mullumbimby Hospital site (1 Azalea Street, Mullumbimby). It focuses on the future of the vacant land (not the aged care facility).

A community feedback period has just been completed regarding the vision, objectives and urban design principles for the site as presented in the draft Site Strategy and Urban Design Protocol (SSUDP).

15 The draft SSUDP was developed by Council and relied heavily on the endorsed recommendations by the Mullumbimby Hospital Project Reference Group in 2018.

There was strong interest from the community during the draft SSUDP feedback period with 41 submissions received. This provided a good basis for updating the document (refer Attachment 1) and as input for the next steps of the project.





20 It is recommended that the SSUDP be used as a guiding document for the project moving forward, and that Council moves ahead with the concept masterplan/feasibility work and statutory planning amendment process as outlined in this report.

RECOMMENDATION:

5 **That Council:**

1. **thanks all community members who gave feedback during the consultation period on the draft Site Strategy and Urban Design Protocol.**
2. **notes that submissions have been used to improve the exhibited document and will be used as inputs into future planning and design stages.**
- 10 3. **endorses the revised Site Strategy and Urban Design Protocol (refer Attachment 1 #E2022/113329) for the former Mullumbimby Hospital site to be used as a guiding document for the project.**
- 15 4. **requests staff to prepare a draft planning proposal informed by the Site Strategy and Urban Design Protocol and any required Baseline Studies and Advice and report this to Council for consideration prior to seeking a gateway determination.**
5. **requests staff to arrange an Enquiry by Design process (inclusive of community, industry and Councillor engagement) to underpin Concept Masterplan and Development Control Plan drafting.**
- 20 6. **requests staff to report the Concept Masterplan, Development Control Plan, and associated development options to Council.**

Attachments:

- 25 1 Former Mullumbimby Hospital Site Strategy Urban Design Protocol (SSUDP) - Nov 2022, E2022/113329 
- 2 Former Mullumbimby Hospital - Combined Submissions Redacted, E2022/112685 
- 3 Former Mullumbimby Hospital SSUDP - Submissions Review, E2022/113067 
- 4 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

30

Report

5 The former Mullumbimby Hospital Site (1 Azalea Street, Mullumbimby) is a 4.4ha parcel of Council owned land located near the centre of town and close to regional schools and services. It is rare flood-free land in Mullumbimby that has the potential to deliver much needed housing, community facilities and services.

A draft Site Strategy and Urban Design Protocol (SSUDP) was prepared that defines the vision, objectives and urban design principles for the site. This document relies heavily on the work and process previously undertaken by the Mullumbimby Hospital Project Reference Group.

10 The SSUDP provides an outline for the project and guides the next stages of the project being:

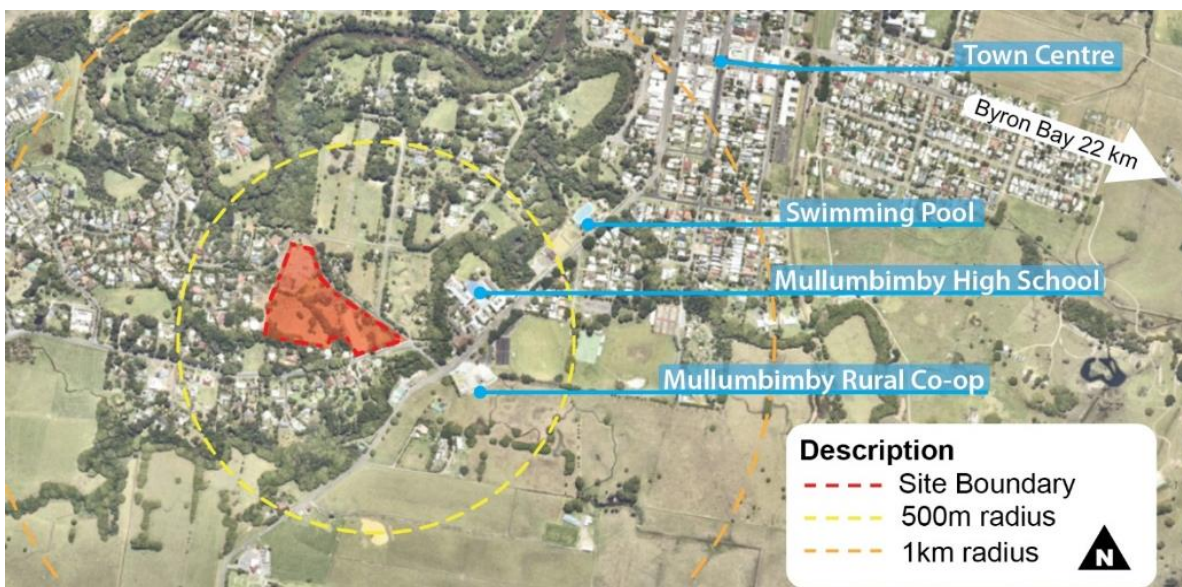
- 1) concept master planning and feasibility to inform a development plan
- 2) statutory planning process to amend the Byron Local Environmental Plan 2014 (LEP) and Byron Development Control Plan 2014 (DCP)

15 A community feedback period has just been completed regarding the [draft SSUDP](#) (as per [Resolution 22-571](#) from 27 October 2022 Council Meeting).

There was strong interest from the community during the feedback period with 41 submissions received. This provided a good basis for updating the SSUDP and for the next steps of the project.

20 A revised SSUDP is provided at Attachment 1. This has been updated to reflect feedback provided during the consultation period.

It is recommended that the SSUDP be used as a guiding document for the project moving forward, and that Council moves ahead with the concept masterplan/feasibility work and statutory planning amendment process as outlined in this report.



25

Consultation feedback

A community feedback period has recently been completed regarding the draft SSUDP (as per [Resolution 22-571](#) from 27 October 2022 Council Meeting).

5 A full compilation of feedback is provided at Attachment 2. A categorisation of the feedback and responses is provided at Attachment 3.

Key feedback received is summarised below:

- Seeking Council to recognise the significant financial value of the site and looking to capture ongoing revenue through the development.
- 10 • Noting importance of connecting with local indigenous representatives at multiple project stages.
- Support for the provision of more dwellings and more affordable dwellings that caters for a range of people (e.g. ageing population, key workers, local indigenous community, people living with a disability, low-moderate income workers, local creatives and artists).
- 15 • Seeking more community and public space in the concept with a number of submissions wanting the provision of arts and cultural facilities.
- Requests for a greater focus on creating a vibrant, mixed-use precinct – not a suburban neighbourhood.
- 20 • Seeking better recognition of the history of the site and the need to be responsive to this in the planning and design.
- Wanting more details on housing typologies, form and density.
- Wanting more emphasis on sustainability.
- Concerns about ability of existing road infrastructure to support increased demand.
- Concerns about the impact on flora and fauna on the site.
- 25 There were also three requests to add some adjoining large-lot residential properties to the planning proposal process. This land is part of the Left Bank Road R5 Large Lot Residential area. In June 2022, Council resolved to progress Rural Land Use Strategy action 21 to investigate the capacity for re-subdivision of large lot residential areas. A separate report to the 8 December 2022 Council Planning meeting outlined a program for this work to align with the Residential Strategy refresh. This will facilitate an open and transparent consideration of options and issues such as infrastructure capacity. Another consideration will be the suitability for an affordable housing contribution scheme to be applied on possible land value uplifts resulting from an urban residential zoning and or further subdivision/densification.
- 30
- 35 Thirty-five (35) respondents used the Your Say survey form to provide their feedback. The survey asked specific questions in relation to the vision statement, project goals, land use, and building heights. Results are as follows.

Survey Questions	Yes	Somewhat	No
Do you agree with the vision statement?	17 (49%)	15 (43%)	3 (8%)
Do you agree with the project goals?	17 (49%)	15 (43%)	3 (8%)
Do you agree with the proposed land uses?	17 (49%)	13 (37%)	5 (14%)
Do you agree with the proposed building height?	17 (49%)	7 (20%)	11 (31%)

Almost 50% of respondents agreed with these provisions. Between 8-14% disagreed with the vision statement, project goals and land uses. However, there were 11 people (31%) that disagreed with the proposed building height.

Revised Site Strategy and Urban Design Protocol

- 5 A revised SSUDP is provided at Attachment 1. This has been updated to reflect feedback provided during the consultation period as responded to in Attachment 3.

Many of the points raised will only be able to be addressed/considered during the concept master planning stage. As such, it is recommended that these submissions be used as inputs at appropriate next stages.

- 10 The survey results are considered sufficiently supportive to proceed with the proposed land uses and building heights as a basis for further investigation. Noting that this report recommends undertaking further analysis before reporting back a draft planning proposal for consideration prior to seeking a gateway determination.

Next Steps

- 15 The following program is an **estimate only and may be accelerated or delayed depending on funding, staff resourcing and other operational priorities.**

STAGE	ESTIMATE
Stage 1 – Project Outline	2022
Review Community Project Reference Group recommendations Site Strategy and Urban Design Protocol (incl. community feedback) Dependencies: Site Auditor Remediation Signoff	By End 2022

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.16

Stage 2 – Feasibility and Planning	2023
<p>Baseline Planning and Advice</p> <ul style="list-style-type: none"> • Country Advice: Input from Arakwal and Byron Tweed LALC • Commercial Advice: Community/Economic Needs; Property; Financing; Housing Models etc. • Planning Studies: Traffic; Ecology; Heritage; Servicing; Stormwater; Contamination; Bushfire; Geotechnical, Built form bulk and scale 	Jan – May 2023
<p>Development Plan</p> <ul style="list-style-type: none"> • Concept Masterplan developed with community engagement • Development Options – staging and subdivision concepts • Feasibility Assessment • Financing Strategy 	May – Aug 2023
<p>LEP and DCP Updates – Drafting and Processing</p> <ul style="list-style-type: none"> • Planning Proposal lodgement, assessment, and refining • Development Control Plan drafting 	May – Aug 2023
<p>LEP and DCP Updates – Consultation and Finalisation</p> <ul style="list-style-type: none"> • Includes community consultation of LEP and DCP proposed amendments 	Sep – Dec 2023
Stage 3 – Implementing the agreed Development Plan	2024-2025

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.3: Town / Village Masterplans - Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.3.7	Amend Local Environmental Plan and Development Control Plan in accordance with Mullumbimby Hospital Precinct Plan

Recent Resolutions

- 5 • [Resolution 18-721](#) (22 November 2018) Mullumbimby Hospital Site Project Reference Group [Recommendations: future use of the site](#)
- [Resolution 22-571](#) (27 October 2022) Endorsement to [exhibit Draft Site Strategy and Urban Design Protocol](#)

Legal/Statutory/Policy Considerations

NA

10 Financial Considerations

The work recommended for endorsement in this report is for the bulk of 'Stage 2 – Feasibility and Planning' as per the Next Steps section earlier. A budget of \$250,000 has been estimated by staff for this stage.

- 15 Council has applied for a \$250,000 grant under the NSW Regional Housing Strategic Planning Fund to support this work. A decision on this grant is scheduled to be made by the end of 2022.

If the funding grant doesn't eventuate, then Council will look to alternate resource and funding options both internal and external to council including support from the NRRC and DPIE.

20 Consultation and Engagement

Consultation on the Draft Site Strategy and Urban Design Protocol

The community feedback period of the draft Site Strategy and Urban Design Protocol was formally from 28 October to 14 November 2022.

We promoted this feedback period by:

- public notice on council website
 - advertisement in the echo
 - email notification to relevant community and business groups
- 5
- email notification to previous members of the PRG and to the Mullumbimby Hospital Action Group
 - local social media posts
 - seeking input from the Tweed Byron Local Aboriginal Land Council
 - media release
- 10
- interview with ABC radio

We heard directly from people via:

- drop-in session at Council offices on 9 November 2022 3-6pm (approximately ten people attended)
 - multiple one-on-one meetings with community members and local professionals
- 15
- multiple phone calls with community members
 - presentation to the Housing and Affordability Advisory Committee (17 November 2022)
 - presentation to the Place Planning Collective Mullumbimby representatives (31 November 2022)
 - discussion with the Department of Planning and Environment
- 20
- Your Say form to gather written feedback – as discussed in the body of the report

Consultation proposed in the next stage

As per the Next Steps section of this report, there will be two major stages of further community consultation in 2023. This will be: 1) as part of the development of a Concept Masterplan, and 2) when the draft LEP and DCP amendments are exhibited.

25

Report No. 13.17 Update Resolution 22-595 - State Imposed land use planning changes for Agritourism and Implications for Council

Directorate: Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy
Alex Caras, Land Use Planning Coordinator
Sam Tarrant, Planner

File No: I2022/1672

Summary:

10 Council considered a Mayoral Minute No. 8.1 State imposed land use planning changes for agritourism at the [Agenda of Ordinary Meeting - Thursday, 27 October 2022 \(infocouncil.biz\)](#) and resolved as follows:

Resolved 22-595 that Council:

- 15 1. *Urgently and strongly confirms to the NSW Department of Planning and Environment, that Byron Shire Council:*
- 15 a) *'Opts out' of the new provisions for agritourism and associated land uses until such time as we conduct our own review of where the provisions/ clauses could be appropriate;*
 - 20 b) *Reaffirms its earlier resolutions 21-203 and 22-065;*
 - 20 c) *Objects to the land use terms 'Agritourism', 'Farm experience premises' and 'Farm gate premises' and 'Farm Stay accommodation' being made permissible with consent anywhere in our LEPs at this stage;*
- 25 2. *Receives a short report as soon as practical on the agritourism related land use planning changes being considered/pursued by the NSW Government following a meeting with the DPE.* (Lyon)

This report provides a response to item 2 of the resolution.

RECOMMENDATION

That Council:

- 5 1. Urgently informs the NSW Government that Council insists that the new 'Agritourism', 'Farm experience premises' and 'Farm gate premises' land use terms be prohibited across all zones in the Byron LEP 2014, including in the RU1, RU2 and C3 zones.
- 10 2. Reminds the DPE of its many assurances via the Explanation of Intended Effect, statements on the Planning Portal and various emails that councils could "*identify zones in which they wish to allow the new farm events and farm gate land uses*", and "*councils could decide to amend their LEPs to prohibit these new uses in all zones.*"
- 15 3. Strongly objects to the ambiguity and quasi mandating of 'Agritourism' and its sub terms as permissible with consent in the Byron LEP 2014 from 1 December 2022 and February 2023.
- 20 4. Strongly objects to the significant weakening of the development standards in the exempt and complying provisions that were exhibited in 2021 and have been amended and notified without any meaningful consultation with Council.
- 25 5. Notes Council's strong disappointment with the lack of meaningful or transparent consultation with local constituents and communities, and the disregard for the LGNSW President Darriea Turley's letter outlining serious concerns (dated Oct 13, 2022).
- 30 6. Should the NSW Government persist with effectively mandating 'Agritourism' in certain zones in Byron Shire:
 - 25 a. Opt-in to the 'Farm gate premises' optional clause (only) for Byron LEP 2014;
 - 30 b. Commence a review of the existing Byron LEP and DCP controls relevant to 'Agritourism' and 'Farm stay accommodation' and report back to Council on any consequential changes to these, in due course.
 - 35 c. Strongly request a deferral from the commencement of the Agritourism Reforms until February 2024, to enable the preparation, exhibition and finalisation of local planning controls (as required), that will establish additional Byron Shire specific development standards for the range of agritourism land uses.
- 40 7. Requests that the NSW Government commit to:
 - a. Arranging public information sessions, as a matter of urgency, to explain the reforms to the public and interested communities; and
 - b. Depending on what eventuates, undertaking a 12-month review of the reforms to enable them to be refine, improve or adjust if needed or appropriate.

8. Sends a copy of this resolution to relevant local members of the NSW Parliament and relevant Ministers and Shadow Ministers.

5 **Report**

Background

In October 2022, the NSW Government notified a range of changes to legislation relating to Stage 1 of the Agritourism Reforms. Below are also links to the following relevant to the Reforms:

- 10 - [Standard Instrument \(Local Environmental Plans\) Amendment \(Agritourism\) Order 2022](#)
- [State Environmental Planning Policy \(Exempt and Complying Development Codes\) Amendment \(Agritourism\) 2022](#)
- 15 - [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Amendment \(Farm Stay Accommodation\) Regulation 2022](#)
- DPE Agritourism webpage [Agritourism - \(nsw.gov.au\)](https://www.nsw.gov.au/agritourism)

As a result, the new and amended terms to be inserted into LEPs under the guise of 'Agritourism' and other definitions include:

- 20 • 'Farm gate premises' – where visitors interact with produce from the farm, such as fruit picking, sales, tastings, workshops and cafes (type of agritourism)
- 'Farm experience premises' – where visitors can experience life on a farm including tours, horse riding, weddings, functions and retreats (type of agritourism)
- 25 • 'Farm stay accommodation' – including temporary accommodation in buildings or movable dwellings like tents, caravans. (type of tourist and visitor accommodation).

30 New planning pathways will allow these activities to happen with either fast-track approval (complying development) or no planning approval (exempt development) with development standards. If an activity doesn't meet the standards for exempt or complying development, a development application may be able to be lodged in those zones that permit these uses.

The new land use terms are only to apply where the main use of the land is the production of agricultural goods for commercial purposes.

35 A key objective of the agritourism proposals is to ensure primary production remains the principal use of farmland. This includes by allowing agritourism only on a farm that is a primary production business under the Income Tax Assessment Act 1997 (Assessment

Act 1997 (Cth) or has been categorised as 'farmland' by the council under the Local Government Act 1993.

What this means is you must continue to have a commercial farm to run your agritourism business and the agritourism activities must be ancillary (secondary) to the farm.

- 5 Ostensibly this is the State Government's safety net to ensure that perverse land use outcomes do not result from these reforms on rural lands that should otherwise not be used for Agritourism without a full and proper development assessment.

However, concerns remain with this approach and the development standards applied to enable these new land uses.

- 10 Stage 2 of the Agritourism reforms will see an amending SEPP made in February 2023.

Reform Stages explained

Stage 1 reforms commencing on 1 December 2022

- Amend the NSW Standard Instrument LEP to:
 - 15 - Insert the new agritourism and related land use terms in the SI LEP dictionary — notably, 'Agritourism', and its sub terms ('Farm experience premises' and 'Farm gate premises').
 - Introduce the new 'Farm stay accommodation' and 'Farm gate premises' optional clauses. These clauses remain optional and as such, Council has the opportunity to opt in or maintain its opt-out nomination.
 - 20 - Make changes to the definition of 'Farm stay accommodation'.
 - Expand 'development without consent' opportunities for 'Poultry farms' and 'Pig farms'.
- Amend State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008 to:
 - 25 - Make changes to the Interpretation section (i.e., dictionary) to reflect the new and amended definitions.
 - Introduce savings provisions for complying development.
 - Introduce an 'exempt development' pathway for the rebuilding of farm buildings damaged by natural disasters, agritourism signs, 'Farm experience premises', 'Farm gate premises', 'Farm stay accommodation' and 'Roadside stalls'. These changes will apply to the RU1, RU2 and C3 zones in LEP 2014.
 - 30 - Introduce a new Code, being the 'Agritourism and Farm Stay Accommodation Code' that provides a 'complying development' pathway for 'Farm experience premises', 'Farm gate premises' and 'Farm stay accommodation'.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.17

- Make consequential changes to the Housing SEPP, Primary Production SEPP and the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 in response to the Agritourism Reform changes.

5

Stage 2 reforms commencing February 2023

A new (amending) SEPP will include the following in councils LEPs:

- *Agritourism* permitted with consent where 'agriculture' is permitted with consent, in the RU1, RU2 (and RU4) zones.
- *Agritourism* permitted with consent in additional zones as nominated by councils
- The optional clauses as nominated by councils

15

Note: Updates to Byron LEP 2014 to include the new land uses and the optional clauses for 'farm stay accommodation' and 'farm gate premises' are intended to be made in February 2023 through an amending SEPP. Councils must complete and submit the council-endorsed nomination form to nominate additional zones or adopt the optional clauses by 23 Dec 2022.

Nomination process

As stated above, councils have been asked to:

- to nominate any additional zones for agritourism land uses to implement the *Standard Instrument (Local Environmental Plans) Amendment (Agritourism) Order 2022* (LEP Order)
- to nominate to adopt the revised optional clauses for *farm stay accommodation* and *farm gate premises* in the LEP Order if it has not previously nominated to adopt them.

25 Otherwise, it is proposed to permit *agritourism* (including *farm gate premises* and *farm experience premises*) as being permissible with consent as follows:

- where *agriculture* is permitted
- in the RU1, RU2 and RU4 zones, and
- in other zones as nominated by councils.

30

Farm stay accommodation is already a permissible land use in the RU1, RU2 and C3 zones, and clause 6.8 Rural and nature-based tourism development of the LEP 2014 applies to it. There are also provisions in DCP 2014 for this type of use. As such the optional clause is not needed for this use at this time.

35

Farm gate premises is a new land use term, and by State Government mandate the use will be permitted in the RU1, RU2 and C3 zones in LEP 2014 from 1 December. There are no existing provisions in the LEP 2014 or DCP 2014 that apply to this use. As such,

Council needs to opt in by nomination for the optional clause for farm gate premises before 23 December to ensure that the clause is included in February 2023 without the need for a planning proposal.

It is not recommended that Council nominate any additional zones for these uses.

5 Key issues

- DPE Consultation – pathway changed during the process without consultation with councils and with significant implications
- We have worked with our community over several years to set up a Byron appropriate framework for the use of rural land underpinned by a Rural Land Use Strategy – this has the capacity to derail this good work and community confidence
- We have an Agricultural Cluster Group and adopted Agricultural Action Plan which has not been considered by the DPE - this has the capacity to derail this good work and community confidence
- Only Limited exclusions to these development pathways are being considered by DPE e.g., Hunter Water Drinking Catchment and the Mount Panaroma precinct
- The development standards relied upon are the result of a pilot program with a limited number of councils, none of which were on the north coast or in sensitive coastal locations – as such regional variations and needs have been ignored
- The changes to the Standard Instrument LEP and Byron LEP have substantial implications for Byron Shire, including undermining current endorsed policy positions for land uses like rural weddings, events and tourist and visitor accommodation (e.g., cabins).
- Notwithstanding the new exempt and complying pathways introduced above 1 December 2022, the new land use term ‘Agritourism’, and its sub terms will become permissible with consent anywhere that ‘Agriculture’ is permissible with consent in NSW from February 2023.
- The significantly heightened potential for land use conflict will require attention and response from Council officers. This will unfortunately divert council planning resources – already under extreme pressure – away from critically important development assessment functions – hampering the ability of this council to contribute to addressing the urgent need for more housing, which is especially acute following this year’s flood events.
- Council will also need time to consider issues such as lots without dwelling entitlements, compliance implications, unregulated clearing, risk to life in camping areas (from fires and floods) and other potential impacts.

Conclusion

Council staff have made repeated representations to and had discussions with the DPE (and Minister’s Office) since October about these reforms.

Despite this, the DPIE position remains as follows:

- 5 • Agritourism reforms are progressing regardless of councils resolutions
- No deferral of these reforms can be granted to councils like other SEPPs e.g., Low Rise Medium Density Code
- No ability to request a SEPP exclusion exists
- 10 • No ability to request or option to scope out Coastal Specific development standards for exempt or complying development which had been previously indicated by DPE staff

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans

Recent Resolutions

- 15 • 22-595

Legal/Statutory/Policy Considerations

As discussed in this report.

Financial Considerations

None relevant to this report.

20 **Consultation and Engagement**

These are State Government Reforms.

Council has continued discussions with the DPIE staff in good faith, only to be told that the Minister for Planning’s position is that the Agritourism reforms will remain as drafted and apply as a blanket across all NSW.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.17

The numerous representations to the Minister and DPIE about our concerns as such have not been satisfactorily responded to.

Councils, such as Tweed, Ballina, Bellingen, Clarence Valley and [Shoalhaven](#), have been making similar submissions and considering opportunities to request deferrals as well.

5 Most have current reports and resolutions on same.

It is noted that Local Government NSW has written to the Minister for Planning and Minister for Homes, outlining a range of concerns regarding the proposed new agritourism rules. Their advocacy on behalf of NSW Councils includes a request to postpone the commencement of the reforms (Recommendation point 5).

10

Report No. 13.18 Annual Emissions Inventory and update on Net Zero Emissions goal

Directorate: Sustainable Environment and Economy

Report Author: Phillip Ridler, Sustainability Officer

5 **File No:** I2022/1715

Summary:

This report outlines the annual emissions inventory for the 2021/22 financial year for Byron Shire Council operations and provides an update on the current identified emissions boundary.

10 FY2021/22 is the first year that Council has produced an annual emissions report inclusive of scopes 1, 2 and 3, i.e. Council's full Climate Active-compliant emissions boundary. Previous emissions reports identified six scope 1 and 2 emission sources, and in this year's report Council has added another 26 scope 3 emission sources.



15 With the addition of scope 3 emission sources this year the overall emissions are higher than reported last year, however, the overall trajectory of Council's emissions is down.

RECOMMENDATION:

20 **That Council:**

1. **Notes the annual emissions inventory, (Attachment 1 #E2022/114369), and Council's progress toward meeting the net zero emissions target.**
2. **Notes the progress update on the Net Zero Emissions Action Plan for Council Operations 2025.**
- 25 3. **Notes that the annual emissions report will be tabled at the next available Climate Change & Resource Recovery Advisory Committee Meeting.**

Attachments:

- 30 1 2021-22 Annual inventory of Council's emissions profile all scopes - Final, E2022/114369 
- 2 Net Zero Emissions Action Plan for Council Operations 2025, E2020/56957 

Report

5 Council has been annually reporting on its greenhouse gas emissions since baseline year 2015/16. Council has resolved to be net zero emissions for its operations by 2025, to source 100% of its energy through renewable sources by 2027 (**Res 17-086**), and to become certified carbon neutral under the Climate Active standard commencing in financial year 2025/26 (**Res 19-634**).

The *Net Zero Emissions Action Plan for Council Operations 2025* (the Action Plan) was adopted by Council in 2020 (**Res 20-628**) and maps a path for future activities that Council will undertake to reduce emissions from Council operations (Attachment 2, E2020/56957).

10 Part A of this report presents the 2021/22 Annual Emissions Inventory for Council operations. Part B of this report presents the second annual progress update on the Action Plan.

Part A: 2020/21 Annual Emissions Inventory overview

15 FY2021/22 is the first year that Council has produced an annual emissions report inclusive of scopes 1, 2 and 3, i.e., Council's full Climate Active-compliant emissions boundary. Previous emissions reports identified six scope 1 and 2 emission sources, and in this year's report Council has added another 26 scope 3 emission sources.

20 On 5 May 2022 staff presented Councillors with an internal report on Council's scope 3 emissions generated by consultants, 100% Renewables. This report was prepared after last year's annual report 'cut-off date', so we have retrospectively added the FY2020/21 figures to the report to give better context.

25 Consequently, Council has experienced an increase in reported organisational carbon emissions compared to the previous reported year, however, lower than the retrospectively added figures to the FY2020/21 report. This shows the Council's emissions have reduced this year by 5.4% compared to the equivalent widened emissions boundary of last year.

Figure 1 and Table 1 below show how Council is tracking towards the net zero target by 2025. Table 2 provides a summary of change in relation to different emissions sectors.

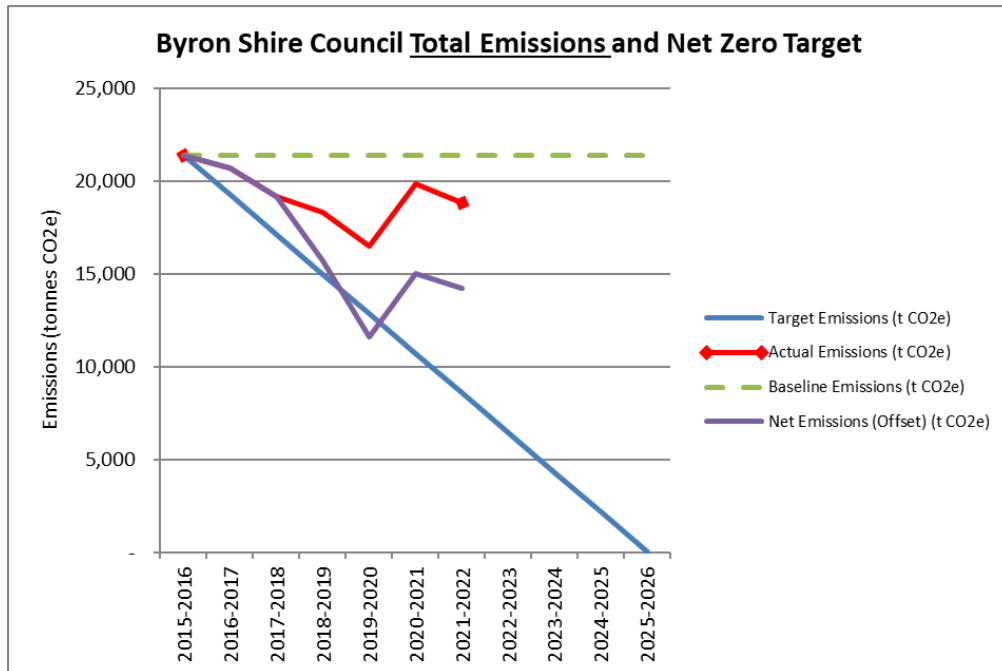


Figure 1. 2019-20 Emissions tracking towards 2025 target.

5

Table 1. 2019-20 Actual and net emissions since baseline year 2015/16.

Financial Year	Actual Emissions (tCO2e)	Net Emissions (Offset) (tCO2e)
2015/16	21,389	21,389
2016/17	20,701	20,701
2017/18	19,122	19,122
2018/19	18,325	15,700
2019/20	16,442	11,618
2020/21* (All scopes)	19,810	14,998
2021/22* (All scopes)	18,805	14,190

10

Table 2. Summary of Emissions Sectors and Change

Summary of Emissions Sectors		
	Highlights	Emissions Change (tCO2e)
Electricity & Fossil fuels		
Electricity	<ul style="list-style-type: none"> Contract with Powershop until Jan22, then Iberdrola and Origin provided 100% renewable electricity. 3.8% reduction in electricity use. Annual cost \$1,248,775. 	-161 (net emissions is zero)
Streetlights	<ul style="list-style-type: none"> Contract with Powershop until June22, then Iberdrola provided 100% renewable electricity. Electricity use was reduced by 6.1% due to the replacement program of failed fluorescent lamps with 	-36 (net emissions is zero)

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

	<ul style="list-style-type: none"> LED lamps. Annual cost if street light service is \$326,188. 	
Fleet	<ul style="list-style-type: none"> 1.8% decrease in fuel consumption. Emissions fell 1% for FY2021/22 The price of petrol and diesel increased significantly this year due to higher world demand of fuel post the Covid travel restrictions, and current international market volatility. 39% of fuel used in light (passenger) vehicle fleet and 61% used in heavy plant and equipment. Significant action is required to reduce fleet sector emissions. Annual cost \$781,084. 	-9
Waste		
Waste	<ul style="list-style-type: none"> 8.2% reduction in overall emissions for waste. 8.6% natural decline of emissions in landfill. Composting emissions increased compared to the previous year by 15.5%. No Australian Carbon Credit Units (ACCU's) sold during the year. 	-618
Wastewater	<ul style="list-style-type: none"> 11% decrease in wastewater fugitive emissions (108 tCO₂e), despite a 1.75% decrease in flow. Main decrease in emissions was due to a review of the calculation methods for Bangalow STP. The annual flow was slightly lower than last year, although significantly higher than the previous 5 years. 	-108
Community investment - Construction		
Asphalt		+267
Concrete	<ul style="list-style-type: none"> Increase over FY2020/21 emissions due to the extreme weather events 	+53
Road Building Materials		+211
Equipment hire		+147
Water for Council operations		
Water	<ul style="list-style-type: none"> Water usage increased by 9.7ML to 45.80ML, up 27% on the previous year. Emissions were up 25% to 94.96 (tCO₂e) 	+25
Employee commute		
Commute	<ul style="list-style-type: none"> Based on survey, increased due to increased number of FTE 	+63
Other emissions		
Paper IT equipment IT software Postage & couriers Telecommunications Entertainment Advertising Cleaning Stationery Legal fees	These emissions contribute approximately 958 (tCO ₂ e) or 6.8% of the total. The emissions are calculated using Climate Active factors based on the spend on each of the emission sources or uplift factors.	-20

Popcar – Car share service Machine & vehicle repairs Refrigerants Education Working from home Air travel Business accommodation Food and catering Office equipment		
--	--	--

Impacts of extreme weather events

5 The extreme weather events in February and March 2022 caused severe infrastructure damage in Byron Shire through flooding and storm damage. Infrastructure, such as roads, bridges and pavements had the most damage but also the large volume of rainfall had a direct impact in the provision of services by Council. The above-mentioned issues had a direct cost impact to Council but also resulted in an increase in the emissions profile, due to an increased use of materials, electricity, workforce resources and asset utilisation. Some of the key identified impacts in the emissions in FY21/22 are as follows:

10 **Infrastructure and construction:**

- This sector had one of the largest increases in emissions for FY2021/22, and the ongoing repair and replacement of Council infrastructure will continue to impact future emissions.
- Areas that saw direct increases included asphalt, concrete, general building materials, equipment hire, work force, diesel usage, and transport.

Electricity:

- Although the total electricity consumption was down 3.8% compared to the previous year, some increased asset consumption directly corresponded with the weather events.
- 20 • The sewage treatment plants (STP) had higher than average volumes to treat due to increased water entering the system. This requires extra duty from pumps, blowers, chemicals and associated STP infrastructure.
- The Resource Recovery Centre had an increased consumption due to the need to pump out contaminated rainfall and manage increased amounts of leachate. This resulted in extra electricity consumption in pumps but also transport costs to treat the liquid at the Byron STP.

A full and detailed analysis of each sector and suggested action is provided in Attachment 1.

Part B: Progress update on *Net Zero Emissions Action Plan for Council Operations 2025*

5 The *Net Zero Emissions Action Plan for Council Operations 2025* (the Action Plan) (Attachment 2) was adopted by Council at the Ordinary Meeting of 26 November 2020 (**Resolution 20-628**). The Action Plan maps a path for future activities that Council will undertake to reduce emissions from Council operations. It was designed to align with the Delivery Program and Operational Plan and allocates responsibility for specific actions to different Directorates. This helps keep staff accountable and to track progress.

10 There are five objectives, based on Council’s principal sources of emissions, which provide the Action Plan’s basic structure:

- Objective A – Electricity;
- Objective B – Fuel;
- Objective C – Waste, Water, and Sewer;
- 15 • Objective D – Governance; and
- Objective E – Community Infrastructure.

Actions within the Action Plan are labelled based on the emissions objective (i.e. sector) they correlate to. For example, under Objective A – Electricity, Action A1 is “investigate 5MW solar farm at Dingo Lane, Myocum”.

20 The measure under 2021/22 Operational Plan Activity 3.2.1.1 “Implement the *Net Zero Emissions Action Plan for Council Operations 2025*” is, “annual report to Council on delivery of Action Plan, alongside annual emissions inventory”. The following update completes that OP Activity.

Objective A – Electricity

25 Objective: improve electricity efficiency and transition to 100% renewable energy.

As of 1 January 2022, Council achieved the “100% renewables” part of **Resolution 17-086** and fulfilled the overarching Action Plan Electricity objective to “transition to 100% renewable energy”. This is five years ahead of the 2027 target. Until 1 January 2024, Council has a contract with electricity retailer Iberdrola to source approximately 60% of its
30 total operational electricity needs (all large sites) from Collector Wind Farm in Cullerin, NSW. The remainder of Council’s electricity needs will be 100% GreenPower (all small sites). Fulfilling the 100% renewables target will help Council achieve our net zero emissions target by 2025.

35 While Council may have achieved this renewable energy target, the best solution is to always avoid use of electricity in the first place or seek to reduce current consumption. The following actions seek to minimise Council’s carbon profile.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

Action	Corresponding OP Activity	Status update	Estimated delivery date
<i>A1. Investigate 5MW solar farm at Dingo Lane, Myocum</i>	1.4.4.5	Staff are continuing with the Development Application process to progress the project to shovel ready status. The project is due to the Northern Rivers Regional Planning Panel in November 2022.	30 June 2023 (project to be shovel ready)
<i>A2. Investigate bioenergy facility at West Byron STP</i>	3.2.1.5	The Development Application consent was granted in May 2022. If/when State and Federal grant funding approvals are forthcoming, Council can consider the holistic financial implications of the Bioenergy and Dingo Lane projects on Council's Long Term Financial Strategy and make a decision for 'Go/No Go' on construction for the Bioenergy Facility. Note also that Public Private Partnerships with private financing could be contemplated for this and the solar farm projects.	30 June 2023 (Council decision for 'Go/No Go')
<i>A3. Facilitate bulk roll out of LED streetlights for Byron Shire</i>	n/a	Planning for the bulk upgrade is currently being undertaken and the project is expected to be rolled out in early 2023 with Essential Energy.	2023 (bulk rollout planned)
<i>A4. Investigate energy efficiency upgrade of Council Administration Building, Mullumbimby</i>	3.2.1.11	The Sustainability team has partnered with Council's Property Maintenance team to investigate options for energy efficiency upgrades at the Administration Building. Quotations have been sought for lighting upgrades and new solar PV systems and these are currently being reviewed.	30 June 2023 (business case to Council)

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

Objective B – Fuel

Objective: optimise fuel efficiency and transition to renewable fuel sources.

Action	Corresponding OP Activity	Status update	Delivery date
B1. <i>Investigate new bulk fuel storage and monitoring system to minimise manual data entry</i>	3.2.1.3	Fleet Team Leader is still reviewing Council's fuel infrastructure, including software used for data capture and reporting. Current infrastructure has passed its recommended life span and the fuel management processes currently used are inefficient. The project has been started and testing of new valves is underway, it is thought to be completed by the end of FY2022.	30 June 2023 (ET report)
B2. <i>Develop and deliver Electric Vehicle Charging Station Policy and Procedure</i>	1.6.3.2	<i>Electric Vehicle Charging Station Instalment and Maintenance Procedure 2021</i> was introduced as an internal document to guide staff in June 2021. This document applies to staff wishing to install new or maintain existing Council-owned EV charging stations. A how-to guide for external providers wishing to install charging stations on Council land is currently being investigated by staff. In addition, the Sustainability Team has engaged a third party to manage and monitor Council's two EV charging stations on one software platform, and formalised Council's Property Maintenance Coordinator as the EV charging station asset owner. The chargers in Mullumbimby were replaced in March 2022 and the charger at	30 June 2023 (ongoing management)

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

Action	Corresponding OP Activity	Status update	Delivery date
		<p>Byron Library was repaired and recommissioned in September 2022.</p> <p>A user-pays system was implemented in 2022 for both locations.</p>	
<p><i>B6. Review Council's passenger vehicle policies and procedures to encourage Hybrid and Electric Vehicle ownership</i></p>	<p>n/a</p>	<p>This was partially achieved on 7 October 2020 when staff updated the <i>Light Motor Vehicle Fleet Procedure – "Fees and Charges Makes & Models"</i> to include Hybrid and Electric Vehicle options.</p> <p>A plan outlining what needs to be included in an EV Transition strategy was developed and presented to the Executive Team on 30 November.</p>	<p>Partially achieved October 2020. It is recommended to develop the EV implementation strategy in FY2023.</p>
<p><i>B9. Investigate options for decentralised workforce - Review Scope 3 emissions boundary to include working from home arrangements.</i></p>	<p>n/a</p>	<p>Due to the "work from home" health orders resulting from the COVID-19 pandemic, Council's workforce has become decentralised over the past two years. This contributed to a decrease in electricity usage at Council's Administration building in 2021/22. It is anticipated that staff will continue to be given the opportunity to work from home in some capacity post-pandemic.</p> <p>The Council's emissions boundary is now reporting separate Scope 3 emission sources for working from home and staff commute.</p>	<p>Completed 30 June 2022 (review of scope 3 emissions boundary)</p>

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

Objective C – Waste, Water, and Sewer

Objective: Reduce waste and improve water efficiency.

Action	Corresponding OP Activity	Status update	Delivery date
C3. <i>Progress the closure and rehabilitation of the Southern Expansion landfill cell at the Byron Resource Recovery Centre.</i>	1.4.4.4	Staff are progressing the landfill capping and closure of civil works of the Southern Expansion and will commence rehabilitation as outlined in the <i>Byron Resource Recovery Centre Master Plan</i> .	30 June 2023 (Stage 1 works completed)
C4. <i>Increase efficiency of sewage treatment plants and pump infrastructure.</i>	3.2.1.13	A new temporary position of Sustainability Officer – Utilities was filled in April 2021 to focus on increasing energy efficiency and reducing emissions in the utilities (wastewater collection and treatment) sector. Energy usage audits and benchmarking of Council's utilities services are ongoing. Energy efficiency actions have been identified and the utilities electricity consumption decreased by 2.66% this year.	30 June 2022 (energy usage audit complete)
C6. <i>Review operation of gas flare at Byron Resource Recovery Centre</i>	3.2.1.4	Staff are working with a consultant to review the efficiency of the Myocum Landfill Gas Flare and investigate Council's Australian Carbon Credit Unit (ACCU) generation in line with the net zero emissions target. The ACCU contract was due to expire in December 2021, but there was a shortfall in Council's credits. Staff have requested a five-year extension from the Clean Energy Regulator in order to generate sufficient ACCUs and meet contract obligations.	30 June 2023 (report to Council)

BYRON SHIRE COUNCIL

Objective D – Governance

Objective: Disclose and improve emissions reporting and invest in high quality carbon offsets.

Action	Corresponding OP Activity	Status update	Delivery date
<p>Actions D2 and D3. <i>Conduct Councillor and staff education on carbon monitoring and offsets and develop and implement a carbon offset policy for Council</i></p>	3.2.1.10	<p>The Sustainability team has begun research and development of a draft carbon offset policy for Council operations that will set out how Council selects carbon offset units to achieve net zero emissions. Internal workshops with Councillors and senior leadership staff were held in May and October 2022 and further work is being undertaken by the Sustainability team. This is looking at the possibility of locally generated carbon credits.</p>	<p>30 June 2023 (report to Council)</p>
<p>D5. <i>Develop an emissions disclosure framework for Council staff - Define Council's emissions boundary in accordance with the Climate Active guidelines</i></p>	3.2.1.2	<p>All relevant scope 3 emissions will need to be included in Council's boundary by 2025/26 when we aim to become certified carbon neutral under Climate Active.</p> <p>Through working with a consultant, 100% Renewables, the Climate Active-compliant boundary was determined and calculated for FY21 & FY22. All future emission reports will include the full scope 3 boundary.</p>	<p>30 June 2022 Completed and included in FY2022 emissions report</p>

5

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
3: Nurtured Environment We nurture and enhance the natural environment	3.4: Support and empower our community to adapt to, and mitigate our impact on climate change	3.4.3: Monitoring and reporting - Monitor and report on actions that aim to address climate change	3.4.3.2	Prepare Annual Emissions Inventory to determine progress towards 2025 Net Zero Emissions Target.
3: Nurtured Environment We nurture and enhance the natural environment	3.4: Support and empower our community to adapt to, and mitigate our impact on climate change	3.4.4: Net Zero - Work towards achieving Council's 100% net zero-emissions target	3.4.4.1	Develop a carbon offset policy and procedure for Council in order to achieve net zero emissions.
3: Nurtured Environment We nurture and enhance the natural environment	3.5: Minimise waste and encourage recycling and resource recovery practices	3.5.5: Facilities and services - Provide resource recovery facilities and services that meet statutory requirements	3.5.5.5	Investigate Council's methane gas flare and Australian carbon credit unit generation in line with net zero emissions target

Recent Resolutions

- 5 • Res 17-086: To achieve net zero emissions for Council operations by 2025; and to source 100% of its energy through renewable sources within ten years (by 2027).
- Res 19-268: Adoption of Net Zero Emissions Strategy for Council Operations 2025.
- Res 19-634: To become certified carbon neutral under the Climate Active standard (formerly the National Carbon Offset Standard, or NCOS) commencing in financial year 2025/26.
- 10 • Res 20-628: Adoption of Net Zero Emissions Action Plan for Council Operations 2025.

Legal/Statutory/Policy Considerations

None relevant to the report.

Financial Considerations

None relevant to the report.

5 Consultation and Engagement

None relevant to this report.

5 **Report No. 13.19 Update Resolution 22-552 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre)**

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy

10 **File No:** I2022/1740

Summary:

15 Council considered Report No. 13.7 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre) [Agenda of Ordinary \(Planning\) Meeting - Thursday, 13 October 2022 \(infocouncil.biz\)](#) and resolved as follows:

22-552 Resolved:

1. *That Council proceeds with a planning proposal as attached to this report (Attachment 1) that seeks to amend Byron LEP 2014 to permit events on certain Council owned land at 249 Ewingsdale Road without the need to obtain development consent;*
- 20 2. *Forward the planning proposal to the NSW Department of Planning and Environment for a gateway determination;*
3. *That Council, pending a positive gateway determination, undertakes public exhibition of the planning proposal in accordance with the determination requirements;*
- 25 4. *That Council considers a submissions report post exhibition that includes any recommended changes to the planning proposal for final adoption.*

Staff uploaded the Planning Proposal to the NSW Planning Portal on 20 October 2022, only to have it returned.

30 A discussion with relevant areas of the Department of Planning Industry and Environment (DPIE) ensued, including SEPP Codes and Regional Office teams to resolve the difference of position between us and DPIE such that Council's planning proposal could be resubmitted and progressed to gateway determination.

For this to happen Council needs to agree to amend the Planning Proposal. This report seeks a Council resolution to do this.

RECOMMENDATION:

That Council:

- 5 1. **Notes the update provided on Resolution 22-552 PLANNING - 26.2022.8.1 - Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to permit events on certain Council owned land at 249 Ewingsdale Road, Ewingsdale (Cavanbah Centre);**
- 10 2. **Supports an amendment to the Planning Proposal (Attachment 1 #E2022/93749) such that the proposed events clause will now seek to permit a defined LEP land use (like function centre) as development without consent;**
3. **Authorises staff to make the amendment in point 2;**
4. **Supports the submission of the amended Planning Proposal to the Department of Planning Industry and Environment for gateway determination;**
- 15 5. **Pending a positive gateway determination, undertakes public exhibition of the planning proposal in accordance with the determination requirements;**
6. **Considers a submissions report post exhibition that includes any recommended changes to the planning proposal for final adoption.**

Attachments:

- 20 1 ORIGINAL 26.2022.8.1 Planning Proposal Cavanbah Events (v1 Gateway) - September 2022, E2022/93749 

Report

5 In accordance with Resolution **22-552**, staff uploaded a Planning Proposal to the NSW Planning Portal on 20 October 2022 to amend Byron LEP 2014 to permit events on certain Council owned land at 249 Ewingsdale Road without the need to obtain development consent (exempt development), only to have it returned.

The return of the Planning Proposal was unexpected and in staff's mind without a clear planning reason.

Given there are similar clauses in many other Council's LEPs it did not make sense why Byron Shire was unable to have the same planning pathway in its LEP.

10 A discussion with relevant areas of the DPIE ensued, including SEPP Codes and Regional Office teams.

15 The reason given for the Planning Proposal being returned was that Parliamentary Counsel (PC) is no longer supportive of making 'exempt' LEP provisions in respect of events. Ostensibly this is only a recent position of PC as they have become problematic from a drafting and implementation perspective. Note, PC are the arm of Government responsible for drafting all legal and statutory instruments, and as such must approve any LEP amendment for it to be notified.

20 It has been suggested by DPIE that Council amend the Planning Proposal such that the proposed events clause will now seek to permit a defined LEP land use (like 'function centre') as development without consent, which would require a Part 5 activity approval from Council to proceed. This approach is expected to be acceptable to PC.

25 This new LEP clause would run parallel to other existing planning pathways open to events, activities or uses on the subject land that can otherwise be characterised as recreation areas and recreation facilities (outdoor) as defined under a relevant Environmental Planning Instrument or Development Consent.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.1	Assess requests to amend Local Environmental Plans and/or Development Control Plans including maps in accordance with legislative requirements.
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.1: Foster opportunities to express, celebrate and participate in arts and cultural activity	2.1.3: Events and festivals - Support and enable arts & cultural activity, festivals, projects, and events	2.1.3.9	Collaborate with government, agency and industry on policy and legislative reforms

Recent Resolutions

- 22-552

5 Legal/Statutory/Policy Considerations

As discussed in the report.

Financial Considerations

10 If Council chooses to proceed with the planning proposal, it will be at its own expense as a Council-initiated planning proposal. If Council chooses not to proceed, then the matter does not incur any additional costs.

Consultation and Engagement

To be undertaken in accordance with the Gateway determination.

Report No. 13.20 PLANNING - Report of the Planning Review Committee held 1 December 2022

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 **File No:** I2022/1793

Summary:

This report provides the outcome of the Planning Review Committee (PRC) held on 1 December 2022.

NOTE TO COUNCILLORS:

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

15

RECOMMENDATION:

That Council endorses the outcomes of the Planning Review Committee meeting held on 1 December 2022.

20

Report

The Planning Review Committee meeting was held on 1 December 2022. The meeting commenced at 4:25pm and concluded at 4:35pm.

25 **Councillors:** M Lyon (Mayor), Cr P Westheimer, Cr A Hunter, Cr M Swivel, Cr S Ndiaye, Cr D Dey.

Apologies: Cr A Pugh, Cr S Balson Cr C Coorey

Staff: Chris Larkin (Manager Sustainable Development,

Conflict of Interest: Nil

30 Council determined the following original development applications. The S.4.55 applications to modify those consents were referred to the Planning Review Committee to decide if the

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.20

modification applications can be determined under delegated authority with the outcome shown in the final column.

DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
5.1989.605.2 Mr JL Bennette	Kalamajere Drive Suffolk Park S4.55 to Subdivision modifying a condition relating to contributions	Level 0	Staff Delegation
10.2021.511.2 Town Planning Studio Pty Ltd	865 Broken Head Rd Broken Head S4.55 to delete condition 26(f) relating to removal of bamboo planting adjacent to the Northern property boundary	Level 2 11/10/22 to 24/10/22 1 submission	Staff Delegation

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.21 Request For Tender Outcome - Rifle Range Road Intersection Upgrade

5 **Directorate:** Infrastructure Services
Report Author: Hayden Kress, Project Engineer
File No: I2022/1102

Summary:

10 On 16 March 2022, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2022-1314– Lismore Road and Rifle Range Road Intersection Upgrade.

The Request for Tender was advertised from 21 March 2022 to 4 May 2022. Tenders were received from the following organisations:

- Bellwether Contractors
- 15 • Brooks Hire Service Pty Ltd
- Durack Civil
- Logical Line Marking
- Quickway Constructions Pty Ltd

20 Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the works for Contract 2022-1314.

RECOMMENDATION:

- 25 1. **That Council awards Tender 2022-1314– Lismore Road and Rifle Range Road Intersection Upgrade to the preferred supplier identified in the tender evaluation report (Attachment 1 #E2022/118145).**
- 30 2. **That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2021.**

Attachments:

- 1 Confidential - Signed Request for Tender - Evaluation Report Rifle Range Road Upgrade, E2022/118145

Report

5 On 16 March 2022, the General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract 2022-1314– Lismore Road and Rifle Range Road Intersection Upgrade. The contract is required for the construction delivery of the intersection upgrade.

The Request for Tender sought responses from proponents to provide the following:

- Widening Lismore Road to allow for a right turning lane into Rifle Range Road.
- Drainage upgrades including a new major culvert under Lismore Road to reduce flooding and improve access on Rifle Range Road
- 10 • A new bus bay and shelter for the north-bound bus on Lismore Road
- A new bus bay and shelter for the south-bound bus on Rifle Range Road
- Shared paths connecting the bus bays to Tristania Street
- Signage, safety barriers and line marking

15 The Contract was expected to commence in July 2022 and with construction taking 5 months.

Tenders were advertised as follows:

Byron Shire News: 20 April 2022

Vendorpanel: 23 March – 4 May 2022

Council website: 23 March – 4 May 2022

20 A non mandatory tender site briefing was held on 12 April 2022.

An Evaluation Panel comprising of three Council staff members was formed.

Tenders closed on 4 May 2022 and tenders were received from the following proponents:

- Bellwether Contractors
- Brooks Hire Service Pty Ltd
- 25 • Durack Civil
- Logical Line Marking
- Quickway Constructions Pty Ltd

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

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

Mandatory criteria:

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

Qualitative criteria:

Criteria	Elements
Profile and relevant experience	Tenderer profile
	Previous relevant experience
	Environmental practices
	Opportunities for disadvantaged people
	Local employment opportunities
Quality and availability of resources	Proposed key personnel
	Proposed staff
	Use of subcontractors
	Vehicles, plant and equipment
Delivery Plan	Goods/services standards and methodology
	Implementation plan
	Product sustainability
	Supporting local business, social enterprise and Indigenous business

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

Price	Total contract price
-------	----------------------

The Evaluation Panel have conducted referee checks on the preferred tenderer. The results of this check is deemed by the Evaluation Panel to be satisfactory as detailed in the attached Evaluation Report.

- 5 Financial checks on the preferred tenderer are underway. Council will be advised prior to the Council meeting if this check results in unsatisfactory outcome.

Key issues

Tender pricing is valid until 31 December 2022. On this basis if the contract is to proceed it must be awarded in December 2022.

Financial Considerations

- 10 The price basis for the contract is a lump sum.

Council has increased the budget to \$2,920,778 for this project following the September 2022 Quarterly review.

The tender assessment estimate and available funding is outlined in Figure 1.

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

TENDER ASSESSMENT ESTIMATE					
Description :			Rifle Range Road / Lismore Road Intersection		
Date			28/11/2022		
File No.			PM19_1143		
Designed By:			Burchills		
Estimated By:			H Kress		
Issue No.			2		
Item	Description	Qty	Unit	Rate	Total
1.00	TENDER PRICE				
1.10	Panel Preferred Lump Sum Tender Price	1	item	\$ 2,337,289.42	\$ 2,337,289
2.00	PRECONSTRUCTION				
2.10	Remaining civil design	1	Item	\$ 10,000.00	\$ 10,000
2.20	Electrical design	1	Item	\$ 5,000.00	\$ 5,000
2.30	Pavement design report revision	1	Item	\$ 2,000.00	\$ 2,000
2.40	UGL licence application	1	Item	\$ 1,000.00	\$ 1,000
	PRECONSTRUCTION TOTAL				\$ 18,000
3.00	PRELIMINARIES				
3.10	Project verifier	1	item	\$ 48,800.00	\$ 48,800
3.20	Site clearing	4166	m2	\$ 7.50	\$ 31,245
3.30	Service relocation - Telstra	1	item	\$ 50,000.00	\$ 50,000
3.40	Service relocation - Nextgen	1	item	\$ 10,000.00	\$ 10,000
3.50	Service reocation - Essential Energy	1	item	\$ 50,700.00	\$ 50,700
3.60	Supply of bus shelters	2	each	\$ 13,608.75	\$ 27,218
	PRELIMINARIES TOTAL				\$ 217,963
	Sub Total				\$ 2,573,252
	Contingency	10%		\$ 2,573,251.92	\$ 257,325.19
	Project Management	2%		\$ 2,573,251.92	\$ 51,465.04
	TOTAL				\$ 2,882,042
AVAILABLE FUNDING					
	Federal Road Safety 44283.132				\$ 536,500.00
	RtoR				\$ 580,100.00
	S94				\$ 326,000.00
	SRV Allocation				\$ 672,500.00
	TfNSW				\$ 805,678.00
	TOTAL				\$ 2,920,778.00

Figure 1 - Tender Assessment Estimate

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

Statutory and Policy Compliance Considerations

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

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

10 Local Government (General) Regulation 2021 - Reg 178

[Acceptance of tenders](#)

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

178 *Acceptance of tenders*

- (1) *After considering the tenders submitted for a proposed contract, the council must either—*
- 5 (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
- (b) *decline to accept any of the tenders.*
- (1A) *Without limiting subsection (1), in considering the tenders submitted for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of section 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted.*
- 10
- (2) *A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under section 176). However, if the successful tender was made by the council (as provided for in section 55(2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*
- 15
- (3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following—*
- 20 (a) *postpone or cancel the proposal for the contract,*
- (b) *invite, in accordance with section 167, 168 or 169, fresh tenders based on the same or different details,*
- 25 (c) *invite, in accordance with section 168, fresh applications from persons interested in tendering for the proposed contract,*
- (d) *invite, in accordance with section 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
- 30 (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
- (f) *carry out the requirements of the proposed contract itself.*
- (4) *If a council resolves to enter into negotiations as referred to in subsection (3)(e), the resolution must state the following—*
- 35 (a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subsection (3)(b)–(d),*
- (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).*

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.21

Council's endorsement of the recommendation to award the tender as recommended in the attached Evaluation Report is sought.

Report No. 13.22 Planning agreement between Billinudgel Pty Ltd and Byron Shire Council

Directorate: Infrastructure Services

Report Author: Christopher Soulsby, Development Planning Officer S94 & S64

5 **File No:** I2022/1727



Summary:

10 The purpose of this report is to seek Council's endorsement to enter into a planning agreement with Billinudgel Property Pty Ltd. The terms of the planning agreement are for Billinudgel Property Pty Ltd to make a monetary contribution to Council of one dollar per camper at a festival held on the site.

RECOMMENDATION:

15 **That Council agrees to enter into the Planning Agreement provided as Attachment 1 (E2022/117451) to this report.**

Attachments:

- 20
- 1 Planning Agreement Billinudgel Pty Ltd and Byron Shire Council - Edits by Legal Services, E2022/117468 
 - 2 Billinudgel Pty Ltd MOD 2 - SSD - Consolidated Consent (1), E2022/117318 

Report

The Department of Planning approved the State Significant Development for the North Byron Parklands - Cultural Events site. The consent has subsequently been modified by the Department and a consolidated version of the consent is provided as attachment 2.

- 5 The consent contained a condition that required a planning agreement between the developer and Council be entered into. Condition A22 and appendix 3 is set out as follows:

A22. Within twelve months of the date of this consent, or other timeframe agreed by the Planning Secretary, the Applicant must enter into a PA with BSC in accordance with: (a) Division 7.1 of Part 7 of the EP&A Act; and (b) the terms of the offer in Appendix 3

APPENDIX 3 GENERAL TERMS OF APPLICANT'S PLANNING AGREEMENT OFFER

The Planning Agreement (PA) must include provisions for the payment, collection, management and distribution of the contributions under the agreement, with a focus on funding community and infrastructure projects in the area surrounding the site.

Council	Terms of PA Offer
Byron Shire Council	<ul style="list-style-type: none"> • A contribution of \$1 per festival camping patron, per accommodation booking, up to a maximum of \$120,000 per year. • Contributions to be managed generally in accordance with the draft Byron Voluntary Visitor Fund (Option 3) or as otherwise agreed between the parties, with funding focused in areas north of the Brunswick River (and including the township of Brunswick Heads) to the northern local government area boundary. • Contribution funding to be expended on infrastructure projects that support the community and tourists that visit these areas. • Contribution funding to be paid to Byron Shire Council six monthly (no more than 30 days after each event has concluded).

The developer has provided a copy of a draft agreement that conforms to these requirements.

The operative part of the draft agreement proposes a contribution in the following terms:

- 15 *A contribution of \$1 per large festival camping patron, per accommodation booking, up to a maximum of \$120,000 per year funding focused in areas north of the Brunswick River (and including the township of Brunswick Heads) to the northern local government area boundary with Contribution funding to be expended on infrastructure projects that support the community and*
- 20 *tourists that visit these areas. Contribution funding to be paid to Byron Shire Council six monthly (no more than 30 days after each large camping event has concluded)*

25 Unlike a planning agreement that is negotiated by Council with a developer the terms of this agreement are set by the consent and Council has no ability to force the developer to accept amended terms. The developer has a consent and if Council declines to enter into

the agreement in accordance with the terms as set out in condition A22 then it is the view of staff that the consent would remain operational.

Options

- 5 Council may opt to entering into the planning agreement to accept the monetary contribution or may decline to enter into the agreement. There is limited scope to negotiate any changes to the agreement.

Strategic Considerations

Community Strategic Plan and Operational Plan

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

Recent Resolutions

- 10 [22-452 Notice of Motion No. 9.1 North Byron Parklands - Splendour in the Grass 2022 Minutes of Ordinary \(Planning\) Meeting - Thursday, 8 September 2022 \(infocouncil.biz\)](#)

The proposed planning agreement does not contravene the above resolution.

Legal/Statutory/Policy Considerations

- 15 The draft planning agreement has been reviewed by Legal Services and the following minor changes have been made:

Clause 7: Insert 7.1 and the words “Complies with Clause 13 hereof: and”

Clause 7 renumber 7.2 and 7.3.

In clause 8 replace 93G with 7.5 to reflect the new numbering system of the act.

Amend clause 10 as follows:

- 20 10. Enforcement

Nothing in this Deed prevents Council from exercising any function under the Act or any other Act or Law relating to the enforcement, by a suitable means of any breach of this Deed or any matter to which this Agreement relates.

Council Policy

- 5 The departmental guidelines require Council to have policy on planning agreements. Council Policy Planning Agreements 2021 is to provide guidance and to supplement the act, regulations, and departmental guidelines. Whilst this policy applies it is of little relevance as the content of the planning agreement has been pre-determined by the consent authority.

10 **Financial Considerations**

This planning agreement presents an ongoing income stream for infrastructure upgrades. It is not large enough to fund new infrastructure by itself but would be used in combination with developer contributions to leverage grant funds.

The cost of administration can be absorbed by the current developer contributions team.

15 **Consultation and Engagement**

Public Exhibition

The draft planning agreement was exhibited for 28 days as required by the Environmental Planning and Assessment Act 1979. No submissions were received.

20

Report No. 13.23 Preferred Alignment Mullum to Bruns Cycleway

Directorate: Infrastructure Services

5 **Report Author:** Kate Draskovic, Planning Support Officer
Judd Cornwall, Traffic & Transport Engineer

File No: I2022/1736

Summary:

10 The purpose for this report is to put forward a recommendation for the proposed Mullumbimby to Brunswick Heads Cycleway alignment based on community feedback.

This report has summarised the feedback received from the public in response to their preferred outcome. The exact alignment of the routes will be determined as part of future investigation and design activities.

15 **RECOMMENDATION:**

That Council supports option 1 (from the community “Tell us what you think” survey) Mullum to Bruns Cycleway and endorse Council staff in progressing with the design on this alignment.

20

Attachments:

1 Raw Data - Mullum to Bruns Cycleway, E2022/117394 

25

Report

Council is proposing to build a cycle path that connects Mullumbimby to Brunswick Heads and surrounding areas including Ocean Shores.

5 Following investigations into a number of different options, two potential outcomes have been proposed as shown in figure 1.

Option 1 (formally route A, figure 2) – north route begins near the rail station in Mullumbimby and heads north along the rail corridor until Synotts Lane and then heads east through adjoining properties, the Brunswick Valley STP and connects to Brunswick Valley Way just north of Rajah Road Ocean Shores.

10 Option 2 (formally route D, figure 2)– south route follows Argyle Street out of Mullumbimby and cuts through old paper roads to a section of the Saddle Road and then connects to Brunswick Heads from the southern entry point (the Motorway overpass) to Tweed Street Brunswick Heads.



15 **Figure 1: Proposed cycleway options Mullum to Bruns (media release)**

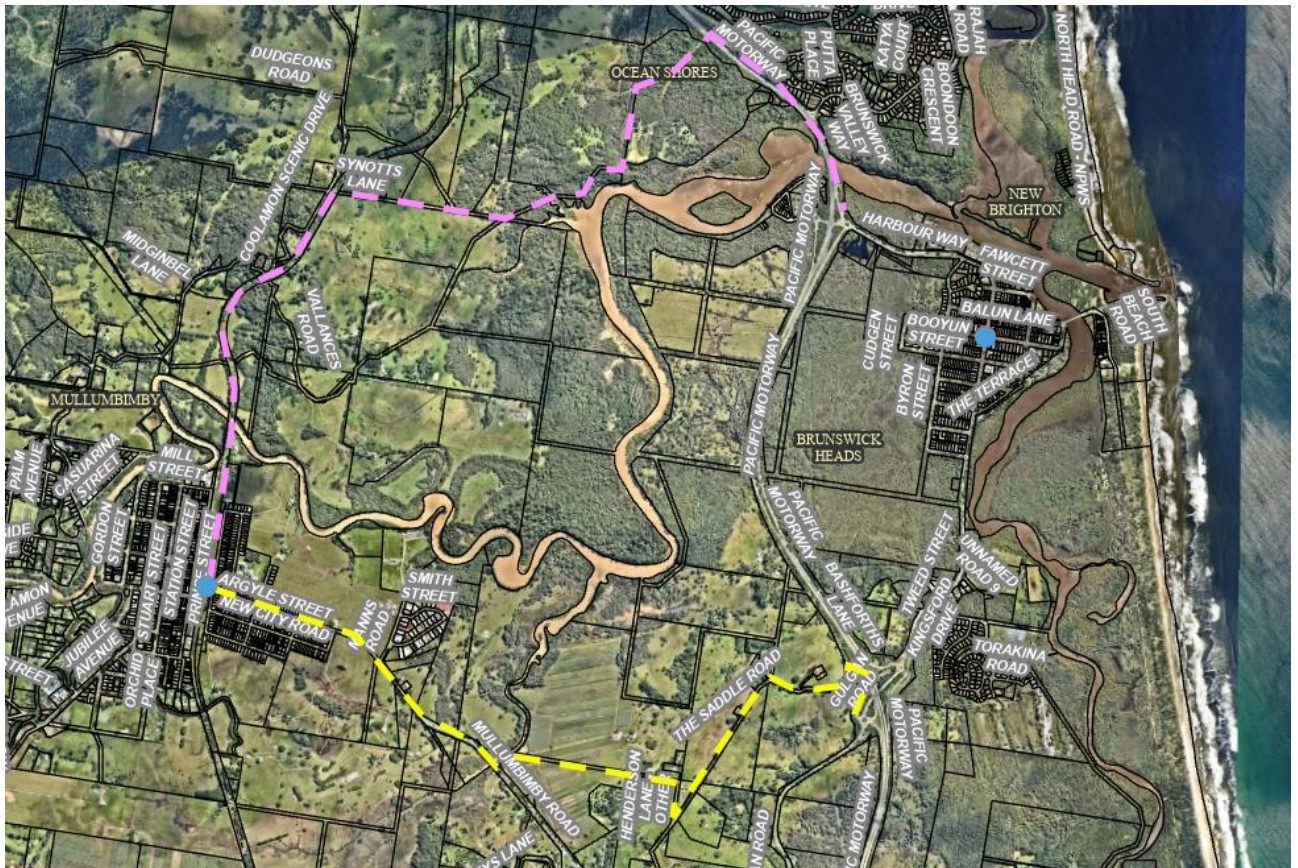


Figure 2 – Route A (Pink) and Route D (Yellow) options to connect Mullumbimby to Brunswick Heads

Community Feedback

5 Council asked for community feedback via a survey located on the Byron Shire Council website. The ‘Mullum to Bruns Cycleway project – tell us what you think’ survey was available from 7 September 2022 to 7 October 2022.

803 responses were received during the survey period, a summary and analysis of the responses is provided below:

10 Survey Question 1 - To what degree do you support the concept of a cycle route that connects Mullumbimby to Brunswick Heads and Ocean Shores?

The options available to respondents were strongly support, somewhat support, neutral, somewhat oppose and strongly oppose. Respondents were only able to select one option.

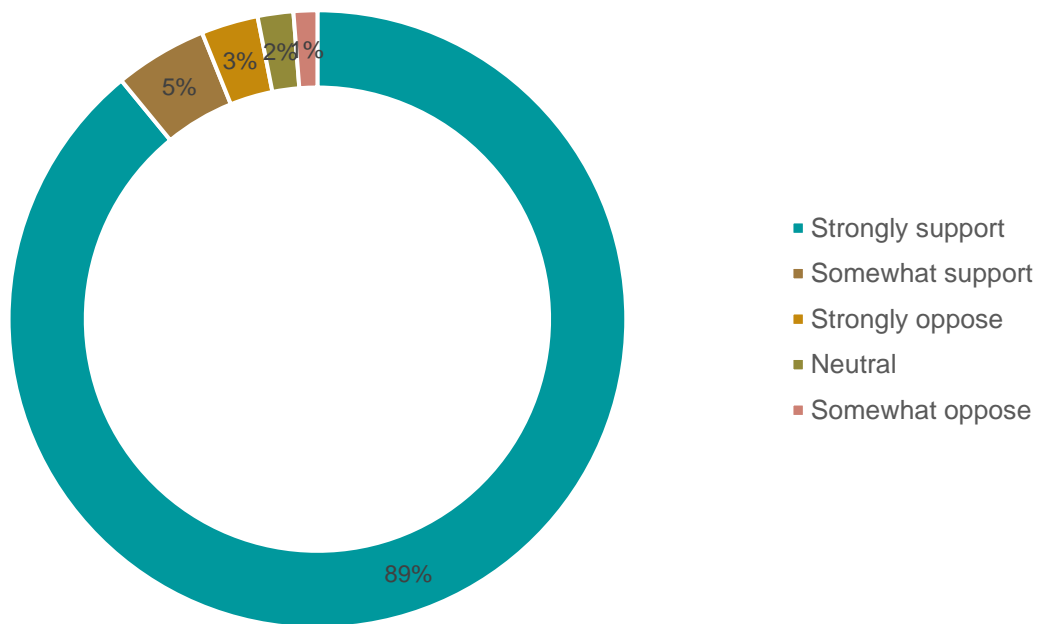
The overwhelming majority of respondents (89%) strongly support the concept.

15 The results are as below;

- Strongly support (89%)
- Somewhat support (5%)

- Strongly oppose (3%)
- Neutral (2%)
- Somewhat oppose (1%)

To what degree do you support the concept of a cycle route that connects Mullumbimby to Brunswick Heads and Ocean Shores?



5 **Survey Question 3 - How would you be likely to use the cycleway routes proposed?**

Respondents were given six options to choose from, which are listed below and could select any number of options.

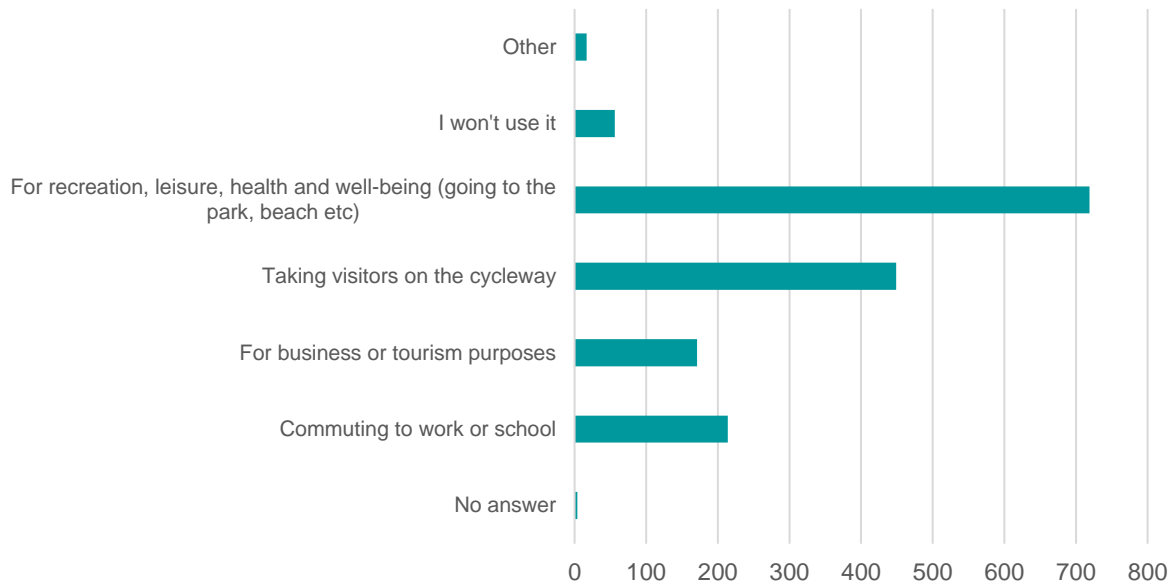
10 The most selected use of the cycle way was for recreation, leisure, health and well-being (going to the park, beach etc) which was selected 719 times and accounted for 44% of responses.

The results are as below;

- For recreation, leisure, health and well-being (going to the park, beach etc) (44%)
- Taking visitors on the cycleway (28%)
- Commuting to work or school (13%)
- 15 • For business or tourism purposes (10%)

- I won't use it (3%)
- Other (1%)

How would you be likely to use the cycleway routes proposed?



Survey Question 5 - Please select the three things you value the most.

5 Respondents were asked to select the three things they value the most out of the options listed below.

The values selected the most amount of times were ‘opportunity for active recreation, improving health and wellbeing’ (19%), followed closely by ‘Safety – I want a route that is safe from traffic, has good passive surveillance, and is not difficult to ride’ (18%).

10 The results are as below;

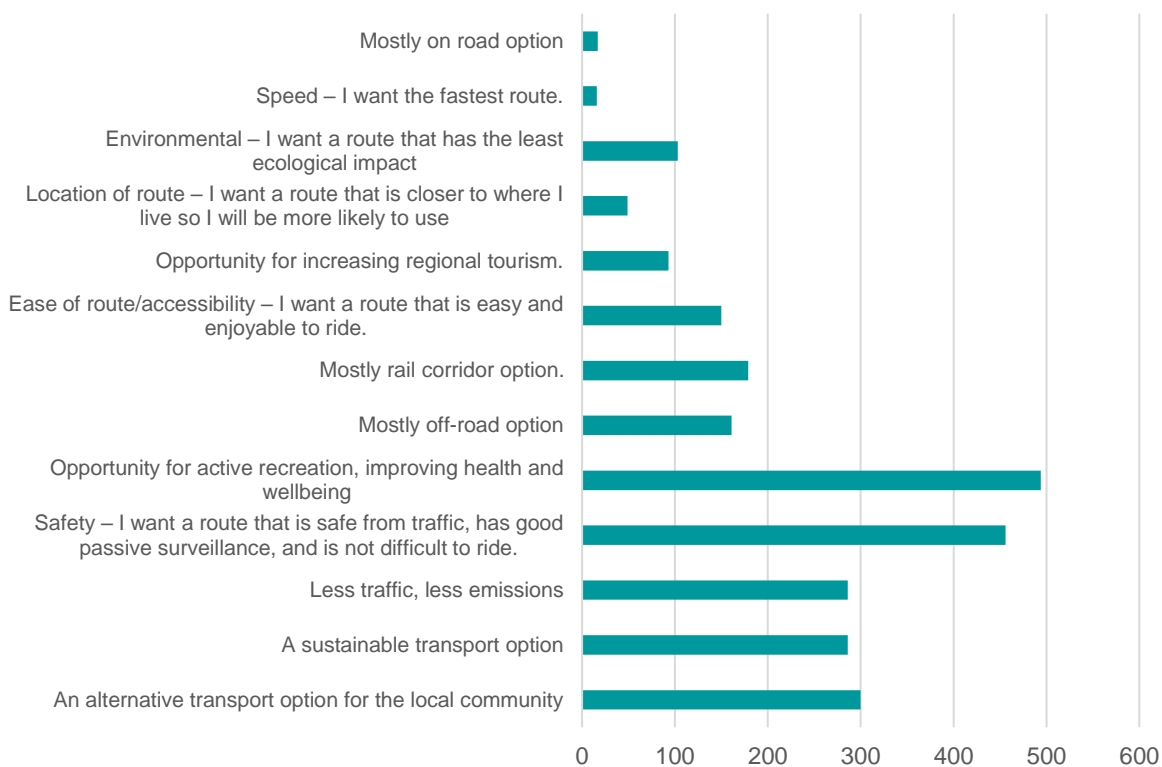
- Opportunity for active recreation, improving health and wellbeing (19%)
- Safety – I want a route that is safe from traffic, has good passive surveillance, and is not difficult to ride (18%)
- An alternative transport option for the local community (12%)

15 • A sustainable transport option (11%)

- Less traffic, less emissions (11%)
- Mostly rail corridor option (7%)
- Mostly off-road option (6%)

- Ease of route/accessibility – I want a route that is easy and enjoyable to ride (6%)
- Opportunity for increasing regional tourism (4%)
- Environmental – I want a route that has the least ecological impact (4%)
- 5 • Location of route – I want a route that is closer to where I live so I will be more likely to use (2%)
- Speed – I want the fastest route (1%)
- Mostly on-road option (1%)

Please select the three things you value the most



Survey Question 6 (Whole data set) – Which option do you prefer?

10 The respondents were asked which cycle route they would prefer, Option 1 – the north option or Option 2 – the south option:

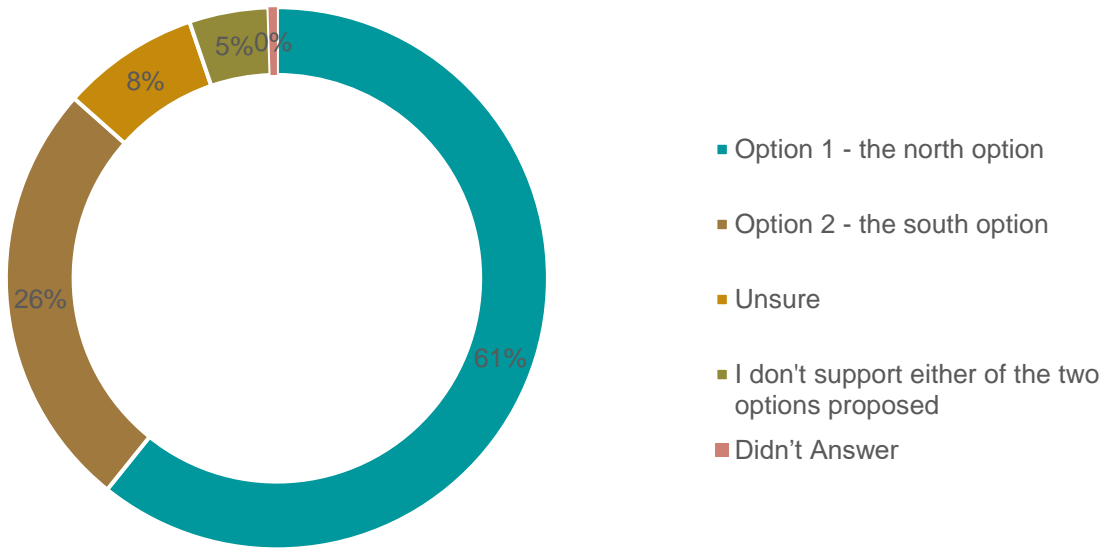
Option 1 – the north option was the preferred option with 61% of the votes.

The results are as below;

- Option 1 – the north option (61%)
- 15 • Option 2 – the south option (26%)

- Unsure (8%)
- I don't support either of the two options proposed (5%)
- No answer (0%)

Which option do you prefer?

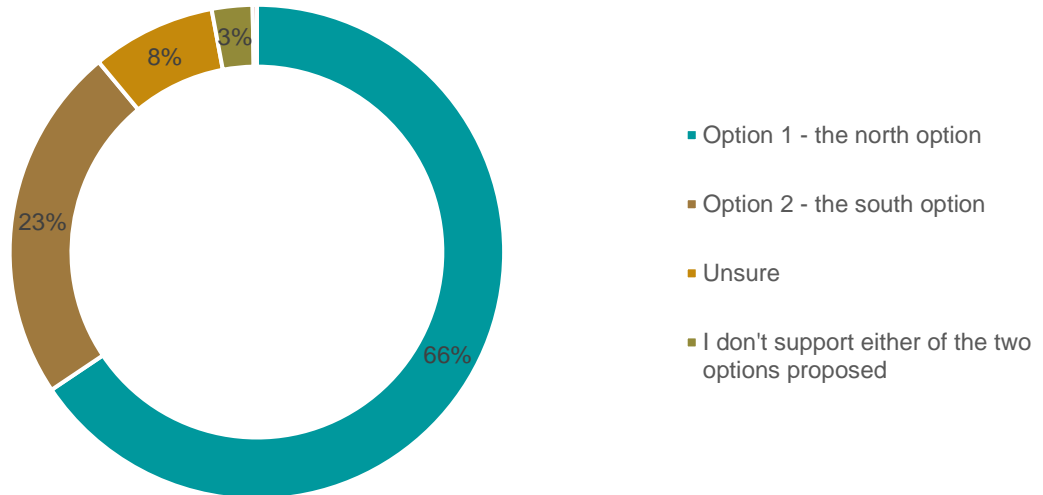


5 **Survey Question 6 (Only considers people who strongly support a Mullum to Bruns Cycleway)– Which option do you prefer?**

Looking at just the answers from the 89% of respondents that strongly support the cycleway, the results are as below;

- Option 1 – the north option (66%)
- 10 • Option 2 – the south option (23%)
- Unsure (8%)
- I don't support either of the two options proposed (3%)

Which option do you prefer? (Respondents who Strongly Support the Cycleway)



Survey Question 9 – Tick the age group that applies to you.

Respondents were asked to select their age group bracket.

The results are as below;

- 5 • 56-65 (28%)
- 46-55 (27%)
- 36-45 (15%)
- 66-75 (15%)
- 26-35 (7%)
- 10 • 75+ (3%)
- 18-25 (3%)
- 0-17 (2%)

15 Survey Question 10 – Tick all that apply to you.

Respondents were asked to select all that apply out of the following options.

The results are as below;

- I am a resident of the Byron Shire (35%)

- I am a ratepayer of the Byron Shire (33%)
- I work in the Byron Shire (22%)
- I am a visitor to the Byron Shire (7%)
- Other (3%)

5 Survey Question 11 – Which suburb do you live in?

Respondents were asked to enter the suburb they live in

The most common responses are as below;

- Mullumbimby (25%)
- Ocean Shores (22%)
- 10 • Brunswick Heads (7%)
- Byron Bay (5%)
- South Golden Beach (4%)
- Main Arm (2%)
- Myocum (2%)
- 15 • Bangalow (2%)
- Lismore (2%)
- Suffolk Park (2%)

Survey questions not contained within this report:

- 20 For the purpose of this report only questions that relate to the cycleway alignment are referred to. Other responses to general questions have been noted and are contained within attachment 1 of this report (E2022/117394).

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.1: Provide a safe, reliable, and accessible transport network	5.1.3: Active transport - pedestrians and cycleways - Deliver the actions identified in the Pedestrian Access and Mobility Plan and in the Bike Plan	5.1.3.3	Mullumbimby to Brunswick Heads On Road Cycleway

Recent resolutions

Resolution number **22-140**

- 5
 1. Commences community consultation on Route Options A and D as part of the Mullum to Bruns cycleway project.
 2. Reports the findings of the community consultation back to Council with a view to inform a single preferred route for the cycleway which is to be progressed in terms of investigation, planning and design activities. (Lyon/Ndiaye)

10 Financial Considerations

Design for the Mullum – Bruns Cycleway can be funded through the budget allocation in (GL 44281.013) there is currently approximately, \$300k available to progress the design.

Consultation and engagement

- 15 Council released a survey to the public seeking feedback in relation to the Mullum to Bruns cycleway. The Media release went public on 13 September 2022 and closed on 7 October 2022.

Report No. 13.24 Renaming of a Park in Bangalow

Directorate: Infrastructure Services

Report Author: Andrew Erskine, Open Space Technical Services Officer

File No: I2022/1790

5 **Summary:**

The Bangalow Park commonly known as Bangalow Weir or Bangalow Pool Park no longer has a weir or pool since the degraded weir was removed to improve fish passage.

The parklands volunteer group who care for the park have requested the park now be formally named to reduce confusion.

10

RECOMMENDATION:

- 15
- 1. Council approves the proposed name Piccabeen Park to be placed on public exhibition for 28 days in first quarter of 2023.**
 - 2. A further report be provided to Council advising on outcomes of the public exhibition.**

20

Report

25 The park commonly known as Bangalow Weir or Bangalow Pool no longer has a weir or pool since they were removed to improve fish passage, consequently the name is no longer appropriate and the volunteer group who care for the park have asked for it to be renamed to reduce confusion. The initial suggestion of the park stewards was Bangalow Parklands but as the showground is officially named Bangalow Park this may also have led to confusion.

30 The preference of the Geographic Names Board is to use local Aboriginal names where possible. The name Piccabeen Park was suggested and has been supported by the Arakwal Board. Piccabeen is an Aboriginal word used to describe the Bangalow Palm or a carrier made from its leaf sheaf.

If this name is acceptable to Council, the proposal would be placed on public exhibition for a period of 28 days after which feedback will be reported to Council.



Figure 1: Bangalow Park proposed for formal naming

Key issues

5 The park is not formally named, but is anecdotally known as Bangalow Weir, or Bangalow Pool. These historic features are no longer present. Clarity in place naming reduces confusion, whether this be an invitation to a picnic or in allowing swift Emergency Response to an accident. When the proposed name is gazetted, it will appear in future official mapping.

Options

Guidelines from the Geographical Naming Board for selection of names;

- Aboriginal names are encouraged.
 - Names acknowledging the multicultural nature of NSW are encouraged.
- 5
- Names associated with the heritage of an area are encouraged.
 - A name that owes its origin to the peculiarity of a topographic feature designated such as shape, vegetation, animal life etc. may be accepted.

Next steps

10 The proposal be placed on public exhibition for a period of 28 days after which feedback will be reported to Council. If the proposed name remains acceptable to Council following public exhibition the name Piccabeen Park will then be forwarded to the GNB for gazettal.

Strategic Considerations

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<p>2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued</p>	<p>2.3: Respect and value Aboriginal cultures, knowledge, and history</p>	<p>2.3.1: Aboriginal community and First Nations People - Develop strong and productive relationships that empower the Aboriginal community</p>	<p>2.3.1.1</p>	<p>Continue working with Traditional owners on land management matters</p>

Financial Considerations

15 Once a name for the park has been formalised the design and construction of a sign will be required.

The cost of a sign will be available from adopted parks infrastructure renewal budget.

Consultation and Engagement

Potential names for the park were discussed between staff and the park’s stewards.

The Arakwal Board have provided support for use of this name for this park.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Finance Advisory Committee Meeting held on 17 November 2022

5 **Directorate:** Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2022/1714

Summary:

10 This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 17 November 2022.

RECOMMENDATION:

15 1. **That Council notes the Minutes of the Finance Advisory Committee Meeting held on 17 November 2022.**

2. **That Council adopts the following Committee Recommendations:**

Report No. 4.1 Budget Review - 1 July 2022 to 30 September 2022
File No: I2022/1648

Committee Recommendation 4.1.1

1. **That Council authorises the itemised budget variations as shown in Attachment 2 (#E2022/109971) which include the following results in the 30 September 2022 Quarterly Review of the 2022/2023 Budget:**
 - a) **General Fund – \$0 movement to the Estimated Unrestricted Cash Result**
 - b) **General Fund - \$3,005,900 decrease in reserves**
 - c) **Water Fund - \$1,536,100 decrease in reserves**

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

14.1

- d) **Sewerage Fund - \$278,600 decrease in reserves**
2. **That Council adopts the revised General Fund Estimated Unrestricted Cash Result of (\$207,000) for the 2022/2023 financial year as at 30 September 2022.**
 3. **That a memo be brought to a Councillor Workshop identifying options to refocus the intent of Resolution No. 22-586 part 5 to reallocate operational funding with a view to continuing a drainage maintenance focus for the second half of the financial year.**

Attachments:

5

- 1 Minutes 17/11/2022 Finance Advisory Committee, I2022/1656 

Report

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 17 November 2022 for determination by Council. The agenda for this meeting can be located on Council's website at: [Minutes of Finance Advisory Committee Meeting - Thursday, 17 November 2022 \(infocouncil.biz\)](https://www.infocouncil.biz/minutes-of-finance-advisory-committee-meeting-thursday-17-november-2022)

5

Committee Recommendation

The Committee considered the 30 September 2022 Quarterly Budget Review (Report 4.1).

The 30 September 2022 Quarterly Budget Review outlined Council's estimated financial position for the 2022/23 financial year, reviewed as at 30 September 2022.

- 10 The 30 September 2022 Quarterly Budget Review is the first quarterly budget review for the 2022/2023 financial year and there are a series of proposed budget adjustments outlined in the report. It has not identified any potential improvement to the 2022/23 budget position of an estimated \$207,000 deficit which is the original budget deficit adopted by Council for 2022/2023 in June 2022.
- 15 This Budget Review also considered three recent Council resolutions to as outlined in the report where funding has been included for two of those resolutions relating to:
- Resolution **22-361** concerning Bangalow Sportfields Plan of Management \$2,000
 - Resolution **22-534** concerning a parking study at Brunswick Heads \$140,000

- 20 The remaining Resolution **22-586** concerning Drainage Capital works and allocating an additional \$300,000 for capital works was considered by the Finance Advisory Committee where recommendation 3 was added to Committee recommendation 4.1.1.

Council will be considering the Budget Review – 1 July 2022 to 30 September 2022 at the Ordinary Meeting to be held on 24 November 2022.

Financial Implications

- 25 As per the Reports listed within the Finance Advisory Committee Meeting of 17 November 2022.

Statutory and Policy Compliance Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 17 November 2022.

30

Report No. 14.2 Report of the Audit, Risk and Improvement Committee Meeting held on 17 November 2022

Directorate: Corporate and Community Services

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

File No: I2022/1730

Summary:

10 This report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 17 November 2022 for determination by Council.

RECOMMENDATION:

15 1. **That Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 17 November 2022.**

2. **That Council adopts the following Committee Recommendation:**

Report No. 4.1 Internal Audit Plan 2023-2024

File No: I2022/1115

Committee Recommendation 4.1.1

1. **That Council endorses the revised Internal Audit Plan 2023-2024 (E2022/104827).**

2. **That Council notes that the Audit, Risk and Improvement Committee will receive a detailed version of the Internal Audit Plan 2023-2024 at the first meeting in 2023 to allow for any refinement of the Plan.**

3. That Council adopts the following Committee Recommendation:

Report No. 4.2 2023 Agenda Schedule

File No: I2022/1440

Committee Recommendation 4.2.1

That Council endorses the Agenda Schedule for 2023 (Attachment 2 E2022/98398).

4. That Council adopts the following Committee Recommendation:

Report No. 4.4 Business Continuity Plan Review 2022

File No: I2022/1476

Committee Recommendation 4.4.1

That Council endorses the revised Business Continuity Plan Part 1 – Manual (E2022/100219).

5. That Council adopts the following Committee Recommendation:

Report No. 5.1 Internal Audit Report Quarter 1 2022-23 including Open Space Review

File No: I2022/863

Committee Recommendation 5.1.1

That Council:

- 1. Notes the Summary of Internal Audit Recommendations for Quarter 1 2022-2023 at Attachment 1 (E2022/102222).**
- 2. Endorses the recommendations from the Executive Team to close off four internal audit recommendations from Quarter 1 2022-2023 as listed in Table 1 of this report (which is a summary from Attachment 2 E2022/E2022/96912).**
- 3. Endorses that management implement the recommendations made in the Internal Audit of Open Space (September 2022) (Attachment 3 E2022/102322).**

6. That Council adopts the following Committee Recommendation:

Report No. 6.1 Draft 2021/2022 Financial Statements
File No: I2022/1701

Committee Recommendation 6.1.1

- 1. That the Audit, Risk and Improvement Committee note the Audit Engagement Closing Report for the year ended 30 June 2022 provided by the Audit Office of NSW provided at Confidential Attachment 3 (#E2022/113308).**
- 2. That Council:**
 - (a) adopts the Draft 2021/2022 Financial Statements incorporating the General Purpose Financial Statements (#E2022/112363) and Special Purpose Financial Statements (#E2022/112364).**
 - (b) approves the signing of the “Statement by Councillors and Management” in accordance with Section 413(2)(c) of the Local Government Act 1993 and Section 215 of the Local Government (General) Regulation 2021 in relation to the 2021/2022 Draft Financial Statements.**
 - (c) endorsed that the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 15 December 2022 in accordance with Section 418(1) of the Local Government Act 1993.**

Attachments:

- 5 1 Minutes 17/11/2022 Audit, Risk and Improvement Committee, I2022/1653 
- 2 Confidential - Internal Audit Program Summary 2023-2024, E2022/104827
- 3 Confidential - Summary of IA Recommendations - Quarter 1 2022-2023, E2022/102222
- 4 Confidential - Internal Audit Recommendations status Quarter 1 2022-2023, E2022/96912
- 5 Confidential - Internal Audit Report - Open Spaces, E2022/102322

10

Report

The attachment to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 17 November 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Audit, Risk and Improvement Committee Agenda 17 November 2022](#)
[Audit, Risk and Improvement Committee Supplementary Agenda 17 November 2022](#)

10 The attachment numbers included in the recommendations to this report follows the numbering of the Audit, Risk and Improvement Committee Meeting Agenda. Confidential attachments from that Agenda have been included with this report for Council's information. The non-confidential attachments are available at the links provided above.

Confidential attachments included in this report:

- Report 4.1 Attachment 1 – This has been included as Attachment 2 to this report
 - Report 5.1 Attachments 1, 2 and 3 – These have been included as Attachment 3, 4 and 5 to this report
- 15 Note: Report 6.1 Attachment 3 – This has not been included with this report as it is available to the Committee only.

Committee Recommendation

20 The recommendations in this report to Council lists only those committee recommendations that require endorsement by Council e.g. items the Committee simply noted have not been included in this report. The remainder of the Committee Recommendations are included in the attached minutes.

Further, a number of reports were provided to the Committee for information only and required no recommendations to Council. These are listed in the Agenda and the Minutes at Reports 7.1 to 7.4.

25 Financial Implications

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 17 November 2022.

Statutory and Policy Compliance Implications

30 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 17 November 2022.

5 **Report No. 14.3 Report of the Biodiversity Advisory Committee Meeting held on 17 November 2022**

Directorate: Sustainable Environment and Economy

Report Author: Arika McElroy, Project Support Officer

File No: I2022/1722

10 **Summary:**

This report provides the minutes of the Biodiversity Advisory Committee Meeting of 17 November 2022 for determination by Council.

15 **RECOMMENDATION:**

That Council notes the minutes of the Biodiversity Advisory Committee Meeting held on 17 November 2022.

20 **Attachments:**

1 Minutes 17/11/2022 Biodiversity Advisory Committee, I2022/1663 

25

Report

The attachment to this report provides the minutes of the Biodiversity Advisory Committee Meeting of 17 November 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2022/11/BAC_17112022_MIN_1505.PDF

The committee recommendations are supported by management and are provided in the attachment to this report.

Summary of Reports

- 10 **Report No. 4.1** - Update of constitution following new members.

The Committee noted the updated constitution.

Report No. 4.2 - Brunswick Valley Landcare Support Officer quarterly report April to June 2022

The Committee noted the report.

- 15 **Report No. 4.3** - Biodiversity and Agriculture Projects Update.

The Committee noted the update on current projects and programmes being undertaken by Council staff and requested staff to prepare further reports on camphor laurels on rural land and Carbon sequestration to the next Committee meeting.

Financial Implications

- 20 As per the Reports listed within the Biodiversity Advisory Committee Meeting of 17 November 2022.

Statutory and Policy Compliance Implications

As per the Reports listed within the Biodiversity Advisory Committee Meeting of 17 November 2022.

25

Report No. 14.4 Report of the Climate Change and Resource Recovery Advisory Committee Meeting held on 17 November 2022

Directorate: Sustainable Environment and Economy

5 **Report Author:** Arika McElroy, Project Support Officer

File No: I2022/1723

Summary:

10 This report provides the minutes of the Climate Change and Resource Recovery Advisory Committee Meeting of 17 November 2022 for determination by Council.

RECOMMENDATION:

15 1. **That Council notes the minutes of the Climate Change and Resource Recovery Advisory Committee Meeting held on 17 November 2022.**

2. **That Council adopts the following Committee Recommendations:**

Report No. 3.1 Sustainability Project Updates
File No: I2022/1426

Committee Recommendation 3.1.1

1. **That the Climate Change and Resource Recovery Advisory Committee notes the report.**
2. **That Council continues the annual membership with Climate Emergency Australia.**
3. **That Council notes that the report on Council's Annual Emissions will also be tabled with the Climate Change and Resource Recovery Advisory Committee for further consideration and input.**

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.4

3. That Council adopts the following Committee Recommendations:


Report No. 3.2 **Revised Constitution of Climate Change and Resource Recovery Advisory Committee**

File No: I2022/1661

Committee Recommendation 3.2.1

1. That Council supports an invitation to Mullum Cares to participate in the Climate Change and Resource Recovery Advisory Committee, include Cr Dey as an alternate Councillor and endorse the constitution at Attachment 1 (E2021/148037) as amended pending Mullum Cares acceptance.
2. That Cr Pugh be alternate Chair in Cr Ndiaye's absence.

Attachments:

- 5 1 Minutes 17/11/2022 Climate Change and Resource Recovery Advisory Committee, I2022/1685 

Report

The attachment to this report provides the minutes of the Climate Change and Resource Recovery Advisory Committee Meeting of 17 November 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2022/11/CCRR_17112022_MIN_1535.PDF

The committee recommendations are supported by management and are provided in the attachment to this report.

Summary of Reports

10 Report No. 3.1 - Sustainability Project Updates

The Committee noted the report and recommended that Council continues the annual membership with Climate Emergency Australia and notes that the report on Council's Annual Emissions will also be tabled with the Committee for further consideration and input.

15 Report No. 3.2 - Revised Constitution of Climate Change and Resource Recovery Advisory Committee

20 The Committee recommended that Council support an invitation to Mullum Cares to participate in the Committee, include Cr Dey as an alternate Councillor, endorse the constitution as amended pending Mullum Cares acceptance, and that Cr Pugh be alternate Chair in Cr Ndiaye's absence.

Report No. 3.3 - Resource Recovery Projects Update

The Climate Committee noted the report.

Report No. 3.4 - North Coast Regional Waste Investment Project and Richmond Valley Council's waste update for Councils

25 The Committee noted the report.

Financial Implications

As per the Reports listed within the Climate Change and Resource Recovery Advisory Committee Meeting of 17 November 2022.

Statutory and Policy Compliance Implications

30 As per the Reports listed within the Climate Change and Resource Recovery Advisory Committee Meeting of 17 November 2022.

Report No. 14.5 Report of the Housing and Affordability Advisory Committee Meeting held on 17 November 2022

Directorate: Sustainable Environment and Economy

5 **Report Author:** Noreen Scott, EA Sustainable Environment and Economy

File No: I2022/1796

Summary:

10 This report provides the minutes of the Housing and Affordability Advisory Committee Meeting of 17 November 2022 for determination by Council.

RECOMMENDATION:

15 **That Council notes the minutes of the Housing and Affordability Advisory Committee Meeting held on 17 November 2022.**

Attachments:

20 1 Minutes 17/11/22 Housing Affordability Advisory Committee, I2022/1645 

Report

The attachment to this report provides the minutes of the Housing and Affordability Advisory Committee Meeting of 17 November 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Housing and Affordability Advisory Committee Meeting - Thursday, 17 November 2022 \(infocouncil.biz\)](#)

The committee recommendations are supported by management and are provided in the attachment of this report.

Summary of Reports

- 10 **Report No. 3.1 Presentation by Associate Professor Louise Crabtree-Hayes**
The Committee noted the presentation given by Associate Professor Louise Crabtree-Hayes.**Report No. 3.2 Housing Initiative and Project Updates**

The Committee noted the update on current initiatives and projects being undertaken by Council staff.

15 Financial Implications

As per the Reports listed within the Housing and Affordability Advisory Committee Meeting of 17 November 2022.

Statutory and Policy Compliance Implications

- 20 As per the Reports listed within the Housing and Affordability Advisory Committee Meeting of 17 November 2022.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.6 Report of the Local Traffic Committee Meeting held on 30 November 2022

5 **Directorate:** Infrastructure Services
Report Author: Shelley Flower, Traffic and Parking Systems Officer
File No: I2022/1785

10 **Summary:**

The attachment to this report provides the minutes of the Local Traffic Committee Meeting held on 30 November 2022 for determination by Council.

Council's action on the LTC advice will be:

- 15 a) If Council is in agreement with the LTC unanimous support then the proposal may be approved. In these cases there is no conflict between Council and the advice of the LTC, consequently there is no need for Council to inform TfNSW or the NSW Police representatives of the decision.
- b) If Council is in agreement with the LTC unanimous support, but no longer wants to proceed, the proposal may still be rejected.
- 20 c) If Council is in agreement with the LTC unanimous decline then the proposal may be rejected. Again there is no conflict between Council and the advice of the LTC. Consequently there is no need for Council to inform TfNSW or the NSW Police representatives of the decision.
- 25 d) If Council decides to proceed with a proposal where the advice of the LTC is not unanimous support, then the Council must first advise the TfNSW and the NSW Police representatives in writing of their intention to approve the proposal. TfNSW or the NSW Police may then lodge an appeal to the Regional Traffic Committee (RTC).
- 30 e) If Council decides to proceed with a proposal where the advice of the LTC is a unanimous decline, then the Council must first advise the TfNSW and NSW Police representatives in writing of their intention to approve the proposal. TfNSW or the NSW Police may then lodge an appeal to the RTC.

Due to the fact that the TfNSW and the NSW Police have the power to appeal certain decisions of the Council, the LTC cannot provide its advice to Council until both TfNSW and the NSW Police have provided their vote on the issue.

RECOMMENDATION:

5 1. That Council notes the minutes of the Local Traffic Committee Meeting held on 30 November 2022.

2. That Council adopts the following Committee Recommendation:

Report No. 6.1 Tincogan Street/Dalley Street Reprioritisation (including zebra pedestrian crossing facility)

File No: I2022/1735

Committee Recommendation 6.1.1

That the Local Traffic Committee support the installation of the zebra (pedestrian) crossing shown in Attachment 2 (E2022/117476).

3. That Council adopts the following Committee Recommendation:

Report No. 6.2 Belongil Parking Scheme Review - New parking limits

File No: I2022/1537

Committee Recommendation 6.2.1

That the Local Traffic Committee supports proposed regulatory items for Belongil Beach on Childe, Border and Kendall Streets as shown in Attachment 1 (E2022/117545).

Attachments:

10

1 Minutes 30/11/2022 Local Traffic Committee Extraordinary, I2022/1779 

Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 30 November 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Extraordinary Local Traffic Committee Meeting - Wednesday, 30 November 2022 \(infocouncil.biz\)](https://infocouncil.biz)

This report contains the recommendations of the Local Traffic Committee (LTC) meeting held on 30 November 2022.

Committee Recommendation

- 10 As per the Reports listed within the Local Traffic Committee Meeting of 30 November 2022.

Financial Implications

As per the Reports listed within the Local Traffic Committee Meeting of 30 November 2022.

- 15 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Local Traffic Committee Meeting of 30 November 2022.

Report No. 14.7 Report of the Moving Byron Advisory Committee Meeting held on 2 December 2022

Directorate: Infrastructure Services

5 **Report Author:** Dominika Tomanek, Executive Assistant Infrastructure Services

File No: I2022/1803

Summary:

10 The attachment to this report provides the minutes of the Moving Byron Advisory Committee Meeting of 2 December 2022 for determination by Council.

RECOMMENDATION:

15 1. **That Council notes the minutes of the Moving Byron Advisory Committee Meeting held on 2 December 2022.**

2. **That Council adopts the following Committee Recommendations:**

Report No. 4.1 Moving Byron Strategy - Revised Submission Summary and Transport for New South Wales Feedback

File No: I2022/1410

Committee Recommendation 4.1.1

1. **That Council receives and considers via its Moving Byron Advisory Committee:**
 - a) **an authorised draft of the TfNSW Integrated Transport Planning Framework (Planning and Strategy Development Initiation Document – Byron Shire); and**
 - b) **the planning framework itself, incorporating the Moving Byron Transport Plan and recognising council’s settlement strategies**

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

14.7

2. That Council extends to TfNSW an open invitation to continue as part of Moving Byron Advisory Committee.

3. That Council adopts the Moving Byron Strategy with the following amendments:
 - a) state the number of submissions;
 - b) remove the reference to 32% as presented at page 16 of the committee Agenda;
 - c) In Figure 1 change the word 'agree to' to 'mention';
 - d) Remove figure 2.

3. That Council adopts the following Committee Recommendations:

Report No. 4.2 E Bus Proposal
File No: I2022/1721

Committee Recommendation 4.2.1

That Council seeks support from Transport for NSW (TfNSW) to hold a workshop in early 2023 to explore ways of improving the current bus network in Byron Shire as discussed in Moving Byron Strategy.

Attachments:

- 5 1 Minutes 02/12/2022 Moving Byron Advisory Committee, I2022/1794 

Report

The attachment to this report provides the minutes of the Moving Byron Advisory Committee Meeting of 2 December 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Moving Byron Advisory Committee Meeting - Friday, 2 December 2022 \(infocouncil.biz\)](https://www.infocouncil.biz)

Committee Recommendation

The committee recommendations are supported by management and are provided in the attachment to this report.

Financial Implications

- 10 As per the Reports listed within the Moving Byron Advisory Committee Meeting of 2 December 2022.

Statutory and Policy Compliance Implications

As per the Reports listed within the Moving Byron Advisory Committee Meeting of 2 December 2022.